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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Addendum

**Mission to Kyrgyzstan: comments by the State on the report of the
Special Rapporteur***

* Reproduced in the annex as received.

Annex

Comments of the Government of Kyrgyzstan on the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

1. Mr. Juan Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, visited the Kyrgyz Republic on December 5 – 13, 2011 and presented his report to the Government of the Kyrgyz Republic on January 24, 2012.
2. The Kyrgyz Republic highly values this work and expresses its gratitude to the Special Rapporteur and his team.
3. In view of the interest in defining the objective situation with the practice of using torture in the country, the Government of the Kyrgyz Republic invited the Special Rapporteur Mr. Juan Mendez to visit the Kyrgyz Republic and provided him with open and unrestricted access to all closed institutions in accordance with his mandate.
4. The Kyrgyz Government agrees to some findings and critical comments of the Special Rapporteur, at the same time it hereby submits some comments to his report.
5. The Government makes significant efforts to align the legislation with the new Constitution of the Kyrgyz Republic of 2010 and international human rights commitments of the country. The Concept of legal policy has been drafted and is currently under review; the Jogorku Kenesh (the national Parliament) at present is considering the Law on the National Center on prevention of torture as well as a package of changes and amendments to the Criminal and Procedural Codes.
6. In terms of its oversight function, the agencies of the Office of the Prosecution of the Republic make regular and targeted efforts to combat torture and other cruel, inhuman or degrading treatment or punishment.
7. A number of departmental normative and regulatory acts were adopted and enforced.
8. On April 12, 2011 the Prosecutor General issued the Directive “On strengthening procuracy oversight over observance of constitutional guarantee of prohibition of torture and other cruel, inhuman or degrading treatment or punishment”, in pursuance of this directive the prosecution agencies conduct activity aimed at strengthening the procuracy oversight over observance of constitutional guarantee of prohibition of torture and other cruel, inhuman or degrading treatment or punishment.
9. On September 6, 2011 the Prosecutor General sent her instruction to the prosecutors of all levels, in addition to concrete tasks, this instruction provided for personal liability of the heads of territorial prosecution bodies for ensuring the observance of the constitutional guarantee of prohibition of torture on respective territories.
10. The Action Plan on prevention of torture (dated September 28, 2011) was drafted and is under implementation. For the purpose of verifying the observance of the Directive of the Prosecutor General of the Kyrgyz Republic by the lower level prosecutors, a mobile group composed of the staff of the Office of the Prosecutor General has been conducting the inspection which lasted since January 10 until February 15, 2012.
11. As the investigation of torture presents certain difficulties, the Office of the Prosecutor General developed and forwarded to the prosecutors for their use the Methodological Recommendations on investigation of torture and other cruel, inhuman or

degrading treatment or punishment as well as the Methodology of inspecting the temporary detention facilities (IVS).

12. In pursuance of the abovementioned normative acts, municipal prosecutors conduct systematic inspections of the police control rooms, administrative punishment cells, temporary detention facilities (IVS) of district police departments; they also visit offices of the inquiry and criminal investigation officers, review the complaints registers and interview citizens. Surprise visits have also become a practice.

13. During 2011 the prosecutors conducted 860 surprise visits which resulted in 15 submissions (disciplinary action was taken in respect of 3 persons), 4 notices of improvement, 1 person was warned on inadmissibility of violating the law and 6 criminal cases were initiated.

14. In order to ensure the observance of law, the prosecutors initiated the installation and functioning of video cameras in the temporary detention facilities (IVS) of the police departments of Jalal-Abad and Mailu-Suu cities, as well as Bazar-Korgon and Toktogul districts of the Jalal-Abad province. Similar activities are conducted in the IVS of the police departments of Suzak and Aksy districts. The Office of the Prosecution in the Talas province initiated the installation of video cameras in the IVS of the Talas provincial police department.

15. During 2011 the offices of the prosecution received 298 complaints on torture and other cruel treatment (in 2010 there were 270 such complaints). The review of 244 complaints resulted in dropping the criminal proceedings (in 2010 there were 236 such decisions); criminal proceedings were initiated in respect of 54 or 18.1% of complaints (in 2010 – 34 complaints or 12.6%). In the course of investigating these criminal cases the investigating officers issued resolutions to suspend 14 police officers from performing their duties.

16. The increase in the number of initiated criminal cases from 34 to 54 compared to 2010 was caused not by the growth of instances of using torture and other cruel, inhuman or degrading treatment or punishment, but due to pro active work of the offices of the prosecution.

17. The criminal and procedural legislation clearly regulates the process of verification and evaluation of evidence; all available evidence, including the confessionary statements, is subject to objective and comprehensive review. The collected evidence is compared with other evidence, the necessity of obtaining new evidence is explored and the sources of evidence are verified. Each evidence is subject to objective and comprehensive evaluation in their aggregate, therefore the decision of the court on the culpability of the convict is based not only on his / her confessionary statements, but also on all available and accessible evidence evaluated in their aggregate.

18. The criminal and procedural law does not envisage the priority of submitting a complaint on the use of torture first to the office of the prosecution and then to court; the rights of appeal of the suspect / accused / defendant against the actions of investigation bodies are not limited. In the event such complaint is received, it is registered in the case and the judge is obliged to verify the validity thereof. In case the court verdict is appealed against, the violation of such procedure may result in cancellation of the court verdict and disciplinary measures in respect of such judge.

19. The institutions of the penitentiary system of the country really do face certain challenges. More specifically, an acute problem is to provide the necessary living conditions for the inmates in the settlement colonies with the State penitentiary service under the Government of the Kyrgyz Republic. The premises of the correctional facilities

badly need capital repair. For many years such repair has not been performed in the correctional institutions NN 1, 2, 3, 8, 14, 16, 31 etc. due to the lack of funds.

20. Among the inmates of the pre-trial detention centers (SIZO) there are convicts who are kept there to perform domestic duties, these inmates are detained in strict isolation from other persons in custody, and no contacts between them are allowed. This is in line with Article 46 of the Criminal penitentiary Code of the Kyrgyz Republic.

21. The life imprisonment is the strictest type of punishment envisaged in the criminal legislation of the Kyrgyz Republic, the execution of this punishment is not compatible with keeping the persons sentenced to life imprisonment in the institution of open and semi-open types (settlement colonies). Regrettably, difficult financial and economic situation of the country does not allow the allocation of funds for the construction of a special separate facility for this category of inmates. Therefore such persons are kept in SIZO No 1 and correctional colony No 47 without being provided with minimum living standards ensuring their normal life. In this context the Republic would appreciate the assistance from the international community and international organizations.

22. The case of Mr. A. Askarov deserves special mentioning as this case was the one of significant public response. The report contains a one-sided description of the criminal case against Mr. A. Askarov and other convicts as well as the criminal case against Mr. K. Turdahunov, Mr. S. Nurdinov, Mr. K. Ermakov and Mr. M. Ismanov.

23. The panel of judges on criminal cases and administrative infractions of the Supreme Court of the Kyrgyz Republic has confirmed the verdicts pronounced by the courts of the first and the second instances in respect of these criminal cases. At the same time the report fails to indicate the causes and effects as well as the court proceedings during the review of the cases and delivering the verdicts. In considering the case of Mr. Azimjan Askarov and other convicts, the courts received numerous statements and motions of the defense lawyers. On each statement judges were making decisions to investigate the allegations of torture and obtaining confessionary statements under coercion. Despite the fact that the court allowed the motion of Mr. Askarov's defense lawyer concerning the examination of the latter, Mr. Askarov made a written waiver to undergo such examination in the presence of his defense lawyers, a forensic expert, the representatives of investigation bodies and the penitentiary institution. In addition, the Office of the Prosecutor General of the Kyrgyz Republic also checked the validity of arguments made by the defense lawyers in respect of tortures and confessionary statements under coercion; these facts were not confirmed. The supervisory complaints of the defense lawyers contained allegations of illegal methods of investigation in respect of their clients. In the process of review of the case the supervisory instance conducted a comprehensive and objective investigation of these allegations, which were subsequently rejected as non-corresponding to the materials of the criminal case.

24. During the review and evaluation of the evidence pertaining to the criminal case against police officers Mr. K. Turdahunov, Mr. S. Nurdinov, Mr. K. Ermakov and Mr. M. Ismanov, the reviewing authority decided to uphold the judicial decisions made by the courts of previous instances, which confirm the innocence of these persons. As the findings of the forensic examination on the casus of bodily harm of the victim were ambiguous, the panel of judges on criminal cases and administrative infractions of the Supreme Court of the Kyrgyz Republic decided that the injuries of the victim were caused not by the actions of the police officers, but rather were inflicted during the double car accident committed by him and his escape and intention to disappear from the scene of the crime.

25. The report also says that the Special Rapporteur failed to get information on at least a single case when the evidence was not admitted due to the fact that it had been illegally obtained. During the meeting between the leadership of the Supreme Court of the Kyrgyz Republic and the Special Rapporteur and his team, this issue was discussed. Later the

copies of the decisions of a local court in the Kyrgyz language were sent to the Special Rapporteur, this decision was acquitting the defendant due to the confirmed fact that the evidence was obtained illegally. Therefore the Kyrgyz Republic has a practice of acquitting the defendants in the event that the use of coerced confessions is confirmed.

26. The Kyrgyz Republic remains open for a constructive dialogue and cooperation with the Special Procedures of the UN and expresses its hope for future fruitful interaction on issues of common interest.
