

Submissions to the Committee against Torture
for the 70th session, 4 November – 9 December 2020
on the Third Periodic Report of the Kyrgyz Republic¹
(doc. no. CAT/C/KGZ/3)

1. These submissions will address the provision of harm reduction services to drug users in Kyrgyzstan, in particular to those deprived of their liberty. Kyrgyzstan started to provide such services in 2002, but today their sustainability is put in question more than at any preceding moment. It also continued to criminalise drug possession even in insignificant quantities and even without intent to supply.
2. These submissions will proceed as follows. We will set out the legal basis for the internationally binding obligation of Kyrgyzstan to introduce and implement harm reduction policies, in particular for those deprived of their liberty (A). We will then recall the history of the UN Treaty Bodies' examination of the harm reduction policies in Kyrgyzstan (B) and the authorities' failure to address the issues already identified during the reviews and relevant for the mandate of this Committee (C). The core of this submissions will concern the criminalisation of drug consumption in Kyrgyzstan (D) and the problems for the provision of substitute treatment in the country (E).

A. Legal obligation to introduce and implement harm reduction policies

3. Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. Furthermore, under Article 16, the references to torture in, among others, Article 11 are to be understood also as references to other forms of cruel, inhuman or degrading treatment or punishment.
4. The 1955 Standard Minimum Rules for the Treatment of Prisoners, as originally phrased, already provided for medical services within prisons. Accordingly, Rule 22 (2) states that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical

¹ This report is drafted by the «Harm Reduction Network» Association, Eurasian Harm Reduction Association and Agora International Human Rights Group. Information about these organizations is annexed to this report.

care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.”

5. These provisions linked the prohibition of torture, cruel, inhuman or degrading treatment with the right to health provided for in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

6. Still with the original wording of Rule 22 of the 1955 Standard Minimum Rules on the Treatment of Prisoners, the link between prohibition of cruel, inhuman and degrading treatment and the right to health was highlighted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, in his Submission to this Committee regarding drug control laws of 19 October 2012,

“Harm reduction programs should be promoted within prisons as well. The right to health casts a core obligation on States to ensure availability and accessibility to treatment without discrimination, especially for vulnerable and marginalized groups. Prisoners and detainees constitute a vulnerable population, as the extent of their enjoyment of the right to health is restricted and dependent on State authority”.²

7. In 2015 the Standard Minimum Rules for the Treatment of Prisoners were reviewed and named “the Nelson Mandela Rules” (A/RES/70/175). Under Rule 26(1) the provision of health care for prisoners is a State responsibility and prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Furthermore, under Rule 26(2), health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

8. Echoing the development of the international rules, the mandate holders of a number of special procedures and a UN Treaty Body argued that as a step towards the fulfilment of the right to health, drug use and possession should be decriminalized and depenalized. They went on to state that

“The provision of harm reduction is not merely a policy option for States. Rather, the provision of these programmes for people who use drugs, including but not limited to the core UNODC/WHO/UNAIDS interventions, constitute a legal obligation as part of State obligations to progressively realize the right to health and to guard against inhuman or degrading treatment”.³

²Available at <https://www.ohchr.org/Documents/Issues/Health/drugPolicyLaw.pdf>

³Joint Open Letter by the UN Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the Committee on the Rights of the Child, on the occasion of the United Nation General Assembly Special Session on Drugs New

9. Consequently, it can be inferred from the evolution of the positions of the UN human rights system that the obligation to introduce harm reduction, in particular, in prisons, is based on the prohibition of inhuman or degrading treatment and on the right to health, both of which are to be implemented without discrimination (article 2(2) of the International Covenant on the Economic, Social and Cultural Rights; article 4(1) of the International Covenant on Civil and Political Rights).

B. Consideration of Kyrgyzstan's harm reduction policies by the UN Treaty Bodies

10. The operation of harm reduction services in Kyrgyzstan have only been reviewed by the UN Treaty Bodies once, by the Committee on Economic, Social and Cultural Rights, on the occasion of the examination of the combined second and third periodic reports under ICESCR.⁴
11. The Committee, while appreciating the provision of drug replacement therapies by the State party, noted with concern that drug users and those providing harm reduction services were frequently harassed by law enforcement officials, and methadone programme participants had been victims of arbitrary detention. The Committee also noted with concern that persons with a drug addiction were frequently subjected to discrimination in their access to health services, including by being asked for informal payments.
12. The Committee recommended that the State party adequately monitored and sanctioned discrimination in access to health services for persons with a drug addiction. The Committee also recommended that the State party increased full access to free and adequate drug substitution therapies that respect the dignity of patients. The Committee further recommended that the State party ensured that persons with a drug addiction and providers of harm reduction services would not be subjected to any harassment or arbitrary detention by the authorities.
13. While the report of Kyrgyzstan to the Committee against Torture is intended to address matters different from those under the ICESCR, we note with regret that the information requested by the CESCR was of direct relevance to the prohibition of torture and other cruel, inhuman or degrading treatment, but was not provided by the authorities to the Committee against Torture.

C. Continued targeting of the recipients of the harm reduction services

14. We submit that the issues identified by the ICESCR also relate to the mandate of this Committee for the reason that they either concern arbitrary detention and degrading

York, 19-21 April 2016, available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19828&LangID=E>

⁴CESCR, *Concluding observations on the combined second and third periodic reports of Kyrgyzstan*, E/C.12/KGZ/CO/2-3, 7 July 2015, para. 23.

treatment directed by the police at a vulnerable group. We also submit that they were not addressed by the authorities of the Kyrgyz Republic, as the violence continues. We rely on the most recent cases reported by the UNDP-funded “Street lawyers” project and described below. The project employs 35 lawyers across the country who provide legal assistance to the disadvantaged groups.

15. On 2 April 2020 “Burkhan” who receives substitution treatment was arrested by police on his way home after having received methadone. He was taken to a police station and detained for 5 hours until the doctors confirmed to the police the legality of the methadone found. The police, however, attempted to make “Burkhan” do the tidying up of the police station premises and when he refused, he was insulted, threatened with criminal prosecution, and his telephone was taken away.
16. On 14 April 2020 “Karybek” who receives substitution treatment was arrested by the police after having received a 5-day amount of methadone, even though he was in possession of the documents confirming the legality of the possession. He was, however, taken to a police station and the police attempted to charge him with theft and illegal possession of drugs. “Karybek” denied the allegations and was eventually released the following morning at 8 a.m., but fined for the breach of the Covid19-related curfew.
17. On 21 April 2020 before noon “Andrey” who receives substitution treatment was arrested by the police, including one policeman Ulan who is often seen by the substitution treatment site. Methadone was found on him and he was in possession of the documents confirming the legality of the possession. “Andrey” was taken to a police station, he was first charged with an attempt to sell methadone and then incited to become an informant. He denied the charges and eventually the police forced him to do the tidying up of the police station before being released after four hours of detention. A similar story happened on 11 June 2020 to “Ivan” from whom the police also tried to extort money.
18. In March 2020 “Margarita”, a drug user, received treatment in a State-run hospital. When she was treated again on 22 May 2020 a surgeon asked her for how long she had been HIV-positive. “Margarita” was surprised with the question and learned that in March 2020 a sample was taken for an HIV test without her knowledge and consent, without her having been informed of the results and without her having been offered medical advice and counselling. “Margarita” attempted suicide and only then was provided with assistance. There was no inquiry or investigation into the circumstances of the March 2020 HIV-test.
19. Consequently, drug users, especially those who receive substitution treatment, are targets of the police when they visit the methadone distribution sites. The targeting makes an already vulnerable group particularly vulnerable. There have been no meaningful investigations into these cases which is a violation of articles 1 and 12 of the Convention against Torture.

D. Continued criminalisation of drug consumption in Kyrgyzstan

20. On 1 January 2019 new criminal legislation entered into force in Kyrgyzstan. Three new codes list the punishable offences classified by their gravity. These are the Criminal Code (*Уголовный кодекс*) for the gravest offences, not unlike *crimes*, Code of Misdemeanours (*Кодекс о проступках*) listing what can be described as *délits*, and Code on Regulatory Offences (*Кодекс о нарушениях*) which may roughly be compared to *contraventions*.
21. Despite the comprehensive legislative reform, Kyrgyzstan continues to criminalise drug possession and consumption. With the new codes the amounts of fines were dramatically increased. Under the pre-2019 Code of Administrative Offences fines for drug possession without intent to supply varied between 500 to 2,000 Kyrgyzstani soms (EUR 5 to 21 or USD 6 to 25 at the time of writing). Since 2019 acquisition or possession of any narcotic or psychotropic substances in “insignificant amounts” *without intent to supply*, an offence under article 123 of the Code of Misdemeanours, has been punishable by a fine of 30,000 to 60,000 soms (EUR 320 to 640 or USD 380 to 720).
22. The fine under the new Code of Misdemeanours is accompanied by three to six months of probation (“limitation of liberty”) which, under article 46(3) of the Code, consists of the obligation to report to the probation officials, to inform them of any change of place of residence, of workplace, not to leave the country and not to leave the place of residence without prior permission.
23. One further obligation under article 46(3)(7) of the Code of Misdemeanours is *not to consume* narcotic, psychotropic, toxic substances. As provided for in article 46(6) of the Code, failure to comply with this obligation may result in a fine, again of 30,000 to 60,000 soms. If not paid within three months, the fine under article 46(6) is doubled, as provided for in article 46(7) of the Code.
24. While the amount of the fine of 30,000 to 60,000 soms may not seem excessive in absolute terms, it is heavy when it is analysed in proportion to the level of income in Kyrgyzstan. The average monthly salary in the country was 16,287 soms (EUR 173 or USD 206) in the first half of 2019 and varied between 10,642 and 15,472 soms (EUR 113 to 165 or USD 134 to 196) outside the capital city of Bishkek. So even the lowest fine for drug possession equals two to three average monthly incomes.⁵ Furthermore, failure to pay the fine both under article 123 or under article 46(6) of the Code of Misdemeanours, is a crime under article 351 of the Criminal Code which is punishable by up to two years and six months of deprivation of liberty.
25. Even harsher penalties are provided for in article 268 of the Criminal Code for the possession of drugs *without intent to supply*. For the “large” quantities (e.g., over 1 g of heroin) the penalty is either a fine of 260,000 to 300,000 soms (EUR 2,776 to 3,203 or USD 3,265 to 3,768) or imprisonment for two and a half to five years accompanied, however, with a lower fine of 100,000 to 140,000 soms (EUR 1,067 to 1,495 or USD

⁵<https://harmreductioneurasia.org/wp-content/uploads/2020/04/Analysis-drug-possession-fines-proportionality-Kyrgyzstan-RUS.pdf>

1,256 to 1,758). It follows that serving a prison sentence offers a discount on the fine. These penalties thus equal a year in prison to 42,667 soms (EUR 455 or USD 535).

26. In practice, three fourths of offenders under article 123 of the Code of Misdemeanours were sentenced to the minimum fine of 30,000 soms and the minimum probation of three months. 55% of convicts under article 268 of the Criminal Code were sentenced to terms between two years and six months and three years of deprivation of liberty with fines of 50,000 soms, while 33% were sentenced to three to five years of deprivation of liberty with fines in the range of 40,000 to 100,000 soms.⁶
27. Published statistics are scarce, but it follows from the publications of the National Statistics Committee of the Kyrgyz Republic that in 2018 out of overall 7,097 persons convicted 1,217 were for drug-related crime.⁷ This is the most recent year for which statistics are available and this was the last year of operation of the previous versions of the Criminal Code and the Code of Administrative Offences. There is no breakdown as to how many were convicted for trafficking and how many for consumption and no breakdown even by the type of the penalty imposed, but drug offenders is by far the largest group of criminal convicts, almost surpassing the sum of second (disorderly acts, 650) and third (theft, 633).
28. Drug consumption and possession even in insignificant quantities and without intent to supply not only remains criminalised in Kyrgyzstan, but even the minimal fines were increased by a factor of 60 and became out of proportion to the average salary.

E. Problems in the provision of substitute treatment

29. Opioid Substitution Treatment (OST) is legal and provided in Kyrgyzstan, both for those at liberty and for those deprived of liberty. Over 1,000 persons were the beneficiaries of these programs in 2019, of whom around a third were in detention.
30. It is to be welcomed that the authorities in Kyrgyzstan cooperate with civil society on the OST-related matters. Yet, the provision of treatment is entirely funded by foreign and/or international donors and the provision of social support for the clients is entirely dependent on the activities of NGOs, only the distribution of treatment to end-users is provided by the penitentiary administration. Even the official report on the matter lists UNAIDS, UNDP and the Global Fund to Fight AIDS, Tuberculosis and Malaria as the main sponsors of the harm reduction services in the country.⁸ Soros Foundation – Kyrgyzstan, UK-funded Central Asian HIV/AIDS Program and EU-funded Central Asia Drug Action Program were the major OST funders in places of detention.
31. The programs' effectiveness thus depends on the NGOs which are by definition foreign-funded. In the course of 2020 the *Jogorku Kenesh*, Kyrgyzstan's unicameral parliament,

⁶Ibid., p. 19.

⁷<http://stat.kg/ru/statistics/download/dynamic/686/>

⁸http://cadap-eu.org/upload/file/CSS_Kyrgyzstan_2018_03_online_final.pdf

deliberated a bill to restrict NGO activities by imposing new reporting obligations and operating restrictions (e.g., with respect to who NGOs may employ or contract).⁹ On 18 June 2020 it was adopted in the second reading and now awaits the third and final reading.

32. This bill, if passed into law, would considerably complicate NGO activities by increasing the expenditure on accounting and reporting. These complications would come with no public benefit whatsoever as the NGOs already report their income and expenditure to the tax authorities.
33. New bill would endanger also the groups that provide OST and other harm-reduction services in detention. For the reason that the NGOs are the key funders of these services and nothing is provided by the State, the bill would put the very existence of such services at risk.

F. Conclusion

34. In view of the foregoing we submit that there has been no full decriminalisation of drug use in Kyrgyzstan and that the provision of harm reduction services remains dependent on foreign funding and is operated via NGOs that are under threat of the enactment of new restrictive legislation.
35. As these submissions were being prepared, unrest broke out in Kyrgyzstan following electoral fraud. At the time of writing it was unclear whether effective government was in place in the country.
36. We accordingly invite the Committee to insist that the Kyrgyz Republic undertakes to:
 - repeal the provisions exclusively punishing drug consumption, most importantly, those introducing penalties for drug possession “without intent to supply”;
 - review criminal penalties so that they are commensurate with the income of the population;
 - ensure that harm reduction services are provided in spite of the political unrest and irrespective of the outcome of the future parliamentary elections and the political process in general;
 - ensure that the harm reduction services are provided by the State to everyone who may need them without discrimination or any kind of pressure.

⁹<http://kenesh.kg/ru/draftlaw/579931/show>

Annexe : Information about the submitters



Eurasian Harm Reduction Association (EHRA). We are a non-for-profit public membership-based organization uniting harm reduction activists and organisations from Central and Eastern Europe and Central Asia (CEECA) with its mission to actively unite and support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances in the CEECA region. The Association is registered in Lithuania in 2017 continuing regional harm reduction activists' network tradition since 1997.



«Harm Reduction Network» Association is a Kyrgyzstan network of organizations created and run by communities of people who inject drugs and people living with HIV that was registered in 2004. The Network's mission is to promote harm reduction programs, participate in public policy and develop a common strategy for the prevention and treatment of drug addiction, HIV / AIDS, TB, HCV and other socially significant diseases among vulnerable groups such as people who inject drugs, people living with HIV, prisoners and former prisoners.



Agora International Human Rights Group is an association of over 100 lawyers working on landmark human rights cases, domestically and internationally, in Russia and other former Soviet Union countries. Agora secured a number of important judgments from the Russian Constitutional Court and the European Court of Human Rights on a variety of issues, including rights of HIV-positive persons, police entrapment and planting of evidence in drug-related cases etc. Agora supports and advises Kyrgyzstani human rights organisations and lawyers on human rights-related issues of draft legislation and court cases.