

Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women by the by the Kyrgyz Republic

Association for Protection of Human Rights in the Criminal Proceedings “ARTICLE 9”

The present report is prepared by the Association for Protection of Human Rights in the Criminal Proceedings “ARTICLE 9” – a platform of human rights organizations, experts and analysts working to promote the rights to freedom and personal integrity. The Association “ARTICLE 9” is involved in providing legal assistance, analysis of criminal legislation and law enforcement practice, promotion of rights in criminal proceedings, education in the law, and litigation proceedings. (<https://www.article9.kg/>)

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

This report by the Association describes the following problems:

1. Discrimination against women during arrest and detention in closed institutions;
2. Lack of the effective mechanism which provides detained victims of torture, cruel treatment, violence, and harassment with submission and consideration of their complaints, security guarantees from potential persecution, suppression of abuse, and other forms of pressure on female complainants, prohibition of access to female complainants on the part of the employees whose actions are complained;
3. Shortages of female employees in closed institutions;
4. The imposition of preventive measures in the form of detention on women, ignoring the fact of their commission of economic crimes, pregnancy, young children, disabilities or other serious health problems;
5. Illegal limitation of access to an advocate and visits during the detention period under the COVID-19 pandemic.

The Association submits the present report to the Committee on the Elimination of All Forms of Discrimination Against Women in order to have the following recommendations taken into account by the Committee members in preparing the Concluding Observations on the fifth periodic report of the Kyrgyz Republic under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women.

Recommendation №1. Introduce changes in the legislation and practice which provide detained victims of torture, cruel treatment, violence, and harassment with submission and consideration of their complaints, security guarantees from potential persecution, suppression of abuse, and other forms of pressure on female complainants, prohibition of access to female complainants on the part of the employees whose actions are appealed

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

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

Recommendation №2. Provide for the relevant number of female employees in detention facilities during personal search or inspection, delivery of medical care, escorting, and other necessary cases to prevent attacks on personal dignity

The stay of women in detention facilities and escort procedures under the supervision of the male staff pose risks of harassment, violence, and cruel treatment by the detention facility staff.

All 46 temporary detention facilities of the Ministry of Internal Affairs, where detained women can be held from 48 hours to 1 year, have no female staff.

All 4 pre-trial detention facilities of the State Service for Execution of Punishment, where detained women can actually be held over 1 year, lack female staff members. In the vast majority of cases only male guards were involved in escort procedures. Besides, the women-respondents informed about repeated facts of sexual harassment, personal search, and male employees' spying on women when the latter change clothes and/or are in toilet and shower rooms, which represent the forms of gender-based violence and sexual abuse¹.

Recommendation № 3. Introduce a prohibition in the criminal procedural legislation on detention of women in cases of their commission of economic crimes, pregnancy, young children, disability or other serious health problems. Detention of women should be used only in exceptional cases

The national legislation requires judges to take into account the validity of the suspicion, information about the identity of the suspect, the accused, his age, state of health, marital status, occupation and other circumstances when deciding on the use of preventive measures. However, the monitoring identified pregnant women, women with young children, and women with health problems in detention facilities. 27 of the 34 women detained in the pre-trial detention facility

¹ <https://drive.google.com/file/d/1ZmHKYdEXqjcmE8qoGSoUq49bMxwFIOB/view?usp=sharing>

were accused of committing economic crimes. The court did not find any circumstances in relation to these women for the imposition of alternative preventive measures to detention. According to the detained women interviewed during the monitoring, the reasons for detention often included such circumstances as lack of passport, their own housing, or the necessary certificates.

The case of Daria Kirnovskaya, a widow with seven children, the youngest of whom is four, is revealing. Daria was accused of committing an economic crime. She was detained and placed in a pre-trial detention facility in Karakol, Issyk-Kul region, while the children were left without their mother's care and lived in Tokmak, Chui region. The woman had no contact with her children and no information about their whereabouts.

Recommendation №4. Provide detained women with the right to receive quality health care and introduce the legislative norms allowing to:

- **special rules related to medical care in cases of sexual and other forms of violence;**
- **provide for the implementation of detained woman's request for treatment by a female doctor or nurse;**
- **providing gender-sensitive mental health care;**
- **taking health care measures relevant directly to the female body.**

The monitoring revealed an acute shortage of qualified health workers, including female doctors, low level of qualification among health workers, institutions, and low quality of medical care coupled with the lack of effective system of interaction between healthcare institutions in local communities. The monitoring revealed that pre-trial detention facilities have problems with pregnancy follow-up and preparation for childbirth: the institutions do not administer medicines, vitamins, binders, and anti-varicose agents². The monitoring in the detention facility in Karakol revealed two cases of miscarriages among pregnant women.

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

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

Recommendation №5. Provide free access to advocate and visits to detention facilities by national human rights institutions, including under quarantine conditions

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

- presentation of the PCR test for COVID for visiting detention facilities every 11 days;

² Special Report of the National Centre of the Kyrgyz Republic for Prevention of Torture "Observance of the Rights of Women in Pre-Trial Detention Centres of the State Service for Execution of Punishment under the Ministry of Justice of the Kyrgyz Republic" (Bishkek, 2021)

- communications with and visits of defendants are allowed provided sanitary and epidemiological norms (treatment with disinfectants, facemask and gloves regime) are observed.

At the same time, the presentation of PCR tests by the employees of detention facilities was not required.

The women-respondents who have advocates through the State-Guaranteed Legal Aid (SGLA) reported that their advocates did not visit them on the ground of a lack of funds for regular passing of PCR tests.

Recommendation №6. Oblige the Government to provide detained women with: personal hygiene products, if necessary, pre- and post-natal feminine supplies, baby clothes and supplies, compliance with the established nutritional standards

According to the monitoring results, only in one pre-trial detention facility №53 in Jalal-Abad women received feminine hygienic pads. None of the pre-trial detention facilities provided women who gave birth with post-natal feminine supplies, diapers for children, baby clothes and other essentials for the care of a newborn and an infant. The premises of pre-trial detention facilities do not have adequate conditions for the care of children under the age of three while they are in detention facilities together with their mothers.

One-fifth of the women-respondents in detention singled out the problems of the food quality. Particularly, the women in early stages of pregnancy (up to seven months of pregnancy) did not provide for complementary food prescribed by law.

Due to the inadequate conditions Aizhan Ibrayimova, a woman detained in the capital's pre-trial detention facility, had to part with her five-month-old son on the grounds that it was not safe for the child to be in such conditions.

Recommendation №7. The national legislation should provide for the following norms that:

- **exclude arbitrary refusal by officials to provide women in detention with communications;**
- **establish a simplified procedure for letter exchange;**
- **regulations that guarantee visits to detained women with disabilities, pregnant and women with young children, and those caring for seriously ill people;**
- **upon the consent of a detained woman provide for audio and video contacts with relatives and other persons.**

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

- the necessity of obtaining a negative PCR test result for COVID-19 even for short-term visits by relatives, which carries a significant financial burden for family members;
- written permission for communications or visits on behalf of the official or body handling the criminal case. Such permission is issued at the subjective discretion of the official/body which results in numerous arbitrary refusals of permissions for visits;
- lack of alternatives to personal visits and postal correspondence communication channels.

Detained women whose family members and close ones live far from the detention facility have a restricted right to visit and communicate with each other.

Nurzat Kambarbekova, a woman detained in the pre-trial detention facility in Jalal-Abad, was in a state of incommunicado. Her relatives lived in Bishkek and were not able to come, and the administration did not provide her with any phone or other communication. The administration of the facility did not inform her of her right to correspondence.

In the pre-trial detention facility in Jalal-Abad the administration does not inform detained women about their right to correspondence and about the letter transfer procedure. The attempts of the relatives to transfer letters together with the food and clothes were stopped by the administration due to the absence of the stamp of the postal institution on the envelope.

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

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