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NATIONAL CIVIL SOCIETY NETWORK
FOR JUSTICE SECTOR MONITORING

SUBMISSION FOR THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW (UPR) OF KYRGYZSTAN: KEY ISSUES REGARDING COMPLIANCE WITH INTERNATIONAL STANDARDS IN THE JUSTICE SECTOR

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International Partnership for Human Rights (IPHR) is an independent, non-governmental organisation founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities in repressive environments.

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The Akyikat-Karegi Civil Society Network was established in Kyrgyzstan in 2022 to serve as a platform for coordinated civil society action to monitoring, assess and respond to challenges in the justice sector. It currently consists of 18 civil society organisations and 100 civil society activists.

Bishkek, Kyrgyzstan

Inquiries to the network can be directed to IPHR, using the contact information above.

The Lawyers for Human Rights Public Foundation is a human rights organisation established in Bishkek in 2016. It is dedicated to uniting legal professionals, lawyers, and experts who are committed to human rights values.

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1) Introduction

1.1. As result of a reform process initiated in the justice sector in Kyrgyzstan a decade ago, justice-related legislation was thoroughly revised, modernised and aligned with applicable international standards. Despite important preparatory work, the implementation phase, launched in 2019, revealed serious challenges in effectively enforcing new norms and mechanisms in practice. Moreover, new changes to the national legal framework introduced by the authorities in 2021 partly eroded previous achievements, threatening the overall reform process.

1.2. This submission highlights key concerns regarding compliance with international human rights standards in Kyrgyzstan's justice sector, including the principle of the independence of the judiciary, due process and fair trial rights, the rights of detainees and individuals accused of crimes, the prohibition of torture, and other relevant standards.

1.3. The submission is based on monitoring conducted by local civil society organisations (CSOs) from the 'Akyikat Karegi' network, as part of a project implemented by International Partnership for Human Rights (IPHR) and Lawyers for Human Rights (LHR) with support from the EU. The project aims to strengthen civil society capacity to monitor, analyse and respond to challenges within Kyrgyzstan's justice sector. In their monitoring, the CSOs focused on various aspects of the justice system, applying a comprehensive monitoring methodology developed by recognised international and national experts.¹ Their methods included analysing legislation and official documents, conducting surveys, field monitoring, and more.

2) Kyrgyzstan's criminal justice policy

2.1. Civil society monitoring and analysis revealed the **absence of a coherent, comprehensive criminal justice policy** in Kyrgyzstan, which leads to fragmented approaches. It is therefore crucial to elaborate a unified and consolidated criminal policy document to structure and systematise all policies and practices in this area.

2.2. Further, the monitoring showed that **although criminal law aligns well with international standards on paper**, and most basic principles such as legality, equality before the law, humanism and others are enshrined in national law, the **practical application of these standards is often inconsistent and problematic**.

2.3. In some cases, there are concerns regarding both the legal compliance with and the practical implementation of international standards. For example, while the principle of legal certainty - requiring that legal provisions be clear, precise and unambiguous - is set out in the Criminal Code's general part, the Code's special part **contains ambiguities that allow for varied interpretations by investigative and judicial authorities** in violation of this principle. This issue stems from legislators not adequately considering legal clarity when drafting new bills or amendments to the Criminal Code.

2.4. Moreover, while the Criminal Code recognises the rights of victims of crimes, it **does not provide for compensation for harm, forcing victims to pursue civil justice** when seeking compensation.

2.5. An issue of major concern is the re-introduction of so-called **pre-investigation checks** as part of the revision of Kyrgyzstan's criminal legislation in 2021. This highly problematic practice had previously been abolished in 2019 due to its inconsistency with human rights standards set out by Kyrgyzstan's Constitution and international law. According to the revised Criminal Procedure Code (CPC), these checks allow law enforcement authorities to conduct investigative measures for up to 20 days without officially opening a criminal case. During this time, they can inspect crime scenes, interview witnesses, gather forensic evidence, and request documents.

2.6. The justification for reinstating pre-investigation checks was to reduce the workload on law enforcement authorities by abolishing the need for a full investigation for every reported crime. However, this reform came **at the expense of due process and fair trial rights**.

2.7. In practice, pre-investigation checks are often used in cases of **sexual and gender-based violence**, including rape, delaying the initiation of criminal cases by up to 20 days. This violates victims' rights to a prompt and effective investigation and can subject them to **secondary victimisation**, such as invasive questioning and forensic exams without official victim status or assurance that their case will proceed to court.

2.8. Further concerns arise from the potential for **manipulating crime statistics** under the pre-investigation system, which can also contribute to **corruption and other abusive practices**. Police have an incentive to close investigations at this stage to artificially reduce the number of officially registered crimes, thereby improving crime detection rates. This problem is exacerbated by the continued use of crime detection rates as a key measure of police efficiency.

2.8. Key recommendations to the Kyrgyzstani authorities:

- Elaborate a clear strategic criminal policy document, covering all policies and practices in the criminal justice sector and setting the direction for criminal policy development in coming years.
- Align the Special Part of the Criminal Code with the principles outlined in its General Part to ensure consistency and full compliance between both sections. Moreover, ensure that the criminal justice principles and standards outlined in the General Part of the Criminal Code are reflected in all relevant laws, including the Criminal Procedure Code and the Code of Offenses. Synchronising these codes is crucial for effective law enforcement.
- Educate Members of Parliament on criminal law principles and international standards to prevent haphazard lawmaking, and conduct public legal education campaigns to raise awareness and understanding of these issues.
- Promote consistent and uniform jurisprudence. In particular, the Supreme Court should summarise judicial practices in cases of confiscation, damage compensation, citizenship issues, and other sensitive areas of criminal policy where pressing questions arise and human rights are at stake.

- Develop regulatory legislation to establish a specialized Victim Compensation Fund, as outlined in the Criminal Procedure Code, ensuring victims receive appropriate compensation for harm within the criminal justice system.
- Abolish pre-investigation checks, as they violate due process and fair trial standards, and ensure that criminal cases are promptly initiated in response to sexual and gender-based violence and that victims are protected from secondary victimization during the investigative process.
- Revise the performance metrics for law enforcement agencies by discontinuing the use of crime detection rates as a key indicator of efficiency, and instead adopt more nuanced assessment approaches that reflect the quality of investigations and adherence to legal standards.

3) The independence of the judicial system

3.1. The Institute for Public Analysis conducted in-depth monitoring of the independence and effectiveness of the judiciary in Kyrgyzstan, revealing several critical challenges, including **political interference, corruption, inadequate funding**, and **a lack of transparency** in the selection and disciplinary procedures for judges. These issues undermine the independence and integrity of the judicial system.

3.2. The 2021 Constitution of Kyrgyzstan significantly expanded the President's powers over the executive and other branches of government, including the judiciary. The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights warned that this expansion risks "encroachments on judicial independence." ² The President now exercises **considerable influence over key judicial functions** such as the appointment, dismissal, and rotation of judges, as well as the appointment of court presidents. To safeguard judicial independence, legislative measures are needed to **clarify and limit the President's role** in these processes. For instance, the law should clearly define the grounds on which the President can refuse to appoint candidates selected by the Council on Justice Affairs (the body responsible for judicial selection), and the practice of unannounced vetting of candidates by the President should be prohibited. In the longer term, broader reforms are necessary to further limit presidential influence and ensure a clear separation of powers.

3.3. Additionally, the **composition of the Council on Justice Affairs should be revised** to ensure its autonomy, with strict prohibitions against interference in its work. Currently, the Council consists of judges (two-thirds) and representatives from the Presidential Office, Parliament, the People's Kulturai, and the legal community (one-third).

3.4. To enhance transparency and fairness in judicial selection, **clear criteria should be established** to assess candidates' professional, personal, and public competencies. The involvement of professional psychologists could provide an objective evaluation of candidates' suitability. Selection procedures for appointments to the Constitutional Court and Supreme Court should also be made **more rigorous**.

3.5. The Council on Justice Affairs must **uphold the principle of transparency** by publishing all decisions related to the selection of judges and disciplinary matters. Media and observers should have unrestricted access to its meetings.

3.6. The **criteria for disciplining judges should be strictly defined** to avoid arbitrary actions. A list of exceptional circumstances justifying early dismissal should also be established.

3.7. The **role of the Congress of Judges and its executive body**, the Council of Judges (elected by the Congress), **should be strengthened**. For example, the Council of Judges should be empowered to investigate reports of interference in judicial administration and take action against those responsible. Either the Council or Congress of Judges should have the right to nominate candidates for court chairperson positions. The Congress should also be able to initiate the early removal of chairpersons due to lack of confidence. Furthermore, clear legal grounds for the disciplinary liability of court chairpersons, especially for failure to perform their duties, must be established.

3.8. Finally, the **current level of funding for the judicial system is insufficient**, and **procedures for independent budget management are not effectively implemented**. This financial dependency on the executive and legislative branches negatively impacts the administration of justice. Urgent reforms are needed to ensure adequate funding and independent budget management for the judiciary.

3.9. Key recommendations to the Kyrgyzstani authorities:

- Limit the President's influence over key judicial functions, including the appointment, rotation, and dismissal of judges, by introducing legal mechanisms that restrict executive overreach.
- Ensure transparency and independence of bodies responsible for judicial selection and disciplinary matters, enabling public oversight and scrutiny.
- Provide sufficient funding for the judiciary and implement independent budget management systems to eliminate financial dependence on other branches of government.

4) The independence and operation of the national Bar Association (Advokatura)

4.1. Monitoring and analysis of the independence and functioning of the legal profession in Kyrgyzstan, conducted by representatives of the Public Foundation "Civics", highlighted important findings and recommendations.

4.2. Although Kyrgyzstan's Bar Association is intended to be autonomous and self-governing, **the involvement of the Ministry of Justice in its elections and activities undermines this independence**. It is crucial to amend relevant laws to reduce state interference and ensure greater autonomy for the Bar Association. This should include excluding state officials from the Bar's implementing bodies, such as its Qualification and Ethics Commissions. In addition, **licensing and certification processes should be reviewed** to ensure they are fair, impartial and non-discriminatory, and **clearer definitions and classifications** of disciplinary offenses should be established.

4.3. The recent elections to the Bar Association's governing bodies, held in January 2024, **demonstrated shortcomings in ensuring fair and transparent election processes**. These included limited opportunities for pre-election campaigning and difficulties for candidates from smaller regions in gaining representation.

Measures are needed to address these issues.

4.4. To **improve the transparency and accountability**, the Bar Association should establish standardised reporting requirements for its governing bodies and ensure the publication of reports. Improving internal structures will help uphold basic principles more rigorously, thereby enhancing public trust and the credibility of the legal profession.

4.5. Ongoing **professional development is vital**. The Bar Association should continue improving its educational programmes, expand training centres, and adopt up-to-date teaching methods. It should **revise professional quality standards**, ensure that they comply with international standards and apply to all lawyers, **and monitor their implementation** in practice.

4.6. Further, **enhancing the Bar's technical capabilities and infrastructure** will support its goal of full independence and improve the quality of legal services provided. Finally, the Bar Association must take **adequate action in response to all reported cases of obstruction of lawyers' professional activities**. In some regions, more than half of the lawyers surveyed reported cases of interference.

4.7. Key recommendations to the Kyrgyzstani authorities:

- Revise existing laws to minimise state interference in the Bar Association's operations and ensure that state officials are excluded from its governing bodies.
- Ensure that licensing and certification processes for lawyers are fair, impartial and non-discriminatory.
- Bolster the Bar Association's technical capabilities and infrastructure and support the Association in implementing steps to enhance transparency, accountability, and public trust in the legal profession.

5) Access to legal assistance

5.1. Monitoring of **access to state-guaranteed legal assistance in the Jalal-Abad region** of southern Kyrgyzstan, highlighted **significant issues with the accessibility of primary legal consultation and assistance** in the region. This is primarily due to the lack of legal aid centres. Moreover, the office of the region's Legal Aid Service Coordinator is located in a difficult-to-reach area and is often closed, making it crucial to improve accessibility.

5.2. There are also concerns about **the lack of coordination among the entities involved in providing legal assistance**, as well as **the absence of uniform standards and practices**. Although paralegals have been introduced as a new category of legal aid providers, there is currently no legal framework governing their activities. To ensure the quality of legal assistance, regular monitoring and evaluation of legal aid services with the involvement of independent observers are needed. Specific regulatory norms and quality standards for paralegals should also be established.

5.3. In addition, there is **little public awareness about the availability of free legal aid services**. This issue should be addressed through improved communication and information-sharing practices via official websites and other channels. In addition, user-friendly online platforms could be created for legal consultations, such as Telegram bots.

5.4. Access to more complex legal services for individuals involved in legal cases **is similarly limited**. Monitoring findings indicate that in 2023, only 210 individuals received qualified, secondary legal assistance in the Jalal-Abad region, a low figure relative to the population size. At the same time, there are **concerns about the quality** of such services. A key recommendation to address these issues includes **improving communication** between the Ministry of Justice and the Bar Association, which is responsible for the development of the procedure and criteria for the selection of lawyers providing qualified legal assistance. There is also a need to **improve training and support for lawyers** and to implement a **more systematic approach to monitoring** and assessing the availability and quality of qualified legal aid.

5.5. Further, the monitoring found that **funding for the state-guaranteed legal aid service system in the country is insufficient and stagnant**, failing to meet the growing demands for legal assistance. Additionally, there is **no clear, transparent mechanism for the payment of lawyers**, leading to problems with non-payment of services and creating risks of corruption. In this context, many lawyers perceive joining the register of lawyers providing state-guaranteed legal assistance as neither prestigious nor attractive. To address these issues, increasing state funds should be allocated for legal assistance, the payment procedures for lawyers reformed, and a fully automated, digitalised, and transparent system created for interacting with lawyers involved in state-guaranteed legal assistance.

5.6. Key recommendations to the Kyrgyzstani authorities:

- Increase the number of legal aid centres and ensure that such centres are located in easily reachable areas with consistent hours of operation to enhance accessibility for residents.
- Implement a legal framework governing the activities of paralegals and establish uniform quality standards and regulatory norms for legal assistance to ensure the reliability and effectiveness of services provided.
- Improve public awareness of available free legal aid services through effective communication strategies, including user-friendly online platforms and information-sharing via official websites and social media.
- Allocate additional state funding for the legal aid service system, reform payment procedures for lawyers providing state-guaranteed legal assistance, and implement a transparent, automated system for managing interactions and payments to prevent corruption and enhance the attractiveness of legal aid work.

6) Protection of human rights during the pre-trial stage

6.1. Civil society monitoring highlighted **worrying gaps in the legal framework and practices related to the pre-trial stage** of criminal cases in Kyrgyzstan, particularly regarding alignment with international

standards.

6.2. A major concern is that **the country's legislation does not mandate the application of international human rights treaties in criminal proceedings** - a deficiency that needs urgent attention. To address this, a provision should be included in the Criminal Procedure Code stating that international law is an integral part of national legislation and has direct effect.

6.3. Moreover, **citizens are not always notified about the actions taken in response to their legal complaints**. This lack of transparency can lead to dissatisfaction and distrust in the justice system. In addition, **existing legislation allows officials to filter and dismiss complaints without the oversight of an investigative judge** during an unregulated stage of preliminary checks. This mechanism deprives participants in criminal proceedings of the procedural guarantees provided by national legislation and international norms and can result in corrupt practices and abuse. Relevant legislation should be amended to ensure adequate legal regulation of the preliminary check stage and to eliminate the possibility of internal dismissal of cases. Investigators should be held accountable for unlawful refusals to initiate criminal cases and for unjustified delays in investigations.

6.4. Additionally, legal amendments are needed to **establish an effective, independent body responsible for investigating allegations of human rights violations** during the pre-trial stage, such as arbitrary detentions, torture, and other violations.

6.5. Key recommendations to the Kyrgyzstani authorities:

- Amend the Criminal Procedure Code to explicitly state that international human rights treaties are an integral part of national law and have direct effect in criminal proceedings.
- Implement measures to ensure that citizens are notified about the actions taken in response to their legal complaints, enhancing transparency and rebuilding trust in the justice system.
- Revise legislation to regulate the preliminary check stage of criminal proceedings, ensuring oversight by an investigative judge and holding investigators accountable for unlawful refusals to initiate cases and for unjustified delays.
- Create an effective, independent body tasked with investigating allegations of human rights violations during the pre-trial stage, including cases of arbitrary detention, torture, and other abuses, to ensure accountability and uphold human rights standards.

7) Compliance with human rights standards within the penal system

7.1. A **comprehensive review of the compliance with international human rights standards and guarantees within the penal system** of the Kyrgyz Republic was conducted by civil society representatives in collaboration with the National Centre for the Prevention of Torture (NPM). The review encompassed an in-depth legal analysis and close to 40 monitoring visits to pre-trial and prison institutions, during which interviews were conducted with detention facility officials and more than 230 detainees, including members

of vulnerable groups such as women, minors, detainees with illnesses, people with disabilities and others. Based on the findings, a report was developed and presented at an event held in June 2024.³

7.2. Major concerns documented in the report include:

- **Detention conditions in several monitored penal institutions do not meet minimum requirements** established by international standards and national legislation with respect to living space, food quality, access to drinking water, sanitation, and other basic parameters.
- Many detainees expressed **dissatisfaction regarding limited access to medical assistance and family contact**.
- Of the surveyed detainees, 31% were unaware of internal regulations and their rights in detention, while **28% reported lack of access to adequate legal assistance**.
- A significant portion, **23%, of the surveyed detainees reported being subjected to physical or psychological violence**, and 10% did not feel safe in detention.
- **Conditions in punishment cells** in some monitored penal institutions **could be equated to inhuman and degrading treatment**. At the same, there is no possibility to appeal decisions regarding placement in such cells.
- The monitoring also highlighted concerns about **the failure to take into account the specific needs of members of vulnerable groups**, such as people with disabilities in detention.

7.3. Key recommendations to the Kyrgyzstani authorities:

The Kyrgyzstani authorities should be urged to take effective measures to address the concerns described and ensure that the conditions in prison facilities, as well as the treatment of detainees fully correspond to national and international standards, including with respect to living space, sanitation and other basic conditions; access to medical and legal assistance; family contacts; prevention of torture and ill-treatment; and accommodating the needs of vulnerable groups.

¹ The methodology (in Russian and Kyrgyz) is available at: <https://iphronline.org/articles/new-methodology-for-monitoring-the-criminal-justice-sector-developed/>

² See joint opinion: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)007-e)

³ <https://iphronline.org/articles/kyrgyzstan-monitoring-findings-on-detention-conditions-presented-at-bishkek-event/>