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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
TO THE UN COMMITTEE AGAINST TORTURE ON THE OCCASION OF ITS EXAMINATION  
OF THE SECOND PERIODIC REPORT OF THE KYRGYZ REPUBLIC UNDER THE  
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT**

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## **ICJ SUBMISSION TO THE COMMITTEE AGAINST TORTURE ON THE OCCASION OF ITS EXAMINATION OF THE KYRGYZ REPUBLIC'S SECOND PERIODIC REPORT**

1. The International Commission of Jurists (ICJ) welcomes this opportunity to submit its comments to the UN Committee Against Torture in advance of its consideration of the Second Periodic Report of Kyrgyzstan under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>1</sup>

2. In this submission, the ICJ focuses on concerns about the implementation by Kyrgyzstan of Articles 1, 2, 3, 4, 11, 12, 14, 15 and 16 of the CAT concerning a) failure to prevent torture and other ill-treatment of persons in detention; b) application of the definition of the crime of torture and its implications; c) failure to ensure and respect the right of detainees of access to a lawyer; d) failure to ensure independent, impartial and thorough investigation of acts of torture and other ill-treatment; and e) failure to respect the prohibition of the use of evidence obtained under torture or other ill-treatment.

3. Finally, the submission addresses the failure of the authorities to ensure reparation to victims of torture and other ill-treatment, including that which should result from findings of violations by UN treaty bodies.

### **Prevention of torture and other ill-treatment (Article 2 and 3 CAT)**

4. The systematic use of torture in Kyrgyzstan has been acknowledged by the national authorities. In June 2012 Prosecutor General Aida Salyanova is reported to have stated: “[t]orture exists, unfortunately, in our society and for certain representatives of law enforcement agencies it has become a part of their professional culture.”<sup>2</sup>

5. The findings of the UN Special Rapporteur on Torture, the European Court of Human Rights and the UN Human Rights Committee are consistent with this statement. The UN Special Rapporteur on Torture found that in Kyrgyzstan, “[a]lmost all detainees [he had ] interviewed [during his visit to the country in December 2011] indicated that they had been subjected to mistreatment or beatings since the time of apprehension and delivery to the temporary detention facility for the purpose of extracting a confession”.<sup>3</sup> He also noted that the police are simply “unable” to carry out criminal investigations without violating the rule of law<sup>4</sup> while being “institutionally prone to use torture and ill-treatment against detainees to compensate for an embedded lack of investigative capacity”.<sup>5</sup> In a recent judgment, the European Court of Human Rights considered the use of torture in Kyrgyzstan to be “widespread and routine”.<sup>6</sup>

6. The scale of the use of torture in the Kyrgyz criminal justice system is also reflected in numerous views of the UN Human Rights Committee finding violations of article 7 of the International Covenant on Civil and Political Rights.<sup>7</sup>

7. These conclusions are supported by the ICJ’s interviews with lawyers in Kyrgyzstan who report that their clients are regularly subjected to beatings following arrest.<sup>8</sup> The ICJ

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<sup>1</sup> Second report of Kyrgyzstan on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the period from 1999 to 2011, CAT/C/KGZ/2, 13 September 2012; Consideration of reports submitted by states parties under article 19 of the convention, Initial reports of states parties due in 1998, Kyrgyzstan, CAT/C/42/Add.1, 25 August 1999; Concluding Observations, Kyrgyzstan, Report of the Committee against Torture, A/55/44, paras. 70-75.

<sup>2</sup> Prosecutor General Aida Salyanova, Vechernity Bishkek, 4 June 2012, <http://www.vb.kg/190601>.

<sup>3</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 45.

<sup>4</sup> *Ibid.*, para. 53.

<sup>5</sup> *Ibid.*

<sup>6</sup> ECtHR, *Makhmudzhan Ergashev v. Russia*, Application no. 49747/11, 16 October 2012, para. 76.

<sup>7</sup> E.g.: *Gunan v. Kyrgyzstan* (1545/2007), 25 July 2011; *Zhumbaeva and Moidunov v. Kyrgyzstan*, (1756/2008), 19 July 2011; *Krasnov v. Kyrgyzstan* (1402/2005), 29 March 2011; *Akhadov v. Kyrgyzstan* (1503/2006), 25 March 2011.

<sup>8</sup> ICJ seminar addresses the independence of the legal profession in Central Asia, <http://www.icj.org/icj-seminar-addresses-the-independence-of-the-legal-profession-in-central-asia/>;

has also received consistent reports of beatings of detainees committed by other detainees at the instigation of officials.

8. In Kyrgyzstan, the widespread practice of torture is facilitated by the authorities' failure to consistently apply in practice procedural safeguards for detainees that are established in national law, including the right of persons in detention to a lawyer (see below)<sup>9</sup> and the carrying out of compulsory medical examinations of detainees upon their arrival at each place of detention.<sup>10</sup>

9. Furthermore, in some respects, the procedures prescribed in national law are insufficient to effectively protect against torture. For example, in cases of alleged torture or other ill-treatment, medical examinations are mandatory under article 40(5) of the Criminal Code only where violence against a detained person is alleged to have been inflicted "by officers of inquiry and investigation"; there is no such requirement where the violence is alleged to have been inflicted by a private person, such as another detainee, or by other state agents.

10. As noted below, the routine use of torture and other ill-treatment is also facilitated by the consistent failure of the authorities to ensure: effective investigations into alleged torture or other ill-treatment; accountability for those responsible for crimes of torture and other ill-treatment and by the routine failure to respect the prohibition of reliance in court on evidence obtained under torture or other ill-treatment(see below).

11. Kyrgyzstan also fails to implement its international obligation to refrain from sending people to places where there is a real risk of torture and ill-treatment in violation of the principle of *non-refoulement*. For example, in the case of *Maksudov, Rahimov, Tashbaev and Piratov*<sup>11</sup> several persons were extradited from Kyrgyzstan to Uzbekistan despite a real risk of torture. The authorities took this action while a petition was pending and despite a request for interim measures of the Human Rights Committee.<sup>12</sup>

#### **Definition and prosecution of the crime of torture (Articles 1 and 4 in conjunction with Articles 2 and 16 CAT)**

12. Torture is an offence under the Criminal Code of Kyrgyzstan,<sup>13</sup> which categorises it as a grave crime. Grave crimes are those crimes which, according to the law, are punishable with a sentence of over five years' but not exceeding ten years' imprisonment.<sup>14</sup>

13. In addition, the crimes of "abuse of power" (Article 304), "exceeding power" (Article 305), or "compulsion to testify" (Article 325) are also punishable under the Criminal Code. None of these offences however is categorized as a "grave offence, thus attracting lesser sentences."<sup>15</sup>

14. In practice, prosecutors rarely charge individuals with torture, instead, when a person is charged, he/she is charged with lesser offences<sup>16</sup> - carrying penalties that are not consistent with the gravity of the alleged act of violence. The detailed information

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*Report on Independence of the Legal Profession in Central Asia*, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf> para. 56.

<sup>9</sup> Criminal Procedure Code of the Kyrgyz Republic, articles 40(1)(4), 42(1)(9); The law of the Kyrgyz Republic on procedures and conditions of detention of persons detained on suspicion and charges of committing crimes, para. 17.

<sup>10</sup> Criminal Code of the Kyrgyz Republic, Article 40(5).

<sup>11</sup> *Maksudov, Rakhimov, Tashbaev, Pirmatov v Kyrgyzstan*, 1461, 1462, 1476 and 1477/2006, 31 July 2008.

<sup>12</sup> *Ibid*, paras. 8.1-8.9.

<sup>13</sup> Criminal Code of the Kyrgyz Republic, Article 501-1 (as amended on 10.08.2012).

<sup>14</sup> *Ibid*, Article 12.

<sup>15</sup> Minimum punishments under those articles of the Criminal Code are: Article 304 – fine or imprisonment of one to three years; Article 305 – fine or imprisonment of one to three years; Article 325 – Imprisonment of up to two years.

<sup>16</sup> E.g. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 13.

regarding initiation of investigation recently provided to the Special Rapporteur on Torture by the Prosecutor General has demonstrated that the harshest penalty a perpetrator of torture has ever faced is a suspended sentence, while in general the case will be closed without even reaching court.<sup>17</sup>

15. With regard to the application of the definition of torture, the authorities have yet to ensure that acts by private individuals, undertaken at the instigation or with the consent, or acquiescence of state officials are investigated or characterized as torture. Instead, where an act which amounts to torture or other ill-treatment under CAT has been committed by private individuals, the authorities routinely fail to investigate any complicity of state officials, despite a pattern of violence committed against detainees which is instigated by or takes place with the consent or acquiescence of state agents. Beatings of detained persons – which may on occasion be carried out at the instigation of the authorities – are characterised by the law enforcement bodies and courts as a private matter between detainees rather than as a matter that engages the responsibility of the state to ensure the safety of persons under their effective control.<sup>18</sup> The failure to investigate state involvement in such acts results in impunity and may serve as an incentive for state officials to continue to instigate acts of torture or other ill-treatment by private individuals.

16. Further, in practice this may allow the authorities to overlook an act of torture, qualifying it instead as a less serious crime which does not require an automatic investigation, but in regard to which an investigation can only be initiated by the alleged victim of torture filing a complaint.<sup>19</sup>

17. The courts have not developed a legal doctrine to clearly distinguish a crime of torture from other crimes related to abuse of power by the police. Nor are any clear criteria applied by investigative bodies to draw such distinctions.<sup>20</sup> Thus acts that amount to torture, and which should be prosecuted as such, are often construed as other crimes under the Criminal Code, including crimes of “abuse of power” (Article 304), “exceeding power” (Article 305), or “compulsion to testify” (Article 325).<sup>21</sup> In practice, this leads to impunity for the perpetrator of acts of torture or, at best, it means that the crime of torture will not be punished with an appropriate penalty, contrary to the obligation to make acts torture “punishable by appropriate penalties which take into account their grave nature” (CAT article 4.2).

### **Rights of detainees to a lawyer (Article 11, Article 2 CAT)**

18. Despite a constitutional guarantee of the right to a lawyer from the moment of apprehension,<sup>22</sup> the Criminal Procedure Code specifically mentions that the right is limited to having a lawyer “from the moment of the first interrogation, and in cases of apprehension – from the moment of the factual delivery to a body of inquiry”.<sup>23</sup> These provisions exist in a context where it is the first hours of detention when suspects are most vulnerable to torture or other ill-treatment.<sup>24</sup> The ICJ has documented cases and received reports of torture in the very early stages following apprehension, before the arrest or detention is formally registered<sup>25</sup> for example during a transfer of an arrested person to a police station.<sup>26</sup>

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<sup>17</sup> *Ibid*, para. 54.

<sup>18</sup> *Ibid*.

<sup>19</sup> E.g. ICJ, Report on the arrest, detention and trial of Azimzhan Askarov, op cit, para. 72.

<sup>20</sup> E.g. *Turdukan Zhumbaeva v Kyrgyzstan* (1756/2008), 24 August 2011, paras. 2.5, 8.10; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 56.

<sup>21</sup> E.g. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 13.

<sup>22</sup> Constitution of the Kyrgyz Republic, Article 24(5).

<sup>23</sup> Criminal Procedure Code of the Kyrgyz Republic, Article 40(4).

<sup>24</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 43; ICJ, Report on the arrest, detention and trial of Azimzhan Askarov, paras. 38-40.

<sup>25</sup> For example, the ICJ established that Azimzhan Askarov's arrest was registered only on the following day, following alleged ill-treatment. The issue was raised in the courts, which failed to investigate this issue despite the fact that his detention was reported in the local media before his

19. The failure to ensure in practice effective access to a lawyer may in turn hamper the ability of lawyers to protect detained clients against torture or other ill-treatment. Although under the Law on the Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody (Article 17), no permission is needed for a lawyer to visit his or her client, the ICJ has received reports from lawyers that, in practice, sometimes lawyers do need to secure special permission from investigators to have access to their clients.<sup>27</sup> It has also been reported that meetings of lawyers with their clients may be obstructed and the provision of the Criminal Procedure Code guaranteeing an unlimited number and length of such meetings<sup>28</sup> is not always observed in practice.<sup>29</sup>

20. Lawyers in Kyrgyzstan have reported to the ICJ that the confidentiality of communications with their clients in detention is often not respected and that it is undermined by procedures and facilities, despite being guaranteed under the law.<sup>30</sup>

21. The quality of legal representation available to detained persons remains uneven, and in some instances lawyers themselves, especially those appointed by the authorities where a suspect is unable to afford his or her own lawyer, may be passive observers of ill-treatment, failing to take any steps to protect their clients.<sup>31</sup> This is due in part to weaknesses in the system of appointment of such lawyers which allows for the appointment of lawyers likely to favour the interests of law enforcement agencies over those of their clients, contrary to the provisions of Kyrgyzstan law<sup>32</sup> as well as international standards such as the UN Basic Principles on the Role of Lawyers.<sup>33</sup>

### **Investigation of allegations of torture (Article 12 CAT)**

22. Where information about the use of torture is brought before a judge, it is often ignored or the lawyers who raise the issue often face a negative attitude from judges.<sup>34</sup> Even if the judge does address the issue, this will normally be limited to questioning the relevant officials, such as the police officer concerned, as to whether the torture took place, and, if the official rejects the allegations, the judge will consider the matter closed.<sup>35</sup> Judges tend to ignore independent medical examination reports and to only accept those issued by the state forensic institutions,<sup>36</sup> whose conclusions may often be less objective and be influenced by the law enforcement agencies concerned. Not only does this shift the burden of proof of torture to the victim, but it also often makes it impossible for the victim to establish that torture took place.

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official registration. See ICJ, Report on the arrest, detention and trial of Azimzhan Askarov, para. 44; Fergananeews.com, "A Human Rights Defender Azimzhan Askarov is arrested and being tortured", 17 June

2010, <http://www.fergananeews.com/news.php?id=15022&mode=snews>.

<sup>26</sup> ICJ Report, Independence of the Legal Profession in Central Asia, page 56; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 44

<sup>27</sup> ICJ seminar addresses the independence of the legal profession in Central Asia, <http://www.icj.org/icj-seminar-addresses-the-independence-of-the-legal-profession-in-central-asia/>.

<sup>28</sup> Criminal Procedure Code of the Kyrgyz Republic, article 42(1)(9); The law of the Kyrgyz Republic on procedures and conditions of detention of persons detained on suspicion and charges of committing crimes, para. 17.

<sup>29</sup> ICJ seminar addresses the independence of the legal profession in Central Asia, <http://www.icj.org/icj-seminar-addresses-the-independence-of-the-legal-profession-in-central-asia/>.

<sup>30</sup> Criminal Procedure Code of the Kyrgyz Republic, article 48(6); The Law of the Kyrgyz Republic on Lawyer's Activity, article 12; ICJ Report, Independence of the Legal Profession in Central Asia, page 68; ICJ Report on the arrest, detention and trial of Azimzhan Askarov, op . cit ., para 59.

<sup>31</sup> ICJ Report, Independence of the Legal Profession in Central Asia, page 67; *Gunan v. Kyrgyzstan* (1545/2007), 25 July 2011, para. 2.6.

<sup>32</sup> The law of the Kyrgyz Republic on Lawyers' Activity, Article 13.

<sup>33</sup> UN Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

<sup>34</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 48.

<sup>35</sup> E.g.: HRC, *Gunan v. Kyrgyzstan* (1545/2007), 25 July 2011, para. 2.7.

<sup>36</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 51.

23. The defence's attempts to bring evidence of torture or ill-treatment before the court may often be obstructed. This may happen at the pre-trial stage, when defence lawyers' requests to obtain the attendance of witnesses for the defence are often dismissed by the investigators who have discretion to invite or not invite such witnesses.<sup>37</sup> Furthermore, in court, the judge will often refuse to consider evidence of torture presented by the accused or his or her lawyers.<sup>38</sup> This failure to admit evidence of torture may contribute to a finding by the court that the allegations of ill-treatment are groundless and are not supported by the materials of the case.<sup>39</sup>

24. In contravention of the obligation identified by this Committee under Article 12 CAT "to proceed to an investigation *ex officio*, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion"<sup>40</sup> lawyers report that judges do not in practice refer such cases to the prosecutor for investigation into allegations of torture or ill-treatment brought to their attention, despite the fact that they have legal powers to do so.<sup>41</sup>

25. The ICJ has heard from lawyers in Kyrgyzstan that prosecutors' investigations of crimes of torture and ill-treatment are typically not designed to be effective in bringing perpetrators of crimes of torture to justice.<sup>42</sup> This results in a striking disparity between the government's recognition of the need to address the widespread use of torture, and, as mentioned above, the paucity of convictions for it.

### **Evidence obtained under torture (Article 15 CAT)**

26. There is no procedure that spells out what measures should be taken when there is information that evidence has been obtained through the use of torture or ill-treatment. Further, as noted by the UN Special Rapporteur on Torture following his visit to Kyrgyzstan, judges are not aware of the steps to be taken in regard to ordering an investigation into the allegations.<sup>43</sup> Even though the law prohibits obtaining testimony by unlawful means requiring its exclusion,<sup>44</sup> as mentioned, allegations of torture are not fully investigated.

27. Although domestic law prohibits obtaining testimony by unlawful means,<sup>45</sup> there is a heavy reliance on self-incriminatory confession evidence. As a result, evidence obtained through torture or other ill-treatment is routinely used as a basis for convictions<sup>46</sup> and form a major part of evidence leading to conviction contrary to Article 15 CAT.

28. Given the widespread use of torture in interrogations, this puts torture and ill-treatment at the heart of the justice system.<sup>47</sup> The heavy reliance on confession evidence within the criminal justice system creates incentives for investigating officials – who are often under pressure to obtain results – to use physical or psychological coercion. In fact, the ICJ is not aware of any case in which evidence has been excluded in court because it was obtained by torture or other ill-treatment.

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<sup>37</sup> Law of the Kyrgyz Republic on Lawyers' Activity, article 12(1); Criminal Procedure Code, article 48.

<sup>38</sup> See for example, *Otabek Akhadov v. Kyrgyzstan*, Human Rights Committee, Communication No 1503/2006, CCPR/C/101/D/1503/2006, para. 52.

<sup>39</sup> E.g.: *Gunan v. Kyrgyzstan* (1545/2007), 25 July 2011, para. 2.7.

<sup>40</sup> UN CAT, *Blanco Abad v. Spain*, 59/96, 14 May 1998, para. 8.2.

<sup>41</sup> Criminal Procedure Code, Article 155(3).

<sup>42</sup> ICJ seminar addresses the independence of the legal profession in Central Asia, 27 March 2013.

<sup>43</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 21 February 2012, A/HRC/19/61/Add.2, para. 20.

<sup>44</sup> Criminal Procedure Code, Article 81(3).

<sup>45</sup> Constitution of the Kyrgyz Republic, Article 26(4); Criminal Code, Article 325; Criminal Procedure Code, Article 81 (inadmissibility of the statements made in the absence of a lawyer during investigation).

<sup>46</sup> E.g.: *Gunan v. Kyrgyzstan* (1545/2007), 25 July 2011.

<sup>47</sup> ICJ Report, Independence of the Legal Profession in Central Asia, page 56.

### **Security of lawyers (Article 2, Article 16 CAT)**

29. In recent years, the Kyrgyz authorities have systematically failed to prevent violent physical attacks against lawyers, in particular in the South of the country. The ICJ is aware of numerous cases in which lawyers were subjected to physical attack by members of the public, often supporters of the victims in a case in which the lawyer represented the defendant. Such attacks have taken place in or outside court, or when attempting to visit clients in detention. While attacks were very frequent immediately after the violent ethnic disturbances of 2010 in the south of Kyrgyzstan,<sup>48</sup> they still occur; the most recent examples include an attack on two lawyers in the Supreme Court in 2013 by supporters of the victim in the case.<sup>49</sup> Despite the fact that the attacks on lawyers are often committed by persons who are present in court and who are therefore easily identifiable, no person has been brought to justice following such attacks.<sup>50</sup>

30. Such attacks raise questions in respect of the positive obligations of the State to protect lawyers from ill-treatment, under Articles 2 and 16 CAT. Furthermore, they endanger the effective legal representation of detained and accused persons who are under threat of torture or ill-treatment. It is well documented that torture has been routinely used against those tried and convicted of offences related to the ethnic clashes of 2010 between the Kyrgyz and Uzbek populations in the South of the country.<sup>51</sup>

### **Failure to ensure reparation (Article 14)**

31. Kyrgyzstan has failed to ensure that victims of torture and other ill-treatment receive adequate reparation. This is so even in cases in which the Human Rights Committee has found a violation of Article 7 of the ICCPR.

32. This is so notwithstanding the fact that the Article 41(2) of the Constitution requires remedy or reparation upon a finding a violation by an international body.

33. Furthermore no steps have ever been taken to ensure that when the use of torture is established by international mechanisms, such as the UN treaty bodies, prosecution is initiated.<sup>52</sup>

34. Of concern, as mentioned above, is that fact that Kyrgyzstan has disregarded interim measures of UN treaty bodies, transferring people to Uzbekistan despite a real risk of torture which they faced. In the follow up dialogue with the Committee, Kyrgyzstan stated that guarantees of their government regarding extradited persons did not extend to Uzbekistan.<sup>53</sup>

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<sup>48</sup> "Kyrgyzstan: measures to end attacks on lawyers and defendants urgently needed", press-release of the International Commission of Jurists of 15 October 2010, <http://www.icj.org/kyrgyzstan-measures-to-end-attacks-on-lawyersand-defendants-urgently-needed/>.

<sup>49</sup> "Kyrgyzstan: ICJ condemns assaults on lawyers in Supreme Court", press release issued by the International Commission of Jurists on 2 April 2013, <http://www.icj.org/kyrgyzstan-icj-condemns-assaults-on-lawyers-insupreme-court/>; Kyrgyz Republic: government must take urgent measures to end attacks on lawyers, press release issued by the International Commission of Jurists on 21 August 2013, <http://www.icj.org/kyrgyz-republic-government-must-take-urgent-measures-to-end-attacks-on-lawyers/>.

<sup>50</sup> See, Kyrgyz Republic: government must take urgent measures to end attacks on lawyers, press release issued by the International Commission of Jurists on 21 August 2013, <http://www.icj.org/kyrgyz-republic-government-must-take-urgent-measures-to-end-attacks-on-lawyers/>.

<sup>51</sup> Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010, [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_490.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_490.pdf); ICJ, Report on the arrest, detention and trial of Azimzhan Askarov, paras. 171-178.

<sup>52</sup> Follow up jurisprudence, Kyrgyzstan, [http://www.bayefsky.com/html/kyrgyzstan\\_ccpr\\_follow\\_juris.php](http://www.bayefsky.com/html/kyrgyzstan_ccpr_follow_juris.php).

<sup>53</sup> Follow up dialogue on the case of *Maksudov, Rahimov, Tashbacv and Piratov, 1461, 1462, 1476 and 1477/2006*: "As for the Committee's doubts about the Kyrgyz authorities' ability to guarantee the safety in Uzbekistan of the authors after extradited, it should be noted that the provision of such guarantees would be regarded as an encroachment on Uzbekistan's sovereignty. Should the Committee desire further information about the health of the persons extradited, it should address an appropriate enquiry to the Office of the Procurator-General of the Republic of Uzbekistan".

## **RECOMMENDATIONS**

35. Against the background of the information provided within this submission, consistent with its obligations under the CAT the ICJ considers that the government of Kyrgyzstan must:

### **Article 2**

1. urgently adopt a comprehensive programme of reform, that includes legal and policy measures aimed at eradicating torture and other ill-treatment in detention;
2. include within such a programme measures to ensure a zero-tolerance approach to torture in policy and practice, including through training of law enforcement officers, policy and guidance at all levels of the relevant authorities, and consistent enforcement of the criminal law in regard to crimes of torture and other ill-treatment;
3. ensure that detainees who have allegedly been subjected to violence while deprived of their liberty have the right to be examined by a doctor, and that such examination is carried out in accordance with the Istanbul Protocol<sup>54</sup>.
4. ensure that procedural safeguards for detainees provided under law are strictly and consistently followed in practice, and that those officials who do not do so are held accountable in disciplinary or criminal proceedings.

### **Articles 1 and 4 in conjunction with Articles 2 and 16**

5. guarantee qualification of acts falling under the definition of article 1 CAT as the crime of torture in cases where private individuals act at the instigation, or with the consent or acquiescence, of officials;
6. use of legal criteria to distinguish acts of torture from other unlawful acts by the police or other officials or other parties concerned;
7. hold accountable, under the law and in practice, not only those who directly perpetrate acts of torture but also senior officials who are responsible for places of detention and for the use of torture by their subordinates;
8. take measures to ensure that persons in detention are effectively protected against acts of violence by private individuals such as other detainees;
9. take steps to effectively investigate and prosecute and punish both private perpetrators and state agents who instigated, consented to, or acquiesced in any act falling under articles 1 or 16.

### **Articles 11 and 2**

10. take steps to ensure that every person detained has access to a qualified and independent lawyer immediately after his or her apprehension and regularly thereafter;
11. ensure that in practice, detained persons have unrestricted access to a lawyer without need of authorisations which are not required by law or which unduly impede access;
12. implement the guarantee under the Criminal Procedure Code of an unlimited number and length of the meetings of persons in detention with their lawyers;
13. ensure adequate facilities and take other necessary measures to ensure the confidentiality of meetings between a lawyer and his or her client;
14. ensure in practice that wherever a lawyer raises concerns of torture or other ill-treatment of a client in detention, measures are taken to protect the detainee from reprisals, as well as to investigate promptly, independently and thoroughly the allegations of ill-treatment.

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<sup>54</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), Submitted to the United Nations High Commissioner for Human Rights 9 August 1999, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.



### **Article 12**

15. clarify and strengthen the legal powers of courts to refer cases of alleged torture or other ill-treatment to the prosecuting authorities whenever credible information about the use of torture or other ill-treatment is brought to the attention of the Court, whatever the source;
16. take measures to ensure that investigations into the allegations of torture and other ill-treatment are independent, impartial, effective and thorough, in a manner consistent with the Istanbul Protocol;
17. ensure that an individual who alleges torture is not required to prove the occurrence but rather that the burden of proof is shifted to the state.
18. ensure that perpetrators of crimes of torture and other ill-treatment are brought to justice, in proceedings that meet international fair trial standards and that those convicted are punished in a manner that is consistent with the gravity of the crime.

### **Article 15**

19. take effective measures to ensure that information obtained by means of torture or other ill-treatment is excluded as evidence from criminal proceedings in accordance with Article 15 of the Convention;
20. ensure that the burden of proof lies with the prosecution to show beyond reasonable doubt that evidence was not obtained under any form of ill-treatment;
21. maintain and publish statistical data regarding granting or denial of motions to exclude evidence obtained by torture or other ill-treatment.

### **Articles 1 and 16**

22. ensure that appropriate security measures are in place to protect against attacks on lawyers in or outside courts, and in or outside places of detention, and to issue and enforce guidance to ensure that law enforcement officers take effective preventative action to prevent or end attacks against lawyers;
23. ensure that, in cases where lawyers are known or reasonably suspected to be at risk of attack, either because of specific threats they have received or because of the nature of the cases they are involved in, the relevant law enforcement authorities promptly take all necessary measures to guarantee their effective protection.
24. ensure prompt, independent and thorough investigation of allegations of threats or attacks against lawyers;
25. immediately launch independent and thorough investigations into cases of attacks against lawyers which have already been reported, and bring those responsible to justice through a fair procedure;

### **Article 14**

26. fully cooperate with the UN treaty bodies, including the CAT Committee, and ensure that the obligations under the treaties are implemented bona fide;
27. enforce the constitutional provision requiring that establishing of a violation of rights by an international body leads to a remedy and reparation;
28. strictly comply with the requests for interim measures whenever a UN treaty body issues such a request.