Key concerns and recommendations on torture and ill-treatment in Kyrgyzstan, April 2016

Torture and other forms of ill-treatment continue to be widely used across Kyrgyzstan. While beatings with fists and various objects are most frequently used, cases of abuse with electric shocks and suffocation continue to be reported. According to the Prosecutor General’s Office of Kyrgyzstan, 199 complaints of torture/ill-treatment were registered in 2015. In the same year over 100 victims or their relatives turned to the NGO Coalition against Torture in Kyrgyzstan for help. The actual number of instances where people were subjected to torture or ill-treatment is not known as many victims and their relatives refrain from lodging complaints with the authorities or from seeking assistance from human rights groups for fear of reprisals and/or because they do not believe it is possible to obtain justice.

There are several reasons why torture persists in Kyrgyzstan. The majority of law enforcement officers continue to work according to a quota system – albeit unofficially – under which they are ranked and assessed by the number of crimes they have successfully solved. Such a system exacerbates the risk that police officers will resort to torture or ill-treatment to obtain a confession to a hitherto unsolved crime. In addition, persisting impunity contributes to the vicious cycle of silence and abuse.

**Detainees particularly vulnerable to torture before they are taken to a detention facility**

In the large majority of cases detainees are subjected to torture or ill-treatment before they are taken to a temporary detention facility. We are concerned that the Criminal Procedure Code of Kyrgyzstan (CPC) does not provide detainees with basic safeguards from the moment of de facto apprehension, such as access to a lawyer of their choice, access to independent medical examination and notification of family. The CPC considers a person to be detained from the moment when he/she is admitted to a detention facility run by the Ministry of Internal Affairs and it provides no information on how much time may elapse between the actual arrest and the arrival of the detainee at the detention facility. Police often hold detainees in police cars or in the duty offices of police stations in the first hours, sometimes even days, of detention. There, police frequently subject them to torture or ill-treatment to force them to sign confessions, before taking them to a temporary detention facility and recording the detention.
More needs to be done to effectively investigate allegations of torture and ill-treatment

According to the Prosecutor General’s Office, 265, 220 and 199 complaints involving allegations of torture or other ill-treatment were recorded in 2013, 2014 and 2015 respectively. A total of 18 (in 2013), 16 (in 2014) and 62 (in 2015) criminal proceedings were opened. In the remaining cases no full investigations were carried out, although international human rights law requires states to conduct full and effective investigations into all allegations of torture and ill-treatment that adhere to the principles of promptness, thoroughness, impartiality and independence. In very few cases were the perpetrators adequately punished. In 2013 and 2014 only five police officers were sentenced to prison terms. One of them was sentenced to four years’ imprisonment while the others were given suspended sentences.

The law opens up the possibility that investigating agencies may obscure their own culpability for torture. In line with Article 38 of the CPC of Kyrgyzstan, the internal security services of the Ministry of Internal Affairs, the Financial Police, the State Committee for National Security, the Drug Control Agency or other law enforcement agencies are tasked with examining torture allegations when victims submit their complaints to these very agencies that are implicated in the allegations. Due to the obvious lack of impartiality of this procedure, the agencies usually conclude that the allegations have not been substantiated and, typically, no criminal cases are opened. During this procedure victims are not awarded the procedural status of “victims”, and as a result, they are neither entitled to contribute evidence for consideration by those conducting the examination, nor are they permitted to see the agency’s final report.

When complaints are submitted to prosecutors they first conduct a preliminary inquiry to decide whether there are grounds to warrant the opening of a criminal case. At this preliminary stage, investigators conducting the inquiry can only view the crime scene and order forensic examinations. Other essential investigative activities aimed at examining the circumstances of the alleged torture from all perspectives such as search operations, interviewing victims and witnesses and cross-questioning police and victims can only be conducted when a criminal case is opened. The time that law enforcement agencies and prosecutors spend on the examination and preliminary inquiry phase usually prevents full investigations from starting promptly after an allegation is received, a factor which also contributes to obstructing effective investigations.

In those instances where criminal cases are opened, the subsequent investigations also often lack effectiveness. In practice, prosecutors, who usually lead the investigation, often rely on police officers to carry out investigative activities, meaning that colleagues of the alleged perpetrators are responsible for investigating the allegations. To the knowledge of the NGO Coalition against Torture, prosecutors frequently rely on statements obtained from the alleged perpetrators and their colleagues. Prosecutors often fail to conduct investigations effectively due to an inherent conflict of interest stemming from their multiple functions i.e. the investigatory function, supervision of the legality of the investigative process, and the function of criminal prosecution.

In a positive move intended to address ongoing impunity the Prosecutor General of Kyrgyzstan set up the Special Prosecutors Unit (SPU) in May 2015, which is tasked with coordinating and overseeing the work of all prosecutors who conduct torture investigations in Kyrgyzstan. The SPU is also authorized to conduct preliminary inquiries, open criminal cases and refer cases to local prosecutors for investigation. While the criminal cases opened into allegations of torture/ill-treatment in 2013 and 2014 coincided with the cases that
the NGO Coalition against Torture actively supported, the higher proportion of criminal procedures instigated in 2015 is partly due to the SPU’s work.

**Recommendations**

The Kyrgyzstani authorities should be requested to take the following steps:

- Bring the definition of deprivation of liberty in domestic legislation in line with international human rights law, in particular ensure that the moment of apprehension is treated as the outset of detention.
- Ensure that everybody who is deprived of his or her liberty has access to basic safeguards such as access to a lawyer of the detainee’s choice, information about the detainee’s rights, notification of family, and access to an independent medical doctor.
- Ensure that all allegations of torture and ill-treatment are investigated promptly, thoroughly, impartially and independently and bring to justice those responsible.
- Improve the existing investigatory mechanisms to ensure that they conduct prompt, thorough, impartial and independent investigations into allegations of torture and ill-treatment; ensure that they have no hierarchical or institutional link to the alleged perpetrator and are endowed with sufficient authority, competence and resources.