



UPR Submission

Kyrgyzstan

May 2014

Updated in December 2014 - Updates are in bold

Summary

In June 2010, only a month after Kyrgyzstan's last Universal Periodic Review, violent inter-ethnic clashes between the Uzbek minority and Kyrgyz majority communities broke out in southern Kyrgyzstan, resulting in more than 400 people killed, thousands injured, and over 2,600 homes destroyed. In the aftermath of the violence, the Kyrgyz government has failed to adequately address abuses in the south, in particular against ethnic Uzbeks, who endured the majority of casualties and destroyed homes, and who – in the years since then – have been disproportionately subjected to arbitrary detention, ill-treatment and torture, and extortion schemes without redress. Investigations and trials into the violence, including that of human rights defender Azimjon Askarov, who was sentenced to life in prison in 2010 on politically-motivated charges and tortured in custody, have been profoundly flawed.

Kyrgyzstan has taken a number of steps to implement some of the reform commitments to which it agreed in 2010. These include, for example, holding peaceful and pluralistic presidential elections (although the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) noted a number of shortcomings), cooperating with UN human rights mechanisms, submitting an overdue report to the Human Rights Committee and establishing a National Center for the Prevention of Torture. Kyrgyzstan also acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

However, grave human rights abuses persist, including the use of and impunity for ill-treatment and torture; violations of fair trial standards; violence and discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; *refoulement* of refugees and asylum seekers; restrictions on freedom of speech; and attempts to restrict the activities of civil society groups. This submission focuses on human rights abuses that have marred Kyrgyzstan's rights record over the last four years, and which the Kyrgyz government should address as a matter of priority.

Torture and Ill-Treatment and the Right to a Fair Trial

While Kyrgyzstan implemented a number of recommendations it had accepted during its previous UPR on combatting torture, including issuing an invitation to the Special Rapporteur on torture and adopting legislation on the National Preventative Mechanism, it fell short of implementing recommendations to “ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture of any person subjected to any form of arrest, detention or imprisonment” and to “take measures to ensure the full independence of the judiciary and to ensure that guarantees of fair trial for everyone are implemented.”

Allegations of ill-treatment and torture were especially prevalent in the context of the criminal investigations and trials relating to the June 2010 ethnic violence.ⁱ Investigations and trials similarly stood out as being profoundly flawed – marred by threats and violence against defendants and lawyers perpetrated by people at trials, and serious violations of due process rights, such as the right to representation by a lawyer of their choice and the right to consult with a lawyer in private. Lawyers told Human Rights Watch the authorities routinely refused to order medical examinations of detainees in cases of suspected ill-treatment. To date, authorities in Kyrgyzstan have not reviewed convictions where defendants alleged torture or in which there were other glaring violations of fair trial standards.

Following his visit to Kyrgyzstan in December 2011, the UN Special Rapporteur on torture found that “the use of torture and ill-treatment to extract confessions remains widespread” and that “general conditions in most places of detention visited amount to inhuman and degrading treatment.”ⁱⁱ

The acute problem of courtroom violence by audiences, which was a pervasive problem in the context of the June 2010 trials, continues to perpetuate an environment that seriously undermines defendants’ fair trial rights across Kyrgyzstan. Kyrgyz authorities have failed to tackle this serious issue or hold perpetrators accountable. The ongoing case of Mahamad Bizurukov, an ethnic Uzbek defendant standing trial on June 2010-related charges, stands out as one of the most egregious. Bizurukov and his lawyers have been subjected to repeated threats, harassment, and physical attacks since his trial started in 2011, with no accountability for perpetrators.ⁱⁱⁱ

Prosecutorial authorities rarely open criminal cases against law enforcement agents on allegations of torture. In the context of June 2010 related cases, in particular, perpetrators of torture and ill-treatment have enjoyed virtual impunity for their crimes - prosecutorial authorities refused to investigate allegations of torture, and courts relied heavily on confessions allegedly extracted under torture to sentence defendants to long prison sentences. In 2011, Human Rights Watch also documented how prosecutorial authorities used a variety of tactics to avoid opening criminal investigations into allegations of torture including conducting inadequate and pro forma preliminary inquiries, pressuring defendants to withdraw torture complaints, and refusing to order medical examinations for detainees who claimed they were tortured.^{iv}

More generally, even in the rare instances a criminal case into allegations of ill-treatment or torture has been initiated, investigations and trials have been delayed or stalled. A telling example is the criminal case against four Bazar-Kurgan police officers following the August 2011 death of an ethnic Uzbek detained on charges related to the June 2010 ethnic violence. Usmonjon Kholmirzaev died several days after his release without charge, apparently from injuries he sustained from beatings in custody.^v A criminal case was

opened against four police officers, but their prosecution has been subjected to repeated delays and, to date, no one has yet been held accountable for Kholmirzaev's death.

Wrongful Imprisonment of Azimjon Askarov

During its last UPR, Kyrgyzstan accepted a recommendation “to undertake clear commitments to put an end to all forms of intimidation, harassment, aggression, arbitrary arrest and detention, and torture against all persons, in particular human rights defenders [...]” Yet only a few months later, in June 2010, authorities arrested human rights defender Azimjon Askarov, and despite a flawed trial and his allegations of torture, sentenced him to a lifetime in prison.

Askarov, who worked to document police treatment of detainees, was found guilty of involvement in the gruesome killing of a policeman and injuring several officers during mass disturbances in the southern city of Bazar-Kurgan in June 2010. His prosecution was marred by serious violations of fair trial standards and credible allegations by Askarov and the other defendants that they were tortured in custody, and violence and threats against the defendants by the victim's relatives.

Although Askarov's lawyers have tried to appeal, prosecutorial authorities have thus far refused to open an investigation into Askarov's credible allegations of torture in custody. **Furthermore, in February 2014, after a 9-month review of Askarov's case, an investigation commission created under the Prosecutor General's office declined to reopen his case. Although Askarov appealed the decision, after multiple court reviews, the Supreme Court on September 3 upheld the decision of the Prosecutor General's office.**

Freedom of Association and Functioning of Civil Society

Kyrgyzstan accepted all recommendations made during its previous UPR in 2010 to respect freedom of assembly and protect civil society. However, over the last two years, the government and some members of parliament have made attempts to introduce legislation that would impose burdensome reporting obligations and restrictions on civil society groups, and which is inconsistent with Kyrgyzstan's international obligations. **Civil society activists have also faced harassment and interference in their work.**

For example, in late September 2014, the National Security Agency (GKNB) opened a criminal investigation into allegations that a survey on the rights of ethnic minorities in southern Kyrgyzstan, conducted by a local group with the support of US-based rights organization Freedom House, would incite inter-ethnic discord. The groups challenged the legality of the investigation, but an Osh court rejected their suit. On November 28, the Osh Regional Prosecutor's office decided to drop the case.

In January 2013 the State Financial Intelligence Unit under the Prime Minister's office introduced a draft law on money laundering that would have imposed burdensome reporting obligations on noncommercial organizations and authorized a new state body to “monitor and control” the activities of noncommercial organizations in Kyrgyzstan. After civil society groups organized a public hearing and formed a working group with representatives of the unit, however, the discriminatory provisions were removed.

In 2013, some members of Parliament introduced a draft “treason law” that would have unduly tightened controls over citizen groups and activism by amending the country’s criminal code, broadening the definition of treason to include routine nongovernmental activities such as international advocacy or briefing foreign counterparts, for example. However, in late November 2013 the bill failed to garner enough votes in Parliament to pass its second reading.^{vi}

In September 2013, a restrictive “foreign agents” law was introduced by two parliamentarians and officially registered for Parliament’s consideration in May 2014. The “foreign agents” bill would require domestic nongovernmental organizations in Kyrgyzstan that receive foreign funding and engage in vaguely worded “political activities” to register as “foreign agents.” It would also create criminal liability for the leaders of nongovernmental organizations “whose work incites citizens to refuse to fulfill their civic duties or commit other unlawful acts.” The “foreign agents” bill would endanger freedom of association and expression in Kyrgyzstan, and appears aimed at restricting and curtailing the activities of nongovernmental organizations. **On November 24, at a parliamentary hearing on the draft bill, a majority of deputies present at the hearing voted to adopt recommendations to withdraw or amend the bill. As of this writing, parliament had not yet considered the bill.**

Freedom of Expression

At Kyrgyzstan’s last UPR, it agreed to recommendations to “[c]ontinue to take all the measures necessary to prevent interference with press freedom [...],” following which, in July 2011, it took the welcome step of decriminalizing libel.

On May 17, 2014, the president signed into law a new amendment to article 329 of the criminal code that is not compatible with international human rights standards and would have the effect of re-criminalizing libel, according to a legal analysis commissioned by office of the OSCE Representative on Freedom of the Media Dunja Mijatović.^{vii}

Since Kyrgyzstan’s last UPR, several journalists have suffered physical or verbal attacks while carrying out their work. **For example, in mid-August, several assailants attacked Davron Nasipkhanov, a journalist in Osh, outside his home. They called him a “sart”, a derogatory term for ‘Uzbek’ and said that “sarts” should be killed. Authorities formally opened an investigation, but at the time of writing had not provided any information on progress made.**

In 2011, in the run-up to the October presidential election, the Central Election Commission denied accreditation to online news agencies, thereby placing arbitrary limits on where and how Kyrgyzstan’s voters receive information about presidential candidates.^{viii} The restriction is incompatible with Kyrgyzstan’s obligations to respect freedom of expression.

In June 2011, Kyrgyzstan’s Parliament adopted a resolution instructing the Ministry of Culture, the Ministry of Justice and the Prosecutor General to “take measures to block the site Ferghana.ru in the informational space in the Republic.” In February 2012, state-controlled KyrgyzTelecom began to enforce the resolution against Ferghana.ru, an independent Central Asian news website which provided critical reporting on the

June 2010 events. Although the site could still be accessed through some other providers, the ban was not fully lifted until April 2013.

In September 2012, Kyrgyz General Prosecutor's office ordered the One World film festival organizers to refrain from screening a documentary film entitled 'I am Gay and Muslim.'^{ix} The Kyrgyz State Committee on Religious Affairs assessed the content of the film and determined it to be "extremist," "offensive to Muslims," and "inciting interreligious hatred." The State Committee on National Security officially banned the film.

Gender-based Violence

In February 2013, Kyrgyzstan adopted legislative amendments to increase the maximum jail sentence for bride kidnapping from three to seven years (to ten years if the girl is under 17 years of age), thereby taking a much-needed step to implement the recommendation from Kyrgyzstan's last UPR to "take further legislative and practical measures to end violence against women, in particular [...] bride kidnapping."

Work on a new domestic violence law was ongoing at the time of writing.

Yet, Kyrgyz authorities have not effectively addressed long-standing problems of gender-based violence, which continues to date. Violence and abduction for forced marriage (bride-kidnapping) remain pervasive forms of violence against women in Kyrgyzstan and impunity remains the norm. In a rare exception, a court in September 2012 sentenced Shaimbek Aimanakunov to six years in prison on a conviction for incitement to suicide, rape, and forced marriage. A nineteen-year-old university student hung herself after Aimanakunov had raped and forcibly married her two days after he abducted her.

Refoulement of Refugees and Asylum Seekers

During its last UPR, Kyrgyzstan accepted a recommendation to "[r]espect in all circumstances the principle of non-refoulement," yet, in practice, has failed to fully implement its obligations under international and national law.

In 2013, Kyrgyz authorities sought to extradite an Uzbek national and, in a separate case, did not protect a refugee from being forcibly disappeared, despite Kyrgyzstan's international obligations to protect individuals from being returned to countries where they face a clear risk of torture. In November 2012, the Prosecutor General's office issued an extradition order for Khabibullo Sulaimanov, after Uzbekistan requested his extradition. After contesting his extradition in court and once he was granted refugee status by the Office of the UN High Commissioner for Refugees (UNHCR), the order for his extradition was overturned. Shukhrat Musin, another Uzbek refugee, was awaiting third country resettlement when he disappeared from Bishkek on February 18, 2013. He was later discovered in a detention center in Andijan, Uzbekistan.

Violence and discrimination against LGBT people

The Kyrgyz government did not implement recommendations it had accepted during its last UPR to "intensify in practice sanctions in cases of [...] discrimination against women due to sexual orientation [...]"

or to “review the compliance of its national legislation with provisions of the International Covenant on Civil and Political Rights on non-discrimination, in particular with regard to [...] sexual orientation or gender identity.”

LGBT people in Kyrgyzstan experience abuse and discrimination from both state and non-state actors. Due to widespread stigma, homophobia, and transphobia in Kyrgyzstan, few victims feel able to access the justice system by filing complaints. Fear that personal information will be disclosed or of retaliation by the police prevent most LGBT victims of police abuse from reporting incidents of violence, harassment, extortion and ill-treatment.

Human Rights Watch documented multiple incidents of police ill-treatment and extortion against gay and bisexual men, which occur with impunity in a largely homophobic environment.^x Five gay men and a 17-year-old gay boy interviewed by Human Rights Watch said that they experienced sexual violence by police, including rape, group rape, attempts by police to put a stick, a hammer, or an electric shock weapon in their anus, unwanted touching during a search, or being forced to undress in front of police. In two cases Human Rights Watch documented, police officers disclosed the victim’s sexual orientation to other detainees, who then beat or raped the victims.

On October 15, parliament passed in its first reading a homophobic and blatantly discriminatory draft law which would impose criminal and administrative sanctions on mass media, independent groups, and others for “creat[ing] a positive attitude toward nontraditional sexual relations” **in the mass media or in public assemblies.**^{xii} The bill carries a maximum sentence of up to one year in prison. Starting in March 2014, following significant public attention to the “propaganda bill,” violence against LGBT people and activists has been on the rise.

International Criminal Court

Kyrgyzstan signed the treaty establishing the International Criminal Court (ICC) in 1998 but has yet to ratify it. The government did not provide a clear response to recommendations made in this regard during Kyrgyzstan’s previous UPR in 2010. The International Criminal Court is the first permanent international tribunal with jurisdiction over war crimes, crimes against humanity and genocide. As a court of last resort, which only has jurisdiction when national courts are unwilling or unable to prosecute these crimes, it is an essential institution in the effective implementation of international human rights and humanitarian law.

Recommendations

Regarding the torture and ill-treatment and the right to a fair trial:

- Ensure that allegations of torture and inhuman and degrading treatment are investigated promptly and efficiently and that perpetrators are brought to justice;
- Reopen proceedings related to the June 2010 violence to investigate torture allegations, hold perpetrators accountable, and remove from evidence any testimony found to have been coerced under torture;

- Take urgent measures to end courtroom violence and hold accountable before the law those who incite or participate in violent acts against defendants, lawyers, or judges;
- Ensure that the national torture and discrimination prevention measures include an effective mechanism in place for receiving complaints from victims of abuse including LGBT people and members of other vulnerable groups who require their personal information to be kept confidential.

Regarding the wrongful Imprisonment of Azimjon Askarov:

- Release Azimjon Askarov pending a full, impartial, and fair investigation, including into his allegations of torture and ill-treatment.

Regarding the functioning of civil society:

- Ensure that any new law or regulation on NGOs conforms to the Kyrgyz Republic's international human rights obligations on freedom of association.

Regarding freedom of expression:

- Ensure that legislation regulating freedom of the media conforms to international human rights standards, including with respect to the recently adopted amendment to the criminal code;
- Ensure that any attacks on journalists are promptly investigated and the perpetrators are held accountable.

Regarding gender-based violence:

- Enforce existing criminal laws against assault and abduction, and prosecute perpetrators of gender-based violence and bride-kidnapping to the fullest extent of the law.

Regarding refugees and asylum seekers:

- Ensure that no refugee or asylum seeker is forcibly returned to a place where they face a risk of torture.

Regarding the rights of LGBT people:

- Publicly reaffirm that all people in Kyrgyzstan have the right to live free from discrimination and violence based on their sexual identity and that any acts to the contrary are illegal and will be prosecuted;
- **Refrain from introducing bills that would discriminate against LGBT people; in particular, refrain from adopting the draft law on “dissemination of information about non-traditional sexual relations” currently under review in parliament;**

- Review compliance of national legislation with provisions of the International Covenant on Civil and Political Rights (ICCPR) on nondiscrimination, in particular with regard to women and persons of minority ethnicity, sexual orientation, or gender identity.

Regarding the International Criminal Court:

- Ratify the ICC Statute.

ANNEX – ENDNOTES

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