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civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Rapport du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, Juan E. Méndez

Additif

Mission au Kirghizistan* **

Résumé

Le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants s'est rendu au Kirghizistan du 5 au 13 décembre 2011.

Le Rapporteur spécial remercie le Gouvernement kirghize de son invitation. Il juge encourageantes les mesures concrètes prises pour lutter contre la torture, mais demeure préoccupé par les lacunes importantes qu'il a constatées dans la législation et la façon dont celle-ci est appliquée. L'absence de garanties juridiques efficaces contre la torture et les mauvais traitements et la légèreté des sanctions prévues pour des actes de torture créent inévitablement un environnement propice à l'impunité.

Se fondant sur les informations qui lui ont été communiquées au cours des réunions tenues avec des décideurs, des victimes et des représentants d'organisations de la société civile, le Rapporteur spécial est parvenu à la conclusion que la torture et les mauvais traitements étaient des méthodes encore largement utilisées pour obtenir des aveux. Il est préoccupant de constater que les enquêtes sur les allégations de torture et de mauvais traitements ne sont pas assez rapides, approfondies et impartiales. Les conditions générales de détention prévalant dans la plupart des locaux que le Rapporteur spécial a visités sont assimilables à des traitements inhumains et dégradants.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale et en russe seulement.

** Soumission tardive.

Le Rapporteur spécial recommande au Gouvernement kirghize d'accélérer le rythme des réformes législatives afin que l'interdiction absolue de la torture soit inscrite dans la loi et de mettre en place des garanties efficaces contre la torture et les mauvais traitements dans la législation et dans la pratique; d'ouvrir immédiatement des enquêtes impartiales et approfondies sur les allégations de torture et de mauvais traitements; et de poursuivre sans délai les responsables présumés, lorsque cela se justifie. Le Rapporteur spécial exhorte le Gouvernement kirghize à mettre sur pied un mécanisme national efficace de prévention conformément au Protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants et à le doter des ressources financières et humaines nécessaires. Il lui recommande en outre de prévoir des crédits budgétaires suffisants afin d'améliorer les conditions de détention dans les lieux privés de liberté.

Le Rapporteur spécial invite le Gouvernement kirghize à prendre des mesures décisives pour garantir l'application immédiate et efficace de ses recommandations et lance un appel à la communauté internationale pour qu'elle aide le Kirghizistan à lutter contre la torture et les mauvais traitements en lui accordant l'appui financier et technique nécessaire.

Annexe

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Kyrgyzstan (5 - 13 December 2011)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–8	4
II. Legal framework.....	9–33	5
A. International level.....	9	5
B. Regional level.....	10	5
C. National level	11–33	5
III. Assessment of the situation.....	34–72	9
A. Practice of torture and ill-treatment.....	37–42	10
B. Lack of effective safeguards and prevention	43–57	11
C. Conditions of detention	58–72	15
IV. Conclusions and recommendations.....	73–84	17
A. Conclusions	73–79	17
B. Recommendations	80–85	18

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Kyrgyzstan from 5 to 13 December 2011, at the invitation of the Government. The purpose of the visit was to assess the situation of torture and ill-treatment in the country, including conditions of detention, and to identify measures needed to prevent torture and ill-treatment in the future.

2. During his 9-day mission, the Special Rapporteur met with the President, the Vice-speaker of the *Jogorku Kenesh* (Parliament), the Head of the Committee on Human Rights, Equal Opportunities and Public Associations of Parliament (Parliamentary Committee), the Deputy Ombudsman, the Minister for Foreign Affairs, the Minister for the Interior, the Prosecutor General, the Minister for Justice, the Head of State Service for the Execution of Punishments, the Deputy Head of State Committee on National Security, the acting Chairwoman of the Supreme Court, the Ministers for Health, Education, and Social Protection, district and city representatives of above-mentioned ministries in Osh and Djalal-Abad, members of civil society organizations and representatives of United Nations agencies and other international organizations. He also met with victims of torture and their relatives, and visited places of deprivation of liberty in Bishkek, Chui, Osh and Djalal-Abad provinces.

3. The Special Rapporteur wishes to thank the Ministry of Foreign Affairs for issuing authorization letters providing him with unrestricted access to all detention facilities in accordance with the terms of reference for fact-finding missions by special rapporteurs.¹

4. Owing to time constraints, the Special Rapporteur selected a representative sample of places and facilities and visited a total of 15 detention centres of all types, including seven temporary detention facilities, four pretrial detention facilities, two police stations, a penal colony and one psychiatric hospital in different parts of the country.² The testimonies heard about torture and ill-treatment shared the same pattern and were largely corroborated by forensic expertise.

5. The Special Rapporteur would like to express appreciation to the Government for facilitating his unrestricted access to most of the places where persons are deprived of their liberty. Overall access was by and large granted to pretrial detention facilities under the jurisdiction of the State Service for the Execution of Punishments.

6. The Special Rapporteur had to wait, however, for duty officers to gain permission from their superiors before he was granted access to IVSs run by the Ministry of the Interior. On two occasions, the Special Rapporteur had to interrupt his visits owing to unacceptable restrictions to his working methods. At the temporary detention facility in Uzgen district (Osh province), the deputy head, Baky Diykanev, entered into lengthy negotiations with him, questioning the time and purpose of his visit, on the pretext that the visit was being conducted after working hours on Saturday. The Special Rapporteur's access to the temporary detention facility was eventually compromised with "no more than five minute" interviews with inmates, which he had to interrupt because of the officer's continued interference and agitation of inmates "to tell the truth". At the temporary

¹ E/CN.4/1998/45, appendix V.

² In principle, a temporary detention facility ("IVS") are used to hold inmates in the first 48 hours after their arrest and before the courts have authorized their remand for trial. A pretrial detention facility ("SIZO") is used to hold inmates from the initial court decision until trial. Penitentiary colonies are for inmates serving sentences. In principle, police stations do not hold detainees.

detention facility in Moscovskiy district (Chui province), its deputy head, Zarubek Ibraimov, also placed undue time restrictions on conversations with inmates, in addition to being rude to the members of the Special Rapporteur's team. At the temporary detention facility of Osh City Interior, an officer went to the cells ahead of the Special Rapporteur telling inmates "you know what you have to say". These incidents constitute serious breaches of the terms of reference agreed upon by the Government of Kyrgyzstan. Moreover, any restrictions to the Special Rapporteur's right to unrestricted access to detention facilities and any interference with private interviews with detainees leads him to suspect that these authorities wished to conceal evidence.

7. The Special Rapporteur wishes to express his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular its Regional Office for Central Asia, in Bishkek, the United Nations country team, the Resident Coordinator and others involved in organizing the visit, for the excellent assistance prior to and throughout the mission.

8. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission. On 20 January 2012, he sent an advanced preliminary version of the present report to the Government in English and a Russian language version on 24 January 2012. On 20 February 2012, the Government provided comments.

II. Legal framework

A. International level

9. Kyrgyzstan is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Kyrgyzstan acceded to the Optional Protocol to the Convention against Torture in 2008. The State is also a signatory to the Rome Statute of the International Criminal Court.

B. Regional level

10. Kyrgyzstan, as a participating State in the Organization for Security and Cooperation in Europe (OSCE), has made a number of political commitments in the field of human rights. It is also a party to regional agreements, mainly in the field of security cooperation, such as the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases of the Commonwealth of Independent States . Kyrgyzstan is a member of the Shanghai Cooperation Organization and the Collective Security Treaty Organization.

C. National level

1. Constitutional and legislative provisions criminalizing torture

11. Article 22 of the Constitution promulgated on 27 June 2011 stipulates that "No one may be subject to torture or to other inhuman, cruel and degrading forms of treatment or punishment." In addition, article 20, paragraph 4, of the Constitution provides that the prohibition of torture and other inhuman, cruel and degrading forms of treatment and punishment should not be subject to any limitations.

12. Article 305-1 of the Criminal Code, as amended in 2003, prescribes punishment for ill-treatment, including ill-treatment with the use of torture, in the form of imprisonment for a period of three to five years.

13. Although article 22 of the new Constitution reflects article 7 of the International Covenant on Civil and Political Rights on the prohibition of torture, under the Criminal Code torture belongs to the crimes of minor gravity involving lesser public danger; a charge of torture may be dropped if victims decide to withdraw their complaint or in the event of reconciliation.³ The insignificant sanction provided for under article 305-1 inevitably creates an environment conducive to impunity as perpetrators usually get conditional sentencing as first-time offenders or are released on amnesty. In Kyrgyzstan, the crime of torture is not differentiated from other types of abuse of power, making it hard to distinguish torture from lesser forms of cruel, inhuman, or degrading treatment or punishment. The crime of torture can usually be prosecuted under other provisions of the Criminal Code, including “abuse of power” (art. 304), “exceeding power” (art. 305), “negligence” (art. 316) or “forced deposition” (art. 325).

14. The current definition of torture in article 305-1 is incomplete and not fully in conformity with article 1 of the Convention against Torture. It limits criminal responsibility to “public officials” and does not criminalize torture committed by others acting in an official capacity or by individuals acting at the instigation or with the consent or acquiescence of public officials. Furthermore, it does not refer to severe pain, and discrimination is not mentioned as a reason for committing torture. In addition, the specific offence of torture is not punishable by appropriate penalties commensurate with the gravity of the offence, as required by article 4, paragraph 2, of the Convention. The Special Rapporteur was encouraged to learn that a Ministry of Justice working group has drafted a law on amendments to the Criminal Code, to be submitted to Parliament, and that the bill will eventually correct the anomaly with regard to the penalty for torture.

2. Safeguards during arrest and detention

15. Article 24, parts 3 and 4, of the Constitution and article 39, part 2, of the Criminal Procedure Code provide that no one may be detained in custody for more than 48 hours without a judicial decision. The provision also details that detainees should be brought promptly or in any case before the expiration of the 48-hour period following the moment of apprehension before a court in order for it to decide on the lawfulness of detention.

16. While article 24, part 5, of the Constitution prescribes the right to legal counsel for any person in detention from the moment of the actual apprehension, the Code of Criminal Procedure delays this guarantee to the moment of the first interrogation or the moment of actual delivery to the institution in charge of conducting preliminary investigation (art. 40, part 4).

17. Articles 44 and 45 of the Code of Criminal Procedure provide that, in the event the defence lawyer of choosing is not able to appear within 24 hours from the moment of arrest or custodial placement, the investigator is entitled to arrange for the designation of a State-appointed defence lawyer.

18. According to article 100 of the Code of Criminal Procedure, suspects should be interrogated in the presence of a defence lawyer. Prior to the interrogation, the arrested

³ According to the Prosecutor General’s Office, decisions about the discontinuation of criminal cases of lesser gravity are adopted mainly on the basis of articles 28.1.12 and 28.1.14 (refusal to support accusation), article 29.1.2 (peaceful settlement) of the Code of Criminal Procedure and article 66.2 (agreement reached with the victim) of the Criminal Code.

person is to be informed of his or her rights and of the offence suspected, in accordance with article 24, part 5, of the new Constitution.

19. According to the amendment to article 17 of the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody, an additional written certificate, issued by the investigator, a prosecutor or the court and stating that the advocate is the attorney of record for the detainee's case is required before the attorney is allowed to see his client. The Special Rapporteur is concerned about this recent amendment, which adds an unnecessary bureaucratic hurdle in the early hours of detention, when detainees have not yet appointed counsel of their own choosing; moreover, it creates an environment conducive to coercion. When used at that stage, it violates the principle of equality of arms established under the International Covenant on Civil and Political Rights (art. 14).

20. Although according to article 26, paragraph 4, of the new Constitution and article 81 of the Code of Criminal Procedure, evidence obtained in violation of the law should not be relied upon in court, article 81, part 4, of the Criminal Code does not explicitly mention evidence obtained through torture or other forms of ill-treatment, but simply lists the types of evidence that are inadmissible. Article 325 of the Criminal Code makes it a punishable offence for an investigator to obtain testimony during questioning through unlawful acts, and the Code of Criminal Procedure renders any confession given during the investigation procedure in the attorney's absence inadmissible (article 81). The Special Rapporteur observes, however, that, in practice, there is no clear procedure in place prescribing the measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment. Furthermore, in practice, there appears to be no instruction to the courts with regard to implementing that rule or ordering an immediate, impartial and effective investigation if the rule is violated.

21. The Special Rapporteur recalls that international customary law and treaty law require States to ensure that any statement that is established to have been made as a result of torture is not to be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.⁴ This exclusionary rule is fundamental for upholding the absolute and non-derogable nature of the prohibition of torture by providing a disincentive to use torture.⁵ It is imperative to ensure the inadmissibility of any extrajudicial statement that is not freely and promptly ratified before a court of law, and a specific prohibition of the use of extrajudicial statements even as "inferences" or "presumptions".

22. Articles 16 and 19 of the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody, and the Rules on Internal Regulations of Temporary Detention Facilities of the Ministry of the Interior (article 3.1) provide for the right of suspects and accused persons to receive visits and to correspond upon written permission of the investigator. Neither the Code of Criminal Procedure nor the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody include a provision on the right of suspects to a free telephone call with family members or relatives in accordance with Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

23. According to article 40, part 5, of the Code of Criminal Procedure, every time a suspect is placed in a temporary detention facility and also when this person, his/her counsel or his/her family makes a complaint regarding physical abuse inflicted by agents of

⁴ See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15.

⁵ A/HRC/16/52, para. 52.

inquiry or investigation, the suspect is to undergo a compulsory and documented medical certification ordered by the administration of the temporary detention facility. Similar legal provisions apply to an accused person (art. 42, part 7). By decision of a head of the detention facility or investigator, or by request of a suspect or accused person or his/her counsel, medical certification may be performed by staff of health-care institutions to document bodily injuries (article 23 of the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody). The Special Rapporteur observes that, in practice, the norms mentioned in the two paragraphs above are not duly implemented in Kyrgyzstan.

3. Complaints and investigation of acts of torture and ill-treatment

24. Article 155 of the Code of Criminal Procedure requires inquiry officers and prosecutors to accept, register and review reports or statements on committed or intended crimes. The complaint filing procedure requires the complaint to be forwarded to the relevant addressee immediately or within 24 hours for persons detained or taken into custody (art. 128). Furthermore, crime reports can be registered either in police stations or with national security bodies, or financial police. The Special Rapporteur notes that, in practice, the registration of crimes committed by police officers is often delayed, resulting in the loss of evidence. In addition, the centre responsible for the collection, analysis and storage of all crime-related information under the authority of the Ministry of the Interior reportedly lacks transparency and has no external oversight.

25. Under article 38 of the Code of Criminal Procedure, agencies of preliminary inquiry, such as the police, penitentiary institutions and pretrial detention centres, military institutions, agencies of national security, and financial police, upon the receipt of a complaint, are to conduct a preliminary inquiry prior to the initiation of criminal proceedings. In most cases, if any inquiries are held, the police investigate torture allegedly perpetrated by its own officials, and the same holds true for the Committee for National Security and the financial police. The Special Rapporteur observes that the preliminary inquiry usually concludes that the allegations of torture and ill-treatment have not been substantiated and do not merit a full-scale criminal investigation.

26. In addition, during the preliminary inquiry, victims are not given an opportunity to present evidence nor are they allowed to review the report of the preliminary inquiry, making it virtually impossible for them to appeal its findings successfully.

27. The Special Rapporteur observes that, although the legislation provides for various complaint channels, the fact remains that these mechanisms are marred by allegations of lack of independence and ineffectiveness and the complaints are essentially addressed to the very body alleged to have perpetrated the ill-treatment. Such circumstances jeopardize their public credibility and do not allow unbiased examination of complaints of torture by police officers. In addition, there is not enough public awareness about the existing complaint mechanisms or confidence in their protective role. The Special Rapporteur recalls that, in the overwhelming majority of cases, the heads of preliminary and pretrial detention facilities denied having received any complaints of torture or ill-treatment in the past five years. The denial or absence of official complaints leads to the conclusion that the existing complaints mechanisms lack credibility, making them de facto non-functional.

28. The Special Rapporteur notes that prosecutorial oversight, although exercised regularly, does not focus on receiving or detecting cases of torture, but mostly on conditions of detention. The Special Rapporteur believes that most detainees refrain from filing complaints with prosecutors or inquiry officers during their monitoring visits out of fear of reprisal. Furthermore, no protection is afforded by the State to victims of torture, given that the Law on the Protection of Rights of Witnesses, Victims and Other Parties of Criminal Proceedings does not envisage any enforcement mechanisms. The Ombudsman's

Office, as part of its broad mandate, is also tasked with receiving complaints, including cases involving acts of torture or ill-treatment; however, it lacks capacity and the resources necessary to perform its tasks. According to the Deputy Ombudsman, in 2010, of 1,270 complaints, only eight were related to torture.

29. The Special Rapporteur received reports indicating that the deadline set in article 156, part 2, of the Code of Criminal Procedure for the investigator or prosecutor to decide within three days (or 10 days in exceptional circumstances) whether to launch a criminal investigation is rarely observed. In addition, the required medical examination of the victim is usually delayed until the injuries have disappeared. With regard to torture, even the time established in law for deciding upon the initiation of a criminal investigation is excessively long; it prevents prompt and effective determination and preservation of evidence and the identification of perpetrators. Preliminary inquiries conducted by the Department of Internal Security of the Ministry of the Interior vis-a-vis its own colleagues against whom complaints have been made are also marred by a conflict of interest. There is also conflict of interest between the investigating and overseeing functions of prosecutorial authorities, given that criminal cases launched into allegations of torture by police officers during preliminary investigations cast a shadow over the effectiveness of oversight of the legality of investigation also overseen by the prosecutor's office.

30. The Special Rapporteur welcomes the bill signed into law by the President on 9 August 2011 on amendments and changes to the Criminal and Procedural Code of Kyrgyzstan, whereby investigations of offences envisaged in, inter alia, article 305-1 of the Criminal Code are to be conducted solely by the officers of the prosecutor's office. The Special Rapporteur observes that, despite the fact that prosecutors have regained investigating functions over the crimes of torture and other ill-treatment, they lack real investigatory powers, depend on the police to conduct searches and seizures, and do not have their own operative groups or their own criminologists.

31. The Special Rapporteur was encouraged to learn from the Prosecutor General that efforts were being made to make the suspension of law enforcement officials from their posts mandatory, in view of the fact that, until very recently, before official charges were brought against public officials, the latter continued to hold their posts and were suspended only during the period of pretrial investigation.

32. The Code of Criminal Procedure makes passing references to rehabilitation in articles 225, 419, 422 and 225, part 2. It does not, however, prescribe in full terms the enforceable right of the victim to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Special Rapporteur learned that there were no State-supported specialized rehabilitation services for victims, nor were such programmes envisaged by the Government at the time of the visit.

33. Furthermore, it appears that, under article 417 of the Code of Criminal Procedure, the effective implementation of the right of torture victims to compensation is significantly hampered by strict procedural requirements, given that the right to compensation is recognized only upon a judicial verdict or a resolution of the investigating body or prosecutor.

III. Assessment of the situation

34. Kyrgyzstan has undergone significant developments since 2010, including the adoption of the new Constitution, on 27 of June 2011; an invitation made by the President to an independent international commission of inquiry, the Kyrgyzstan Inquiry Commission, mandated to investigate facts and circumstances relating to incidents of inter-ethnic violence in the south of Kyrgyzstan in June 2010; the holding of parliamentary and

presidential elections, in 2010 and 2011 respectively, and the consequent formation of a new Government; the release, including by reduction of sentences, of thousands of prisoners under the Amnesty Act of 27 July 2011; the ratification by Parliament in March 2010 of the Second Optional Protocol to the International Covenant on Civil and Political Rights; the development of a national development strategy for the penitentiary system (“UMUT-2”) for the period 2011-2015; and three subsequent instructions issued by the Prosecutor General, in April, September and October 2011, on the prohibition of torture and the strengthening of prosecutorial control and oversight of prosecutorial negligence in cases of torture and ill-treatment.

35. The Special Rapporteur learned that, pursuant to Presidential Decree No. 41, various public advisory councils were established within the Ministry of the Interior and Prosecutor General’s office in Bishkek, Osh and Djalal-Abad, entrusted with monitoring places of detention. In addition, public monitoring councils, which comprise representatives from civil society, were created under the Ministry of the Interior, the State Service for the Execution of Punishments and the State Committee of National Security to monitor detention facilities and other closed institutions. Furthermore, a draft law on the police force and the prospect of reforming the Ministry of the Interior are both under discussion. The draft bill on the national centre for the prevention of torture has been finalized and is to be submitted to Parliament for discussion early in 2012. It is also encouraging that, since May 2011, three memorandums of understanding have been signed by prosecutors and civil society organizations – for Djalal-Abad province, for Osh City and for Osh province – providing for public councils to identify solutions and building confidence in the prosecutorial authorities. The first initiative of the public councils was the installation of closed-circuit cameras in some temporary detention facilities in Djalal-Abad province.

36. In addition, in 2010 and 2011, several monitoring initiatives were undertaken by various public advisory councils and the Parliamentary Committee to examine the conditions in temporary and pretrial detention facilities. The purpose of the monitoring visits was to, inter alia, propose budgetary allocations for the maintenance of the facilities. Of particular interest to the Special Rapporteur were the findings of the project on torture prevention in temporary detention facilities under the Ministry of Internal Affairs, initiated by the OSCE Centre in Bishkek, the Ombudsman and a group of civil society organizations.

A. Practice of torture and ill-treatment

37. The Special Rapporteur received numerous accounts and eyewitness testimonies suggesting that torture and ill-treatment had been historically pervasive in the law enforcement sector. This practice has been intensified by the turbulence of the past two years with the ousting of President Bakiev in April 2010, followed by the violence that took place in the South in June 2010.⁶ During the violence in June 2010 and its aftermath, reports consistently highlighted the frequency and gravity of arbitrary detention, torture and ill-treatment by law enforcement bodies.

38. Throughout the mission, testimonies of victims and their lawyers pointed to general patterns of torture and ill-treatment committed by police officers after arrest and during the first hours of informal interrogation. During interviews with victims, the Special Rapporteur heard multiple allegations of torture that shared the same pattern: asphyxiation

⁶ Long-standing ethnic tensions in the south of the country escalated in 2010. The main outbreak of violence began in Osh in June and later spread to Djalal-Abad, resulting in several hundred deaths and more than 1,000 people injured (Prosecutor General’s Office).

with plastic bags and gas masks with no flow of oxygen; punches and beatings with truncheons; the application of electric shock and the introduction of foreign objects into the anus, or the threat of rape. Police stations, temporary detention facilities, the premises of criminal police departments of the Ministry of the Interior and the pretrial detention facility of the State Committee of National Security were the locations most often cited as where the ill-treatment occurred. The Special Rapporteur was told that the use of torture by the criminal investigation police was exacerbated by the heavy reliance on confessions in the judicial system.

39. The Special Rapporteur has concluded that, in the immediate aftermath of the violence of June 2010, there was a significant increase of continued arbitrary arrests and detentions, incidents of forced confession under the use of torture and ill-treatment during arrest and while in detention, denial of access to a lawyer of one's choosing, denial of independent medical aid, threats and extortion of money in exchange for dropping or mitigating charges. These incidents, usually committed by the operative-investigating officers of the Ministry of the Interior during the first hours of apprehension and interrogation, continued to be widespread throughout 2011.

40. The commission of acts of torture was further facilitated by the lack of effective safeguards during the first hours of arrest, non-compliance with regulations requiring the prompt registration of persons arrested, failure to notify family members immediately following an arrest, delayed independent medical examinations and the complicity of State-appointed lawyers with investigators who offer a purely token presence and who are seen as being formally present to rubberstamp the decisions of the investigator.

41. On the basis of the information received and interviews conducted with relatives of victims, the Special Rapporteur concludes that the deaths in custody reported and lack of accountability for them were not isolated instances. Independent investigations launched into deaths in custody are the exception rather than the rule.⁷ In addition, relatives of the victims often come under pressure from the police to withdraw their complaints or to settle and have the case closed.

42. The authorities of the Ministry of the Interior were unable to provide precise statistics on the number of deaths in custody; they did, however, list the main causes of deaths, including suicides and alcohol and drug overdoses. In terms of procedure, the Special Rapporteur was informed that a forensic examination was performed and investigation was initiated into the circumstances of the death. According to the statistics provided by the State Service for the Execution of Punishments, during the period 2007-2011, there was a decrease in the number of deaths in penitentiary institutions and pretrial detention facilities under the oversight of the Service. Of 151 deaths in 2007, five were caused by bodily injuries; in 2010, there were only two deaths of pretrial detainees caused by bodily injuries out of 90; and in the first 11 months of 2011, of 81 deaths, five were caused by bodily injuries: one in the pretrial period, and four post-conviction.

B. Lack of effective safeguards and prevention

43. The Special Rapporteur has concluded that there is a serious lack of effective safeguards during the first hours of detention. Owing to the failure to register suspects at the time of apprehension, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment, given that it is during this time when basic safeguards are

⁷ See CCPR/C/94/D/1275/2004.

generally not provided for in practice and the arrested person remains without any protection.

1. Unrecorded detention and denial of access to lawyers

44. In all places visited, the dates of arrest, transfer to other facilities and release from custody were properly registered and records maintained. Most detainees indicated that they had seen judges and prosecutors and that, in most cases, “duty lawyers” were present at the various stages of custody and judicial process. In practice, however, any torture or coercion had by then already taken place – at the time of apprehension and transfer to a police station, an action that is not recorded. The law authorizes police to make an arrest on suspicion of criminal responsibility and without judicial warrant, which by itself constitutes an invitation to mistreatment. On the other hand, the law also states that, within three hours of making an arrest, the police officer must take the person to an investigating officer or release him or her. The irregular – but almost routine – procedure of unregistered arrest makes it impossible to establish whether the three-hour maximum term for the first stage of deprivation of liberty is observed. Similarly, the 12-hour period envisaged for notification of family members about the arrest by the investigator, as stipulated in article 99 of the Code of Criminal Procedure, appears to be an ineffective safeguard.

45. Almost all detainees interviewed indicated that they had been subjected to mistreatment or beating since the time of apprehension and delivery to the temporary detention facility for the purpose of extracting a confession. During this unaccounted period of time, suspects may be held in unofficial detention settings (unregistered custody), such as in police vehicles or office rooms, where police officers have “conversations” with suspects or witnesses. This involves inviting a person to the police station without recording the time and purpose of the visit, and often holding a person incommunicado for an unlimited period of time. These individuals do not in effect enjoy the rights that are provided for by criminal procedure law to suspects or accused.

2. Evidence obtained under torture

46. The Special Rapporteur received reports according to which, in practice, confessions obtained under torture are not expressly excluded as evidence in court. Moreover, the majority of verdicts in criminal cases are mostly based on voluntary confessional statements made during the investigation or at the time of surrender. In addition, the courts encourage this practice by giving undue weight to confessions when evaluating evidence. If a defendant claims during trial that the confession was obtained through torture, the courts either ignore such statements altogether or conduct a superficial inquiry by simply questioning the police officers in court. After the officers deny the use of torture, the judge concludes that the defendant’s allegations are not substantiated and should be treated as an effort to avoid justice.

3. Lack of ex officio investigations

47. Under current legislation, acts of torture and ill-treatment are not investigated ex officio, but only at the request of the victim once a motion has been received from the defence lawyer.

48. The Special Rapporteur received information and heard testimonies according to which, in trials relating to the violence of June 2010, judges and prosecutors repeatedly failed to act on information of torture or ill-treatment supplied by defendants or their lawyers. The Special Rapporteur heard multiple allegations and received reports according to which judges often ignored allegations of torture made by defendants, or silenced the defendants to halt descriptions of how they had been ill-treated during investigation. In several cases, courts dismissed allegations of torture, claiming that the allegations were

groundless because the defendant or his/her lawyer had not submitted complaints to the prosecutors ahead of the trial.

49. The decision of the Supreme Court of 20 December 2011 upholding the life sentence for prominent human rights defender Azimjan Askarov and other defendants convicted in relation to the violence of June 2010, despite reports of his torture in detention and defendants' claims that confessions had been extracted under duress,⁸ is an example of the highest judicial body's failure to act on allegations of torture and ill-treatment. The recent decision of the Supreme Court of 9 December 2011, which upheld the lower instance courts' ruling on the acquittal of four policemen prosecuted for torturing the victim, even though there was sound medical evidence in the record of savage acts of torture, is yet another discouraging example of a failed administration of justice.

4. Burden of proof and independent medical examinations

50. The Special Rapporteur was not able to obtain information on any instance when judges and prosecutors are known to have ordered medical examinations at their own initiative in response to allegations or signs of abuse. International law and precedent clearly puts the burden on the State and its agents to initiate investigations *ex officio* whenever there is any suspicion of torture.⁹

51. Needless to say, it is hard to prove torture when medical examinations by independent and impartial forensic experts are not promptly conducted. Even in those cases, the defendants should not have to bear the burden of proof of coercion to exclude self-incriminating statements, especially if they recant at the first opportunity they have to talk to a judge. Since independent medical examinations must be authorized by the supervising authority (such as the investigators, the prosecutors or the penitentiary authorities), that authority has ample opportunity to delay authorization so that any injuries deriving from torture have healed by the time an examination is conducted. The evidence suggests that detainees are often held for longer periods until the signs of torture have disappeared, at which stage they are transferred to a pretrial detention facility. As a result, a forensic examination might identify bruises but fail to establish the time of mistreatment. At trial, courts tend not to take into account conclusions other than the ones provided by official State-appointed forensic experts. In addition, State forensic medical examinations take priority over the opinions provided by independent experts proposed by defence counsel. The Special Rapporteur was informed that forensic doctors in Kyrgyzstan do not have adequate training on documenting torture and other forms of ill-treatment and, because of the existing institutional set-up, lack independence from the authorities in whose custody the alleged ill-treatment took place. Their offices and laboratories are heavily under-equipped owing to the general budgetary restraints in the country.

52. Judges are widely seen as formally present at the criminal process, but mainly to rubberstamp decisions of investigating officers or prosecutors rather than take a genuine interest in following up on torture allegations. The overwhelming majority of interviewees stated that neither at the first hearing to sanction pretrial detention nor during the trial itself had any judge asked about the treatment during the initial period of custody. Moreover, if victims made allegations of torture or ill-treatment, they were routinely silenced. The Special Rapporteur was unable to obtain information on cases where evidence had been

⁸ See "UN human rights chief urges judges in Kyrgyzstan to respect defendants' civil rights", OHCHR press release, 22 December 2011. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11739&LangID=E.

⁹ See European Court of Human Rights, *Kurt v Turkey*, 25 May 1998.

excluded because it was found to have been obtained under torture.¹⁰ A worrying feature of the system repeatedly described to the Special Rapporteur is that, since crimes need to be solved, previous convicts are often accused of having committed them and their cases are simply fabricated, often by obtaining confession under duress, to which false evidence is then added.

5. Impunity and lack of effective investigation of torture allegations

53. According to the Prosecutor General, more than 5,000 criminal investigations were opened into crimes relating to the events of June 2010 by an interdepartmental investigative working group under the Prosecutor General's Office, comprising police and security bodies. Many cases were, however, terminated owing to lack of evidence. This put a strain on reportedly ill-prepared police and investigative bodies, institutionally prone to use torture and ill-treatment against detainees to compensate for an embedded lack of investigative capacity. For that difficult task, it counted only on police operatives and investigating officers as well as national security agents, all of whom had long been associated with allegations of extraction of confessions under torture and ill-treatment. Such bodies are notoriously unable to complete criminal investigations and deliver results in complex cases in ways that uphold the rule of law and thereby re-establish the trust of citizens in State institutions. Perhaps inevitably, the investigative efforts of the criminal justice process brought about an unprecedented scale of legally suspect convictions and triggered further violations, including denial of due process guarantees. This was carried out against a backdrop of existing concerns over independence and impartiality of the judicial oversight. There is also alarming evidence that many criminal proceedings were marred by widely reported bias against members of certain ethnic minorities.¹¹

54. According to information provided by the Prosecutor General's Office, as at December 2011, there have been no convictions for torture and very few prosecutions (if any) since article 305-1 was introduced into the Criminal Code in 2003. In 2010, the Office received a total of 251 complaints regarding abuse of power, including with use of violence (art. 305), and 14 complaints regarding torture (art. 305-1). Only six criminal cases were launched concerning torture complaints, of which five cases were sent to court; the other eight cases were dismissed. In 2010, three people were subjected to disciplinary measures. During the first nine months of 2011, the Office received 200 complaints regarding abuse of power and 31 complaints of torture, of which 13 criminal investigations were launched and 18 cases dismissed. During the same period, 36 people were punished with disciplinary measures. In 2011, for the first time, five police officers were convicted of abuse of power and received suspended sentences. According to the Ministry of the Interior, during the first 10 months of 2011, eight criminal cases were initiated against police officers by the Ministry; only two of those cases were submitted to court, and no decision had yet been reached at the time of the visit.

55. The Special Rapporteur expresses his concern that serious human rights violations committed in the context of ongoing investigations into the events of June 2010 and after have continued unabated in recent months. There is a serious lack of sufficiently speedy, thorough and impartial investigations into allegations of torture and ill-treatment, as well as a lack of prosecution of alleged law enforcement officials. The efforts made by the interim

¹⁰ The Government provided the Special Rapporteur with a decision of a local court (in Kyrgyz language) indicating that the defendant was acquitted as the confession was declared to have been obtained illegally. A single case, however, does not change the Special Rapporteur's view that, in general, the exclusionary rule is not applied.

¹¹ See A/HRC/17/41.

Government to investigate and punish the abuses that resulted from the events of June 2010 have proved to be largely ineffective.

56. The Special Rapporteur received credible reports according to which official replies of prosecutors do not usually contain information on how the decision not to initiate a criminal investigation was reached. It is reported that preliminary inquiries have been frequently inadequate as prosecutors fail to take all possible steps to verify allegations of torture. In several cases, prosecutors relied on inconclusive forensic examinations to decide not to investigate; in others, prosecutors did not interrogate the victim about allegations, nor were steps taken to question witnesses or medical personnel.

57. While the Special Rapporteur is encouraged by the concrete steps taken by the Prosecutor General vis-à-vis the recent instructions (see paragraph 34 above), it remains to be seen how these directives will be implemented at the city and provincial levels.

C. Conditions of detention

1. Temporary and pretrial detention facilities

58. Currently, all 47 temporary detention facilities are under the oversight of the Ministry of the Interior. The State Committee for National Security has its own pretrial detention facilities in Bishkek and Osh. The average length of stay at a pretrial detention facility varies from 9 to 12 months. All 11 correctional colonies, including three institutions for tuberculosis patients, a juvenile penitentiary, a colony for women, six pretrial detention facilities and 15 settlement colonies are under the jurisdiction of the State Service for the Execution of Punishments.

59. The Special Rapporteur acknowledges that the prison population has significantly dropped in recent years, from 16,934 in 2004 to 9,698 in 2011¹² (not including the temporary and pretrial detention facilities of the National Security Committee). It is worth noting, however, that the penitentiary policies applied have an essentially punitive nature rather than aim at reintegrating prisoners into society. The execution of sentences still consists of placing convicted persons in standard, reinforced or strict regime penal colony settlements.

60. The Special Rapporteur observed that conditions in a temporary detention facility, a pretrial detention facility and a penal colony varied from being adequate (pretrial detention facilities No. 1 in Bishkek and No. 25 in Osh) to unsatisfactory (most temporary detention facilities visited) to appalling (Kara Suu district pretrial detention facility in Osh province). Most facilities visited were characterized by unsanitary conditions and poor or non-existent ventilation or daylight; most lacked heating. In temporary detention facilities built as early as 1923, inmates are confined for 23 hours a day to their poorly illuminated cells with little or no ventilation and minimum food and water. Cells contain four to six mattresses on the floor or on bunk beds and provide little space for movement. In most temporary detention facilities, showers with no hot water were located at an outside court and access to them was restricted to once a week. In some temporary detention facilities, detainees are allowed to use the toilet only twice a day at scheduled times; it is also their only opportunity to walk. Access to water for washing is extremely restricted. Meals are of very poor quality, and in most facilities, consist of only one serving a day, plus hot water for tea. Families are allowed to bring supplementary food supplies.

¹² Figures provided in the draft national strategy on penal enforcement system development for the period 2011- 2015 "UMUT - 2".

61. Tuberculosis patients in facilities visited were separated. In almost all temporary and pretrial detention facilities visited, there was no separation between convicted and pretrial inmates. Most detainees indicated that their arrest had been confirmed by a court within the first 48 hours, as provided by law (albeit counted from the initial interrogation, not the actual detention). Most inmates interviewed confirmed that, however, their detention in a temporary detention facility continued after that court hearing instead of being remanded to a pretrial detention facility, as the law would require. Continued detention in temporary detention facilities can last from one month to several months, and even a year. This was explained by the fact that transfers from a temporary to a pretrial detention facility are only conducted once every 10 to 15 days. In addition, most correctional facilities are located in the Chui region, while other regions do not have custodial institutions. In practice, owing to the shortage of pretrial detention facilities and the need for prolonged investigations, temporary facilities are used as pretrial ones.

62. In temporary detention facilities, access to and the length of family visits are determined by investigating officers on a case-by-case basis, which is an incentive for bribery and arbitrariness. The Special Rapporteur observed that most pretrial detainees in temporary detention facilities were either not aware of their right to receive visits from their families or thought that they were not entitled to it during pretrial detention.

63. There is no permanent medical presence in temporary detention facilities, and health emergencies are handled by simply calling an ambulance. While existing medical personnel in pretrial detention facilities employed by the Ministry of the Interior and the penitentiary administration perform check-ups upon arrival, they clearly lack independence, because they are accountable to the prison administration. If a medical worker observes bodily injuries tending to show evidence of torture, in the absence of a complaint, his or her report will rarely provide a description of injuries. In addition, medical personnel lack specific training in assessing and documenting cases of torture and ill-treatment.

64. With the caveat in mind that, in some temporary detention facilities visited, the administration placed undue pressure on inmates and pressured them “to tell the truth”, the Special Rapporteur did not receive complaints of mistreatment by facility employees. Invariably, inmates who reported having been tortured stated that they had been ill-treated before they arrived at the detention facility. They did, nevertheless, complain about general conditions at their place of detention, access to and length of family visits, lack of adequate food and access to drinking water, length of detention in the facility and the absence of any information about their fate. Several detainees indicated that they had had no contact with their relatives since detention. The almost total denial of contact with the outside world, often for prolonged periods, clearly contradicts the principle of the presumption of innocence and puts disproportionate psychological pressure on suspects. Outside temporary facilities, the Special Rapporteur heard testimonies about reprisals by the administration of the facility against inmates filing a complaint.

65. Conditions in pretrial detention facilities and the colony visited were relatively bearable, although the infrastructure was in a deplorable state. All four facilities visited had modestly equipped medical units, but there was an acute shortage of medical personnel, especially dentists and gynaecologists, and no psychiatric assistance. Family visits were only authorized on a case-by-case basis by the investigator. Meals (of poor nutritional value) were served three times a day.

66. In all facilities visited, the administration acknowledged the appalling conditions, old buildings and low budgetary allocations. Some heads of temporary and pretrial detention facilities are overly reliant on international help and funding to maintain minimum detention conditions and to install closed-circuit cameras in interrogation rooms and in common areas of the facilities (in Djalal-Abad province). Some detention facilities

currently run harm-reduction programmes for drug users, including substitution medication and needle exchange.

67. The police stations visited – in poor condition but well maintained – did not have holding cells.

2. Women in detention

68. Women are separated from men and juveniles are, with some exceptions, held separate from adults. For women in detention, conditions are generally better than in men's cells. In only one pretrial facility were there female guards as required by international minimum standards. In pretrial facility No. 1, a terminally ill woman continued to be detained. The Special Rapporteur urges the authorities to release the woman on humanitarian grounds.

3. Inmates serving life imprisonment

69. Following the abolition of the death penalty in 2007, more than 200 death penalty sentences have been commuted to life imprisonment. Currently the 259 prisoners sentenced to life imprisonment are housed in various pretrial detention centres. In facility No. 1 and Colony No. 47, inmates live in basements in dreadful conditions, confined in virtual isolation and solitary confinement in cells built in 1943 and designed for death row prisoners. Their isolation is applied automatically because of their life sentence and is not related in any way to their behaviour in custody. In effect, the system has given up on any possibility of rehabilitation.

70. The Special Rapporteur was informed that the construction in the village of Jany-Jer of a special building for inmates serving life terms had been delayed for years owing to lack of funding.

4. Psychiatric institutions

71. The Special Rapporteur received a favourable impression of the Kyzyl-Yhar psychiatric hospital in Djalal-Abad province, which was clean and well maintained, although the infrastructure itself is very old and the facility has a shortage of doctors. At the time of the visit, 36 patients were undergoing forced treatment. Some 25 pretrial detainees under criminal investigation were undergoing a judicial-psychiatric expert evaluation.

72. Although no cases of mistreatment were identified at the time of the visit, the Special Rapporteur received reports of ill-treatment of patients, including complaints about the extensive use of tranquilizers when patients do not comply with orders.

IV. Conclusions and recommendations

A. Conclusions

73. While recognizing the positive developments and progress made in securing constitutional rights and freedoms, the Special Rapporteur notes that there are significant gaps in legislation, policies and law enforcement practices. The political transition is an excellent opportunity to lay down the foundation of the absolute prohibition of torture and to incorporate constitutional provisions into all relevant legislative acts.

74. In this context, the open recognition of the existence of torture and ill-treatment by the current and former President, the deputy Speaker, the Head of the

Parliamentary Committee and the Prosecutor General reflects a clear political will to combat torture and ill-treatment. The Special Rapporteur heard of no such instructions communicated by the responsible officials of the Ministry of the Interior to condemn torture and ill-treatment or to declare unambiguously that torture and ill-treatment by police officers would not be tolerated.

75. The Special Rapporteur emphasizes the importance of ensuring that torture is defined as a serious crime, in compliance with the definition of torture in article 1 of the Convention against Torture, and that all acts of instigation of, consent to or acquiescence in torture by public officials or other persons acting in an official capacity are criminalized and supported by adequate penalties commensurate with the gravity of the offence.

76. The Special Rapporteur concludes that arbitrary arrests and forced confessions continue. The same applies to ill-treatment and coercion during arrest and while suspects are in unregistered police custody, denial of access to a lawyer of one's choosing, lack of independent medical aid, and threats and extortion in exchange for dropping charges. These abuses are usually committed by operative and investigating officers during the first hours after apprehension.

77. The absence of prompt, impartial and full investigations into allegations of torture and ill-treatment makes such acts a crime that goes unpunished. Impunity in turn reinforces reliance on confessions in the administration of criminal justice and to the unfettered discretion of investigating officers to authorize or refuse independent forensic expertise. Cases of torture are practically not addressed and perpetrators are not punished. It is imperative that public confidence in the judiciary and in the fairness and predictability of its rulings be restored.

78. Conditions in pretrial detention facilities are far from compliance with international standards and amount to inhuman and degrading treatment. The Special Rapporteur realizes that the penitentiary system is severely underfunded and suffers from decades of accumulated problems; he nonetheless believes that, with no current overcrowding in places of detention, improving decrepit infrastructures should be easier. Reliance on international assistance and ad hoc projects is, however, not a sustainable solution. A coordinated approach and State budgetary allocations are needed to improve the inhuman conditions in temporary detention facilities. In addition, while recognizing that many of the problems observed are caused by a lack of resources, he notes that some important steps could be taken that are not resource-dependent, such as establishing stronger legal and procedural safeguards and a more widespread application of non-custodial measures for persons accused of petty crimes.

79. Despite the Government's move to open the detention facilities to external oversight, access is still on an ad hoc basis and has limited impact. The Special Rapporteur was unable to obtain information on any complaints initiated following visits by monitoring bodies. Likewise, the Ombudsman's office is unable to ensure regular and effective oversight of detention places. It is therefore imperative that a national preventive mechanism be established in accordance with the Optional Protocol to the Convention against Torture and that it be equipped with the and human resources necessary to embark on its mission.

B. Recommendations

80. In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with appropriate assistance from the international community,

including the United Nations and other actors, take decisive steps to implement the following recommendations:

1. Legislation

(a) Amend, as a matter of priority, article 305-1 of the Criminal Code to ensure that torture is defined as a serious crime in accordance with article 1 of the Convention against Torture, sanctioned with penalties commensurate with the gravity of the crime; And ensure in the Law on Amnesty that no person convicted for the crime of torture will be entitled to benefit from an act of amnesty;

(b) Ensure that legislation concerning evidence presented in judicial proceedings is brought into line with the provisions of article 15 of the Convention against Torture in order to exclude explicitly any evidence or extrajudicial statement obtained under duress, unless the person interrogated affirms the veracity of the statement before a judge, and that persons convicted on the basis of such evidence are acquitted and released; and ensure that any allegation of torture and ill-treatment made in court is promptly dealt with by the judicial authorities without the need for a specific motion by the defence lawyer;

(c) Amend the Code of Criminal Procedure and the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of Crime to include a provision on the right of the suspect to one free telephone call with family members or relatives; and reduce the 12-hour period envisaged for notification of arrest by the investigator to the family stipulated in article 99 of the Code of Criminal Procedure;

(d) Amend the Code of Criminal Procedure and other legislative acts (including the law on operational investigations and search activities) with a view to ensure that the time period starting from the moment of actual arrest until the formal initiation of the criminal case is in accordance with international standards, with clear designation of procedural status, rights and safeguards.

2. Safeguards and prevention

81. The Special Rapporteur recommends that the Government:

(a) Ensure strict adherence to registration from the very moment of apprehension, abolish unacknowledged custodies and ensure strict surveillance devices in police stations; make police station chiefs and investigating and operative officers criminally accountable for any unacknowledged detention and make it a serious crime; define clearly the ability and obligation of judges to inspect places of detention and enforce the prohibition on unacknowledged detention and torture by initiating criminal prosecutions; ensure that access to lawyers of the suspect's own choosing is granted from the very moment of apprehension; and repeal the recent restrictions on access by lawyers to their defendants requiring multiple authorizations;

(b) Overhaul the system of State-appointed lawyers completely and replace it with an open and transparent process of fairly remunerated independent lawyers, a process that is not controlled in practice by the investigating officers; and foresee the establishment of national legal aid programmes that guarantee access to a lawyer for all detainees, including prior to interrogation;

(c) Set in legislation a minimum timeline within which medical examination is to be provided without delay, in conformity with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); ensure timely access to independent

medical examination at all stages of the criminal process, in particular when the suspect is placed in a temporary police detention facility, when taken out for any investigative activity, and upon return ensure that a forensic examination is conducted on the basis of the victim's application or his/her lawyer's motion for forensic service as a matter of law subject to judicial review in the event of delay or refusal, and that reports of independent forensics are attributed the same evidentiary weight as reports prepared by State-appointed forensic experts; and ensure that independent forensic reports are admissible in court upon submission by a defence counsel without any prior approval by an investigator or a State prosecutor to include them in the case file;

(d) Expedite a prompt, impartial and thorough investigation into all allegations of torture and cruel, inhuman or degrading treatment or punishment, and undertake public prosecutions without delay where the evidence warrants them; unless the allegation is manifestly unfounded, those involved should be suspended from their duties during the investigation and proceedings;

(e) Increase the number of qualified health personnel in temporary and pretrial detention facilities and ensure that medical staff in places of detention are independent by transferring them from the State Service for the Execution of Punishments and the Ministry of the Interior to the Ministry of Health; and provide forensic medical services with training in the medical investigation of torture and other forms of ill-treatment;

(f) Recall that evidentiary rules – and their incorrect interpretation -- should not reward police and investigator misconduct; the exclusion of evidence at trial is one effective means to combat misconduct and abuses in the course of a criminal investigation;

(g) Ensure that defence lawyers are given procedural opportunities to collect evidence independently of investigators through, inter alia, the deposition of witnesses and experts directly before a judge;

(h) Shift the burden of proof to prosecution to prove beyond reasonable doubt that a confession or other evidence has not been obtained under any kind of duress, and consider filming and audiotaping interrogations;

(i) Encourage judges and prosecutors to routinely ask persons arriving from police custody how they have been treated and to order an independent medical examination if they suspect that the detainee has been subjected to ill-treatment; an ex officio investigation should be initiated whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment; these cases tried under article 305-1 of the Criminal Code are prosecutable ex officio and should not be subject to termination upon the victim's request;

(j) Improve the effectiveness of existing alternatives to pretrial detention and consider the introduction of new alternatives by encouraging the use of non-custodial measures such as bail, reporting to a police station, radio-monitored bracelets and house arrest;

(k) Establish clearly set out enforcement mechanisms to provide victims with effective remedy and redress, including compensation and as full rehabilitation as possible by allocating funds in the national budget; and fulfil the right of the victim to obtain redress through civil litigation regardless of whether the guilt of a public agent has been determined by a court on a criminal case;

(l) Establish an effective national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture, ensure budgetary allocations

and equip the mechanism with sufficient human and other resources to enable it to inspect all places of detention regularly, to receive complaints, initiate prosecutions and follow them through to their conclusions;

(m) Consider adopting a law to allow regular inspections of all places of detention by an independent monitoring mechanism (in addition to the national preventive mechanism); ensure that oversight mechanisms, inter alia, public advisory councils, are able to conduct unimpeded and effective oversight of places of detention and that their findings and recommendations are made public; and introduce independent, effective and accessible complaint mechanisms to all places of detention through the installation of telephone hotlines or confidential complaints boxes, and ensure that every detainee has unimpeded and unsupervised access to the prosecutor upon request and that complainants do not suffer any reprisals;

(n) Ensure that pretrial detainees are transferred from temporary detention facilities to pretrial detention centres at the expiration of the 48-hour period.

3. Conditions of detention

82. The Special Rapporteur recommends that the Government:

(a) Appoint a high-level commission of multidisciplinary, credible specialists to conduct an urgent inspection of all detention centres with the aim of closing down immediately all facilities that are declared unfit for human habitation;

(b) Allocate sufficient budgetary resources to improve conditions in detention facilities with a view to provide adequate health care, improve food quality and ensure the separation of minors from adults and of pretrial prisoners from convicts; and design the system of execution of punishments in a way that truly aims at rehabilitating and reintegrating offenders by abolishing restrictive regimes and creating work opportunities and recreational activities for inmates;

(c) Eliminate the complete isolation of inmates sentenced to life imprisonment and move them to open or semi-open facilities.

4. Institutional reforms

83. The Special Rapporteur recommends that the Government:

(a) Complete the ongoing reform of the police apparatus, and have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or ill-treatment by their subordinates and that perpetrators will be held to account;

(b) Take measures to transfer authority over temporary detention facilities from the Ministry of the Interior to the State Service for the Execution of Punishments;

(c) Raise the awareness of personnel of the Prosecutor General's Office and investigating officers of the Ministry of the Interior of their role in preventing torture and ill-treatment, by means of mandatory training on international standards on the prohibition of torture, the provisions governing investigations of torture and ill-treatment, and interrogation techniques and develop training programmes for health and legal professionals on detecting, reporting and preventing torture, to be delivered during professional qualification courses;

(d) Strengthen the training of the judiciary in relation to torture and other cruel, inhuman or degrading treatment or punishment, and ensure effective follow-up.

5. Health-care facilities/psychiatric institutions

84. The Special Rapporteur recommends that appropriate bodies use institutionalization as a last resort and provide alternatives, including non-custodial psychiatric assistance available at local hospitals, and ensure the patient's right to free and informed consent to treatment in compliance with international standards.

85. The Special Rapporteur requests the international community to support the efforts of Kyrgyzstan in implementing the above-mentioned recommendations, in particular in its efforts to reform its legal system, establish a preventive framework against torture and ill-treatment and provide appropriate training for police and prison personnel.
