

Report to the United Nations Committee Against Torture

Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to women by the Kyrgyz Republic

**Association for Protection of Human Rights in the Criminal Proceedings
“ARTICLE 9” in collaboration with the World Organisation against Torture
(OMCT) and The International Rehabilitation Council for Torture Victims
(IRCT)**

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The 3rd Periodic Report of the Government of the Kyrgyz Republic

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The present report is submitted to the UN Committee Against Torture (hereinafter referred to as the “Committee”) under the 3rd periodic report of the Kyrgyz Republic on implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “Convention”) for the purpose of informing the Committee’s experts about the current problems relating to the realization of and respect for rights embodied in the Convention.

While working on the report, we did not intend to disprove the official information. On the contrary, our goal was to provide the Committee's experts with the information about existing but still not reported problems on the implementation of the Convention’s provisions for the reporting period.

The conclusions of the present report are based on the analysis of the current legislation, the results of monitoring of temporary detention facilities and pre-trial detention centres, where detained women are held (4 out of 6, Bishkek city, Karakol city, Jalal-Abad city, Voznesenovka village in the Chui Region) carried out in 2020¹ and 2021, and on the reports of the National Centre of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “NCPT”).

This report is prepared by the Association for Protection of Human Rights in the Criminal Proceedings “ARTICLE 9” – a platform of human rights organizations: the Public Foundation “Golos Svobody” (“Voice of Freedom”), the Public Foundation “The Centre for the Protection of Public Interest”, the Public Union “Partnership Group Precedent”, including experts and analysts working to promote the rights to freedom and personal integrity. The Association “ARTICLE 9” is involved in providing legal assistance, analysis of criminal legislation and law enforcement practice, education in the law, and strategic litigation proceedings in order to promote human rights in the criminal proceedings (<https://www.article9.kg/eng/>).

The priorities of the Association are those stages of the criminal process and court proceedings at which there is a high risk of human rights violations: legality, justification, and procedure of detention; medical examination; access to effective legal assistance; freedom from torture/cruel treatment; measures of restraint and alternatives; observance of procedural time limits; civil monitoring and conditions of detention; effective procedures of appeal and effective investigation of complaints; access to a fair trial; and issues of compensation and rehabilitation.

Since 2019 the Association has been examining the observance of women’s rights in criminal proceedings during the arrest and investigation, guarantees for protection, and any forms of discrimination against women. In order to study these issues, the Association uses the following mechanisms: monitoring of custodial institutions, interviewing persons at custodial institutions, provision of legal assistance, filing lawsuits, and preparation of individual complaints for the UN Committees.

¹ <https://drive.google.com/file/d/1ZmHKYdEXqjmmE8qoGSouUq49bMxwFIOB/view>

Introduction

The total number of persons in the State Service for Execution of Punishment institutions amounts to 8436 persons, out of whom 245 are women, which accounts for 3% of the total number. Kyrgyzstan has four pre-trial detention facilities where women are held. The total number of women held in pre-trial detention facilities is 107.

There always was and still is the problem of rights and needs of women taken into custody. The national legislation and practice are not gender sensitive and ignores women in criminal proceedings. Women are not only vulnerable to torture and cruel treatment, but they also have special needs, which, as a rule, remain unaddressed at detention facilities, or they are considerably aggravated by detention.

The COVID-19 pandemic has had a negative effect on the rights of women held in custodial institutions, and this has affected their right to counsel, restricted the access to medical services, and resulted in total isolation and absence of communication with family members and close ones.

This report by the Association describes the following problems:

1. Lack of gender-sensitive prison management and measures to prevent abuse and gender-based violence;
2. Lack of the effective mechanism for submission and handling of complaints about torture in closed institutions, including security guarantees against potential harassment in detention facilities;
3. Inhuman conditions for women in detention facilities;
4. Medical care in detention facilities;
5. Illegal limitation of access to a lawyer and visits during the detention period under the COVID-19 pandemic.

The report concludes with the recommendations for the government of the Kyrgyz Republic

(I) Lack of gender-sensitive prison management and measures to prevent abuse and gender-based violence in closed institutions in relation to women

1. The stay of women in detention facilities and escort procedures under the supervision of the male staff pose risks of harassment, abuse, and cruel treatment by the detention facility staff, and these are ignored by the government of the Kyrgyz Republic.
2. All 46 temporary detention facilities of the Ministry of Internal Affairs, where detained women can be held from 48 hours to 1 year, have no female staff. According to the [study](#) in 2020, all women-respondents held in 11 temporary detention facilities of Chui and Issyk-Kul Regions and Bishkek reported that the escort procedures were implemented by the male staff only.
3. All 4 pre-trial detention facilities of the State Service for Execution of Punishment, where detained women can actually be held over 1 year, lack female staff members. According to the findings of the [survey](#) conducted in 3 pre-trial detention facilities in Bishkek, Jalal-Abad, and Naryn in 2020 and the current monitoring of all 4 pre-trial detention facilities in Bishkek, Jalal-Abad, and Karakol, and Voznesenovka village, the majority of women-respondents reported that in most cases the escort procedures were implemented by the guards of the male sex only. Besides, the women-respondents informed about repeated facts of sexual harassment, personal

search, and male employees' spying on women when the latter change clothes and/or are in toilet and shower rooms, which represent the forms of gender-based violence and sexual abuse.

(II) Lack of the effective mechanism for submission and handling of complaints about torture and inhuman treatment in closed institutions, including security guarantees against potential harassment in detention facilities

4. According to the national legislation, suggestions, statements/petitions, and complaints, of the suspects and the accused, including the complaints about torture and other cruel, inhuman or degrading treatment addressed to the appropriate authorities, are sent through the administration of the detention facility, where the detainees are held. Besides, the national legislation does not provide for the gender-sensitive prison management.

5. When visiting closed institutions, the employees of human rights organizations and NCPT documented the facts that administrations of these institutions ignore the complaints of the detained women about the violation of their rights. Besides, the national legislation does not guarantee the security of female complainants-victims of violence after filing complaints.

6. According to some of the women-respondents, they were subjected to pressure from the institution's employees due to their filing complaints. The pressure was made possible due to the availability of free access to female complainants on the part of the institution's employees whose actions were appealed.

Kanyngul Kazybek kzy and Alina Janybek kzy applied to the NCPT with the complaint against the actions of the employees of the women's unit at the pre-trial detention centre of Bishkek. The employees put persistent pressure on women in the form of acts of outrage, threats, and maltreatment, unjustifiably used physical force against them, made lengthy body searches in the presence of male employees, and committed various forms of sexual harassment. The complainants had previously attempted to appeal against the actions of the pre-trial centre employees, but they received no answer. In these conditions, the employees, whose actions had been appealed, had a free access to the female complainants and put pressure on them because they filed complaints.

7. The national legislation prohibits to refer complaints to public officials, whose actions are appealed, but does not prohibit to refer complaints to the administration of the institution where the employee whose actions are appealed works. The monitoring revealed that when they receive a complaint against the actions of the employees of the detention facility, the national security bodies do not register the crime in the Unified Register of Crimes and Misdemeanours (hereinafter referred to as the "URCM") and readdress the complaint for consideration by the Specialized Prosecutor's Office², which, in its turn, does not register the crime in the URCM either and readdresses it to the administration of the detention facility with a mission to conduct an internal investigation. The administration of the detention facility conducts formal internal checks, which do not identify any violations by the employees, and then sends a reply to law enforcement authorities saying that the allegations stated in the complaint have not been confirmed. Based on these conclusions, the national security bodies and the Prosecutor's Office do not initiate prosecution of offences. As a result, the illegal acts committed by the employees of closed institutions remain unpunished.

² The Prosecutor's Office for Supervision of Compliance with Laws in the Bodies and Institutions of the Penal System

(III) Inhuman conditions for women in detention facilities

8. The Kyrgyz Republic does not provide proper conditions for women, especially for the pregnant ones and those who have children with them, for the disabled and people with other health problems, and thus, subjects them to other cruel, inhuman or degrading treatment or punishment.

9. The monitoring of 2021 revealed that: 3 of 4 pre-trial detention centres (Bishkek city, Karakol city, and Voznesenovka village) do not observe the requirements for the living space norm per person; concerning the personal hygiene products, women in detention can receive only soap, toilet paper, and sanitary pads (only the Jalal-Abad city pre-trial detention centre provides sanitary pads, and the administration receives them from donor and charity organizations); hot water lines are not brought to the cells of all pre-trial detention centres. There is a problem with laundry in all pre-trial detention centres. Thus, in 3 pre-trial detention centres, women have to wash and dry the laundry themselves in the cells where they stay. In the Jalal-Abad pre-trial detention centre, the laundry of the detained women is washed by hand by the convicted women whom the administration uses for housekeeping needs. The legislation does not allow to provide newborns and infants with diapers and other infant care and layette. One-fifth of the women-respondents in detention singled out the problems of the food quality. The administration of 3 pre-trial detention centres, where the women in early stages of pregnancy (up to seven months of pregnancy) were held, did not provide for complementary food prescribed by law.

Aizhan Ibraimova held in the metropolitan pre-trial detention centre refused from breast feeding and the right to have a child under three years old with her explaining that it is unsafe for her five-month son's health to be in such conditions. Taking into account the forced cessation of breast feeding, Aizhan complained of the pain in the chest.

(IV) Medical care in detention facilities

10. The national legislation does not contain special rules associated with the delivery of healthcare services in case of sexual and other forms of abuse, fulfilment of a detained woman's request to be treated by a female doctor or nurse as well as the delivery of a psychiatric care with account of gender factors.

11. The monitoring revealed an acute shortage of qualified health workers, including female doctors, low level of qualification among health workers, institutions, and low quality of medical care coupled with the lack of effective system of interaction between healthcare institutions in local communities. Some of the detained women-respondents told the monitoring team that they did not seek medical care because it was provided by a male doctor. The monitoring revealed that pre-trial detention centres have problems with pregnancy follow-up and preparation for childbirth: the institutions do not administer medicines, vitamins, binders, and anti-varicose agents³.

Asel Iskenderova was admitted to the pre-trial detention centre No. 1 of Bishkek in the fourth month of pregnancy. During all 4 months of detention, the administration did not offer Asel to undergo a gynecological examination, she was not registered with the gynecology doctor, necessary analyses were not taken in due time, she was not provided with medicines and

³ Special Report of the National Centre of the Kyrgyz Republic for Prevention of Torture "Observance of the Rights of Women in Pre-Trial Detention Centres of the State Service for Execution of Punishment under the Ministry of Justice of the Kyrgyz Republic" (Bishkek, 2021)

vitamins despite her low blood pressure. Only after the visit of the monitoring team, the accused was brought to the gynecology doctor for consultation and examination, and she was diagnosed with symphysitis and provided with medical care. According to Asel, the reason why the administration denied her of the delivery of medical care was that she did not have a required amount of money.

12. When placed in a closed institution, women very often need timely and quality psychological support, especially in the first days and weeks of detention. All detained women-respondents, who had suffered from domestic violence, reported that they were not provided with psychological support. In the pre-trial detention centre of Bishkek, there is only one psychologist per over 1000 detainees; there is one non-staff psychologist in the pre-trial detention centre of Jalal-Abad; other pre-trial detention centres do not have psychologists. Psychologists in such institutions do not undergo any professional development training courses or trainings on methods of treating women in detention, particularly on treating special women's conditions such as post-natal depression, anxiety about children and parents, distance from the family, and divorce due to detention. The monitoring revealed that detention facilities do not develop and organize individual complex psychiatric treatment and rehabilitation programmes for detained women with account of gender factors and past stresses.

13. According to the legislation, the children of detained women must regularly undergo the examination by doctors of different specializations and be registered with them. As women-respondents with children, especially very new mothers, report, pediatricians visit them very seldom therefore mothers' complaints remain unanswered, and the children of detained women do not receive all necessary vaccinations.

14. During the COVID-19 pandemic, no relevant healthcare activities have not been carried out in the detention facilities. According to the detained women, if they had the symptoms of COVID-19, the institutions' employees prescribed the medicines from conventional ARVI and treated patients in the detention facility, without making a virus scan, assigning relevant treatment, isolating, or transporting to healthcare institutions. In some cases, the employees even ignored the severity of the patient's state.

Gulbaira Burgemikova was held in the pre-trial detention centre of Bishkek for almost 2 years. According to her, in May 2020, she had severe pains in her lungs coupled with other severe symptoms of COVID-19. The administration of the centre dismissed the outbreak of COVID-19 and did not inform the affected women about it. Gulbaira was provided with medicines and put in IVs. During the illness period, Gulbaira was not isolated.

(V) Communications with families for women in detention

15. All women-respondents in detention reported the problems with an access to communications or visits. The causes of the problems are:

- written permission for communications or visits on behalf of the official or body handling the criminal case. Such permission is issued at the subjective discretion of the official/body which results in numerous arbitrary refusals of permissions for visits;
- lack of alternative to personal visits and postal correspondence communication channels.

16. Suspected women whose family members and close ones live far from the detention facility have a restricted right to visits more often than others.

Nurzat Kambarbekova held at the pre-trial detention centre of Jalal-Abad for 7 months was basically held incommunicado because her relatives lived in Bishkek and were unable to come, and the administration did not provide her with telephone or other communication. Besides, the administration of the pre-trial detention centre did not inform the woman about her right to correspondence.

17. According to the women held at the pre-trial detention centre of Jalal-Abad, the administration does not inform them about their right to correspondence and about the letter transfer procedure. The attempts of the relatives to transfer letters together with the food and clothes were stopped by the administration due to the absence of the stamp of the postal institution on the envelope. This requirement of the administration is arbitrary since postal stamping of written communications between detainees and their family members and close ones is not prescribed by law.

(VI) Basic legal guarantees and the right to a lawyer during the COVID-19 pandemic

18. Weakening of control over detention in closed institutions and in conditions of restricted access to a lawyer pose risks of torture and other cruel, inhuman or degrading treatment or punishment.

19. Since the pandemic outset, it was not the law, but the orders № 18-DSP of 1 May 2020 and № 30-DSP of 25 July 2020 issued by the State Service for Execution of Punishment which introduced restrictions for the access to a lawyer:

- presentation of the PCR test for COVID for visiting detention facilities every 11 days;
- communications with and visits of defendants are allowed provided sanitary and epidemiological norms (treatment with disinfectants, facemask and gloves regime) are observed.

20. The approximate cost of the PCR test in Kyrgyzstan amounted to 20 USD. Since the beginning of the quarantine, the country has been experiencing the shortage of disinfectants and protective means. Lawyers and defendants have borne all the risks associated with the expenses for passing tests, search, and purchase of disinfectants and protective means. At the same time, the presentation of PCR tests by the employees of detention facilities was not required.

21. The women-respondents who have lawyers through the State-Guaranteed Legal Aid (SGLA) reported that their lawyers did not visit their defendants on the ground that the state failed to provide for/compensate money for regular passing of PCR tests.

22. The Supreme Court of the Kyrgyz Republic imposed restrictions on the access to a lawyer. Based on its own order № 138 “On Approval of the Rules for the Use of Videoconferencing in the Courts of the Kyrgyz Republic” of 30 July 2020, it introduced the procedure of distant court proceedings via videoconference. As a result, defendants were deprived of the right to personal contact and interaction with the lawyer during the court setting.

RECOMMENDATIONS:

- 1. Provide for the relevant number of female employees in detention facilities during personal search or inspection, delivery of medical care, escorting, and other necessary cases to prevent attacks on personal dignity;**
- 2. Introduce changes in the legislation and practice which provide detained victims of torture, cruel treatment, violence, and harassment with submission and consideration of their complaints, security guarantees from potential persecution, suppression of abuse, and other forms of pressure on female complainants, banning of access to female complainants on the part of the employees whose actions are appealed;**
- 3. Provide for prompt and impartial investigation of complaints about torture and cruel treatment without addressing the institution whose employees' actions are appealed;**
- 4. Ensure the human detention conditions that exclude cruel, inhuman, or degrading treatment: observance of the living space norm per person, provision of hygiene and childcare conditions, and observance of the established nutritional standards;**
- 5. Provide detained women with the right to receive quality health care and introduce the legislative norms allowing to:**
 - deliver medical care in case of sexual or other forms of abuse;**
 - fulfil requests of a detained woman to be treated by a female doctor or female nurse;**
 - develop and organize individual comprehensive programmes for psychiatric treatment and rehabilitation that take into account gender factors and past stresses;**
 - take measures for health protection related to women's needs.**
- 6. The national legislation should provide for the following norms that:**
 - exclude arbitrary refusal by officials to provide women in detention with communications;**
 - establish a simplified procedure for letter exchange;**
 - upon the consent of a detained woman provide for audio and video contacts with relatives and other persons.**
- 7. Provide lawyers and national human rights institutions with a free access to detention facilities, including a personal contact of the lawyer with the defendant during the court sitting and under the quarantine conditions.**

For further information about the results of our studies and monitoring of closed institutions please refer to the website of the Association (<https://www.article9.kg/eng/>) in the Section "Publications". If you have any questions, please use the following contacts:

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