

## HUMAN RIGHTS WATCH

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Members of the United Nations Committee on the Elimination of Racial Discrimination (CERD)

Attn: Gabriella Habtom, Secretary of the UN Committee on the Elimination of Racial Discrimination

UNOG-OHCHR  
CH 1211 Geneva 10  
Switzerland

Re: CERD Review of Kyrgyzstan

February 8, 2013

Dear Committee Members,

We write in advance of the forthcoming review by the United Nations Committee on the Elimination of Racial Discrimination (“the Committee”) of Kyrgyzstan, to highlight several areas of pressing concern we hope to see the Committee take up as part of its examination of the Kyrgyz government’s implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD). These are: past and ongoing abuses in the context of the June 2010 inter-ethnic violence in the south and its aftermath; the wrongful imprisonment of human rights defender Azimjon Askarov; threats and intimidation of civil society actors working in southern Kyrgyzstan; and forced returns of Uzbek refugees and asylum seekers. In highlighting these areas of concern, which implicate Articles 2, 5 and 6 of the Convention, we have taken note of the Committee’s list of themes to be taken up in the context of the review, which shows the Committee’s welcome awareness of a number of the human rights concerns addressed in our contribution.

### Past and Ongoing Abuses in the Context of the June 2010 Inter-ethnic Violence in Southern Kyrgyzstan

In the years since the June 2010 inter-ethnic violence, in which 400 people were killed and almost 2,000 homes destroyed, Kyrgyz authorities have failed to provide justice for victims and to hold perpetrators to account. The courts have sentenced many people to lengthy prison terms, and threats, violence, and serious violations such as arbitrary arrest, torture, and ill-treatment have led to profoundly flawed investigations and trials, which have mainly affected the ethnic Uzbek minority. These violations continue to undermine efforts to promote reconciliation and fuel tensions that might one day lead to renewed violence (see <http://www.hrw.org/news/2012/06/14/kyrgyzstan-no-justice-two-years-after-osh-uprising>).



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While horrific crimes were committed against both ethnic Uzbek and ethnic Kyrgyz citizens in 2010, ethnic Uzbeks in southern Kyrgyzstan endured the majority of casualties and destroyed homes. At the time, Kyrgyz authorities failed to prevent or stop violence once it erupted, and there are strong indications that some military and police forces knowingly or unwittingly facilitated attacks on ethnic Uzbek neighborhoods.

In addition, while most victims of the June violence were ethnic Uzbek, most of the detainees—almost 85 percent—were also ethnic Uzbek. Of 124 people detained on murder charges (as of June 2011), 115 were ethnic Uzbek. Taken together with statements from victims, describing law enforcement personnel's widespread use of ethnic slurs during detention, these statistics raise serious questions about ethnic bias in the investigation and prosecution of perpetrators. It is difficult to avoid the impression that throughout the investigations, prosecutions, and trials, appeasing the ethnic Kyrgyz majority eclipsed the need for justice and accountability. It is also difficult to avoid the impression that lack of effective investigations has made it easier to paint the ethnic Uzbeks as solely responsible for the June violence, and has given license to law enforcement and security bodies to target them for arbitrary arrest and ill-treatment.

Other monitoring bodies have drawn similar conclusions. The UN special rapporteur on torture, who conducted a mission to Kyrgyzstan in December 2011, stated in his February 2012 report that “[t]here is also alarming evidence that many criminal proceedings were marred by widely reported bias against members of certain ethnic minorities.” Speaking about Osh on the occasion of her July 2012 visit to Kyrgyzstan, the High Commissioner noted that “there is not a single Uzbek judge among the judiciary ... I have myself heard the cries for justice from members of the affected communities who have been victimized twice – while the violence was taking place, and in its aftermath ... Having three-quarters of the victims and three-quarters of the alleged perpetrators from the same group, during an episode of inter-ethnic violence, simply does not add up.”

Dozens of trials related to the June 2010 violence were seriously flawed due to violations of the defendants' rights from the time of detention through conviction, including law-enforcement officials' use of torture on a widespread basis in their investigations, denial of the right to representation by a lawyer of the detainees' own choosing, or the right to consult with a lawyer in private. These trials were also marked by harassment and physical attacks against lawyers in southern Kyrgyzstan who defended ethnic Uzbek clients.

Over the last year and a half, Kyrgyz authorities have continued to target ethnic Uzbeks in southern Kyrgyzstan, subjecting them to detention, torture, and extortion schemes without redress in connection with the June 2010 violence. For example, in October 2012, Human Rights Watch documented how courts in Osh and the Jalal-Abad region sentenced two ethnic Uzbeks to life in prison (see <http://www.hrw.org/news/2012/10/28/kyrgyzstan-skewed-justice-over-2010-conflict>; note: in January 2013, an appellate court unexpectedly overturned the life sentence conviction of Shamshidin Niyazaliev, who was subsequently released from prison).

Human Rights Watch and other international monitoring bodies have repeatedly called on the Kyrgyz government to immediately enact a zero-tolerance policy for violations during detention, and promptly and objectively investigate all allegations of torture, ill-treatment, and other violations of detainees' rights.

Enclosed for your reference, please find the summary and recommendations of our June 2011 report "Distorted Justice: Kyrgyzstan's Flawed Investigations and Trials on the 2010 Violence", detailing the findings of our research carried out in October and December 2010. The report is based on 40 interviews with ethnic Kyrgyz and ethnic Uzbek victims and witnesses, lawyers, human rights defenders, and community activists, as well as local government officials, law enforcement and military personnel, and military and civilian prosecutors in southern Kyrgyzstan. It can be accessed in full here: <http://www.hrw.org/reports/2011/06/08/distorted-justice-o>.

Recommendations for steps the Kyrgyz authorities should be urged to take:

- Initiate a formal review process of all cases connected to the violence in the south.
- Conduct new investigations and trials in all cases in which there have been serious violations, especially in cases where defendants alleged they had suffered ill-treatment or torture.

### **The Wrongful Imprisonment of Human Rights Defender Azimjon Askarov**

Azimjon Askarov is an ethnic Uzbek human rights defender from southern Kyrgyzstan currently serving a life-sentence on politically motivated charges after years of reporting on police abuse, including in the context of the June 2010 inter-ethnic violence. He is director of Air, a Bazar-Kurgon-based human rights organization, and is active in the Jalal-Abad District Human Rights Network "Justice." For several years his work has focused extensively on documenting prison conditions and police ill-treatment of detainees and Human Rights Watch believes his wrongful prosecution to be linked to his ethnicity and human rights work.

On June 15, the Bazar-Kurgan police detained Askarov, accusing him of participating in a June 12 clash that resulted in the killing of an ethnic Kyrgyz policeman (see <http://www.hrw.org/news/2010/06/17/letter-prosecutor-general-ibraev-urging-release-azimjon-askarov>). After his arrest, authorities denied Askarov unimpeded access to a lawyer of his choosing. Only a week later, on June 22, was his lawyer finally able to meet with Askarov, however, a deputy prosecutor denied his lawyer's request for a private conversation with his client. At that meeting, Askarov showed his lawyer bruises on his left side and lower back, which the lawyer photographed. The lawyer told Human Rights Watch that he believed the bruises were marks of severe beatings that Askarov suffered shortly after he had been detained (see <http://www.hrw.org/news/2010/06/23/kyrgyzstan-ensure-safety-due-process-detained-activist>).

On three occasions after Askarov's arrest, but before his case went to court, angry groups, which allegedly included relatives of the police officer who was killed, threatened and physically attacked

Askarov's lawyer. Local authorities did not respond to these threats and attacks, even though they took place on the premises of government municipal and law enforcement agencies.

At trial, the court heard numerous witnesses for the prosecution, but none for the defense. Defense lawyers felt they could not endanger witnesses by calling them to the stand, as their safety could not be guaranteed either from the volatile mobs outside or the hostile and unchecked gallery in the courtroom. Also during the trial, the victim's relatives and supporters threatened and struck Askarov's lawyer, shouted threats and insults at the defense team, and beat defendants' relatives, who were outside the courthouse. Police were present, but they took no action. The trial judge refused all defense motions to move the trial to an alternative location, where the safety of the defendants, lawyers, and witnesses could have been better assured (see <http://www.hrw.org/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>).

On September 15, 2010, a Bazar-Kurgon court sentenced Azimjon Askarov to life in prison, despite his allegations of torture that were never investigated and a trial seriously marred by violations of fair trial standards (see <http://www.hrw.org/news/2010/09/15/kyrgyzstan-free-human-rights-defender-ensure-fair-retrial>). On December 20, 2011, Kyrgyzstan's Supreme Court upheld Askarov's life sentence, failing to assuage concerns that he was imprisoned in retribution for his human rights work (see <http://www.hrw.org/news/2011/12/20/kyrgyzstan-verdict-fails-justice>).

Recommendations for steps the Kyrgyz authorities should be urged to take:

- Immediately release human rights defender Azimjon Askarov pending a full investigation into his allegations of torture and review of his case.

### **Threats and Intimidation of Civil Society Actors, Impeding Human Rights Work in Southern Kyrgyzstan**

Several of Kyrgyzstan's most prominent human rights leaders have received threats in connection with their investigations into the June violence and its aftermath, raising concern about deliberate attempts at obstructing documentation of human rights violations affecting the ethnic Uzbek community. For example, in late June 2010, Toleskan Ismailova, director of Citizens Against Corruption, a Bishkek-based human rights nongovernmental organization, fled the country for several months with her family after the Osh prosecutor's office falsely accused her and Aziza Abdirasulova, director of Kylym Shamy, another Bishkek-based human rights NGO, of distributing inaccurate information about a police operation in Nariman, a town in southern Kyrgyzstan, that followed the outbreak of violence in Osh. A few days after this accusation, Ismailova's neighbors in Bishkek reported that strangers had come to the neighborhood to inquire about her family and where she lived.

Aziza Abdirasulova also received numerous threats following the outbreak of violence and her work in the south. In August 2010, for example, angry residents of Bazar-Kurgan threatened to kill one of Abdirasulova's children if their mother monitored Azimjon Askarov's trial.

In October 2010, two unknown men threatened the program coordinator of Spravedlivost (Justice), based in the southern city of Jalal-Abad, for providing free legal assistance to defendants in cases related to the June violence.

In May 2011, the Kyrgyzstan Inquiry Commission (KIC)—commissioned by President Roza Otunbayeva in 2010 and headed by Kimmo Kiljunen, a former member of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE)—published its findings that the government failed to prevent and stop the June 2010 violence. The same month, the Kyrgyz parliament adopted a resolution barring KIC Chair Kiljunen from entering the country, alleging he had provided partial information about the June 2010 violence.

To date, civil society actors working in the south face undue harassment. On November 17, national security agents temporarily detained an analyst from the International Crisis Group (ICG), an international NGO, during a routine research trip to the southern part of Kyrgyzstan, and subjected him to a search and interrogation. The agents confiscated his research and other materials and denied him access to a lawyer. Several days after the analyst was detained, the State Committee on National Security (GKNB) issued a press statement saying that the analyst was under investigation on charges of inciting inter-ethnic discord.

In the days and weeks following, security agents subsequently summoned for questioning five human rights defenders and others solely for meeting with the analyst during his trip to the south (see <http://www.crisisgroup.org/en/publication-type/media-releases/2012/europe/kyrgyzstan-crisis-group-condemns-harassment-by-security-service.aspx>).

Human Rights Watch is concerned that the authorities' interference with human rights work in the south is aimed at obstructing efforts to document and bring to light continuing abuses affecting the ethnic Uzbek community.

Recommendations for steps the Kyrgyz authorities should be urged to take:

- Kyrgyz authorities should immediately cease undue interference in the work of civil society activists in southern Kyrgyzstan, and re-commit to allowing human rights activists and others to work without harassment or fear of unlawful arrest or reprisals.

### **Forced Returns of Uzbek Refugees and Asylum Seekers**

Kyrgyzstan has undertaken important efforts to host hundreds of refugees and asylum seekers from Uzbekistan, Afghanistan, and other countries. However, in recent years these efforts have been marred by the government's failure to fully implement its obligations under international and national law regarding the protection of asylum seekers and refugees, particularly with respect to asylum seekers and refugees who fled from Uzbekistan.

Since 2005, more than a dozen asylum seekers and refugees have been forcibly returned or extradited to Uzbekistan, despite the risk of torture there, and Kyrgyz authorities have failed to

investigate and hold accountable those officials who have been complicit in such forced returns and extraditions (see <http://www.hrw.org/news/2008/12/09/letter-president-bakiev-ensuring-refugee-rights>). Also of concern is the lack of public information about whether investigations into “disappearances” of asylum seekers from Uzbekistan were conducted and, if so, what the results were.

In an ongoing case concerning a former Imam, Khabibullo Sulaimanov, currently in the custody of the GKNB in Bishkek, not only have the authorities failed to respect the prohibition on torture by issuing an extradition order for his return to Uzbekistan, but as of February 5, 2013, when an appellate court began review of his case, the GKNB has not granted permission to either the Office of the United Nations High Commissioner for Refugees or to the Ministry of Youth, Labor and Employment to register Mr. Sulaimanov’s asylum claim (see <http://www.hrw.org/news/2013/02/04/kyrgyzstan-stop-extradition-uzbekistan>).

Recommendations for steps the Kyrgyz authorities should be urged to take:

- Cease any involuntary returns and extraditions to Uzbekistan, where individuals are at risk of torture.
- Fully comply with international standards and Kyrgyz legislation on refugee protection, including by ensuring that every asylum seeker is registered as such, regardless of the legality of his or her entry and stay in Kyrgyzstan.

We hope the above information and reference materials linked to from this letter will help inform the Committee’s assessment and contribute to its recommendations to the Kyrgyz government. We thank you for your attention and consideration to these concerns and wish you a productive session.

Sincerely,



Hugh Williamson  
Executive Director  
Europe and Central Asia Division  
Human Rights Watch



Juliette de Rivero  
Geneva Office Director  
Human Rights Watch

# **Summary and Recommendations of the Human Rights Watch report “Distorted Justice”**

## **Summary**

There is only one word for what is going on here—mess. There is no rule of law. There are no authorities. Everybody does what they want. If I had been younger I would have left for Russia right away.

—Lawyer, Osh, December 7, 2010

One year after large-scale violence between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan claimed hundreds of lives and destroyed thousands of homes, Kyrgyz authorities are failing to provide justice for victims and to hold perpetrators to account. The courts have sentenced many people to lengthy prison terms, but threats, violence, and serious violations such as arbitrary arrest, torture, and ill-treatment have marred investigations and trials. The profoundly flawed investigations and trials, mainly affecting the ethnic Uzbek minority, undermine efforts to promote reconciliation and fuel tensions that might one day lead to renewed violence.

Massive inter-ethnic violence erupted in the southern city of Osh on June 10, 2010, following weeks of increasing tensions between ethnic Uzbeks and Kyrgyz. During the next four days, violence spread to other cities in the south, killing 400 people and destroying close to 2,000 houses. Horrific crimes were committed against both Uzbeks and Kyrgyz. Ethnic Uzbeks endured the majority of casualties and destroyed homes. Kyrgyz authorities failed to prevent or stop violence once it erupted, and there are strong indications that some military and police forces knowingly or unwittingly facilitated attacks on Uzbek neighborhoods.

Kyrgyz authorities have an obligation to investigate the crimes committed during the June violence and hold perpetrators accountable. They also have a duty to adhere to international human rights standards in the criminal justice process. Their failure to do so, which this report documents, is astonishing.

Torture has been a long-standing problem in Kyrgyzstan, but lawyers told Human Rights Watch that the situation worsened after the June violence. Law-enforcement officials in the south have used torture on a widespread basis in their investigations. In total, Human Rights Watch has received credible information about the use of torture and ill-treatment in 65 cases. In many of these, there is extensive evidence corroborating victim testimonies, including photos of their injuries from beatings, medical documents, and statements from lawyers, family members, and other detainees who saw the victims while they were still in detention. There is strong evidence that at least one person died due to torture in detention.

Detainees were abused in several detention facilities in the south, including in police stations falling under the jurisdiction of the Ministry of Internal Affairs and offices of the National Security Service. The main methods of ill-treatment include prolonged, severe beatings with rubber truncheons or rifle butts, punching, and kicking. Victims also reported being tortured by suffocation with gas masks or plastic bags put on their heads; being burned with cigarettes, and being strangled with a strap. In most cases, the main purpose was to obtain confessions to solve specific crimes, but ethnic hatred seemed to have played a significant role as well.

The use of torture and ill-treatment was accompanied by numerous violations of detainees' due process rights, such as the right to representation by a lawyer of their own choosing and the right to consult with a lawyer in private.

Kyrgyz authorities have opened only one criminal investigation into allegations of use of torture and ill-treatment against people detained in relation to the June violence, which was later suspended. Despite numerous complaints and, in several cases, overwhelming evidence, Kyrgyz authorities have failed to promptly and thoroughly investigate and prosecute other incidents of torture connected to the June violence. Perpetrators of torture and ill-treatment have enjoyed virtual impunity for their crimes.

In most cases, prosecutorial authorities have refused to open criminal investigations after flawed and superficial preliminary inquiries: in several cases the authorities did not even question the victims of the alleged torture before deciding not to open investigations. In other cases, investigators and prosecutors have threatened or otherwise pressured detainees to withdraw torture complaints.



Prosecutorial authorities have also failed to act on information about the use of torture and ill-treatment presented during trials. In several, trials defendants retracted statements they made during the investigation, saying that they made them under torture. The prosecutorial authorities failed to take the initiative to examine these claims, even when the defendants presented supporting medical documents, photographic, and video material.

The prosecutorial authorities failed to investigate torture even in the one case in which a judge acquitted a defendant because his confession was extracted under torture. Despite a special decision issued by the court, requesting that the police and prosecutor's office examine the torture claim and report back to the court, prosecutorial authorities have yet to question the victim of the alleged abuse, much less open a criminal investigation.

Judges also failed to critically assess allegations of torture, and in most cases ignored or dismissed such allegations. A common excuse for dismissing allegations, even when presented with overwhelming evidence, was that the defendants had failed to complain earlier to the prosecutorial authorities. For the most part judges dismissed lawyers' arguments that prosecutorial authorities had refused or dismissed their complaints without a proper investigation. Judges also placed undue weight on confessions—sometimes sentencing defendants to lengthy prison terms on little else—and, at least in some cases, seem to have disregarded testimony and evidence in favor of the defense.

The complete impunity for torture not only perverted justice for the June violence, it also signaled that police and national security services could torture detainees in the months that followed. Police and national security personnel also tortured and ill-treated people detained in the context of counter-terrorism and other crimes unrelated to the June violence.

The extremely hostile and violent environment in which the trials have occurred undermined defendants' fair trial rights. Audiences in trials have frequently threatened, harassed, intimidated, and even physically attacked defendants, their relatives, and lawyers and other observers before, during, and after court sessions. The hostile atmosphere has been particularly evident in high-profile trials, such as murder cases, and particularly in cases concerning the murder of policemen.

This charged atmosphere meant that lawyers were reluctant to ask witnesses for the prosecution tough questions; Uzbek witnesses were afraid to come to court to testify; and defendants and lawyers were afraid to insistently raise allegations of torture and ill-treatment. Police and soldiers who were present largely failed to intervene, although their numbers increased after a series of serious attacks in mid-October. Judges failed to use the powers at their disposal to maintain order in the courtrooms.

While most victims of the June violence were ethnic Uzbek, most detainees—almost 85 percent—were also ethnic Uzbek. Of 124 people detained on murder charges, 115 were Uzbek. Taken together with statements from victims describing law enforcement personnel’s widespread use of ethnic slurs during detention, these statistics raise serious questions about ethnic bias in the investigation and prosecution of perpetrators. It is difficult to avoid the impression that throughout the investigations, prosecutions and trials, appeasing the ethnic Kyrgyz majority eclipsed the need for justice and accountability. It is also difficult to avoid the impression that lack of effective investigations has made it easier to paint the ethnic Uzbeks as solely responsible for the June violence, and has given license to law enforcement and security bodies to target them for arbitrary arrest and ill-treatment.

A new general prosecutor, appointed in April 2011, issued orders to promptly react to all allegations of torture and similar violations, and to open investigations in order to hold all perpetrators criminally accountable. While the orders are commendable, they had not ended impunity for torture for the 2010 June violence by time of writing.

The Kyrgyz authorities should immediately enact a zero-tolerance policy for violations during detention, and promptly and objectively investigate all allegations of torture, ill-treatment and other violations of detainees’ rights. The authorities should also facilitate a visit to Kyrgyzstan by the UN special rapporteur on torture. The parliament should enact laws to bring Kyrgyz legislation in line with its international law obligations to prevent and punish all incidents of torture. The Kyrgyz government should also initiate a formal review process of all cases connected to the violence in the south, and conduct new investigations and trials in all cases in which there have been serious violations.

# Recommendations

## To the Government of Kyrgyzstan

- Conduct an independent review with the participation of international legal experts of all proceedings related to the June violence. Reopen proceedings in cases in which the authorities have not properly investigated allegations of torture, or in which there have been serious violations of defendants' fair trial rights.
- Publicly acknowledge the scope and gravity of the problem of torture in Kyrgyzstan, and commit to taking all necessary steps to end the systematic practice of torture.
- Issue and widely publicize directives stating that acts of torture and other ill-treatment by law enforcement officials will not be tolerated, that reports of torture and ill-treatment will be promptly and thoroughly investigated, and that those found responsible will be held accountable.
- Direct the General Prosecutor's Office to fulfill its responsibility under Kyrgyz law to investigate, in a thorough, impartial, and timely manner, all torture allegations against law enforcement officials, regardless of rank and whether the victim or family has filed a formal complaint.
- Ensure that victims of torture or ill-treatment can receive appropriate compensation from the government in accordance with Kyrgyz law.
- Ensure that interrogations can only take place at official locations designated under Kyrgyz law and that a lawyer is always present during interrogations.
- Submit, as a matter of urgent priority, the long-overdue state reports under the UN Convention Against Torture and the International Covenant on Civil and Political Rights.
- Facilitate visits by UN special procedures mandate holders concerned by the issues covered in this report, such as the special rapporteurs on torture and on the independence of judges and lawyers, and the Working Group on Arbitrary Detention.

## **To the General Prosecutor's Office**

- Investigate promptly and impartially all allegations of torture or ill-treatment by security or law enforcement officials of any rank, and prosecute to the fullest extent of the law, in a court that meets international fair trial standards, any official found responsible for ordering, carrying out, or acquiescing to torture or ill-treatment.
- Ensure that every investigation is conducted promptly and impartially and ensure that prosecutors investigate all those responsible, including superiors.
- Ensure prompt and independent forensic medical examinations of detainees who allege that they have been subjected to torture and other abuse.
- When allegations of misconduct are made against a police officer, the unit to which s/he belongs should be immediately excluded from any role in conducting the police investigation of the incident, beyond that of providing witness statements. Authority should be immediately handed over to the prosecutor. Police teams from other stations should provide assistance as necessary.

## **To the Ministry of International Affairs**

- Review and change the incentive structure for investigators and police-officers to reduce the likelihood of abuse and illegal methods of investigation.
- State publicly that the Ministry of Internal Affairs deplors and will no longer tolerate the practice of torture and ill-treatment in police stations and that it will punish all those responsible.
- Immediately suspend any official under investigation for ordering, carrying out, or acquiescing to acts of torture or ill-treatment.
- Discipline or prosecute superior officers who know, or who should have known, about such acts, and failed to act to prevent and punish them.
- Inform victims and their families about the outcome of internal investigations and disciplinary measures, and make this information public to show the ministry will not tolerate abuse.

- Ensure that all detainees are held only in legally-sanctioned detention facilities, and that detainees are not held or interrogated by any other branches or parts of the Interior Ministry outside of those legally authorized to hold detainees.

### **To the Kyrgyz Parliament**

- Amend article 305-1 to bring it in line with the definition in article 1 of the Convention Against Torture, and specifically to make torture a serious crime with the appropriate maximum punishment.

### **To Kyrgyzstan's International Partners**

- Speak out publicly against the practice of torture in Kyrgyzstan, and the government's failure to take effective measures to combat it.
- Condition parts of the development aid to Kyrgyzstan on the government's taking rapid steps to address gaps in compliance with international human rights law regarding torture and ill-treatment.
- Ensure that US and EU government officials and politicians visiting Kyrgyzstan are briefed on the state of Kyrgyz compliance with international human rights law concerning torture and the government's efforts and transparency in addressing human rights violations in places of detention and are requested to raise these concerns.