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**21 June 2021**

**Information on List of Issues for Kyrgyzstan for Consideration by the Committee Against Torture at its 72nd Session (provisionally 8 Nov. – 3 Dec. 2021)**

**Introduction:**

1.

The human rights movement "Bir Duino Kyrgyzstan" sends this communication to the Committee Against Torture (CAT) for consideration of Kyrgyzstan State reports. Our submission describes our concerns about the legislation and enforcement practices in terms of respect for the rights of victims of torture and ill-treatment, and ensuring access to fair justice. The legal system of Kyrgyzstan continues to provide opportunities to criminals to avoid criminal responsibility and punishment for committed crimes, and the reform of criminal legislation has worsened the situation in many aspects, without having a positive effect.

**Information about the authors of the submission**

2.

Since 2010, the Human Rights Movement "Bir Duino Kyrgyzstan" has been protecting the human rights in Kyrgyzstan, the rights of victims of torture and specifically human rights defender Azimzhan Askarov, who was unjustly sentenced to life imprisonment and died on the morning of 25 July 2020.

The organization is actively involved in the protection of civil and political rights of citizens, national minorities, believers and LGBT groups, often subjected to harassment and pressure. After the inter-ethnic conflict in southern Kyrgyzstan in 2010, while protecting the rights of ethnic Uzbeks, especially human rights activist Azimzhan Askarov, the organization was subjected not only to open harassment by government officials in the media, but also to attacks by various nationalist groups, including women. In 2015, in order for Bir Duino-Kyrgyzstan to refuse to protect victims of torture, the secret services searched the office and homes of their lawyers (cm.<https://www.hrw.org/news/2015/03/31/kyrgyzstan-rights-lawyers-office-home-searched>).

**Recommendations of the Committee to Kyrgyzstan in the Concluding Observations on the Second Periodic Report of Kyrgyzstan (20 December 2013)**

3. We confirm the Concluding observations of the Committee Against Torture as of 20 December 2013 on the second periodic report of Kyrgyzstan, in particular the Committee's concerns regarding the following:

a) lack of independent and effective mechanisms for receiving complaints and conducting impartial and comprehensive investigations into allegations of torture; b) obstacles at the stage of the preliminary investigation, in particular in relation to conducting forensic examinations; c) the judicial system does not effectively investigate allegations of torture.

**We draw your attention to the Committee's recommendations to Kyrgyzstan:**

(a) Establish an independent and effective mechanism to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities;

(b) Ensure that, in accordance with the Istanbul Protocol, all health professionals are under a legal obligation to document torture, that timely access to a qualified and independent medical investigator is guaranteed, and that all medical examinations are carried out in private;

(d) Ensure that investigations into allegations of torture are not undertaken by or under the authority of the police, but by an independent body, that they are undertaken and concluded without any delay, and that official investigations are opened in all cases where there are reasonable grounds to believe that torture was committed;

(e) Undertake a full, effective and independent investigation into the claims of torture made by Azimzhan Askarov; ensure that Azimzhan Askarov receives adequate medical care; and review the grounds for his continued detention, in light of his allegations.

(f) Ensure that a thorough and impartial review of 995 criminal cases related to the June 2010 violence is conducted, and, when appropriate, proceedings are reopened in some cases;

(g) Ensure that all persons deprived of their liberty are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty.

4. In this document, we urge the Committee to reaffirm Kyrgyzstan's obligations under the CAT, in particular with regard to ensuring access to justice, effective investigation for survivors of torture and ill-treatment, and bringing perpetrators to justice.

**Lack of independent and effective mechanisms for submitting complaints and conducting impartial and comprehensive investigations into allegations of torture, the problem of impunity for perpetrators of torture.**

5. Despite the reforms of the Criminal Code of Kyrgyzstan in January 2019 and the criminal liability for the use of torture envisaged in the national legislation, facts indicate that investigations are ineffective. This negative practice takes place despite the fact that torture is classified as a serious crime:

article 305-1 of the Criminal Code of the Kyrgyz Republic, which was in force until 2019; article 143 of the Criminal Code of the Kyrgyz Republic, which entered into force in January 2019.

6. In 2019, the National Security Service had 145 cases falling under the scope of the article

on torture. Only one case was sent to court, 74 cases are at the pre-trial stage, and 70 cases of torture were dismissed. Based on all other allegations of torture and ill-treatment that were investigated before 2019 and brought to court, 26 persons were accused. All those persons accused of torture were acquitted, or the criminal cases were dismissed. As the National Center for the Prevention of Torture of the Kyrgyz Republic states, "Thus, in all 100% of the criminal cases falling under the scope of the article on torture considered by the courts, all 26 defendants were acquitted." Thus, the problem of impunity for perpetrators of torture remains one of the key issues in Kyrgyzstan.

7. The unjustified delay in the investigation of criminal cases by the employees of the investigative bodies has become possible due to a gap in the new Code of Criminal Procedure. Since the beginning of 2019, a new Code of Criminal Procedure has been in force. Article 155 of the Code defines the term of investigation of criminal cases. The text of this article states that pre-trial proceedings in criminal cases should be completed no later than 2 months after the date of notification of a person about the suspicion of committing a crime. Therefore, the investigation in the case should be completed no later than two months after the day when the person was informed that he was suspected of committing a crime. In practice, investigators do not notify a suspect of suspicion. As a result, within the framework of their investigations, they are not limited by any time limits. This is what created the conditions for the established practice of delays in solving crimes.

**A comprehensive, effective and independent investigation of the complaints of torture filed by Azimzhan Askarov has not been conducted.**

8. Kyrgyzstan has not complied with the Views of the UN Human Rights Committee as of 31 March 2016, in case No. 2231/2012 CCPR/C/116/D/2231/2012, on the recognition of a violation by the State of the rights of Azimzhan Askarov: article 7, separately and in conjunction with article 2, paragraph 3; article 9, paragraph 1; article 10, paragraph 1 and article 14, paragraph 3 (b) and (e) of the International Covenant on Civil and Political Rights, and the need to pay appropriate compensation.

9. Askarov served his sentence for ten years in prisons and cells for those sentenced to life imprisonment in Penal Colony 47, SIZO (pre-trial detention facility) 19, Penal Colony 19, being in cruel, inhumane conditions, deprived of access to full-fledged quality medical care, while his health was deteriorating every year. In July 2020, during the coronavirus pandemic, Azimzhan Askarov fell ill with right-sided pneumonia, did not receive proper treatment, could not eat, walk, and was cared for by his cellmates. The HRM "Bir Duino Kyrgyzstan" sent appeals to the state authorities and the State Penitentiary Service of the KR stating being ready to pay for his transportation by means of private ambulance and for his treatment, but all those appeals were not accepted. The day before he died, Azimzhan was transported to the Penal Colony 47. On 25 July 2020, the State Penitentiary Service reported the death of the human rights defender.

**A fair investigation into the death of human rights defender Azimzhan Askarov has not been conducted**

10. In accordance with Article 12 of the Convention against Torture, "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". 25 July 2020. Azimzhan Askarov died in colony No. 47, having previously spent more than 10 days in colony No. 19 with double pneumonia, without the access to adequate medical care.

11. The investigation into Askarov's death was transferred to the investigator of the State Penitentiary Service of the KR, who delayed the investigation for almost a year and closed the case on 7 June 2021, justifying this by the lack of corpus delicti. The investigation was conducted by an investigator of the State Penitentiary Service and basically contained a conflict of interest, since the state body in whose institution the human rights defender died was not interested in conducting a quick and impartial investigation. Therefore, the fact of death of the human rights defender Azimzhan Askarov should be investigated by the SNSC of the KR.

**It is necessary to investigate the facts of torture and ill-treatment related to the armed aggression on the border of Kyrgyzstan and Tajikistan, and bring the perpetrators to justice.**

12. In accordance with Articles 4, 5, 6, 7, 8, 9 of the Convention, a full investigation of the facts of torture and ill-treatment of civilians and military personnel of the Kyrgyz Republic, which occurred as a result of the armed aggression of the Republic of Tajikistan on the territory of Kyrgyzstan, should be ensured, and the perpetrators should be held accountable. From 28 April to 1 May 2021, an armed conflict occurred on the border territory of Kyrgyzstan and Tajikistan. On 28 May, 10 citizens of Kyrgyzstan were captured, beaten and ill-treated, and were released only on 1 May as a result of negotiations. As a result of the conflict, 36 people were killed and 183 people were injured. Among the lives lost were those of children: a 12-year-old girl and a 4-year-old boy who were killed by shrapnel due to a shell explosion. The vast majority of the dead and wounded are civilians. More than 33 thousand people were evacuated from the conflict zone. 17 houses in the village of Kek-Terek were burned, other villages were also damaged, gas stations were burned, and shops were looted. More than 13 thousand Kyrgyz citizens were evacuated from the conflict zone, they were placed in the buildings of schools in Batken.

**Ensuring physical procedural security**

13. According to Article 16 of the Convention: "Each State Party undertakes to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment...". In 2019, when analyzing 8 cases of victims of torture, in which the HRM "Bir Duino Kyrgyzstan" was providing protection, only in 2 cases the investigators granted a request to ensure the safety of victims of torture. But these decisions do not specify exactly what security measures were taken. According to our cases, not a single law enforcement officer was removed from his post during the pre-trial proceedings. These actions of the investigator allows the law enforcement officers, who have allowed the use of violence, to exert pressure on the victim of torture using their official authority. Of the eight cases, only three victims of torture remained at large, while the rest were detained based on the main charges.

**Ensuring the safety of human rights defenders protecting victims of torture**

14. Acts of intimidation against human rights defenders have occurred and are occurring frequently. For example, the searches in the office and homes of the lawyers of Bir Duino-Kyrgyzstan. Such cases are wide-spread, including the searches in the office of the human rights organization Human Rights Advocacy Center. This organization is a member of the Coalition against Torture. In 2014, the organization was persecuted, their office was searched, and their office equipment was confiscated (see <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5485b4b74>). It should also be noted that a search was conducted in the house of lawyer Nazgul Suyunbaeva, who actively defends the interests of torture victims. On 10 February 2021 her house was searched by the special service.

Despite the fact that the illegality of such actions of the special services was subsequently established, none of their responsible officials were brought to justice. For example, in the case of Bir Duino-Kyrgyzstan, the courts canceled the search warrant and ordered the return of the confiscated items. But, despite this fact, the officials who initiated such acts of intimidation did not bear any responsibility.

15. Despite the tragic human rights situation, the Parliament is trying to pass anti-constitutional laws aimed at restricting and suppressing, controlling the activities of non-governmental organizations, journalists. The draft law On Trade Unions is under consideration in parliament. These trends threaten the freedom of the civil society and human rights defenders who, in times of crisis and disaster, play a leading role in protecting the most vulnerable citizens in closed institutions.

**The effectiveness of the Istanbul Protocol and the guarantee of timely access to a qualified and independent forensic expert, all medical examinations were conducted in a confidential environment.**

16. The analysis of cases of torture victims conducted by the HRM "Bir Duino Kyrgyzstan" shows that medical examinations, instead of clarifying the circumstances of the case, on the contrary, systematically introduce more doubts and ambiguities, therefore, they are used as a basis for the termination of cases. The forms are not filled in completely. As a result, all aspects remain unexplored, which, in turn, can lead to false conclusions. Thus, in the case of the victim of torture I. Usmanov 6 sections were not filled out in the form; in the case of Sh. Shamatov 19 sections were not filled in; in the case of B. Abdykerimov 17 sections were not filled in; 22 sections were not filled out in the case of U. Umarov; in the case of M. Tashmatov 11 sections were not filled in. The conclusions of the medical examiner's office do not always contain photos, tables or diagrams. There are cases of data distortion: attention is distracted and drawn to another part of the body where there are no signs of violence. Medical documents of specialists are ignored, as well as special diagnostic tests that indicate violence. In the case of the victim of torture, M. Tashmatov, it is indicated that the duration of the objective examination was 20 minutes, in the case of I. Usmanov - 30 minutes were given for the examination, in the case of Sh. Shamatov 20-minute examination was indicated.

**The right to fair and adequate compensation, including the means for the fullest possible rehabilitation.**

17. According to Article 14, a victim of torture has the right to fair and adequate compensation. The UN Subcommittee on the Prevention of Torture made the following recommendation: "Develop and implement clear mechanisms for ensuring rights in order to provide victims with an effective remedy and reparation, including compensation, and the fullest possible rehabilitation through the allocation of funds from the state budget; respect the right of the victim to receive compensation for a civil claim, regardless of whether the official was found guilty by a court in a criminal case." This recommendation has not been implemented. This is also noted by the National Human Rights Institute in the Annual Report of the NCPT of the KR for 2019.

18. The normative legal acts of the Kyrgyz Republic clearly demand the strict implementation by the Government of the Kyrgyz Republic of the international treaties to which the Kyrgyz Republic is a party. For example, article 10, part 1, paragraph 8 of the Constitutional Law "On the Government of the Kyrgyz Republic" states that the Government "ensures the implementation of international treaties, to which the Kyrgyz Republic is a party, that have entered into force in accordance with the procedure established by law...".

19. The UN Human Rights Committee has ruled in favor of victims of torture, where, in addition to all other circumstances of human rights violations, it has indicated the need to pay adequate compensation. To date, the Government of the Kyrgyz Republic has not taken any measures to pay compensation to any of them. On 25 July 2020 A. Askarov died suddenly in the Institution No. 47 of the State Penitentiary Service. On 20 August 2020, the Bishkek City Court, as well as the Supreme Court on 30 October 2020, refused to recognize A. Askarov's wife, Khadicha Askarova, as his legal successor, under the pretext that there is no material succession.

The issue raised before the courts regarding the payment of adequate compensation to A. Askarov was ignored.

**Ill-treatment, access to medical care for prisoners, persons under investigation, and patients in psychiatric institutions during the coronavirus pandemic. Death of a prisoner due to having no proper medical care equates to a fact of extrajudicial execution.**

20. According to article 16 of the Convention, "Each State Party undertakes to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1...". Monitoring of the closed institutions showed that during the first wave of the coronavirus pandemic, the closed institutions in Kyrgyzstan were not accessible to the Ombudsman Institution, the NCPT of the KR, human rights defenders and lawyers, and became accessible only at the end of August 2020. The announced restrictions during the quarantine period increased the risk of threats of torture and ill-treatment. Prisoners were limited in the opportunities to meet with relatives and lawyers, which made it impossible for them to access legal assistance and protection, leading to tragic consequences.

21. Joint preventive visits conducted together with the NCPT of the KR, showed that in the institutions of the State Penitentiary Service and the Ministry of Internal Affairs with a prison-cell type of detention, there was a high level of community-acquired pneumonia and coronavirus. According to the data received, more than 1000 cases of those who had symptoms of community-acquired pneumonia were recorded. 6 prisoners died from double pneumonia,

including Azimzhan Askarov, who died on 25 July 2020. The unavailability of the PCR tests during the first wave of the pandemic allowed the State Penitentiary Service to state that the virus could not enter the prisons. In these conditions, the state did not provide colonies and psychiatric institutions with the necessary amount of PPE (personal protective equipment), disinfectants and access to full, adequate medical care and information on COVID. The problem of providing medicines and adequate medical care was acute. Prisoners were limited in their right to receive high-quality, alternative medical care, while closed institutions allowed deaths to occur, which equated to facts of extrajudicial executions.

22. The requirement of the State Penitentiary Service on the need for fluorographic examination of those arriving in a pre-trial detention facility, leads to conducting this type of examination for the persons under investigation multiple times. The management of the temporary detention facility of Bishkek stated that it could not achieve the opening of a hospital for patients under investigation until December 2020. In addition to the prisoners, there was a high morbidity rate among the staff of the institutions. In these circumstances, the state ignored all the appeals and recommendations of the UN and WHO on the need to reduce the prison population, use alternative methods of punishment, in cases where this is possible, and did not comply with the Principles of N. Mandela.

23. It should also be noted that during the monitoring, patients in one of the psychiatric institutions reported mass vaccination against influenza and reported that there were cases when the vaccination was difficult to tolerate. Forced vaccination amounts to torture and ill-treatment, which is a threat during the COVID vaccination period.

**We respectfully ask the Committee to request further information from Kyrgyzstan on the following issues:**

24. What measures, amendments have been introduced in the criminal legislation to guarantee and ensure an independent and effective mechanism for receiving complaints and investigating cases of torture and ill-treatment, in the fight against impunity and in bringing the perpetrators to justice?

25. What measures has Kyrgyzstan taken to ensure that the facts of torture are effectively documented in accordance with the Istanbul Protocol?

26. What measures have been taken to ensure the fulfillment of duties and responsibilities of medical professionals to document torture?

27. How is it ensured that victims of torture have timely access to a qualified and independent medical investigator, and that all medical examinations are conducted in private?

28. What measures has Kyrgyzstan taken to ensure that an independent body is established to investigate allegations of torture and that investigations are conducted and completed without delay?

29. What measures have been taken/are planned to be taken to restore the rights of the human rights defender Azimzhan Askarov, to implement the UN Committee's Views on Askarov's complaint, as well as the Committee's Views on other victims of the June 2010 events?

30. What measures has Kyrgyzstan taken to conduct an independent and effective investigation into the death of Azimzhan Askarov in the Penal Colony 47?

31. What kind of work has been performed and is being done to combat the extrajudicial executions of prisoners with limited access to rights and medical care in closed institutions?
32. What measures has Kyrgyzstan taken to ensure physical and procedural security for victims of torture, lawyers and human rights defenders providing defense to the victims?
33. What measures have been taken to ensure that victims of torture receive adequate and fair compensation?
34. What measures have been taken and what results have been achieved by the Kyrgyz Republic in conducting an effective investigation of the fact of armed aggression by the Republic of Tajikistan in the border areas, in bringing to justice those responsible for the deaths of civilians and military personnel, as well as 10 Kyrgyz citizens taken prisoners and subjected to torture and ill-treatment?
35. What steps has Kyrgyzstan taken to respect the prisoners' rights of access to medicines, medical care, PPE and disinfectants during the coronavirus pandemic?
36. What measures are being taken to prevent the forced vaccination of the population, prisoners, patients of psychiatric hospitals, as well as conducting multiple fluorographic examinations of persons under investigation?
37. What measures has Kyrgyzstan taken to comply with the Mandela Principles for prisoners, prisoners with special needs, women and children, especially during the coronavirus pandemic?
38. How does Kyrgyzstan implement the UN and WHO recommendations on the need to reduce the prison population and use alternative methods of punishment?
39. What is Kyrgyzstan doing to prevent the adoption of anti-constitutional laws aimed at controlling and narrowing the political space for NGOs promoting human rights in Kyrgyzstan?

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