

## REVIEW TO THE UN UNIVERSAL PERIODIC REVIEW

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Current report includes the information on human rights violation and freedom in Kyrgyz Republic for 2015-2018:

- 1) Violation of human rights and freedom during the anti –terrorist operations;
- 2) Violation of the rights and freedom of the conscripts;
- 3) Violation of human rights to freedom of peaceful assemblies.

### **1. Violation of human rights and freedom during the anti –terrorist operations.**

#### «Broad» definition of the regulations of anti- terrorist legislation.

The law of the Kyrgyz Republic on «Counteraction to terrorism» does not have specific criteria for declaring the anti –terrorist operation, it is mentioned that «the anti-terrorist operation is conducted for suppressing the terrorist act, in case it is impossible to prevent by other forces or methods». However, «other forces or methods» are not specified by the law.

In accordance with the current Law, the National Security Service of the Kyrgyz Republic takes a decision to introduce and lift the levels of terrorist threat and legal regime of anti-terrorist operation. The meaning of «levels of terrorist threat and legal regime of anti- terrorist operation» is not defined by the Legislation.

The law specifies, that the levels of terrorist threat, the rules of introducing the levels of terrorist threat are defined by the Government to inform the population on the threat of terrorist act and organizing counter- terrorist actions. Though, this document was passed and approved by the decision of the Government on 8 April 2016, it is not accessible to public.

The law establishes the number of restrictions on human rights and freedom during the legal regime of anti –terrorist operations. The decision on introducing the legal regime of anti –terrorist operations should be published immediately by the Mass Media. However, such information has not been published by the Mass Media.

The restrictions on human rights and freedom are made in the territory of the legal regime of the anti- terrorist operations. However, some restrictions contradict the international standards. For instance: the law authorizes the control of telephone calls or other information, blocking and restriction of communication, access to the living houses, estates and transports by the security forces without judicial act and without court consideration of the legality and substantiation of such actions.

The Constitution of the Kyrgyz Republic provides for the possibility of the restrictions on human and civil rights and freedom. Such restrictions can be established only by the Constitution and the laws, and they must correspond to the purposes. However, there is no specific definition of the principle of correspondence of the restrictions of civil rights and freedom.

The law on «Counteraction to terrorism» authorizes forced harm to life, health and property of the terrorist including the decision to eliminate the terrorist during the anti -terrorist operations on prevention of terrorist and extremist activities. The reasons for taking such decision is not established by the law.

It is important to note that, the matter of the legality of using fire arms in combating with terrorism is not regulated by the law on «Counteraction to terrorism». The lawfulness of harming the life, health and property of the «terrorist» is initially established by the law.

The security officers who participate in the anti- terrorist activities do not take responsibility for causing damage during the anti- terrorist operations, or for the decision on the elimination of «terrorist».

### The consequences of anti-terrorist operations: violation of the right to life.

The anti-terrorist operations in the Kyrgyz Republic usually result in «elimination of terrorists». In many cases, the Security Forces justify killing the terrorists due to their resistance. The law on «the counteraction to terrorism» does not regulate the matter of the reasons for using arms to defeat. The matters of reasons for using arms to defeat in the concrete case corresponded with achieving the legal purposes are not regulated by the law, and the mechanisms of the appropriate investigation into the circumstances of the man's death are not established by the independent body.

In many cases, people learn about the special operations and elimination of the terrorists through the Mass Media however, there is no information about the names of the killed terrorists, what kind of terrorist acts they attempted to commit, and what level of the terrorist threat was at the moment of their elimination, and why they were killed.

It is important to note that the dead bodies of the «terrorists», who died during prevention of the terrorist act are not given away to the close relatives, and their burial ground is also kept in secret. By the request of the close relatives of the killed terrorist, the forensic, ballistic and other types of examinations cannot be carried out due to the lack of the dead body.

In addition, the observation of the rights to life of the «detained terrorists» is a matter of concern.

In Bishkek, in October 2015, the massive security operations were carried in search of the group of dangerous criminals, who escaped from the detention center, some of them were found guilty of extremist and terrorist activities.

Most of them were killed during the detention and later, the others died of heart attack in the cells. The detainees who died of heart attack in the cells were fugitives is a matter of concern in society. The news that the head of the detention center hang himself in the cell was the reason of different opinions. Mysterious death of above mentioned detainees in the cells haven't been explained by the Government.

### Consequences of the anti-terrorist operations: torture, violation of the rights to fair trial, violation of the right to effective remedy.

The prohibition of torture in the international law is absolute and non-derogable even in emergency situations, threatening the lives of the nations.

On 17 July 2015, Kyrgyzstan was going to celebrate «Kurban bayram» (religious celebration). Huge crowds of people participate and perform «namaz» (prayer) during the celebration of «Kurban Bayram» on the old square of Bishkek in Kyrgyzstan every year.

On 17 July 2015, two anti-terrorist special operations were carried out in Bishkek by the officers of the National Security Service of Kyrgyz Republic the day before the celebration of «Kurban bayram». One special operation was carried out in the center of Bishkek in Gorkyi Street, where four people were killed by the officers of the National Security Service of Kyrgyz Republic. The second special operation was carried out outside of Bishkek city in a new settlement next to the hydropower station-5, where two people were killed by the officers of the National Security Service of Kyrgyz Republic. The other mass media sources report the detention of seven men. The exact number of the detainees during special operations is unknown till present time, different mass media informed the detention of 4-7 people.

The Foundation «Kylym shamy» has information about 8 detainees<sup>1</sup>. All of them were detained by the officers of the National Security Service of Kyrgyz Republic at different times and in different places on the territory of the Kyrgyz Republic. We should note that the formal version of taking the detainees into custody, and confirming the date of their detention are different. Thus, the detainees were drawn up with back number (by the back date) (all except Kunakunov M.) After the detention, the officers of the National Security Service of the Kyrgyz Republic and the officers of the operational unit Alfa used long and sophisticated torture against

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<sup>1</sup> B.S. Batyrknov, A.B. Jumagaziev, A.G. Kurbanbaev, E.M. Kadyrov, S.K. Ibraev, M.K. Kunakunov, Erkin uulu S, B.S. Jumataev

the detainees for obtaining confessions to the involvement and planning of the terrorist act during the celebration of «Kurban Bayram» (religious Muslim holiday) by 17 July 2015.

All the detainees on the accusation of the involvement and planning of the terrorist act during the celebration of «Kurban Bayram» (religious Muslim holiday) by 17 July 2015 were absolutely forbidden by the officers of the National Security Service of the Kyrgyz Republic to correspond and contact with the external world after their detentions and in the custody. The detainees' family members attempted to meet with them but they failed. The investigation was conducted without the counsels' participation. The detainees were provided with "the pocket, duty counsels by the investigation, the detainees even couldn't meet with them for a long time, their «pocket, duty» counsels didn't participate during the investigation.

From the moment of the detention, all the victims were forced to sign a written undertaken not to disclosure state secret, the victims' counsels participated as their defenders also had to sign a written undertaken not to disclose the state secret. It is important to note, that under the National Legislation of the Kyrgyz Republic such a written undertaken not to disclose the state secret is signed when the investigation is conducted on the criminal case related to the espionage activity and disclosure of the state secrets.

In addition, the lawsuits of this case were declared as «closed» (closed process), the verdict was pronounced in a closed regime too. There were no legal reasons for declaring the trial "closed", and all the victims of this case were sentenced to the long terms of imprisonment. In addition, the victims of the case alleged the facts of torture in the trials however, they were ignored by the judge and the prosecutor. The individual complaint on the violations of human rights has been submitted to the UN Human Rights Committee.

#### The recommendations to the UN Human Rights Council:

1. To bring the national legislation on counter-terrorism in accordance with the international standards of human rights and freedom;
2. To ensure that the investigations into complaints of torture are carried out without delay by an independent body;
3. To provide an independent verification of the legality, necessity and proportionality of the use of firearms in anti-terrorist operations;
4. To ensure a fair trial to the detainees during the anti-terrorist operations.

## **2. Human Rights violations and freedom of the military men during military service for fixed period.**

Defense of the Motherland is a sacred duty of each citizen in the Kyrgyz Republic. There is no concept as «voluntary military service for a fixed period», and there is no permission to refuse from the service voluntarily or leave military service.

Under the Legislation of the Kyrgyz Republic, the life and health of the military personnel is provided with the mandatory state insurance from the beginning till the end of the military service.

However, under the Law on «Mandatory state insurance of life and health of the military personnel and liable for military service, drafted for the invasion and training camps», the insurer can be free from paying the insurance amount on the mandatory state insurance in case of the intentional infliction of harm to his health or suicide by the insured person.

The intentional infliction of harm or suicide by the insured person is the reason not to initiate criminal case and not to conduct thorough and effective investigation on the cause of the soldier's death or injuries as a result, the military personnel and their family members cannot dispute and defend their rights.

Today, the definition «suicide» is very «popular», which means that the soldiers' dead bodies are returned to their parents. The state does not doubt if it was «a suicide» and does not consider the matter of the «forced suicide».

For the period of 2015-2018, the Foundation «Kylym shamy» received 11 applications from the parents of the military personnel, most of them were the soldiers of the military service for fixed period. They are:

- 1) Nogoibaev Kubanychbek, born 1996. He hung himself on 11 January 2015. The circumstances on the fact of many scratches and hemorrhage sustained by the victim were not established. The compensation was not paid out.
- 2) Karagulov Nursultan Bakytbekovich, born 1997. He hung himself on 5 June 2015. The impartial and thorough investigation on his case was not conducted. The compensation was not paid out.
- 3) Shamsidinov Dastanbek was found in the psychiatric facility in 2016. It is not clear why the soldier was there. One-time insurance money was paid out to him. Shamsidinov Dastanbek has not been provided with the disability pension yet.
- 4) Ismailov Darhan, Seitally uulu Kadyrbek, Dombaev Sultangazy were constantly beaten and forced by the military officers to work in the private construction in 2018. The military officers were not brought to justice by the court. They are under probation supervision. The compensation was not paid out.
- 5) Saparbaev Ruslan sustained an electric burn, which resulted in the amputation of his both arms in 2018. The guilty military officers were convicted provisionally by the court. The civil complaint on the moral and material compensation was not satisfied.
- 6) Doolbek uulu Mirlan sunk in the river during the search operation in 2018. The guilty military officers were convicted provisionally by the court. The civil complaint on the moral and material compensation was not satisfied.
- 7) Taldybekov Kubanychbek is an orphan. In 2018, he applied to the Foundation “Kylym shamy” on the fact of extortion of money and violence by the senior conscripts. No measures were taken on the above mentioned facts.
- 8) Moldaliev Kuban was beaten with the butt end of the gun by the military officer in 2018, after this, he lost his eye sight in his left eye. The trials have been suspended. The compensation has not been paid out. The payment of the compensation has not been considered by the court yet.

The recommendations to the UN Human Rights Council:

1. To ensure the effective implementation of the Action plan on introducing leadership principles to investigate effectively and document torture and other inhuman, degrading ill treatment or punishment (the Istanbul protocol) in the Armed forces;
2. To review the national legislation on the insurance of military personnel, particularly supplementing that the insurance claim can be death, injuries, the loss of health during the military service based on (a) the unlawful actions by the officials, (b) torture, c) «forced death»;
3. To fill the gaps in the national legislation, including the responsibility acts in promoting and protecting the rights of the military personnel of the military service for a fixed period to freedom from torture and other inhuman, degrading ill- treatment or punishment.

**3. The violation of the rights to freedom of peaceful assembly.**

There is tendency of restrictions and prohibition of the peaceful assemblies in the Kyrgyz Republic without any legal and substantiated reasons. Such systematical decisions by the authority restricting and prohibiting the future assemblies are a matter of concern. For instance:

- 1) On 17 March 2017, the Lenin district court of Bishkek city made a decision to restrict peaceful assemblies for the period of 20 March – 8 April 2017. Holding all the assemblies were permitted in hippodrome.
- 2) On 28 July 2017, the Pervomay district court of Bishkek city prohibited the peaceful assemblies for the period of 27 July - 20 October 2017.
- 3) On 26 September 2017, the Oktyabr district court of Bishkek city prohibited peaceful assemblies for the period of 26 September -26 October 2017. Holding all the peaceful assemblies were permitted in the Botanic garden.
- 4) On 8 November 2017, the court made a decision to prohibit the peaceful assemblies for the period of 8 November – 1 December 2017. Holding all the peaceful assemblies were permitted in Gorekey park.
- 5) On 29 March 2018, the Lenin district court of Bishkek city made a decision to prohibit the peaceful assemblies for the period of 1 April – 15 April 2018.

The analysis of the court decision shows, that such public authorities as the Parliament of the Kyrgyz Republic, the White House, the Government House, the Supreme and district courts, where people could address were prohibited for the peaceful assemblies.

The restriction and prohibitions of the peaceful assemblies were selective. The court decisions show that all the public assemblies were prohibited, except the official events by the authorities. According to the practice, the prohibition and the restrictions of the peaceful assemblies are related to the terrorist threat and extremism.

It is important to note the prohibition of the peaceful assemblies before electoral processes. For instance: during the presidential elections in 2017, three district courts made decisions to prohibit the peaceful assemblies for the period of electoral processes in all the territory of the capital city.

The Code on Violations of the Kyrgyz Republic, which has entered into force since 1 January 2019, provides for the responsibility for violating the procedure for holding of peaceful assemblies. Under the Code these cases are considered by internal affairs body. The impartial and thorough consideration of the cases on violation of the procedure for holding peaceful assemblies is excluded in such situations. As the violations are registered by the officers of the same internal affairs body, the commission consisting of the same administration makes decisions on above mentioned cases, and the alleged offender is detained in the police station for several hours by the officers of internal affairs body.

Under the Code on Violations of the Kyrgyz Republic, the decisions of internal affairs body may be appealed by the district court. The decisions of the district courts are final decisions. Therefore, the Code on violations defined only one independent instance for appealing the court decision.

The recommendation to the UN Human Rights Council:

1. To provide the citizens of the Kyrgyz Republic with the right to peaceful assemblies in accordance with the international standards.

**4. The bans against the human rights defenders on entering the Kyrgyz Republic.**

The human rights defenders Nigine Bahrieva (Tadjikistan), Vitaley Ponamarev (Russia, «Memorial» Center), Mihre Ritman (HRW) were prohibited to enter the country. The reasons for travel bans were not explained to them. All above mentioned human rights defenders learned about the prohibition to enter the country at the border point, where they were forced to return.

The recommendations to UN Human Rights Council:

1. To address the Kyrgyz Republic with the recommendation not to interfere the human rights activity and exclude «the black list» from the practice.