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For the Kyrgyz Republic

Program to Enhance the Capacity of NGO's and Institutions to Advocate for Implementation of Human Rights Decisions and Standards to Prevent Torture

For the Kyrgyz Republic

Final Report on Model Practices

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FINAL REPORT OF RESEARCH FINDINGS

Program to enhance the capacity of NGO's and institutions to advocate for implementation of human rights decisions and standards to prevent torture

Prepared by:
Sarah King, AUCA Associate Professor and Tian Shan Policy Center Human Rights Program Manager

Contributors:
Matthew Kennis and Bakhtiyor Avezdjanov, Tian Shan Policy Center Researchers

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List of abbreviations

BSI	Bureau of Special Investigations
CEH	UN Historical Clarification Commission report
CC	Criminal Code
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CAT and OPCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CICIG	International Commission against Impunity in Guatemala
CRC	Convention on the Rights of the Child
DICRI	Division of Criminal Investigation
DPP	Director of Public Prosecutions
EC	European Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FECI	Special Anti-impunity Prosecutor's Office
HRA	Human Rights Act
HRU	Human Rights Units
IACPPT	Inter-American Convention to Prevent and Punish Torture
ICCPR	International Covenant on Civil and Political Rights
ICPC	Independent Commission for Police Complaints
ICPNI	Independent Commission on Policing of Northern Ireland
INACIF	Institute of Forensic Sciences
INDECOM	Independent Commission of Investigations
JCF	Jamaican Constabulary Force
LMoI	Law on the Ministry of Interior
MNS	Ministry of National Security
MoI	Ministry of Interior
MOU	Memorandum of Understanding on Human Rights and Fundamental Freedoms
MP	Prosecutor Genera Office
OPONI	Police Ombudsman for Northern Ireland
ORP	Office of Professional Responsibility
OSI	Open Society Institute
PNC	National Civilian Police
PP	Patriot Party
PPCA	Police Public Complaints Authority
PSNI	Police Service of Northern Ireland
SIU	Special Investigations Unit
TDI	Temporary Detention Isolators
UNDP	UN Development Program
UNE	National Unity for Hope Party
UPR	Universal Periodic Review
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Abstract

The Tian Shan Policy Center, with the American University of Central Asia, has undertaken a European Union grant-funded initiative to facilitate research-based policy reform in the Kyrgyz Republic.[1]

The "Program to enhance the capacity of NGOs and institutions to advocate for implementation of human rights decisions and standards to prevent torture," is seeking to:
1) document legal and institutional practices that are effectively used by European, Eurasian and countries of Latin America and the Caribbean to prevent torture and abuse in detention, along with relevant international standards;
2) share with and train advocates and public officials on the model reforms and facilitate a dialogue on the best ways to replicate or adapt elements from those models in the Kyrgyz Republic; and
3) publish and disseminate those models to support more effective advocacy and on-going reform efforts in the Kyrgyz Republic.

This report serves as a final report of TSPC's research findings to date. This includes both desk research and field research of countries, which have been identified as potential models for consideration in the effort to prevent torture and abuse in detention. What follows below are recommendations for aspects of models which have been identified as potentially useful for the Kyrgyz Republic, and details about the models from which they were taken. The purpose of the report is not to suggest that the Kyrgyz Republic wholly adopt any of the systems currently utilized by the States below. It is instead to highlight aspects of models, which have the potential to be useful, in combination with other actions, in the fight for the eradication of torture in the Kyrgyz Republic.

The purpose of this report is also to encourage dialogue among civil society, government and other interested stakeholders about the preliminary results of TSPC's research. More information regarding the methodology and timeline for work is included at the end of the report.

Lastly, it should be noted that this report is not comprehensive of every relevant aspect of necessary reform in the system, which addresses the prevention, identification and investigation of torture. It instead aims to highlight some of the highest priority areas, as determined by in-country research and work with local partners, and then to suggest potential models for change.

[1] This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the American University of Central Asia / Tian Shan Policy Center and can in no way be taken to reflect the views of the European Union.

Summary Recommendations

Investigatory Mechanism:

Recommendation #1:

In order to ensure the practice of meaningful, independent investigations in cases where there have been allegations of torture or other forms of abuse of detained persons, by state officials, the Kyrgyz Republic must establish a system where such investigations are not performed exclusively by the existing investigatory or prosecution structures accused of, or having a stake in the outcome of, the abuse. Investigations of allegations of misconduct, criminality and human rights abuses should be conducted by an agency or persons that are institutionally, culturally and politically independent of bodies or individuals being investigated.

Recommendation #2:

The Kyrgyz Republic's legislation regarding the independent mechanism should detail its personal jurisdiction and subject matter jurisdiction, its reporting and accountability structure, an open process for selection of the head of the agency and mechanism for submission of complaints by the public and duties of security forces to report incidents. Moreover, investigatory legislation should include enforceable timelines. It is also extremely important that the legislation protects the investigating body from any external interference.

Recommendation #3:

Any model which is utilized in the Kyrgyz Republic must be fully funded and resourced, including sufficient provisions for forensic capabilities. Without the necessary staff and support, independence will be impossible to achieve. The staff must reflect the community and contain women, young people, ethnic and religious minorities. Without proper resourcing, investigators will be forced to take short cuts and rely on other institutions, which will undermine their independence and effectiveness.

Recommendation #4:

The Kyrgyz Republic should create a procedural mechanism where a third party prosecutor (person or entity separate from the existing office of the prosecutor) may apply to the presiding judge, for permission to join a criminal case. The applicant should have standing to apply for intervention at any time during the investigation or trial phrase of a case, and should have the power to bring complaints before the court, bring evidence before the court, and participate in all aspects, including the questioning of witnesses, during the investigation and trial phases of the legal proceedings.

Recommendation #5:

Public scrutiny is key to a successful investigatory mechanism and the most successful models all ensured access to information on investigations, trends in police abuse, recommendations made by investigatory bodies and follow-up. Investigatory bodies must actively attempt to inform the public to develop trust in them as well as the policing forces that they investigate.

Safeguards:

Safeguard #1 – Definition of Detention / Custody to Trigger Procedural Safeguards

Recommendation:

The Kyrgyz Republic should amend the definition to clarify that a person is "detained," or "apprehended" from the moment at which his or her freedom of movement is limited, and all procedural safeguards should be triggered from that point.[2] All other related articles contained within the CPC should also be amended to reflect this change.

(See Appendix for the proposed language of this definition and other related legislative amendments)

Safeguard #2 – Definition and Notice of Rights

Recommendation #1

The Kyrgyz Republic should create a written list of the procedural rights, which are guaranteed to all detained persons in Criminal Procedural Code of the Kyrgyz Republic. Detained persons should be given notice of these rights and proof of that notice should be contained within the protocol of detention.

Recommendation #2

Procedural rights must attach from the moment of factual detention, and this must be communicated to the detained person. Rights should be communicated, at minimum, orally upon the moment of factual detention and then should be given to the detained person in writing, in a language he or she understands, upon the arrival at the first official facility (police station or detention facility).[3] If the detainee does not speak the official or state language, he or she must be provided with a translator. If he or she is not a citizen of the Kyrgyz Republic, the individual must also be allowed to contact his or her consulate.

[2] As described in this report in the section entitled "Notice and Applicability of Procedural Safeguards" the Kyrgyz Constitution utilizes the term "фактического лишения свободы" in order to describe "factual detention." However, a literal translation of the term would actually be "factual deprivation of liberty." While that is the literal translation, it appears that the intended definition of "фактического лишения свободы," is one which reflects factual "detention," not "deprivation of liberty." Because of the potential confusion, based on the CPC definition of "deprivation of liberty" as a post-conviction sanction, the drafters of this report suggest the Kyrgyz Republic adopt a definition for the moment of factual detention or "момент фактического задержания," (moment of factual detention) instead of "фактическое лишение свободы." The drafters point out that the term moment of "factual detention" is currently utilized in Article 44 of the Kyrgyz Criminal Procedural Code. As described in the report section on the definition of detention, the current interpretation of the term factual detention appears to refer to the moment of the detainee's arrival or registration at a detention / investigations center. Ultimately, it would be advisable to streamline the terms between the Constitution and CPC, such that they are uniform and reflect the current understanding within the Kyrgyz Legal and Judicial practice. Currently, amending the CPC to define the factual detention, "фактического задержания," as the moment at which a person's freedom of movement is limited would suffice to create the appropriate moment for ensuring procedural safeguards are given to detainees. Further, a delay on amending the Constitution such that "фактического задержания" (factual detention) is used instead of "фактического лишения свободы" (factual deprivation of liberty) would not create a conflict of laws problem in the interim.

[3] Bulgarian Criminal Procedural Code, Sections 219 and 55 (1),

International Standards

The Kyrgyz Republic is party to all of the major United Nations treaties which prohibit torture and ill-treatment, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol (CAT and OPCAT), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Kyrgyz Republic has also signed, but not ratified, the Rome Statute of the International Criminal Court.[4]

This report addresses many of the specific international standards, targeted at the prevention and investigation of torture and abuse. While not meant to be comprehensive of every global human rights standard, a selection of the most relevant are highlighted herein.

The most basic of these standards, is the definition of torture contained within the CAT Convention. As a State Party to the Convention, the Kyrgyz Republic is bound by its requirements and definitions. Torture is defined under the CAT as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[5]

The ICCPR puts this definition into operation by prohibiting all forms of torture. Article 7 states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."[6]

Importantly, the CAT not only defines torture and abuse, but it also provides for additional proactive measures in the Optional Protocol (OPCAT), which entered into force June 2006. As mentioned above, the Kyrgyz Republic has ratified the OPCAT. The OPCAT creates The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), as well as requiring signatories to create National Preventive Mechanisms (NPM).[7]

[4] A/HRC/19/61/Add.2, para 9, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez Addendum Mission to Kyrgyzstan (21 February 2012).
[5] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.
[6] International Covenant on Civil and Political Rights; 16 December 1966.
[7] Optional Protocol to the United Nations Convention Against Torture (OPCAT) Subcommittee on the Prevention of Torture http://www2.ohchr.org/english/bodies/cat/opcat/.

The international community recognized that there will be times when the measures to safeguard against and prevent torture and other abuse will not be sufficient to prevent torture from happening. The Convention Against Torture also provides for a right to complain about torture to competent authorities.

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.[8]

Taking this a step further, a wide range of international specialists collaborated to create a set of standards which specifically address effective documentation and investigation of torture. The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, "is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body."[9]

The CAT does not state the method for proving torture. It does, however, prohibit the use of any statement established to have been made as a result of torture, from being invoked as evidence in any proceedings against the declarant.[10]

Regional Standards – Europe and Latin America

While the regional standards in other parts of the world are in no way binding on the Kyrgyz Republic, they are worth considering for comparison in order to understand the universal trends in the protection and advancement of human rights.

Europe

The European Convention on Human Rights (ECHR) categorically prohibits torture, inhuman or degrading treatment.[11] A recent analysis of European Standards considered the decisions from the European Court of Human Rights (ECtHR), European Committee for the Prevention of Torture and other international standards to compile a comprehensive list of applicable European Guidelines.[12] These guidelines make it clear that no derogation is possible from the absolute prohibition against torture or ill-treatment. As this report specifically investigated practices within the United Kingdom, it is also worth highlighting that in 1998, the UK passed the UK Human Rights Act 1998 (HRA).[13] Articles 2 and 3 of the HRA deal with Right to Life and the Prohibition of Torture respectively. The HRA incorporates the ECHR with Domestic law of the UK.[14]

[8] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 13, 10 December 1984.
[9] United Nations Office of the High Commissioner for Human Rights, "The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," Professional Trainings Series No.8/Rev. 1, pg 1, 2004.
[10] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15, 10 December 1984.
[11] The European Convention on Human Rights, Article 3, Council of Europe, 4 November 1950.
[12] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe 2009.
[13] The Human Rights Act 1998 (UK)
[14] Julie Debeljak , The Human Rights Act 1998 (UK): The Preservation of Parliamentary Supremacy in the Context of Rights Protection, (2003) 9 Australian Journal for Human Rights 183-235.

European standards impose a positive obligation to investigate all allegations or *other indications* of ill-treatment.[15] An express complaint is not necessary to trigger an investigation, while credible accounts of physical or psychological abuse trigger mandatory investigations.[16] In order to make these requirements meaningful, states are also obliged to maintain a "clear system of mechanisms and procedures through which allegations, indications and evidence of ill-treatment can be communicated."[17]Notice of ill-treatment is facilitated by a series of requirements. First, "public officials (including police officers and prison staff) should be formally required to notify the competent authorities immediately upon becoming aware of allegations or other indications of ill-treatment."[18] Additionally, there must be a wide variety of channels available for individuals to complain.[19]

Those conducting investigations must be independent from those implicated in the facts being investigated both hierarchically and practically.[20] Investigations must meet certain minimum standards including thoroughness of investigations as well as confidential and effective medical and forensic examinations.[21]

The European Standards also address the procedural safeguards which should be guaranteed to all persons. All detainees should have the right to access an attorney, have the fact of one's detention notified to a third party, and to access to a doctor from the outset of deprivation of liberty.[22] European standards to allow for the notification of a third party and access to a lawyer to be delayed for certain period when in the legitimate interest of law enforcement, however these limitations must be clearly defined.[23]

Each of those rights has important additional safeguards for detainees. A few worth highlighting include: the right to an attorney includes a right to have private conversations,[24] the right to a doctor includes the right to examination out of the earshot of police, as well as access to the services of recognized forensic doctors.[25]

Latin America

Torture is broadly prohibited by the American Convention on Human Rights (ACHR), in article 5.2.[26] In addition to the ACHR, the Inter-American Convention to Prevent and Punish Torture (IACPPT), which entered into force in 1987, applies in the Americas.[27] Both the Inter-American Court and State reports to the Inter-American Commission oversee the IACPPT.[28]

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[15] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 13, Guideline III.1.1, 2009.
[16] pg 9, Guideline III.1.1 and III.1.2
[17] pg 10, Guideline II.1, 2009.
[18] pg 12, Guideline II.3.3, 2009.
[19] pg 12, Guideline II.3.5, 2009.
[20] pg 14, Guidelines IV.1.1-2, 2009.
[21] Eric Svanidze., pg 15-16, Guidelines IV.2.1-2, 2009.
[22] pg 10, Guideline II.2, 2009.
[23] pg 10, Guideline II.2, 2009.
[24] pg 11, Guideline II.2.3, 2009.
[25] pg 9, Guideline II.2.5, 2009
[26] http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm. Article 5.2 says: "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." The American Convention does not define the types of conduct which constitute torture or cruel, inhuman or degrading treatment, nor does it differentiate between the prohibited acts."
[27] http://www.oas.org/juridico/english/treaties/a-51.html. Article 2(1) of the IACPPT defines torture as:
"any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood

The IACPPT definition of torture is more expansive than the United Nations CAT. For example, the IACPPT does not require that the pain or suffering be "severe," (as in UNCAT article 1) and also defines torture as the "*use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish*."[29] Further, where the UNCAT definition spells out torture as being intentionally inflicted for certain "such purposes as" obtaining information or a confession, etc. The IACPPT expands the specific purposes that might fall under the category to include "any other purpose."

A report by the Organization of American States on citizen security and human rights also outlines States' duty to investigate. It declares "The duty of the State to investigate conduct affecting the enjoyment of the right protected in the [American] Convention applies, irrespective of the agent to which the violation may eventually be attributed. In those cases where conduct is attributed to individuals, the lack of serious investigation could compromise the international responsibility of the State. In cases where the conduct may involve the participation of its agents, States have a special duty to clarify the facts and prosecute those responsible. Lastly, in cases involving the commission of serious violations of human rights such as torture, extrajudicial executions, and forced disappearances the Inter-American Court has established that amnesties, statutes of limitation and provisions for the exclusion of responsibility, are inadmissible and cannot prevent the investigation and punishment of those responsible."[30]

Overview on the Kyrgyz Republic:

The Kyrgyz Republic had a presidential form of government until 2010, but the newly adopted Constitution in June 27, 2010 extended the power of the parliament, creating a semi-presidential or semi-parliamentarian political system. The President is the head of state whereas most of the authority is held by the Prime Minister and the Unicameral Parliament (Jogorku Kenesh).[31] The judicial system of the Kyrgyz Republic is established by the Constitution and constitutional laws, and consists of the Supreme Court and local courts. Judicial power is exercised by constitutional, civil, criminal, administrative and other forms of legal proceedings. The Constitutional Chamber is included in the structure of the Supreme Court.[32]

The Constitution has supreme legal force and direct application in the Kyrgyz Republic.[33] The Constitution of the Kyrgyz Republic provides that citizens have the right to appeal to international bodies on human rights to protect their rights. International treaties, to which the

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to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article."

[28] An APT/CEJIL report explains that the IACPPT "does not name the Inter-American Court as the organ with power to oversee its application, but rather provides for a State reporting system to the [Inter-American] Commission … Nevertheless the Inter-American Court explicitly extended its own jurisdiction to include supervision of the IACPPT, stating that this was possible where a State has given its consent to be bound by the IACPPT, and has accepted the jurisdiction of the Inter-American Court of Human Rights as regards the ACHR (American Convention on Human Rights)."

[29] This report by APT/CEJIL details Inter-American standards and state duties. http://www.apt.ch/content/files_res/JurisprudenceGuide.pdf.

[30] OAS, *Report on Citizen Security and Human Rights*, para 46, 2009, http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm.

[31] Oxford Journals. Parliamentary Affairs Advance Access. By Ismail Aydıngun and Aysegul Aydıngun "Nation-State Building in Kyrgyzstan and Transition to the Parliamentary System", published August 6, 2012. http://pa.oxfordjournals.org/content/early/2012/08/06/pa.gss046.full.pdf+html

[32] Constitution of the Kyrgyz Republic, Section VI Judicial Power in the Kyrgyz Republic, Article 93 (2010).

[33] Constitution of the Kyrgyz Republic, Article 6 (2010).

Kyrgyz Republic is a party and have entered into force, are a constituent part of the Kyrgyz Legal system.[34] The Kyrgyz Republic further has the responsibility to restore the violated rights and compensate the victims, when such bodies find violations of rights.[35]

Torture is explicitly prohibited in the Kyrgyz Constitution. Article 22 of the June 2010 Constitution states that "No one may be subject to torture or to other inhuman, cruel or degrading forms of treatment or punishment."Article 20, paragraph 4, further stipulates that the "prohibition of torture and other inhuman, cruel and degrading forms of treatment and punishment should not be subject to any limitations."[36]

The Government of the Kyrgyz Republic has made progress toward meeting some of its international obligations. As a signatory to the Optional Protocol to the CAT Convention (OPCAT), the Kyrgyz Republic is required to establish a National Preventive Mechanism for the prevention of torture. On July 12, 2012, the President signed the law, passed by Parliament on June 8, 2012, to create the National Center to Prevent Torture and other Inhumane and Degrading Treatment and Punishment.[37] This law aims to create "a system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment of persons detained in places of deprivation of or restraint of liberty."

The law also aims to create and define the procedures of organization and functioning for an independent center for the monitoring of detention centers and the prevention of torture, to be named the "National Center of the Kyrgyz Republic on Prevention of torture and other cruel, inhuman or degrading treatment or punishment" (The National Center).[38] The National Center has begun to take action by appointing the members of the coordination council for the Center. Further, Bakyt Rysbekov was appointed as the first Director of the National Center. According to the Law he will serve in this position for a two-year term. The Center also has been given offices and is in the process of creating a strategic plan. Mr. Rysbekov has expressed concerns about some potential obstacles in the operation of the center. He has stated that law enforcement agencies (security forces) may perceive Center as non-useful controlling organ and will therefore be "important that [Center's] activity is built not upon competitions, not on control, not on seeking for something negative, but partnership."[39] Accordingly, it will be crucial that the National Center receives sufficient funding and support in order to fulfill its mandate.

On June 12, 2012, members of the Kyrgyz Government, representatives of the OSCE Centre in Bishkek, the Freedom House Project "Strengthening Human Rights in Kyrgyzstan," the Soros Foundation Kyrgyzstan, and 12 other civil society organizations, signed a Memorandum of Understanding on Human Rights and Fundamental Freedoms (MOU), deposited with the

[34] Constitution of the Kyrgyz Republic, Article 6 (2010).
[35] Constitution of the Kyrgyz Republic, Article 41 para 2 (2010).
[36] Constitution of the Kyrgyz Republic, Article 20 para 4, 2010. See also: A/HRC/19/61/Add.2 Juan Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, 21 February 2012.
[37] United States State Department Bureau of Democracy, Human Rights and Labor; Country Reports on Human Rights for 2012, Kyrgyz Republic; http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper; The law of the Kyrgyz Republic "On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment."
[38] Law of the Kyrgyz Republic "On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment," 12 July 2012 N 104.
[39] "Bakyt Rysbekov: We try to be in the vanguard of this matter," Voice of Freedom, August 19, 2013. http://vof.kg/?p=11366&lang=en.

Akyikatchy (Ombudsman).[40] In addition to other provisions of the MOU, which promise cooperation and free exchange of information between the government and civil society on certain issues of human rights and fundamental freedoms, this MOU allows for access to places of detention to civil society and international organizations, including monitoring groups created by such organizations. This MOU has been renewed for the following year.

These actions, along with other positive progress in legislation, have advanced the issue. However, in spite of this positive progress, serious issues remain both with the law and practice regarding the prevention of torture and investigations into allegations of torture.

In his December 2011 report on the Kyrgyz Republic, the United Nations Special Rapporteur on Torture, Juan Mendez, noted that he received many accounts indicating that use of torture and ill-treatment was historically pervasive in the law enforcement sector. He further stated that this practice had only intensified in the wake of the ousting of President Bakiev in April 2010 and the violence of the June 2010 events.[41]

A report written for Freedom House Kyrgyzstan by two leading local human rights experts, documented some of these increases.[42] The report noted that within two months of the conflict, the General Prosecutor opened nearly 3,000 criminal cases connected with the riots in the south of the country, with many of those cases accompanied by massive human rights violations including torture, illegal detention, and mistreatment during detention.[43] Detention of citizens in investigation of ethnic conflicts in 2010 in the south of the country occurred in violation of procedural rights. During the course of detention, law enforcements officials did not introduce themselves and did not explain the grounds for detention which is a violation of detainees' rights under the legislation of the Kyrgyz Republic.[44] Further, according to the International Independent Commission's report, mistreatment and prisoner abuse happened in almost every single case of detention.[45] The torture and abuse included everything from beatings all over the body with fists, bully clubs, metal rods, or weapon handles; to suffered electric shocks, suffocation by gasmasks or plastic bags, cigarette burns, and the removal of fingernails.[46]

In April 2011, Prosecutor General Aida Salyanova, issued a decree specifically addressing torture and ordering the prompt investigation of all allegations.[47] On February 12, 2011, the Prosecutor General also issued the Order "On strengthening prosecutorial supervision of procedural activities of investigation and inquiry bodies," which focused on the Osh and Jalal

[40] Memorandum of Understanding on Human Rights and Fundamental Freedoms, 12 June 2012, Bishkek Kyrgyzstan. An early Memorandum of Understanding was signed by The Akyikatchy (Ombudsman) of the Kyrgyz Republic, The OSCE Centre in Bishkek and Kylym Shamy on 7 June 2011 in Bishkek Kyrgyzstan. This early version while not as expansive as the 2012 version, elaborated on a framework for future cooperation of the signatory parties related to human rights and fundamental freedoms, specifically as these rights related to the protection of persons deprived of liberty against torture and other cruel, inhuman or degrading treatment or punishment.

[41] A/HRC/19/61/Add.2 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Kyrgyzstan, UN Doc. (Feb. 21, 2012), available at: http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Visits.aspx

[42] See Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kyrgyzstan.

[43] Id., pg 2; citing to "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch , 2010, pg. 49.

[44] Art 40 Criminal Procedural Code of the Kyrgz Republic.

[45] Id., pg 2; citing to "Отчет Международной независимой комиссии по исследованию событий на юге Кыргызстана в июне 2010", pg. 278 [Report of the International Commission For Investigating Events in the South of Kyrgyzstan in June of 2010, paragraph 278].

[46] Id., citing to "Отчет Международной независимой комиссии по исследованию событий на юге Кыргызстана в июне 2010" pg. 278 [Report of the International Commission For Investigating Events in the South of Kyrgyzstan in June of 2010, paragraph 279].

[47] United States State Department Bureau of Democracy, Human Rights and Labor; Country Reports on Human Rights for 2012, Kyrgyz Republic; http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper; Order "On strengthening prosecutorial oversight of the constitutional guarantee of the prohibition of torture and other inhuman, cruel or degrading treatment or punishment."

Abad Regions.[48] To date, Article 305-1 of the Kyrgyz Criminal Code, the article criminalizing torture, has been under-utilized by the Office of the Prosecutor.[49]

According to the press center of the Ombudsman, forty three criminal cases on torture were opened in a period of 11 months in 2011. According to the Press Center, in the same period of 2010, only 9 criminal cases were filed.

It should also be noted that the Kyrgyz Republic has been the subject of several recommendations from United Nations Human Rights Council (including the Universal Periodic Review, country specific reporting and special procedures) as well as United Nations Treaty Bodies.[50] Several of these recommendations are specific to torture and ill treatment in detention.[51]

Presidential Decree № 11 dated January 21, 2013 adopted a National Strategy for Sustainable Development of the Kyrgyz Republic for the period 2013-2017.National Council for Sustainable Development of the Kyrgyz Republic offers vision of the future of the country, represents the main directions and priorities for action.[52] Among the recommendations:

> 2.8 Reform of the judiciary, the rule of law in their activities
>
> - Judicial reform should be evaluated depending on the achievement of concrete results. Among these priorities are the results:
>
> - Freedom from torture threat, risk of degrading treatment;
>
> - Effective restoration of rights and real enforcement of judgments on penalties in the shortest time;
>
> - Practical application of criminal responsibility for an attempt to influence the process of comprehensive, thorough and objective review of cases; ….
>
> The main objectives of the development of administrative, criminal law, law on the judicial system, procedural law is the introduction of the following measures and mechanisms:
>
> - Providing effective protection and restoration of violated rights of physical persons and legal entities in proceedings.[53]

[48] Order "On strengthening prosecutorial supervision of procedural activities of investigation and inquiry bodies, Official Website of the Office of the Prosecutor General http://www.prokuror.kg/index.php?option=com_newscatalog&view=article&id=169&Itemid=149&lang=ru, posted February 25, 2011.

[49] In an official reply to an inquiry by the Public Foundation "Golos Svobody," requesting to know whether there had been any legal proceedings initiated under article 305-1 of the Criminal Code, the General Prosecutor's Office of the Kyrgyz Republic sent the following two letters addressing proceeding through 2013. The letters 28.06.2013 № 8/32-01-13; 19.07.13 № 8/7-13; 12.02.13 № 8/1-3p; reflected the fact that while multiple cases have been opened under article 305-1, there has not yet been a conviction or sentence passed under this article.

[50] For a complete review of Kyrgyzstan's Human Rights Obligations, see "Kyrgyzstan's Compliance with Human Rights Obligations: Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review (UPR), Special Procedures, and Treaty Bodies," Tian Shan Policy Center, 2012.

[51] For a complete review of Kyrgyzstan's Human Rights Obligations, see "Kyrgyzstan's Compliance with Human Rights Obligations: Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review (UPR), Special Procedures, and Treaty Bodies," Section 2.8 Torture and Ill treatment in detention, Tian Shan Policy Center, 2012.

52 NATIONAL SUSTAINABLE DEVELOPMENT STRATEGY of the KYRGYZ REPUBLIC 2013-2017, pg. 5

53 NATIONAL SUSTAINABLE DEVELOPMENT STRATEGY of the KYRGYZ REPUBLIC 2013-2017, pg. 23-24

Best Practice Models For Effective Investigations

This Project assesses best practices aimed at the eradication of torture. The eradication of torture involves both safeguards for its prevention, as well as a robust system for effective and independent investigations of allegations of torture. For organizational purposes, the analysis of those practices has been split into two sections, one which focuses on the legal safeguards surrounding the definition of detention and notice of procedural rights and the other which considers the mechanisms in place for effective investigation of allegations. The above-mentioned recommendations take pieces from several of the best practices and highlight aspects which have the potential for implementation here in the Kyrgyz Republic. The first section of this preliminary report focuses on the later piece – investigations. When considering investigations of allegations of abuse, it is useful to think about the framework in which these investigations take place. There are two sets of relevant investigations to consider.

First, there is the investigation into the original crime that the suspect is detained for, and then the subsequent investigation into the allegation of torture or abuse. Allegations of torture or abuse in this context, generally (although not always) refer to situations where a detainee has been interrogated or had some other encounter with officials that had the intention of extracting information through illicit means. After such an allegation, there should be a second investigation, not into the original alleged crime, but into the allegation of the crime of torture, abuse or other related offense.

In the examples below, this report examines states that have created structures for these second kinds of investigations, those which involve allegations against the police or other state services for torture, abuse or other related crime, while the complainant is under state control.

The Kyrgyz Republic:

The question of effective investigations of allegations of torture and abuse cannot be considered without first examining the current structure for investigations of all kinds of crimes. Criminal investigations are carried out by investigators of agencies of prosecution and agencies of the Ministry of Internal Affairs. In specific cases, criminal investigations can also fall under the National Security agencies, the agency of Kyrgyz Republic on drug control of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, the financial police and tax police agencies.[54] Investigations begin only upon the initiation of a prosecution.[55]

Currently, the legislation of the Kyrgyz Republic foresees the prosecutor as having the right to institute all criminal proceedings and investigate criminal cases regardless of jurisdiction.[56] However, according to Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

[54] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 161 Investigation Agencies (2013). Article 161. Investigative bodies: investigations of criminal cases shall be conducted in accordance with this Code for investigators of the prosecutor's office, internal affairs, national security, drug control, the penal system, the financial police and customs authorities Actual Text: Статья 161. Органы следствия: Следствие по уголовным делам производится в соответствии с определенной настоящим Кодексом подследственностью следователями органов прокуратуры, внутренних дел, национальной безопасности, по контролю наркотиков, уголовно-исполнительной системы, финансовой полиции и таможенных органов.

[55] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 165 (1) The beginning of an investigation (2013). An investigation may occur only after a criminal case is initiated. Investigative actions such as the review of the place of incident and forensic examinations is possible prior to the initiation of a criminal case. Actual Text: Статья 165. Начало производства следствия
(1) Следствие производится только после возбуждения уголовного дела. Производство таких следственных действий, как осмотр места происшествия и назначение экспертизы возможно и до возбуждения уголовного дела.

[56] Kyrgyz Criminal Procedural Code Chapter 5. Participants of Proceedings and Persons Participating in Court Proceedings, Representing Interests of the State. Article 33 Prosecutor. (2013)

decision dated 13 January 2014, the statutory provision of paragraph 1 of Part 1 of Article 34 of the CPC, does not comply with paragraph 6 of Article 104 of the Constitution. The Office of the Prosecutor is also governed by the Law on Prosecutor's Office of the Kyrgyz Republic. This law gives the prosecutor powers of supervision over the legality of holding detainees in custody as well as supervision of the conditions of that detention.[57] Those powers of supervision include, among other things, the authority to visit the institutions, interrogate detainees, examine materials from the investigation, and ensure that the administration in places of detention observes the rights of detainees.[58]

The Prosecutor also has the right to delegate the investigation to an investigator.[59] In the Code of Criminal Procedure for the Kyrgyz Republic, the term *investigator* is defined as:

> "an officer of prosecutorial agencies, police officer, national safety officer, tax police officer, customs officer of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, authorized to conduct investigation on a criminal case."[60]

The term *investigation* is defined as:

> "a procedural form of pretrial actions of authorized agencies within the stipulated herein authorities to discover, establish and secure circumstances of a case and charge those who committed the crime with criminal liability."[61]

Internal affairs bodies have the right to carry out inquiries and preliminary investigations[62] as well as arrest and detain, in accordance with the procedure established by law and suspects accused of crimes.[63]

While the term investigator is broadly defined in the Code, the Office of the Prosecutor also has responsibilities related to investigations. The Office of the Prosecutor is given the Constitutional responsibility for "supervision of the observance of laws by bodies exercising operative investigation."[64] While this oversight responsibility has potential to create strong oversight, it also has the potential to create conflicts of interest in cases where allegation of abuse arise in the context of on-going investigations or legal proceedings also being supervised by the same office, specifically when those allegations relate to the attempt to procure evidence in a criminal case.

[57] Law on Prosecutor's Office of the Kyrgyz Republic, Article 37.
[58] Law on Prosecutor's Office of the Kyrgyz Republic, Article 38.
[59] Kyrgyz Criminal Procedural Code Chapter 5. Participants of Proceedings and Persons Participating in Court Proceedings, Representing Interests of the State. Article 33 Prosecutor. (2013).
[60] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 1. Major Provisions Article 5 Major Definitions Used in the Code. (2013) Investigator – an official of the prosecutors's office, internal affairs, national security, drug control, financial police, customs, the penal system, empowered to conduct a criminal investigation. Actual Text: следователь - должностное лицо органов прокуратуры, внутренних дел, национальной безопасности, по контролю наркотиков, финансовой полиции, таможенных органов, уголовно-исполнительной системы, управомочное проводить следствие по уголовному делу.
[61] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 1. Major Provisions Article 5 Major Definitions Used in the Code. (2013) an investigations - procedural act of pre-trial activities by the competent authorities within the authority established by this Code to identify, establish and consolidate the totality of the circumstances of the case and to bring the perpetrators of crime to justice. Actual Text: следствие - процессуальная форма досудебной деятельности уполномоченных органов в пределах установленных настоящим Кодексом полномочий по выявлению, установлению и закреплению совокупности обстоятельств дела и привлечению лиц, совершивших преступление, к уголовной ответственности.
[62] Law on Internal Affairs Bodies of the Kyrgyz Republic, Article 8(3).
[63] Law on Internal Affairs Bodies of the Kyrgyz Republic Article 9(8).
[64] Constitution of the Kyrgyz Republic, Article 104(2) (2010).

The Code of Criminal Procedure for the Kyrgyz Republic guarantees all persons access to judicial protection of his or her rights and freedoms at any stage of the criminal proceeding.[65] Unfortunately the current structure for investigations makes protection of a detainee's rights at this stage of proceedings, a challenge.

It has been reported that a large majority of complaints regarding torture arise from actions taken during the initial apprehension of suspects and early hours of detention.[66] Of these complaints, human rights defenders have found that more than 87% of instances of torture occur while detainees are in Organs of Internal Affairs and during this period, the abuse is largely perpetrated by the Operational-Investigative Service of the Internal Affairs organs.[67] Compounding the difficulty, according to paragraph 3 of article 19 of the Law of the Kyrgyz Republic "On Operational-Investigative Activities," employees of this department are accountable "only to their direct supervisor."[68]

If a detainee makes a complaint about torture, or other form of abuse, at the hands of state officials, that complaint may be investigated by the same investigatory structures responsible for the investigation of the original criminal, or administrative, inquiry.[69] Further, the Office of the Prosecutor maintains the ultimate responsibility for the outcome of the investigation.[70] This means that it is foreseeable that complaints of official misconduct, will be investigated by the same structures accused of perpetrating the offenses. This inherent conflict of interest jeopardizes the possibility for any kind of independent or effective investigation.

Jamaica

As is detailed in the attached appendix, Jamaica has faced serious problems with accountability for violent crime, accusations of police involvement in unlawful killings or extrajudicial executions, and corruption. The attached appendix covers the history, which led to the establishment of the independent mechanism for investigations of allegations of abuse in Jamaica, but a brief background will be provided here for context.

The Police Public Complaints Authority (PPCA), formed in 1992, was an attempt to address what was seen to be rampant issues with state abuse, specifically in the police force. However, the PPCA was under resourced and did not have the needed investigative powers to resolve cases efficiently or compel police cooperation.

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[65] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 2 Principles of Criminal Procedure Article 9(1) Protection by the Court (2013). Article 9, Legal aid (1) Everyone is guaranteed legal aid for the protection of rights and freedoms at any time of the legal process Actual Text: Статья 9. Судебная защита
(1) Каждому гарантируется в любой стадии процесса судебная защита его прав и свобод.

[66] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kyrgyzstan, pg 4.

[67] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kyrgyzstan, pg 4. Statement supported by Ulukbek Kochkorov, Ulukbek Kochkorov, a deputy of the Jogorku Kenesh who, as cited to the in same report, stated "...law enforcement operatives themselves carry out acts of torture"and the General Prosecutor who affirmed that "...an overwhelming number of complaints have been received on the actions of law enforcement officers carried out during the process of operational investigations."

[68] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kyrgyzstan, pg 4. For Additional details on the relationship between this office and the states see the same report though pages 3-6.

[69] The Prosecutor's office has the right to investigate official crimes. All ordinary crimes are investigated by investigators of the Ministry of Interior. Additionally complicating the situation, the investigators of the prosecutor's office for collecting evidence, (operative support), utilize the staff working for the Ministry of Interior – police departments - which could cause a conflict of interest.

[70] Code of Criminal Procedure of the Kyrgyz Republic, Chapter 2 Principles of Criminal Procedure, Article 8 Participation of the Prosecutor in Criminal Proceedings (2013). Article 8. Participation of the prosecutors in the criminal process (1) supervise the strict and uniform implementation of legislative acts by carrying out operational investigative activities and investigation by the Prosecutor's Office of the Kyrgyz Republic within its competence. Actual Text: Статья 8. Участие прокурора в уголовном судопроизводстве (1) Надзор за точным и единообразным исполнением законодательных актов органами, осуществляющими оперативно-розыскную деятельность и следствие, осуществляется Прокуратурой Кыргызской Республики в пределах ее компетенции.

In August 2010, the Jamaican government created the Independent Commission of Investigations (INDECOM) to investigate actions by members of the security forces (police, military, all island police, rural police) that result in death or injury to persons or the abuse of the rights of persons.[71] INDECOM is a Commission of Parliament and is composed of a Commissioner, Assistant Commissioner, five investigation teams (where a full complement of 10 investigators per team is envisaged), a forensic unit of seven people and a legal team of four people. It should be pointed out at the outset, that INDECOM is not focused exclusively on complaints of torture of detainees, but more broadly on investigating serious abuses committed by security forces. INDECOM also analyzes patterns of abuse in order to identify trends and provide policy guidance and recommendations for future prevention.

According to a Jamaican civil society leader, "in practice, INDECOM is called, by police, to the scene of any shooting by police. There is a hotline for the public to call in and report shootings. The call is routed to the appropriate regional team. The police are expected to inform INDECOM, though there are often delays of between 2-5 hours in this reporting, though it is improving.[72] The law requires the ranking officer on the scene to preserve the scene and call INDECOM. There has been more (and less) compliance with this requirement by police, but interestingly, citizens who witness police shootings are increasingly calling to report them on INDECOM's hotline."[73]

The INDECOM Act allows INDECOM to investigate incidents regarding the conduct of a member of the security forces or any specified official which (a) resulted in the death of or injury to any person or was intended or likely to result in such death or injury; (b) involved sexual assault; (c) involved assault or battery; (d) resulted in damage to property or the taking of money or of other property; (e) although not falling within any of the preceding paragraphs, is in the opinion of the Commission "an abuse of the rights of a citizen.". The Act also requires security forces to report any such incidents within 24 hours, and immediately if the incident resulted in the death or injury of a person.[74]

Under the Act, INDECOM investigation powers include inspection of "relevant public body or relevant Force, including records, weapons and buildings," and to "take such steps as are necessary to ensure that the responsible heads and responsible officers submit to the Commission reports of incidents and complaints concerning the conduct of members of the Security Forces and specified officials." Articles 4.2 and 4.3 provide INDECOM access, following receipt of a warrant, to any reports, documents and all other evidence, including any weapons, photographs and forensic data, and to retain any records, documents or other property for as long as reasonably necessary. In addition INDECOM is provided access and may enter any premises or location. INDECOM also has the power to take charge of and preserve the scene of any incident.

INDECOM receives its funding as a direct grant by the Jamaican Parliament - to which it must report. It is also free to seek supplementary funding by way of grant funding - locally and

[71] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf.
[72] TSPC meeting with INDECOM leaders, October 23, 2013.
[73] Personal communication via email between TSPC researcher MK and the NGO Jamaicans for Justice, November 19, 2012.
[74] A/HRC/16/52/Add.3, Human Rights Council, Sixteenth session findings and recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Jamaica, 12 to 21 February 2010.

internationally. While INDECOM enjoys significant independence in its work, the INDECOM Act states that its budget is subject to approval by the Minister of Finance.

INDECOM Commissioner Terrence Williams has raised concerns about the lack of adequate resources to be fully staffed.[75]

Guatemala

Guatemala emerged from a 36 year long internal armed conflict in 1996. Over the course of that conflict, two hundred thousand people were killed or disappeared and the door opened for organized crime to grow.[76] During this period, the Guatemalan army became increasingly involved in organized crime.[77] As the conflict ended, the network of those involved in organized crime, and their connection to state actors and state interests also grew.[78]

In 1999, a legislative reform effort to codify many of the 1996 Peace Accord agreements, in the form of a referendum, failed. However, this failure spurred Guatemalan NGOs, their international partners,[79] as well as UN procedures[80] into action. These groups collaborated and formed the reports and documentation that would later be necessary in the establishment of what would become the International Commission against Impunity in Guatemala (CICIG).

Guatemala has established a unique model for independent investigations, which, while also not specifically directed at torture, has the ability to more broadly investigate specialized categories of crime. The CICIG was established by an agreement between the United Nations and the Government of Guatemala in late 2006.

CICIG is an independent, UN affiliated, hybrid national-international commission with strong powers of investigation and a mandate to "support, strengthen, and assist" state institutions investigating and prosecuting crimes committed in connection with the activities of organized crime groups and clandestine security organizations.[81] The CICIG's mandate is broader than investigation and its functions include such activities as identifying the structures, activities, modes of operation and sources of financing of 'parallel power' groups, promoting the dismantling of these organizations and the prosecution of individuals involved in their activities. CICIG also recommends the legal and institutional reforms necessary for eradicating clandestine security organizations preventing their re-emergence.[82]

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[75] TSPC meeting with INDECOM leaders, October 23, 2013

[76] Agreement on a Firm and Lasting Peace, December 29, 1996, http://www.sepaz.gob.gt/index.php/agreement-12; Patrick Gavigan, "Organized Crime, Illicit Power Structures and Guatemala's Threatened Peace Process," International Peacekeeping, Vol. 16, Issue 1, 2009, 62 – 76.

[77] Patrick Gavigan, "Organized Crime, Illicit Power Structures and Guatemala's Threatened Peace Process," International Peacekeeping, Vol. 16, Issue 1, 2009, 62 – 76.

[78] ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011." http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf.

[79] A few examples are: Movimiento Nacional por los Derechos Humanos, "Breve análisis de la situación de defensores de derechos humanos en Guatemala," May 13, 2005, http://www.caldh.org/analisis.pdf;
Washington Office on Latin America, "Hidden Powers in Post-Conflict Guatemala: A study on illegal armed groups in post-conflict Guatemala and the forces behind them," September 2003, http://www.wola.org/publications/hidden_powers_in_post_conflict_guatemala; Human Rights Watch, "Guatemala: Political Violence Unchecked, Guatemala Mission Findings," August 22, 2002, http://www.hrw.org/legacy/press/2002/08/guatemission.htm.

[80] United Nations, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alton," UN Doc., A/HRC/4/20/Add.2, 19 Feb. 2007. http://daccess-ods.un.org/TMP/8121861.html. Based on available statistics from 2005, the study reports a conviction rate of 1.4% in cases involving "crimes against life."

[81] The full text of the agreement can be found here: http://cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=14. Note that CICIG is a "non-UN organ, functioning solely in accordance with the provisions of this agreement."

[82] A list of CICIG's institutional reform recommendations can be found here: http://cicig.org/index.php?page=institutional-reform.

CICIG focuses on high impact cases, typically implicating former politicians or state agents. The theory of change and reform is best summed up in one of CICIG's annual reports: "the prosecution of senior former officials conveys a clear message to the people. With a good investigation, there is no such thing as the perfect crime and the accused party's power is irrelevant, as is the time that has passed since they committed the crime. There must be no doubt as to the fact that such individuals will be brought to justice sooner or later."[83]

Under the Agreement, CICIG has the power to "collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States"[84] and "any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity" is obligated to comply with requests for "statements, documents, reports and cooperation" without delay.[85]

CICIG also coordinates its work with the relevant government counterparts, including the Public Prosecutor's Office (MP) and the Attorney General (who is the head of the MP). A Special Anti-impunity Prosecutor's Office (FECI –formerly known as UEFAC) was created as part of CICIG. [86] The role of FECI is to act as CICIG's prosecutorial arm in high-impact cases. [87]

FECI contains six prosecutors, three auxiliary prosecutors, six agents and two members each from the PNC and the Division of Criminal Investigation (DICRI). Young FECI prosecutors are recruited only after a careful evaluation. The cases overseen by FECI depend upon whether the case fulfills the requirements set forth in CICIG's mandate and upon agreement between the Attorney General and the CICIG Commissioner. FECI is currently investigating more than 50 cases of this nature.[88] The Coordination Department is responsible for representing CICIG with the MP authorities and for creating inter-institutional links pursuant to the instructions passed down by the CICIG Commissioner.

While primary investigative responsibility rests with the police (PNC) under the direction or guidance of the public prosecutor's office (MP), CICIG uses its limited resources and expert teams to focus on high impact cases, while liaising with the MP and PNC to provide technical assistance to many additional cases.

In addition to the interdepartmental coordination and cooperation, the Guatemalan model provides for a procedural mechanism known as the "complementary prosecutor," or "Querellante Adhesivo." This role is sometimes also referred to as a "private prosecutor," or a "third party prosecutor." The complementary prosecutor may join the case at any time at all stages of the investigation and trial, but not after sentencing. He or she has the right to participate in and contribute to the investigation; request to see evidence in advance of the trial; and request a hearing before the investigative court on matters on which he disagrees with the prosecutor.

[83] http://cicig.org/uploads/documents/2012/COM-067-20120911-DOC02-EN.pdf.
[84] Article 3.1 (a) of the CICIG Agreement.
[85] Article 3.1 (h) of the CICIG Agreement.
[86] http://cicig.org/uploads/documents/convenios/mp-cicig.pdf.
[87] High Impact cases are understood as: Due to the form in which they were executed and the characteristics of the perpetrators, shock the population, put witnesses and evidence in danger and weaken the public's confidence in police and Public Prosecutor's Office authorities.
[88] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 24-25

The investigative judge must approve a party's request to become a complementary prosecutor prior to intervention the case. To prompt a criminal prosecution if the MP has not initiated a prosecution itself, "the would-be complementary prosecutor may file a complaint before a court, which remits the complaint to the MP, which should immediately investigate. The complementary prosecutor, or a person who unsuccessfully requested to intervene as a complementary prosecutor, can join the complaint filed by the MP but explain a different basis for the charge or state that charges should not be filed; bring to the court's attention defects in the charges that should be corrected; or object to the charges on the grounds that they omit a suspect or allegation and should be expanded…"[89] According to Article 3(b) in the Agreement that created the CICIG, it has the power to act as Complementary Prosecutor in criminal proceedings under its mandate, and has done so in several cases.[90]

CICIG relies entirely on the international donor/aid community for its budget (the Executive Branch provides office space and other installations needed for its functioning). In the lead up to CICIG's enactment, local and international NGO's lobbied donor governments and agencies to pledge several million dollars for the initial months of operation.

Northern Ireland

Northern Ireland, as part of the United Kingdom, has a multifaceted approach to police oversight. The relevant history and related mechanisms are profiled in the appendices, but most relevant for these purposes is the Police Ombudsman for Northern Ireland (OPONI).

OPONI was established by the Police Act of Northern Ireland in 1998, replacing the former Independent Commission for Police Complaints (ICPC). It started operating in 2000.[91] Critics of the early legislation forming OPONI stated that it was not sufficiently independent from existing investigatory structures. Subsequent lobbying resulted in the Police (Northern Ireland) Act 2000 and then the Police (Northern Ireland) Act 2003 in order to accomplish additional reforms.[92] Although called the Police "Ombudsman," OPONI could be more accurately described as a civilian body with responsibility for oversight of the Police Service of Northern Ireland (PSNI).[93] OPONI could be considered a civilian body due to its complete independence from any government institutions in Northern Ireland, including the Ombudsman for Northern Ireland.[94] Since its creation, OPONI yearly investigates thousands of cases of police abuse and produces just as many recommendations directed at police services; last year some OPONI produced some 2,000 recommendations.[95]

It is worth noting that at times during its existence the Police Ombudsman's office succumbed to political pressure over historical police abuse cases that occurred during the Time of Troubles in

[89] ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011." http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf

[90] At the time of writing, the CICIG was involved in 15 cases as a Complementary Prosecutor. Those cases can be found here: http://cicig.org/index.php?page=cases.

[91] Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland; Committee on the Administration of Justice, 2011, pg 14-15.

[92] Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland; Committee on the Administration of Justice, 2011, pg 14-16.

[93] Department of Justice of UK, a consultation paper on the Future Operation of the Office of the Police Ombudsman for Northern Ireland, p. 9, 2012

[94] OPONI, interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013

[95] Id.

Northern Ireland. Nonetheless, even during that period it remained effective in investigating recent instances of police abuse and earning praise from human rights organizations as the most effective police abuse investigative mechanism.[96] Much of OPONI's success lies in its staff as well as a very strong assertion of its powers as a policing body for the police.[97]

The Police Ombudsman's vision is excellence in the independent and impartial investigation of police complaints. Its mission is providing an effective, efficient and accountable Police Complaints system, which is independent, impartial and designed to secure the confidence of the public and police. [98]

OPONI investigates complaints against the Police Service of Northern Ireland, the Belfast Harbour Police, the Larne Harbour Police, the Belfast International Airport Police and Ministry of Defence Police in Northern Ireland and the Serious Organised Crime Agency when its staff operates in this jurisdiction. The Office is also responsible for the investigation of criminal allegations made against staff of the UK Borders Agency while exercising the powers of constable in Northern Ireland.

The Police Ombudsman investigates all complaints made about PSNI, from incivility to criminal conduct.[99] The Police Ombudsman has exclusive jurisdiction for cases where a death has resulted from the conduct of a police officer which precludes the involvement of the PSNI, including Historical Inquiries Team in such investigations.[100]

The investigative functions of the OPONI operate independently of the Government in order to respect its principle that Government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be.[101] However, police investigate non-serious, complaints that the chief constable referred to OPONI.[102] Although the chief constable appoints a police officer to investigate the complaints' allegations and OPONI can veto the choice of the officer and oversee the investigation.[103]

Investigations are conducted by Police Ombudsman Investigators, who have full police powers under the Police and Criminal Evidence Order (NI) 1989, when conducting criminal investigations. Policing bodies are statutorily required to share all information requested by OPONI, but OPONI has no such duty. Despite the statutory requirement, a MoU has also been drafted between OPONI and policing bodies in NI to facilitate the sharing of information necessary for OPONI to conduct investigations. Conduct investigations are covered by the relevant conduct and complaint regulations.[104]

[96] Committee for the Administration of Justice and Northern Ireland Human Rights Committee, interviews by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 2 and 3 December 2013
[97] OPONI, interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[98] Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, 2011
[99] Department of Justice of UK, a consultation paper on the Future Operation of the Office of the Police Ombudsman for Northern Ireland, pg. 9, 2012.
[100] RUC (Complaints etc) Regulations 2001.
[101] Department of Justice of UK, a consultation paper on the Future Operation of the Office of the Police Ombudsman for Northern Ireland, pg. 11, 2012.
[102] The Police Act of Northern Ireland 1998, Section 57 (1).
[103] Id., Section 57(3)(1).
[104] See Police Act of Northern Ireland of 1998.

During an investigation, it is current practice to conduct two sets of interviews – one criminal and one disciplinary in respect of the same issue.[105] If criminal elements are identified during the interview or at any point of the investigation, OPONI is under duty to refer the case to the Director of Public Prosecutions upon the completion of the investigation.[106]

Most officers voluntarily attend an interview, either as witness or suspect. OPONI lacks the power to require their attendance and in cases of refusal must seek the aid of relevant police authorities. However, this lack of power has not made OPONI ineffective as in practice, police officers almost always cooperate and their refusal to do so is often reproached by superior officers, and who also compel subordinating officers to cooperate with OPONI.[107]

Following an investigation, the Police Ombudsman submits a recommendation on further action to the chief constable of police where the alleged police perpetrator is stationed.[108] Recommendations are not publicized, although the fact that a recommendation was made is publicized.[109]

Although the Police Ombudsman conducts investigations of police misconduct, OPONI is excluded from the related disciplinary hearings unless the officer complained about is not a senior officer and he and the presiding officer agree.[110] If an investigative report indicates that a criminal offence may have been committed by a member of the police, a copy of the report will be sent to the Director of Public Prosecutions with a recommendation by the Ombudsman.[111]

The Police Ombudsman of Northern Ireland is appointed by Her Majesty the Queen, as a named person for a fixed term of seven years. The Police Ombudsman is accountable to the Northern Ireland Assembly, through the Minister for Justice. The status of the Office of the Police Ombudsman is that of a non-departmental public body (NDPB) administrated through the Department of Justice.[112] OPONI staff includes retired police officers and civilian lawyers.[113] Although OPONI realizes the benefits of having former police officers act as its investigators, it is slowly moving away from the practice to improve its independence. For example, a program to train investigators has been established and a group of trainee investigators from purely civilian backgrounds is soon to join OPONI's ranks.[114]

Ontario, Canada

Background

Prior to the establishment of the Special Investigations Unit (SIU) in Ontario, Canada, police services either investigated themselves or another police service was assigned to conduct the investigation. Over time, public concern grew about the integrity of the process in which police officers investigated other police officers, particularly in incidents of police shootings where a

[105] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police Act of Northern Ireland 1998, Investigations, p. 31, 2011.
[106] Policies and Procedures Relating to OPONI, Section 2.82.
[107] OPONI interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013.
[108] OPONI interviews by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013.
[109] Id.
[110] The RUC (Conduct etc) Regulations 2000.
[111] Policies and Procedures Relating to OPONI, Section 2.8
[112] About Us: Police Ombudsman for Northern Ireland. http://www.policeombudsman.org/modules/pages/about.cfm. 2013.
[113] Criminal Justice Inspection Northern Ireland, An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland September 2011, p.24
[114] OPONI, interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013

member of the public had been wounded or killed.[115]

Following the publication of the 1989 Task Force on Race Relations and Policing Report,[116] the Police Service Act was amended[117] and SIU was formed in 1990. SIU is described as an independent, arm's length agency of the Ontario provincial government (Ministry of the Attorney General of Ontario), led by a Director and composed of civilian investigators.[118]

A report looking at police cooperation with the SIU[119] made 25 recommendations to improve SIU effectiveness and address SIU and police cooperation. These recommendations included an increase in the SIU's funding and a legal framework to clearly set out the duties of police officers during SIU investigations. This new regulation (Ontario regulation 267/10)[120] first came into effect on January 1, 1999 and most recently was amended in 2011.[121]

Mandate

According to the SIU website, the "mandate of the SIU is to maintain confidence in Ontario's police services by assuring the public that police actions resulting in serious injury, sexual assault or death are subjected to rigorous, independent investigations. Incidents which fall within this mandate must be reported to the SIU by the police service involved." [122] Incidents may also be reported by the complainant or their families, members of the public, as well as media, coroners, and others.

Jurisdiction

The SIU investigates incidents that fall within its mandate across the whole of Ontario, and has "jurisdiction over all municipal, regional and provincial police officers. This represents 57 police services and approximately 28,000 officers." [123] SIU does not investigate police disciplinary issues or have jurisdiction to investigate the correctional services or other federal entities.[124]

Challenges

As mentioned above, police have a duty to cooperate with SIU investigations under Ontario Regulation 267/10. But in practice, the SIU has difficulty compelling cooperation if it is not provided voluntarily. SIU cannot lay a code of conduct breach charge against a police officer nor refer such charges to another disciplinary body. SIU must rely on the police services themselves to take this action.[125] When officers fail to cooperate, SIU can apply for a search warrant or could even charge an officer with obstruction of justice, though it has been reticent to do so.

Furthermore, under Ontario Regulation 267/10, SIU is not entitled to subject officers' notes during its investigations. However, police services continually try to expand the definition of "notes" to include not only the written account of the incident afterwards, but also radio communications, phone records, videos, etc.

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[115] Adapted from sections on SIU website, http://www.siu.on.ca/en/what_we_do.php, and from TSPC researcher interviews with SIU and MAG officials, February 12-14, 2014.
[116] April 1989, "Clare Lewis Report: The Task Force on Race Relations and Policing," http://www.siu.on.ca/pdfs/clare_lewis_report_1989.pdf.
[117] See Section 113 - http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm.
[118] Adapted from sections on SIU website, http://www.siu.on.ca/en/what_we_do.php, and from TSPC researcher interviews with SIU and MAG officials, February 12-14, 2014.
[119] May 1998, "Adams I: Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit", http://www.siu.on.ca/pdfs/the_adams_report_1998.pdf.
[120] Ontario Regulation 267/10 , http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100267_e.htm.
[121] Adapted from sections on SIU website, http://www.siu.on.ca/en/what_we_do.php, and from TSPC researcher interviews with SIU and MAG officials, February 12-14, 2014.
[122] http://www.siu.on.ca/en/what_we_do.php.
[123] See http://www.siu.on.ca/en/what_we_do.php. Also, Ontario's population is approx. 13.5 million, http://www.fin.gov.on.ca/en/economy/ecupdates/factsheet.html.
[124] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[125] TSPC Researcher meetings with SIU officials in Ontario, Canada, February 12-14, 2014.

Another challenge raised by the Justice Prosecutions department was the fact that a small group of defense attorneys, often supported by the Police Federation, handle most of the SIU related case load and, as a result, are very experienced, specialized, and skilled in defending police officers.[126]

Funding/Staffing

According to recent SIU annual reports, the average SIU budget is approximately $8 million Canadian Dollars (CAD), or roughly $7.5 million USD.[127]

Led by the Director who serves a 5 year term, the SIU consists of roughly 85 staff members. According to PSA section 113 (3), "A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators."[128] In practice nearly all SIU Directors have been former Crown Attorneys.

SIU headquarters staff consists of four investigative supervisors (three full-time and one acting supervisor position), two forensic identification supervisors and 14 investigators. 8 out of the 14 investigators have no previous policing backgrounds - their investigative experience comes from having worked in areas such as immigration and workplace health and safety. In addition, a total of 39 regional investigators and 10 forensic investigators are stationed across Ontario and deployed as-needed.[129] SIU is also supported by an Executive Officer, Legal Counsel, and administrative, operations, outreach, and communications staff.

The SIU has its own forensic lab. Previously, the SIU relied on police forensics. SIU also has a priority access agreement with the Ontario Center of Forensic Science (which is an Ontario Government facility, not a police facility) to process autopsies, blood, DNA, ballistics, and toxicology, among other things. Furthermore, SIU receives support from the Finance Ministry for video and photo analysis.[130]

Oversight/ Monitoring and Reporting

The SIU Director reports to the Ministry of the Attorney General (MAG). The MAG is not involved in operational matters with SIU, but administers the budget.[131] The MAG explained that it has the ability to shift funding between its agencies in the short term to meet surge demands, but has no role in investigations or operational decision making.[132] The MAG also manages the hiring process for the SIU Director. To date, only one SIU Director has served out a full five year term and no Director's term has ever been renewed.[133]

Other challenges were noted, including the potential for the MAG to influence SIU activities, and significant ongoing tensions with the police, often related to reporting delays.

Receiving Complaints and Conducting Investigations

The SIU is mandated to investigate any interaction involving police where there has been death, serious injury or allegations of sexual assault. According to section 3 of Ontario Regulation

[126] TSPC Researcher meetings with SIU and MAG officials and others in Ontario, Canada, February 12-14, 2014
[127] http://www.siu.on.ca/en/annual_reports.php.
[128] See Section 113 - http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm.
[129] See Investigators Creed: http://www.siu.on.ca/en/inv_creed.php.
[130] Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[131] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[132] TSPC Researcher meetings with SIU and MAG officials and others in Ontario, Canada, February 12-14, 2014. A former SIU official, however, suggested that MAG can in fact influence some SIU decisions, e.g. release of the SIU annual report.
[133] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.

267/10 [134] all Ontario police services are under a legal obligation to immediately notify the SIU of incidents of serious injury, allegations of sexual assault, or death involving their officers.[135]

The SIU uses the Osler definition of serious injury, which says:

"Serious injuries' shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious Injury "shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement."[136]

Not all police services have adopted the Osler definition, but even those police services that have adopted it sometimes employ different interpretations or standards in its application. This has led to reporting delays. [137] SIU officials argue that the police should approach such situations of judgment by erring on the side of communication, and take the approach that "when in doubt, call."[138] Police federation leaders argue that there are often grey lines in when to report and that SIU pressure to report can lead to friction with police services.[139]

After an incident has been reported to the SIU, the SIU responds to the scene. Ontario regulation 267/10 section 4 states that "The chief of police shall ensure that, pending the SIU taking charge of the scene of the incident, the police force secures the scene in a manner consistent with all standing orders, policies and usual practice of the police force for serious incidents."[140]

In practice in many cases, police services will continue to manage a scene while SIU conducts an onsite investigation and secures evidence.[141]

On scene, SIU is lead investigator, which is stated in Ontario regulation 267/10 section 5:
"The SIU shall be the lead investigator in the investigation of the incident and shall have priority over any police force in the investigation."[142]

SIU investigations[143] consist of a number of tasks, including:

- examining the scene and securing all physical evidence
- monitoring the medical condition of anyone who has been injured
- seeking out and securing the cooperation of witnesses
- interviewing police witnesses
- seizing police equipment for forensic examination
- consulting with the coroner if there has been a death
- notifying next of kin and keeping the family of the deceased or injured parties informed

[134] http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100267_e.htm.
[135] 267/10 section 3 reads: "A chief of police shall notify the SIU immediately of an incident involving one or more of his or her police officers that may reasonably be considered to fall within the investigative mandate of the SIU, as set out in subsection 113 (5) of the Act" (PSA).
[136] See http://www.siu.on.ca/en/investigate_what.php.
[137] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[138] TSPC Researcher meetings with SIU officials in Ontario, Canada, February 12-14, 2014.
[139] TSPC Researcher call with Toronto Police Federation President, February 18, 2014.
[140] See section 4, 267/10, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100267_e.htm
[141] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[142] See section 5, 267/10, http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100267_e.htm.
[143] See one page investigative process flow chart for further explanation: http://www.siu.on.ca/pdfs/inv_process.pdf.

Ontario regulation 267/10 also outlines the responsibilities and rights of the subject and witness officers in relation to an SIU investigation, including access to notes, right to counsel, and in-person interviews.

In the Wood v. Schaeffer case, [144] the Supreme Court of Canada held that officers do not have the right to counsel at the note taking stage, as this would present too much of a risk that notes would be vetted (or could be perceived to have been vetted) by counsel and become a justification of the actions under investigation, rather than the first memorialization of the events.

Once the SIU completes its investigation, the SIU Director must decide whether, based on the evidence, there are *reasonable grounds* to charge a police officer.[145] If the SIU Director charges an officer it is referred to the Justice Prosecutions department (Crown Attorney) of the Criminal Law Division at the Ministry of the Attorney General, which received all SIU cases and decides whether to prosecute the charges. The SIU, as an investigative agency, is not involved in the prosecution.[146]

In deciding whether to prosecute the charges, the Justice Prosecutions department must determine whether there is a *reasonable prospect of conviction*,[147] which is a higher test than reasonable grounds. If the case meets this test, the case goes to court, where the Justice Prosecutions department must *prove beyond a reasonable doubt* that a criminal offence occurred.[148]

The Justice Prosecutions department has obtained approximately a 50% conviction rate in SIU cases.[149]

Alternative Investigatory Practice - Russia

The Russian system has undergone several reforms in recent years. In response to recommendations by international organizations, a major reform of the prosecutorial system was undertaken in 2007 to ensure its independence and impartiality.[150] Prosecutorial authorities were to be reformed through the administrative separation of their major functions.[151] The Reform Act contained provisions to establish an Investigative Committee attached to the Prosecutor's Office within the existing prosecutorial system.[152]

However, in practice the Investigative Committee showed the need for a clearer separation of the functions of prosecutor's supervision and pretrial investigation powers.[153] NGOs have stated that the prosecutor's offices do not show initiative in starting investigations on torture cases. The

[144] Wood v. Schaeffer, Supreme Court of Canada, 2013 SCC 71, 19 December 2013, http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13388/index.do.
[145] See page 7, "Reasonable grounds are a set of facts and circumstances that would satisfy an ordinarily cautious and prudent person, and which are more than mere suspicion. Information used to establish reasonable grounds should be specific, credible and be received from a reliable source." http://www.cic.gc.ca/english/resources/manuals/enf/enf02-eng.pdf.
[146] TSPC Researcher meetings with SIU and MAG officials in Ontario, Canada, February 12-14, 2014.
[147] See page 1, http://www.attorneygeneral.jus.gov.on.ca/english/crim/cpm/2005/ChargeScreening.pdf.
[148] TSPC Researcher meetings with SIU officials in Ontario, Canada, February 12-14, 2014.
[149] TSPC Researcher meetings with Justice Prosecution department in Ontario, Canada, February 12-14, 2014.
[150] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf, para. 249.
[151] Federal Act No. 87-FZ of 5 July 2007 amending the Code of Criminal Procedure and the Federal Act on the Prosecutor's Office provided for the prosecutor authorities to be reformed through the administrative separation of their functions of supervising respect for lawfulness in the conduct of initial inquiries and pretrial investigations and the hearing of criminal cases in court, on the one hand, and organizing and conducting investigative activities in exercise of the procedural powers granted to them to implement such activities, on the other.
[152] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf, para. 250.
[153] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf, para. 251.

Shadow Report to the CAT committee noted that the prosecutor's office rarely independently initiated the examinations and investigations, even if they possess the data that the torture had been administered and when they do act, it is without urgency or thoroughness.[154] In practice, NGOs noted that in cases where an alleged perpetrator complains of torture or abuse, the prosecutor favors criminal prosecution of the alleged perpetrator over investigating allegations of torture and other violations.[155]

According to a Report by the Russian Federation to the CAT committee, the Russian Government established the Investigative Committee as a separate, independent body outside of the existing prosecutorial system, in an attempt to deal with the perceived and practical issues of independence of the prosecutor's office in investigating police abuse cases. The stated intention behind the separation was to create the conditions necessary for the effective exercise of prosecutorial powers to supervise pretrial investigations, strengthen cooperation between investigative bodies and prosecutorial authorities and to enhance the objectivity of investigations.[156]

Legislative and practical steps were taken to separate the functions of criminal prosecution and investigation. Until 2011, the Prosecutor's Office was responsible both for investigating suspected serious crimes and prosecuting these in the courts (in 2007 the newly created Investigative Committee carried out the investigation function, however, it remained a sub-division within the Prosecutor's Office). In January 2011, the Investigative Committee was instituted as a stand-alone agency, accountable directly to the President, on a par with the Prosecutor's Office.[157]

The Investigative Committee exercises its powers independently of central and local government bodies and civil society associations, is required to be in compliance with Russian legislation. In addition, exerting pressure on the Investigative Committee and its staff to influence or impede its work is a punishable offense.[158]

In April 2012, special departments were established within the Investigative Committee for the specific purpose of investigating crimes allegedly committed by police and other law enforcement officials. This, according to the Investigative Committee's press statement, was in response to an initiative by Russian human rights NGOs, and specifically "Public Verdict,"[159] which suggested the creation of such specialized units within the Investigative Committee to increase the impartiality and effectiveness of criminal investigations into allegations of torture and other ill-treatment.

[154] Russian NGO Shadow Report on the Observance of CAT by the Russian Federation for the period from 2001 to 2005, Moscow, May 2006, online: http://www2.ohchr.org/english/bodies/cat/docs/ngos/joint-russian-report-new.pdf, para. 7.
[155] Russian NGO Shadow Report on the Observance of CAT by the Russian Federation for the period from 2001 to 2005, Moscow, May 2006, online: http://www2.ohchr.org/english/bodies/cat/docs/ngos/joint-russian-report-new.pdf, para. 8.
[156] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf, para. 251.
[157] Alternative report of Amnesty International to CAT review of 5th periodical of the Russian Federation, October 2012, pg. 5.
[158] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf para. 254.
[159] The foundation "Public Verdict" is a Russian human rights organization, which for more than nine years has helped citizens, victims of human rights violations by law enforcement agencies, including most dangerous human rights violations such as torture by the police. The Foundation provides legal, informational and emotional support to victims and their relatives.

In 2010 – 2011, Public Verdict conducted a study on "Possibilities and limitations of investigation of malfeasance committed by law enforcement officers." That study, along with years of specialized experience in victim's assistance, allowed Public Verdict to critically observe "the legal and organizational aspects influencing the quality of review and investigation of complaints against law enforcement agencies." Public Verdict made a set of detailed recommendations, which describe a proposal for ensuring the independence of this type of investigatory system. While not the current state of affairs in Russia, the comparison may be relevant to the Kyrgyz System and are thus described in the attached Appendix.

Best Practice Models on Safeguards

In the context of this report, the term "safeguards" refers to the legal and practical measures that can be taken in order to prevent and eradicate torture and abuse of detainees. Safeguards could be everything from the legal "right to an attorney" to minimum levels of funding for investigations. In the compilation of this research, a variety of safeguards were considered for study. Based on extensive conversations with civil society, along with research into the existing practical and legal framework, this report will focus primarily on the safeguards associated with the provision and notification of rights of persons detained by the state. This focus should not be interpreted to mean that these are the only areas where reform would be beneficial, even necessary.

One area that this report does not cover extensively, but highlights as an important related concern in the field of anti-torture work concerns the effectiveness and independence of both medical examinations and forensic investigations. This issue is linked to both safeguards and investigations. The preliminary report on this topic addressed some of the issues related to the examination and investigations, however further research made it clear that these topics contained so many questions and issues to be addressed that they warranted their own separate inquiry. While these topics would not be best served by a mention here, they are integral to addressing the issues facing the Kyrgyz Republic related to the prevention and effective investigation of allegations of torture and abuse.

Complaints Procedures

Directly related to the question of the investigation of allegations of abuse is the complaint procedure for filing such allegations. Current the law of the Kyrgyz Republic does specify that a suspect has the right to file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor.[160] These complaints can be filed by a complainant, defense council, legal guardian or designated representative. A decision by a judge as to the lawfulness of the actions must be made within 5 days.[161] However, there are few details about

[160] Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings Defending their rights and interests or the rights and interests of people they represent. Article 40(12) Rights and Responsibilities of the Suspect (2013); 40 (12) to lodge complaints against actions of investigative bodies, actions and decisions of the investigator, prosecutor. Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings defending their rights and interests or the rights and interests of people they represent. Article 56 (10) Rights and Responsibilities of a Civil Defendant (2013) 10) to serve pleadings, make complaints against actions of the investigator, actions and decisions of the investigator, prosecutor, court. Actual Text 40(12) приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора. Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings defending their rights and interests or the rights and interests of people they represent. Article 56(10) Rights and Responsibilities of a Civil Defendant (2013); 10) выступать в прениях сторон, приносить жалобы на действия работника органа дознания, действия и решения следователя, прокурора, суда.

[161] Kyrgyz Criminal Procedural Code, Part V. Motions and Petitions, Section 15 Appeal from Actions and Decisions of State Bodies and Officials Administering Proceedings on a Criminal Case, Article 131(3) Complaints Against Actions or Decisions of an Investigator or Procurator. (3) 3) A judge shall check the legality and validity of the action (or inaction) and decisions of the investigator, prosecutor, not later than five days from the date of receipt of the appeal at the hearing with the participation of the applicant and his counsel , legal representative or representative, if

how this right can be not only ensured, but made meaningful. It is further unclear how this right is operationalized as it relates to complaints against arresting authorities while a suspect is in custody.

While detainees do have the right to complain, this right is not perceived as effective due to the practical realities. When the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) visited the Kyrgyz Republic, it remarked on this situation. In its follow up report, referring to complaints procedures, the SPT stated "these mechanisms (including complaints to the Office of the Prosecutor-General or to the courts, as well as complaints made within the penitentiary system concerning conditions of detention, or appeals against the imposition of disciplinary measures) are largely perceived as ineffective, non-independent and futile since they fail to provide complainants with substantive hearings or effective remedies. The fear of reprisals further prevents the use of these mechanisms."[162]

As described above, some of the investigation systems investigated within this report have mandatory reporting and investigation requirements which bind their investigators and investigatory mechanisms to look into certain types of allegations or observations of potential crimes. The jurisdictions below detail additional features included in systems for multi-faceted complaints systems.

The United Kingdom

The United Kingdom has multiple different interrelated systems available to take complaints as well as to investigate allegations of abuse. It ratified OPCAT in December 2003 and designated its NPM in March 2009. The UK government decided to designate multiple, existing bodies as the NPM rather than create a new, single body NPM. The decision behind such a unique NPM system came to be due to the fact that many types of detention facilities in the UK were already subject to monitoring by independent bodies.[163] Initially, there were 18 bodies designated in the NPM in the UK, but the number is soon to increase to 20.[164]

A unique feature of the UK NPM is the use of unpaid volunteers from the local community for monitoring of different places of detention. All monitors undergo a vetting process.[165] There are four NPM members who monitor detention solely through the use of lay monitors. While others use a combination of lay monitors and paid inspectors.

In line with OPCAT requirements for a system of regular visits to places of deprivation of liberty, lay monitors visit such places from once a week to once a month. To encourage visits during unsociable hours, some facilities set guideline numbers of custody visits on weekends,

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they are involved in a criminal case , other persons whose interests are directly affected by the appealed action (or inaction) or the decision , as well as with the participation of the prosecutor. Absence of the persons, timely informed of the time of the complaint, and who do not insist on its consideration with their participation, shall be an obstacle for the consideration of the complaint by the court. Actual Text: Судья проверяет законность и обоснованность действий (бездействия) и решений следователя, прокурора не позднее чем через пять суток со дня поступления жалобы в судебном заседании с участием заявителя и его защитника, законного представителя или представителя, если они участвуют в уголовном деле, иных лиц, чьи интересы непосредственно затрагиваются обжалуемым действием (бездействием) или решением, а также с участием прокурора. Неявка лиц, своевременно извещенных о времени рассмотрения жалобы и не настаивающих на ее рассмотрении с их участием, не является препятствием для рассмотрения жалобы судом.

[162] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzsta, 19-28 September 2013, Para 28.

[163] National Preventive Mechanism, Monitoring places of detention, third annual report of the UK NPM2011-2012, February 2012

[164] Her Majesty's Inspectorate of Prisons, interview with TSPC researchers Bakhtiyor Avezdjanov and Sarah King, December 6, 2013

[165] Id.

late nights and early mornings. Lay persons have a statutory right to visit certain facilities, while requiring permission to access other facilities. They can accept complaints during their monitoring.

Lay monitors in the UK NPM make recommendations as a result of their visits to places of detention. In some UK jurisdictions, England and Wales, action plans are prepared on behalf of the government in response to recommendations made by independent lay monitors. In Northern Ireland, recommendations are directed to the Justice Minister. Moreover, in Northern Ireland, the Prison Service must publish responses to each recommendation.

To ensure independence, lay monitors began a practice of self-introduction and visits without custodial staff, which also encouraged detainees to speak with the monitors.[166] Another tool used in the UK to foster independence of monitors is term limits. In Northern Ireland, independent custody visitors serve six year terms.

Lay monitors are not an all-encompassing solution to an effective monitoring mechanism. There are some limitations. For example, OPCAT requires NPM experts to have required capabilities and professional knowledge. Moreover, the SPT suggested that NPMs should include staff with relevant legal and health care expertise. Lay monitors are selected for their qualities rather than their professional backgrounds and thus may fail to satisfy OPCAT requirements. Nonetheless, such monitors provide diversity, independence, and cost-effectiveness that is hard to achieve with professional monitors.

Georgia

On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units (HRU) to be located within the Ministry of the Interior. [167] The Human Rights Unit of the Ministry of Internal Affairs is also actively involved in the process of internal monitoring.[168] MoI HRU systematically carries out the internal monitoring of TDIs and monitors the health condition of persons placed there. For this purpose, a monitoring group is created within the main unit, which consists of four persons and carries out unexpected visits to all TDIs throughout Georgia.[169]

The MoI HRU also ensures the timely and effective handling of the complaints in order to disclose any acts of ill-treatment as well as prevent its reoccurrence.[170] In case a detainee has any kind of complaint against the detaining officer or employee of TDI, the monitoring unit immediately sends the complaint, and any appended document, to the chief monitoring body of Ministry of Internal Affairs – General Inspection, which is tasked to identify human rights violations and other illegal actions committed by the MoI staff, as well as to handle individual complaints of the citizens. General Inspection investigates offences committed by the staff of the MoI based on the disciplinary regulation of MoI and Police Ethics Code. All complaints transferred to General Inspection by the monitoring unit are sent to the Prosecutors' Office of Georgia, which initiates an investigation.

[166] In Northern Ireland, the proportion of detainees who refused to speak to custody visitors dropped from 18% to 7%, National Preventive Mechanism, Monitoring places of detention, third annual report of the UK NPM2011-2012, p. 37, February 2012

[167] Id. at p. 33.

[168] The division was created by Decree N10 of the Minister of Internal Affairs of January 16, 2001;

[169] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill-treatment in Georgia, released by the Ministry of Justice of Georgia, p 2-3, 2012.

[170] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill-treatment in Georgia, released by the Ministry of Justice of Georgia, p.4, 2012.

HRUs and General Inspections of the law enforcement agencies successfully cooperate with each other. For example, on a daily basis the Human Rights Protection Unit of the Chief Prosecutor's Office of the Ministry of Justice receives information from the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia on data concerning on all facts of bodily injuries of prisoners.[171]

Additionally, the Ministry of Corrections and Legal Assistance initiated a practice, now seen in multiple countries, where special complaints envelopes are disseminated to the prisoners.[172] The complaint envelopes clearly explain the rights of the persons deprived of liberty apart from being used merely as envelopes. The prohibition of torture, inhuman, severe or degrading treatment is on the top of the list of rights. Special boxes are installed for depositing the complaint envelopes. The operation of these boxes is monitored by social service, internal monitoring bodies of Ministry of Corrections and Legal Assistance and Public Defender. The complaint envelopes are numbered and the correspondence is registered in special registration journal. 40,000 envelopes were distributed within the first half of 2011.[173]

Alternative Complaints Reporting Practice - Bulgaria

Bulgarian legislation contains a number of provisions concerning action to be taken in respect of cases of ill-treatment. Notable among these provisions are the several sections which discuss mandatory reporting. Section 205 (2) of the Criminal Code of Procedure (CPC), which mandates that public officials immediately inform the prosecutor's office of any facts related to a criminal offence which may have come to their knowledge. The Code of Ethics of police staff and Instruction No. Iz-1711 of 15 September 2009 contain specific obligations for the police to report to their superiors acts of violence or inhuman or degrading treatment. Ministry of Interior MoI Instruction Article 10 of Guideline No. Iz-2451 also states that a member of the police force who has become witness to the acts under Article 9, shall intervene to prevent or put an end to any such act and shall report it to his/her superior.[174] Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities.

Definition of Detention

Presently, the legislation of the Kyrgyz Republic does not have a sufficiently precise definition surrounding for the concept of detention. The vagueness of the current term, coupled with the somewhat confusing and contradictory related terms, has led to gaps in the law which have had the practical effect of denying persons of procedural protection during encounters with law enforcement officials or other state officials.

[171] Implementation Report of 2008-2009 Action Plan against Torture, Inhuman, Cruel and Degrading Treatment or Punishment in Georgia (Report period June 12 2008 –December 31 2009) pg 6.

[172] See also: The United Kingdom- Her Majesty's Prison Order #2510 Prisoner's Request and Complaints Procedures, Feb. 21, 2002. Northern Ireland- official government page explaining prison complaint mechanisms, including info on complaints boxes: http://www.nidirect.gov.uk/make-a-complaint-to-prison-service; India- complaint boxes are installed in only certain federal regions. By way of example, the Times of India details how 1,000 complaints boxes were installed in Mumbai. http://articles.timesofindia.indiatimes.com/2012-11-26/mumbai/35366412_1_complaint-boxes-police-stations-satyapal-singh.

[173] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill-treatment in Georgia, released by the Ministry of Justice of Georgia in 2012.

[174] Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention 3 December 2010, pg. 4-5 (CAT/C/BGR/4-5).

Article 24(3) of the Constitution of the Kyrgyz Republic states that "no one may be arrested (арестован), kept in custody (содержаться под стражей) or be deprived of freedom (лишенным свободы) except by court decision and solely on the basis of and in accordance with the norms established by the law."[175] Currently in the Kyrgyz Republic, "Detention," or "задержание" is defined as a "coercive procedural action, which essentially consists in imprisoning a suspected person for a short period (up to forty-eight hours) pending a judicial warrant.[176]" Article 110 states that "holding in custody" or "заключение под стражу" is a preventive measure which may be ordered based on a court order, during the course of legal proceedings.[177] Article 49 of the Criminal Code addresses the concept of Deprivation of Liberty or "лишение свободы."[178] It states that Deprivation of Liberty is defined as the period after a conviction by a court of law, when a person is isolated from society and sent to a penal colony, penal settlement, or prison.[179]

The term Factual Detention is referenced in the CPC in article 44(3) and 44(4), however is it not defined. Article 44(3) describes a moment that the lawyer first becomes involved in a case as the moment of first interrogation or the moment of factual detention (however it does not state if these are the same moment). Article 44(4) goes on to say that if a lawyer is not available within 24 hours from the moment or factual detention or moment of putting into custody than an investigator can take certain steps (again it does not clarify what the moment of factual detention is).

As factual detention is referenced but not defined, and we know that factual detention can be equated with the moment that a lawyer is first mandated in a case, it becomes necessary to analyze the CPC to see if any other articles describe the moment at which a lawyer's presence is first required.

In order to do this, one should look to Articles 40 and 95(1) of the CPC. In Article 40(4) we see that a suspect has the right to an attorney from the moment of factual arrival to the agency of preliminary investigation ("с момента фактического доставления его в орган дознания.") or moment of first interrogation.[180]Article 95(1) of the Kyrgyz Criminal Procedural Code describes the "moment of factual delivery" or "с момента фактического доставления."[181] It does not

[175] Constitution of the Kyrgyz Republic, Article 24.
[176] Kyrgyz Criminal Procedural Code, Section 1 General Provisions, Chapter 1 Major Provisions, Article 5 Major Definitions Used in the Code, Major Terms, Detention (2013).
[177] Kyrgyz Criminal Procedural Code, Section 4 Procedural Measures of Restraint, Chapter 12 Preventive Measures, Article 110 (1) Detention (2013). Article 110. Placement in custody (1) Placement in custody as a preventive measure applied by a court order against the accused in the commission of the crimes punishable by law by imprisonment for a term exceeding three years if it is impossible to apply a more lenient measure. Actual text: Статья 110. Заключение под стражу (1) Заключение под стражу в качестве меры пресечения применяется по судебному решению в отношении обвиняемого в совершении преступлений, за которые уголовным законом предусмотрено наказание в виде лишения свободы на срок свыше трех лет при невозможности применения иной более мягкой меры пресечения.
[178] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013).
[179] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013). Article 49. Deprivation of liberty
(1) Deprivation of liberty in forced isolation from society of a convict by sending him/her to a penal colony or by placement in a correctional colony of general, intensive, strict, special regime or in jail. Actual Text: Статья 49. Лишение свободы
(1) Лишение свободы заключается в принудительной изоляции осужденного от общества путем направления его в колонию-поселение или помещения в исправительную колонию общего, усиленного, строгого, особого режима либо в тюрьму.
[180] Kyrgyz Criminal Procedural Code, Part II Court, Parties and Other Participants of Criminal Proceedings Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or Rights of Persons they Represent, Article 40(1) Rights and Responsibilities of the Suspect (2013).
[181] Kyrgyz Criminal Procedural Code, Section 4 Procedural Measures of Restraint, Chapter 11 Detention of the Suspect, Article 95. Procedure for Detaining a Person Suspected in Committing a Crime. The procedures of detention of a person suspected of committing a crime (1) The detention of a person suspected of committing a crime shall be completed no later than three hours after the moment of factual detention. The

specify delivery to where, but it notes that from this moment, law enforcement has three hours in which to create a transcript of detention proceedings or "Протокол о задержании."

The discussion below regarding Notice and Applicability of Procedural Safeguards, will explore the question of legal rights of detainees in greater detail, however it is necessary to first determine the moment that any of these rights are guaranteed. Article 40 Rights and Responsibilities of the Suspect and Article 44 Defense Attorney, describe the moment at which a detained person should receive council. As noted, Article 40 states that Counsel should be available from the moment of arrival to the agency of preliminary investigation or "с момента фактического доставления его в орган дознания."[182] However, Article 44 states that the Defense attorney shall start his participation in the case from the moment of the first interrogation of suspect or witness or the "factual detention of the suspect," the "фактического задержания подозреваемого." This could be interpreted to mean that "factual detention" or "фактического задержания," as it is currently written into the code, is intended to be defined as the moment that the detained person arrives at the detention facility "с момента фактического доставления его в орган дознания," or the moment at which his or her official transcript is created in the facility "Протокол о задержании."

While it is not clear or explicitly defined it is possible to extrapolate a current definition for factual detention based on the time at which a lawyer appears to be guaranteed. When read in combination with Article 95(1), the most likely interpretation is that a person is entitled to a lawyer from the moment of first interrogation, or the moment of factual detention, which will occur at the creation of the protocol of detention, within three hours of delivery to the place of detention or interrogation.

Bulgaria

Detention legally occurs at the factual instance when someone is deprived of his or her freedom of movement,[183] at which point, rights must be read by the detaining officers to the detained person.

While there are some issues in Bulgaria ensuring that detainees are immediately informed of the reason for detention and their rights as is required by law, the Government has taken steps to address the issue.[184] One simple procedural step that they have taken involves reporting and registration requirements. To ensure that the factual moment of detention is reported, the

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detention report shall state the grounds and motives , the time and place of detention (indicating hours and minutes) , personal search results . The report shall be read to the suspect in the presence of counsel , while his rights under Article 40 of this Code are explained. The detention report must be signed by report's author, the detained and his counsel. The investigator must notify the prosecutor about the detention within twelve hours from the moment the detention report is written Actual Text: Статья 95..Порядок задержания лица, подозреваемого в совершении преступления (1) Протокол о задержании лица, подозреваемого в совершении преступления, составляется не позднее трех часов с момента фактического доставления задержанного. В протоколе о задержании указываются основания и мотивы, место и время задержания (с указанием часа и минут), результаты личного обыска. Протокол объявляется подозреваемому в присутствии защитника, при этом ему разъясняются права, предусмотренные статьей 40 настоящего Кодекса. Протокол задержания подписывается лицом, его составившим, задержанным и его защитником. О произведенном задержании следователь обязан письменно сообщить прокурору в течение двенадцати часов с момента составления протокола задержания.

[182] Kyrgyz Criminal Procedural Code, Part II Court, Parties and Other Participants of Criminal Proceedings Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or Rights of Persons they Represent, Article 40(1) Rights and Responsibilities of the Suspect (2013).

[183] Bulgarian Ministry of Interior Act, Article 64. Instruction № Iz-1711, Regulating the order and equipment of premises accommodating detainees in the structures of the Ministry of the Interior Article 4, September 2009 "'Detainees' are defined as those who are deprived of the right to freedom of movement under the terms and conditions of MIA."

[184] Open Society Institute Sofia, Independent Custody Visiting at Police Detention Facilities 2010-2011 National Report, http://osi.bg/cyeds/downloads/Grajd_nabljudenie_policia_ENG.pdf.

detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station.[185]

United States

As elaborated further below, the American Doctrine on detention and procedural safeguards stems from the Supreme Court case in *Miranda v. Arizona*.[186] Miranda was actually one Supreme Court decision that had consolidated and addressed four different cases, all addressing the issue of admissibility of evidence obtained during custodial interrogations.[187] In that case, the court refers to the moment of "custodial interrogation," as the moment in which the Miranda Warnings (notice of procedural rights) must be read to the detained person.[188] In *Miranda*, the Court defined the phrase "custodial interrogation," to mean:

> "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[189]

In the years since the original case, the Court has elaborated on what exactly constitutes "custody."[190] While it is fairly clear that any time a person is placed under arrest, he or she is in custody, courts have had to clarify how far custody extends and at what point custody in fact begins. The definition has been narrowed in recent years, including the 2010 case, *Maryland v. Shatzer*, which found that a temporary and relatively nonthreatening detention (for example a traffic stop), does not constitute custody.[191] To determine whether a person is in custody for Miranda warning purposes, a judge would consider the totality of the circumstances of the actual and perceived limitations placed on a person's freedom of moment.

<u>Notice and Applicability of Procedural Safeguards</u>

The Constitution of the Kyrgyz Republic states that "everyone shall have the right to freedom and personal immunity" and that "no one may be arrested, kept in custody or be deprived of freedom except by court decision and solely on the basis of and in accordance with the procedures established by the law."[192] The Constitution also enshrines the right of all persons to be presumed innocent until proven guilty, and that all doubts should be resolved in favor of the accused.[193]

The Constitution goes on to state that "Any detained person shall be informed urgently of the grounds for his/her detention, have rights explained and ensured, including the right of medical inspection and assistance from the doctor."

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[185] TSPC Interview with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013
[186] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[187] *Miranda v. Arizona* was consolidated with *Vignera v. New York*, on certiorari to the Court of Appeals of New York, and *Westover v. United States*, on certiorari to the United States Court of Appeals for the Ninth Circuit, both argued from February 28 to March 1, 1966, as well as *California v. Stewart*, on certiorari to the Supreme Court of California, argued from February 28 to March 2, 1966.
[188] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[189] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[190] US Courts have similarly debated the meaning of "seizure" for purposes of the 4th Amendment, which forbids unreasonable search and seizure. This is a separate consideration than the definition of custody for purposes of a Miranda Warning, but the definitions may have overlap. While the definition for seizure has been refined, generally, courts largely referred back to the definition from *Michigan v. Chesternut*, 486 U.S. 567 (1988), where courts found that a person was "seized", when a reasonable person did not feel "free to leave" an encounter with the police.
[191] *Maryland v. Shatzer* 130 S. Ct. 1213 (2010).
[192] Constitution of the Kyrgyz Republic, Article 31 (2010).
[193] Constitution of the Kyrgyz Republic, Article 26 (2010).

Regarding the right to legal assistance, English Language translations of Article 24(5) of the Constitution of the Kyrgyz Republic state that from "the moment of actual detention a person should be kept safe, such person shall be granted an opportunity to protect himself/herself personally, enjoy qualified legal aid from a lawyer as well as have an attorney."[194] The actual text of the Constitution refers to this moment as "фактического лишения свободы."[195]

As described in the report above, the term "лишение свободы," means the moment of deprivation of liberty; this term is currently in the Kyrgyz Criminal Code in Article 49.[196] This article refers deprivation of liberty as a post-sentencing period where a person is convicted and sent to a penal colony, a penal settlement or a jail.[197] Under this interpretation, the Constitution could be said to effectively mean that the right to legal aid would not ensue until after the first instance legal proceedings had finished. It would seem that this interpretation would be counter to any intention the drafters would have had.

Importantly, the moment referenced in the Constitution, adds the word "factual" or "фактического" to the earlier referenced "custody" or "deprivation of liberty." This addition does make it possible to suggest that drafters inserted "фактического" with the specific intention of defining the "moment," as the moment of "factual detention" (as opposed to the moment of factual deprivation of liberty). While there are some complications with the current interpretation of the term factual detention in the CPC, this report will refer to the moment of factual detention, as the moment at which a person's freedom of movement is somehow limited by state officials. Thus guaranteeing that at a minimum the right to an attorney should attach from the moment at which a person's freedom of movement was in fact limited, or the moment of factual detention.

In practice, this would mean that from the moment a person was apprehended by an authority, or the moment at which the person no longer felt free to leave the presence of the authority, he or she would have the right to representation by an attorney. In order to make this right have any meaning, the right of the detained person to remain silent must also attach from the factual moment of detention.

This must all be read and considered jointly with existing procedural guarantees contained within the Criminal Code and the Criminal Procedural Codes, as referenced above. While this section will not redefine detention, as that was covered above, it is important to note that there is no clear, legally significant definition for the period between when a person is "apprehended" or encounters the police and the moment at which they factually enter the detention or interrogation facility. Further, as detailed in CPC Article 95(1) officials have three hours, during which there appear to be no legal protections, to create the Protocol on the Detention of a suspect.

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[194] English Language Translation of Constitution of the Kyrgyz Republic, Section II Human Rights and Freedoms, Chapter II Human Rights and Freedoms, Article 24(5)(2010).Translation can be found at World Intellectual Property Organization http://www.wipo.int/wipolex/en/text.jsp?file_id=254747 Accessed on August 2013 Unofficial translation from Russian was done by the EU-UNDP Project on Support to the Constitutional and Parliamentary Reforms and OSCE/ODIHR.

[195] Constitution of the Kyrgyz Republic, Section II Human Rights and Freedoms, Chapter II Human Rights and Freedoms, Article 24(5)(2010). Official Version located on the Website for the Government of the Kyrgyz Republic. http://www.gov.kg/?page_id=263. Accessed on August 2013.

[196] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty Iz-1711 of 15 September .

[197] See id.

As stated, Article 40 in the CPC notes that right to an attorney begins from the moment of interrogation and that during an arrest the right attaches from the moment of actual arrival at the detention facility. Article 40 also generally lists all other "rights and responsibilities of suspects."[198] Part 1 specifies several rights relevant to the safeguards against torture. Most notably a suspect has the right to know what he is suspected of, to have a copy of his rights, to refuse to make statement and to have counsel from the moment of first interrogation, and in case of detention – from the moment of actual arrival to the agency of preliminary investigation.[199]

Article 39 of the CPC defines suspect as person against whom a criminal case was initiated, in respect to which, the detention is applied on suspicion of committing a crime, before any preventive measure is taken. A person ceases to be a suspect from the moment when the investigative body renders a decision to dismiss a criminal case or involves him as accused person.[200]

While the law dictates that confessions alone shall not be the basis for a conviction, and the burden of proof rests on the accuser, issues with the implementation of this law exists.[201] In its 2012 report, which was recently made public, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) noted that while this law exists, it was informed that in practice there is an overreliance on confessions or evidence obtained from confessions as the sole means for conviction.[202] Further, its report went on to emphasis that this practice is fostered by the use of the quota system to solve crimes, along with the technically insufficient equipment relied upon by law enforcement.[203]

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[198] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 40 Rights and Responsibilities of the Suspect (1) generally and (1)(4) (2013). Article 40(1) includes the rights to "1)know what he is suspected of; 2)get a copy of resolution on institution of criminal proceedings against him or a copy of the record of detention; 3)get a copy of the list of his rights; 4) have a counsel from the moment of the first interrogation, and in case of detention – from the moment of actual arrival to the agency of preliminary investigation; 5) make statements in concern of the crime he is suspected of; refuse to make statements;6) make statements in his native language or the language he speaks; 7)use services of an interpreter; 8)introduce evidence; 9) present motions and challenges; 10) study records of the investigational proceedings he was involved in and comment on such records, such comments shall be included into the official records; 11) participate in investigational proceedings taken upon his motions or motions of his counsel or legal representative with the consent of the investigator; 12) file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor." Actual Text: Статья 40. Права и обязанности подозреваемого (1) Подозреваемый имеет право: 1) знать, в чем он подозревается; 2) получить копии постановления о возбуждении против него уголовного дела, протокола задержания; 3) получить письменное разъяснение его прав; 4) иметь защитника с момента первого допроса, а при задержании - с момента фактического доставления его в орган дознания; 5) давать показания или отказаться от дачи показания; 6) давать показания на родном языке или языке, которым владеет; 7) пользоваться услугами переводчика; 8) представлять доказательства; 9) заявлять ходатайства и отводы; 10) знакомиться с протоколами следственных действий, проведенных с его участием, и подавать замечания, которые вносятся в протокол; 11) участвовать с разрешения следователя в следственных действиях, проводимых по его ходатайству или ходатайству защитника либо законного представителя; 12) приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора.

[199] Kyrgyz Criminal Procedural Code, Part II Court, Parties and Other Participants of Criminal Proceedings Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or Rights of Persons they Represent, Article 40(1) Rights and Responsibilities of the Suspect (2013).

[200] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 39 (1) and (4) Suspect (2013). Article 39. Suspect: (1) A suspect is a person : 1) against whom a criminal case is initiated, and 2) against whom detention or preventive measures on suspicion of committing a crime are used, Article 39 (4) (4) A person is relived of the label of suspect from the moment of the investigative body orders the termination of the investigation of the criminal case and accusing him/her of the crime. Actual Text: Статья 39. Подозреваемый (1) Подозреваемым является лицо: 1) в отношении которого возбуждено уголовное дело; 2) в отношении которого по подозрению в совершении преступления применено задержание до избрания меры пресечения; Статья 39(4) (4) Лицо перестает пребывать в положении подозреваемого с момента вынесения органом следствия постановления о прекращении уголовного дела или привлечении его в качестве обвиняемого.

[201] Constitution of the Kyrgyz Republic, Article 26 (2010).

[202] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 21

[203] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 21para 22

The existing gap created because of the vague or missing definitions, means that a person whose freedom of movement is limited by state officials maybe not have procedural safeguards (such as the right to an attorney or right to silence) until they have been interacting with the state for an extended period of time.

In addition to the confusion regarding the moment and manner, which these safeguards must be enforced, there are additional difficulties with enforcement of the rights themselves. The SPT noted widespread complaints that detainees were not immediately notified of their rights,[204] that their family members were not notified of the detention at the outset,[205] and that inadequate record keeping leads to a difficulty in determining whether or not procedural safeguards (specifically time limits) were adhered to.[206] The systemic failure of record keeping, led the SPT to specifically recommend:

> *"The SPT recommends that all persons under the control of the relevant law enforcement bodies are immediately registered and that registers are scrupulously maintained with the following information: (1) exact date and time of apprehension; (2) exact time of arrival at the facility; (3) reasons for the arrest; (4) authority ordering the arrest; (5) identity of the arresting officer/s; (6) date, time and reasons for transfer/s or release; (7) precise information about where the person was held during the whole period of detention (e.g. cell number); (8) date, time and identity of the person notified of the detention, including the signature of the officer who proceeded to this notification; (9) date and time of a family visit; (10) date and time of request and/or meeting with a lawyer; (11) date and time of request and/or visit of a health professional; and (12) date and time of the detained person's first appearance before a judicial or other authority . Police and custodial officers should be properly trained in the maintenance of registers, and should enter the information upon arrival of the detainee. Registries should be regularly inspected by prosecutors and by internal oversight bodies of the police and the penitentiary system. Disciplinary sanctions should be provided for breaches of keeping complete and timely registers"*[207]

Bulgaria

As mentioned above, in Bulgaria, the police have a duty to inform detained persons of their procedural rights from the moment of factual detention.[208] The Ministry of Interior MoI Instruction No. Iz-1711 of 15 September 2009 ("On the equipment of police detention facilities

[204] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 42.

[205] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 44.

[206] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 54.

[207] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 19-28 September 2013, Para 67

[208] Interview by TSPC researcher Bakhtiyor Avezdjanov with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013.

and the rules applicable to them") reiterates the duty of police officers to inform detained persons of the previously mentioned rights immediately after their detention.[209]

The law obliges the investigating authority to inform the criminal defendant of his/her rights at the time of charging him/her in writing, and orally at the factual moment of detention.[210] The rights explained are: the right of the accused to learn the nature and cause of the charges, the evidence on which it is based, the right to testify or remain silent, the right to have a lawyer or to request the appointment of a free lawyer if he/she cannot afford one, the right to read the investigation file, and the right to make motions and appeals. However, the right to remain silent is non-existent at pre-trial stages.[211]

Once the detained person is delivered to a police station, a person must be given, and explained, a written declaration of rights, which lists the rights of access to a lawyer, access to a doctor and notification of custody (and, in the case of foreign nationals, to contact a consular office).[212] The detainee must also list names and phone numbers of persons he/she wishes to contact. The form must be signed in four copies, as stated on the form itself.[213] The declaration of rights and pamphlets describing each right is posted on the walls of interrogation rooms.[214] Pamphlets aimed at police officers that list guidelines for treatment of detainees are also placed on the walls of interrogation rooms.

The Iz-2451 Guideline requires that all facilities under the MoI manage a log of detainees, containing their detailed personal data; a receipt in respect of personal effects and cash of the detained person; a medical examinations log; a log for registering instances where the detained person is led out of the detention facility; a log of cash amounts confiscated and spent by/on behalf of detained persons; a log of visits and/or parcels and food received by the detained persons.[215] The logs are kept in detention facilities and a copy can be subpoenaed or shared upon the demands of a prosecutor.[216]

Any procedural actions restricting or otherwise affecting the rights of persons involved in criminal proceedings, e.g. forced medical treatment, stricter regime of imprisonment, replacement of the penalty of probation with imprisonment, or transfer of convicted felons, may only be performed subject to a court order.[217]

United States

As stated above, the American Doctrine on detention and procedural safeguards stems from the Supreme Court case in *Miranda v. Arizona*.[218] The Court in *Miranda* found that:

[209] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Bulgarian Government on the Visit to Bulgaria Carried out by the CPT*, 4-10 May 2012, p.19 para 20 (Hereinafter "CPT/Inf 2012").
[210] Bulgarian Criminal Procedural Code, Section 219 and 55 (1).
[211] Interview with Dinko Kanchev, Bulgarian Lawyers for Human Rights by TSPC researcher Bakhtiyor Avezdjanov April 2013.
[212] CPT/Inf 2012, p. 20.
[213] The Declaration of Rights, Bulgaria, See Appendix 2.
[214] Interview with police officers from the Regional Police Station 7, Sofia Bulgaria, April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[215] CAT/C/BGR/4-5, p. 24.
[216] Interview with police officers from the Regional Police Station 7 April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[217] Bulgarian Criminal Procedural Code, Articles 427, 445, 451 to 453.
[218] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).

"the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."[219]

In the years since Miranda, the Court has further defined custodial interrogation and developed consequences when the aforementioned procedural guarantees are violated. The Court has affirmed that when these guarantees are violated, the "Exclusionary Rule," applies.[220] The Exclusionary Rule is a judicially created rule, which is aimed at deterring future violations of individual rights.[221] When applied, it prevents the Government from utilizing certain illegally obtained evidence in prosecutions.

As the Exclusionary Rule is a court-created remedy and deterrent, not an independent constitutional right, courts have created some limits to its application. Courts will not apply the Rule when they judge that the harm in applying it would outweigh the deterrent effect.[222] Examples of this are: evidence which was illegally obtained in error, or the introduction of illegally obtained evidence to impeach a defendant's credibility at trial (in order to prevent perjury).

While case law has narrowed the Exclusionary Rule in some ways, it is extended on the other hand through the doctrine of the "fruit of the poisonous tree."[223] The fruit of the poisonous tree doctrine holds that evidence which was gathered with the assistance of other illegally obtained evidence must also be excluded from trial (not just the originally illegally obtained evidence). There are exceptions to the exclusionary rule, including times when evidence was also discovered from an independent source, the evidence would have been found despite the violation of rights, the discovery of the evidence was to tenuously linked to the illegal action, and when the violation of rights (for example problems with a search warrant) was in good faith.[224]

Alternative Notification and Applicability of Rights Practice – Georgia

As mentioned above, Georgia created Human Rights Units inside of its Ministry of the Interior. Notification of the rights and obligations of the detainees is one MoI HRU's main priorities. Based on this priority, a list of procedural rights of the defendants and administrative detainees is posted in all visible places of Temporary Detention Isolators (TDI) throughout Georgia (cells and investigative rooms) in 5 languages (Georgian, Russian, English, Azerbaijani, and Armenian). According to the established practice, if a foreign national is brought to the TDI, the officer of the TDI shall contact the relevant embassy, which will send its representative to the TDI. An employee of the embassy shall meet the relevant person and inform him/her of his/her rights.

[219] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[220] The "Exclusionary Rule," was established in American Case law over many decades. Its original roots can be traced as far back as *Boyd v. United States*, 116 U.S. 616 (1886) through the more recent *Weeks v. US*, 232 U.S. 383 (1914) and affirmed in a line of cases since including eg *Mapp v. Ohio* 367 U.S. 643 (1961), which have combined to broaden the rule to extend to evidence obtained in violation of the Constitutional rights against illegal search and seizure (4th Amendment), self incrimination (5th Amendment) and Right to Counsel (6th Amendment).
[221] *Arizona v. Evans*, 514 U.S. 1 (1951).
[222] *Arizona v. Evans*, 514 U.S. 1 (1951).
[223] *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920).
[224] *Murray v. United States*, 487 U.S. 533 (1988); *Nix v. Williams*, 467 U.S. 431 (1984); *Wong Sun v. United States*, 371 U.S. 471 (1963) and *US v. Leon*, 468 U.S. 897 (1984).

At the same time, the MoI periodically prints information booklets in 5 languages (Georgian, Russian, Armenian, Azerbaijani and English languages), which are disseminated in all TDIs throughout Georgia and they are available to all arrested persons immediately upon their placement to the TDI. The MoI also cooperatively prepares brochures of detainees' rights with international and local organizations. In 2010, 3000 brochures were printed through the joint program of the EU and COE "Combating ill-treatment and impunity," where rights and obligation of law enforcement officers are overviewed.[225]

Related to the Notice of Rights, it is also worth looking at Georgia's practices surrounding the Right to Notification of Custody. Detainees are explained that they have the right to contact someone, to give notification of custody orally, at the moment of detention, and in writing through the declaration of rights, which they must sign in four copies. While nominally and legally, detainees have this right, there are no special phones in police stations, which arrested persons can use to notify someone of their detention.[226] Instead, police officers generally allow detainees to use either their own or police officers' phones to make calls. Not surprisingly, Open Society Institute (OSI) staff, whom Tian Shan Policy Center researchers interviewed in Bulgaria, admitted that some police officers refuse to give their phones to detainees by claiming that they do not have enough credit on their cell-phones to make calls.[227]

Nonetheless, the same OSI staff stated that the right to notification of custody in monitoring of detention facilities is generally observed. Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) indicated that detained persons are often in a position to promptly notify their family or another third party of their situation.[228]

OSI – Sofia held a year-long program which distributed cell phones to police officers for detainee use in order to notify of custody. The program was extremely successful in decreasing instances of police officers' refusal of cell-phone use to detainees for notification of custody. This suggests that issues with the right to notification of custody may exist due to a lack of resources and not police incompetence or ill will.[229]

[225] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill treatment in Georgia p 17.
[226] Interview with police officers from the Regional Police Station 7 April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[227] Interview with OSI-Sofia staff, Zvezda Vankova and Ivanka Ivanova, Sofia Bulgaria, April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[228] CPT/Inf 2012, p. 19
[229] Interview with OSI-Sofia staff April 2013 by TSPC researcher Bakhtiyor Avezdjanov.

Project Methodology and Timeline:

The "program to enhance the capacity of NGOs and institutions to advocate for implementation of human rights decisions and standards to prevent torture," is an 18-month project, which began in January 2013. As described above, the project aims to work with members of government and civil society to research models for the prevention and investigation of torture and develop recommendations for aspects of those models, which have the potential to positively impact the situation in the Kyrgyz Republic.

The project focused on documenting Latin American/Caribbean, former Eastern Bloc countries or other countries that had particularly innovative approaches to reform. Countries were chosen either 1) due to their similarity to the Kyrgyz Republic in terms of institutional/legal structure, or 2) because of challenges similar to the Kyrgyz Republic in terms of abuse by security forces or corruption. For each country, profiles have been developed. Several cases were selected for deeper investigation in the field to ground truth the practices and institutional operations most salient for reform in Central Asia.

The deeper investigations included meetings and discussions with civil society groups on the ground, officials in the institutions of interest, and experts familiar with operations at a practical as well as a legal level. Specific countries were selected based upon set criteria and indicators adopted at the beginning of the project with input from all team members, and via wider consultation with national and international experts. These countries served as the basis for a deeper evaluation of how to adapt specific models to the Kyrgyz Republic. It is important to note that the selection of countries remained a dynamic process, as the project could not know at the outset all of the findings; the various components of a number of legal systems also required additional analysis. For example, components of the Northern Irish, Canadian and English systems became attractive as research subjects in the process of investigation of other countries.

The documentation phase of the project is completed. The next step is dissemination of the findings through workshops and trainings. The upcoming events aim to introduce stakeholders to the research findings, explore options for tailoring the best practice models to the Kyrgyz experience, and building strategies for more effective advocacy with these models.

TSPC coordinated and implemented the project with its local Kyrgyz NGO partners and international partners. As the project progressed, other NGOs have indicated support for further collaboration. In the post-research phase, TSPC expects to draw upon the experience of local partners to successfully advocate for the implementation of model torture preventative practices. The media expertise of American University of Central Asia will also be used to raise awareness of the Project, its reports and recommendations, and workshops or roundtables.

Related research and additional information is available online at https://www.auca.kg/en/tspc/.

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APPENDIX

Country Profiles

Jamaica

Jamaica Background

The relevant human rights standards related to the prevention of torture in Latin America were largely covered in the body of this report so they will not be repeated here. However, a few country specific details are worth noting. Following a country visit in 2010, the report of the Special Rapporteur on Torture, Manfred Nowak, said "Torture is not defined in criminal legislation in Jamaica, nor is Jamaica a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This might explain why during the mission, the Special Rapporteur observed that the term "torture" was not part of the Jamaican lexicon. However, its absence in the law does not mean that it does not exist in practice."[230] In its concluding observations, the Human Rights Committee said "While noting that torture is prohibited under the Charter of Fundamental Rights and Freedoms, the Committee is concerned that torture is not defined as a separate offence under the State party's criminal legislation. The Committee is also concerned about the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the insufficient sanctions imposed on the perpetrators."[231]

In Jamaica, the focus is largely on the perpetration of offenses related to extra judicial killings by security forces and other forms of police abuse. Historically, three agencies were mandated to receive and investigate complaints regarding police misconduct: the Police Public Complaints Authority (PPCA), the Bureau of Special Investigations (BSI) and the Office of Professional Responsibility. The BSI and the Office of Professional Responsibility are institutions within the Jamaican Constabulary Force (JCF) – the police – while the PPCA was a state-funded independent body. According to a report by Amnesty International, The Police Public Complaints Authority (PPCA) was established in 1992 as an independent body to monitor and supervise investigations into killings by police and other complaints against the police. However, Amnesty International and Jamaican human rights organizations reported that the "PPCA had limited effectiveness and independence as it could not conduct its own investigations and relied on the police force to conduct some of its investigations. It lacked the authority to make final

[230] A/HRC/16/52/Add.3, Human Rights Council, Sixteenth session findings and recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Jamaica, 12 to 21 February 2010. See also, Jamaica, concluding observations of the human rights committee, CCPR/C/JAM/CO/3, November 2011. "While noting that torture is prohibited under the Charter of Fundamental Rights and Freedoms, the Committee is concerned that torture is not defined as a separate offence under the State party's criminal legislation. The Committee is also concerned about the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the insufficient sanctions imposed on the perpetrators."

[231] Human Rights Committee, Concluding Observations, November 17, 2011, CCPR/C/JAM/CO/3, Para 21.

determinations on criminal charges and to obtain statements from police officers if they were not willing to co-operate. The PPCA was understaffed and under-resourced. It therefore enjoyed a very low level of public confidence."[232]

The failure to hold responsible perpetrators of violent crime and to hold to account police officers accused of involvement in unlawful killings or extrajudicial executions, combined with widespread corruption, eroded confidence in the institutions of the state over many years. To try and address this, the government set up the Jamaican Justice System Reform project in 2007 to review the justice system and develop strategies and mechanisms for its modernization. The Task Force said that the current structures in place for the independent investigation of police were inadequate and not sufficiently independent and highlighted the Special Investigations Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada as a possible model.[233] During meetings in Kingston, Jamaican NGOs reported they had proposed improved independent models to replace the PPCA for some years before the Justice System Review.[234]

The Independent Commission of Investigations (INDECOM)

In June 2008, a police (JCF) strategic review recommended disbanding the PPCA and replacing it with an Independent Commission of Investigations (ICI). The JCF review states "For some time, the MNS (Ministry of National Security) and the Ministry of Justice have expressed concern regarding a general lack of integrity, increasing corruption and misuse of public funds across the public service … The ICI will benefit from greater resources and improved capacities and neutral investigation arrangements, as well as bring further assurance of independence in the oversight process."[235] The Jamaican Parliament passed the INDECOM Act in March 2010, repealing and replacing the PPCA. The Governor General assented in April, and as described in the preceding report, in August 2010 the Independent Commission of Investigations (INDECOM) began its operations as a Commission of Parliament to investigate actions by members of the security forces and other agents of the state resulting in death or injury or abuse of rights.[236]

Structure

The INDECOM Commissioner is appointed for a five-year term by the Prime Minister, after consultation with the Leader of the Opposition, and should possess the qualifications to hold office as a Judge of the Supreme Court. The Act envisioned five 'Directors of Complaints' to lead five regional offices, though only three regional offices presently exist. Though INDECOM may appoint and employ employees as needed, under the Act, the terms and conditions of employment must be approved by a Committee.[237] Three investigation teams are based out of Kingston. Additional teams are based in Montego Bay and Mandeville. Montego

[232] Amnesty International. "Jamaica: A Long Road to Justice? Human Rights Violations under the State of Emergency," 2011.
[233] Jamaican Justice System Reform Task Force, Final Report, June 2007, http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf. See http://www.siu.on.ca/en/unit.php for more information about the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada.
[234] TSPC meetings in Kingston with Jamaican NGOs, October, 21-25, 2013.
[235] 6.2.2.7: "The future of the PPCA," http://pcoa.gov.jm/files/jcf_strategic_review_2008.pdf.
[236] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf; INDECOM was then called ICI.
[237] The Committee includes (a) the Speaker, as chairman, (b) the President of the Senate: (c) the person designated by the Prime Minister as Leader of Government business in the House of Representatives (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of' Representatives: and (e) the person designated by the Prime Minister as Leader of Government business in the Senate: (F) the person designated by the Leader of the Opposition as Leader of Opposition business in the Senate and (g) the Minister responsible for the public service.

Bay and Mandeville generally reach their target of responding to a scene within two hours, but for the other three Kingston-based teams it often takes longer because of the bad roads and long distances from Kingston. Each investigative team is designed to have 10 people, but they are understaffed at the moment. Similarly, the legal team of four lawyers (two senior lawyers) is insufficient to handle the volume. It is also lacking a deputy commissioner at present.

Of the approximately 80 INDECOM staff, approximately 10 are former/retired police officers. None of the staff came directly from police. Some of the former police had worked abroad and some had retired; INDECOM does not have a set requirement for time out of police before joining its team.

For its first year of activities INDECOM received $86 million Jamaican Dollars, which is roughly equivalent to $ 900,000 USD. The majority of INDECOM's budget ($63.8 million Jamaican dollars) has been reallocated from the Police Bureau of Special Investigations with the remainder coming from the Ministry of Justice's budget that had covered the Police Public Complaints Authority (PPCA).[238] In its second year, INDECOM received roughly $200 million Jamaican dollars.[239] According to a submission by the NGO Jamaicans for Justice, the INDECOM 2012-2013 budget allotment has increased to $288 million Jamaican Dollars (about $ 3 million USD).[240]

Powers

In addition to the powers detailed above, for the purpose of carrying out an investigation, the Commissioner and the investigative staff have the investigatory powers, authorities, and privileges of a constable. INDECOM may at any time require any member of the Security Forces, a specified official or any other person who, in its opinion, is able to give assistance in relation to an investigation, to furnish a statement or produce any document or thing in connection with the investigation that may be in the possession or under the control of that member, official or other person. When conducting an investigation, INDECOM has primary responsibility for preserving the scene of an incident, and may issue directions to the police. Intentionally false or misleading statements or failure to comply with INDECOM's investigations is subject to a fine or term in jail.

The INDECOM Act also requires any member of the Security Forces, or an official who either becomes aware of or is involved in any incident, to take the necessary steps to ensure that a report is made to INDECOM. Purposefully, the duty of reporting incidents to INDECOM extends lower down the hierarchy of the security forces and correctional system than did previously. This duty is designed to break the culture of silence.[241]

[238] Jamaican Gleaner, "INDECOM Gets Millions," December 1, 2010, http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html.
[239] RJR News, "Shaw defends tripling INDECOM's budget," April 20, 2011, http://rjrnewsonline.com/local/shaw-defends-tripling-indecoms-budget.
[240] Jamaica: Follow Up Report to CCPR, Jamaicans for Justice, Jamaica Forum for Lesbians, All-Sexuals and Gays, November 2012.
[241] Claim No: 2011 HCV 06344, 2012-05-25, Case Number: 2011HCV06344, http://supremecourt.gov.jm/sites/default/files/judgments/2012/Williams,%20Gerville%20et%20al%20v%20The%20Commissioner%20of%20the%20Independent%20Commissioner%20of%20Investigations,%20The%20Attorney%20General%20and%20The%20Director%20of%20Public%20Prosecutions.pdf, Paragraph 142.

INDECOM has used various strategies to further its work, including through the regular citation of rules and legislation to coax action from security forces. INDECOM has also made direct recommendations to the police and other security forces on certain policies (with a focus on ending the vetting and collusion of statements, identity concealment during operations, and observing procedure following the use of force). The responses from the police and army have suggested they are frustrated with INDECOM's work. INDECOM, however, continues as a follow up to this strategy by publicizing the responses and countering with public polling that finds support for INDECOM positions and generates pressure. INDECOM also analyzes patterns of abuse to provide policy guidance and recommendations for future prevention.

In mid-August 2012, Justice Minister Golding came out in favor of adding prosecutorial powers to strengthen INDECOM's authority and remove its reliance on the Director of Public Prosecutions (DPP). Golding was quoted as saying "I am of the view that there is a place for certain agencies to be conferred with the powers to prosecute the cases that they investigate, because I think it would lead to a more effective carrying out of their mandate."[242]

In one court case, the Police Federation challenged section 20 of the INDECOM Act which gives INDECOM "the like powers, authorities and privileges as are given by law to a constable" and conferred a right to arrest and charge anyone, in particular, police officers, for the offense of murder, or for any offense at all without a ruling by the Director of Public Prosecutions. On July 30, 2013, the Supreme Court ruled in INDECOM's favor. Police are expected to challenge this ruling with the appeals court.

This ruling was a big moment for INDECOM. It meant that the court had affirmed INDECOM's power to arrest, charge and initiate a prosecution of police officers, despite the DPP's assertion that only they could initiate a prosecution. The judgment did not alter the DPP's constitutional power to take over or discontinue a case. However, in the event that INDECOM seeks the arrest of a police officer, in practice, INDECOM still relies on the Bureau of Special Investigations (an internal police office) to actually carry out the arrest.

INDECOM's public reports between August 2011 and March 2012 explain that a total of 103 investigations were completed and various methods of case closure employed. These methods include referral to police for charges to be laid; referral to the Director of Public Prosecution for a ruling; referral for a Coroner's Inquest; and referral for informal resolutions. In about 20 percent of cases, INDECOM investigations have concluded that the allegations were unsubstantiated.[243]

While INDECOM has demonstrated some substantial success, it has faced large obstacles In addition to the funding and staffing challenges detailed above, its relationship with police is strained and it has faced numerous challenges to its mandate. Some of these challenges manifest in the form of alternative interpretation by (above all) the Police to the INDECOM Act, which has meant in practice that the police commissioner does not enact rules or procedures for the

[242] http://jamaica-gleaner.com/gleaner/20120817/lead/lead9.html.
[243] For INDECOM's most recent full quarterly report, see http://indecom.gov.jm/Release/Report%20to%20Parliament.pdf.

police to cooperate in exactly the way that INDECOM would like (based on its interpretation of the Act).

INDECOM's mandate and powers have been challenged through other court cases as well.

In one case a group of eight police officers challenged INDECOM's authority in section 21 of the INDECOM Act to compel their cooperation in a shooting case on the grounds that their constitutional rights as suspects to not incriminate themselves would be breached if compelled to give witness statements that could be used against them in court. The policemen were charged after they refused to give statements to INDECOM in its investigation into the 2010 shooting deaths of two men including a 16 year old. In May 2012, the Supreme Court ruled that the Act did empower INDECOM to compel any person to give a statement during a probe. The police sought to challenge the May 2012 judgment, but, after requesting an extension to file the relevant documents, the appeals court turned down their application in November 2013.

However, regarding section 21, courts can still rule that a statement is inadmissible if a police officer says he was compelled (Police sit on section 21 summonses). However INDECOM is making the argument that there needs to be an exception from the regular provision of forced testimonies. INDECOM officials point to other examples where this happens, e.g. when private firearms owners have to make a report that can be used against them if they lose their weapons. They argue that the ECHR and Privy Council have already ruled this can be done in analogous circumstances. They argue there's a balance - the need to safeguard life and societal protection.

The police have also challenged section 22 of the INDECOM Act on scene preservation by arguing that the police have primacy at crime scenes. However, INDECOM points to language at the beginning of section 22 which says "Notwithstanding anything to the contrary in any other law" to justify their primacy based on their own legislation. In practice, it's very rare that a scene would not be processed by INDECOM (700 scenes already processed). Most of the time scenes are processed side by side with police.

INDECOM also exercises its authority in the area of failure to cooperate. Recently, INDECOM charged a deputy superintendent of the police with failure to cooperate with a lawful order under section 33 of the INDECOM Act.

In addition to mandate challenges through the courts, an effort is ongoing to weaken the INDECOM Act through the review of the Act which was mandated in the legislation to begin within three years of its passage. The police (JCF), the military, (JDF) and the DPP have all provided submissions to the joint select committee of parliament reviewing the INDECOM Act. INDECOM has responded with its own set of recommendations and responses to the above submissions. Even though INDECOM argues that Parliament's intent was clear, they decided to address the challenges in the above submissions by making recommendations to clarify areas and modify language in the Act where the police were holding to a different interpretation. It is expected that the review process could take between 1 and 2 years.

Guatemala

Guatemala Background

The 36 year long Guatemalan internal armed conflict, during which an estimated 200,000 mostly civilians were either killed or disappeared,[244] came to an end with the signing of the 1996 peace accords.[245] During the internal armed conflict, and especially as military assistance was reduced in the 1980's, the Guatemalan army (and especially military intelligence officers) increasingly became involved with – and started developing their own - organized crime groups to coincide with state interests;[246] they had control over certain areas, like ports, airports, and border checkpoints.

The UN Historical Clarification Commission report (CEH) concluded that the Guatemalan army had committed acts of genocide against groups of Mayan Indigenous people between 1981 and 1983,[247] the period corresponding to parts of both the Lucas Garcia and Rios Montt military regimes. The environment created by internal armed conflict and its aftermath, opened the door for extreme state abuse on many levels and extensive organized crime activity.

In the post war period, organized crime groups have diversified their activities and have expanded their powers of infiltration. Currently, these groups are so developed that they have professional networks including judges, lawyers and journalists in both the public and private sectors, who advocate and operate to ensure that the illegal organizations and their clandestine structures continue operating in impunity.[248]

Following the failure of a 1999 referendum on a legislative reform package meant to codify many of the Peace Accord agreements, Guatemalan NGO's and their international partners,[249] as well as UN procedures[250] started developing a series of reports and proposals that chronicled the substantial weaknesses of the Guatemalan police and judiciary, the infiltration by military and former military officers allied with organized crime groups into key government positions, and ongoing and increasing violence[251] and threats against human rights defenders and social movement actors. These efforts formed the basis of the CICIG Agreement proposals (described in the main report and again here).

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[244] Commission for Historical Clarification (CEH), "Report of the Commission for Historical Clarification, Guatemala Memory of Silence 1999, Conclusion para 2, http://shr.aaas.org/guatemala/ceh/report/english/conc1.html.

[245] Agreement on a Firm and Lasting Peace, December 29, 1996, http://www.sepaz.gob.gt/index.php/agreement-12.

[246] Patrick Gavigan, "Organized Crime, Illicit Power Structures and Guatemala's Threatened Peace Process," International Peacekeeping, Vol. 16, Issue 1, 2009, 62 – 76.

[247] Commission for Historical Clarification (CEH), "Report of the Commission for Historical Clarification, Guatemala Memory of Silence 1999, Conclusion paras 108-122, http://shr.aaas.org/guatemala/ceh/report/english/conc2.html.

[248] ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011." http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf.

[249] A few examples are: Movimiento Nacional por los Derechos Humanos, "Breve análisis de la situación de defensores de derechos humanos en Guatemala," May 13, 2005, http://www.caldh.org/analisis.pdf;
Washington Office on Latin America, "Hidden Powers in Post-Conflict Guatemala: A study on illegal armed groups in post-conflict Guatemala and the forces behind them," September 2003, http://www.wola.org/publications/hidden_powers_in_post_conflict_guatemala; Human Rights Watch, "Guatemala: Political Violence Unchecked, Guatemala Mission Findings," August 22, 2002, http://www.hrw.org/legacy/press/2002/08/guatemission.htm.

[250] United Nations, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alton," UN Doc., A/HRC/4/20/Add.2, 19 Feb. 2007. http://daccess-ods.un.org/TMP/8121861.html. Based on available statistics from 2005, the study reports a conviction rate of 1.4% in cases involving "crimes against life."

[251] The UN Development Programme (UNDP) reported that the number of murders rose 120% over a seven year period from 2,655 deaths in 1999 to 5,885 deaths in 2006, with a homicide rate of 108 per 100,000 in Guatemala City. "Informe estadistico de la violencia en Guatemala," December 2007, https://www.who.int/violence_injury_prevention/violence/national_activities/informe_estadistico_violencia_guatemala.pdf. The number of murders deaths rose to 6,292 by 2008. "Datos de Violencia Homicida en Guatemala," http://www.nd.edu/~cmendoz1/homicidios.htm.

Justice System Overview

The criminal procedure system in Guatemala was formerly inquisitorial and carried out secretly in writing. This system has been replaced by an adversarial system, which includes an oral process, as well as public trials as the main decision-making procedure. The duties of investigation, charge filing, and judgment have been assigned, respectively, to the police (PNC) under the supervision of the Public Prosecutors Office (MP), the MP itself for filing charges and the Judiciary. The enactment of the Criminal Procedural Code, in force since 1994, intended to achieve a criminal justice system that was more agile and effective in the prosecution of crimes, in particular crimes of high social impact. The MP has an annual budget line item in the General Budget of the Nation so as not to be dependent on any other ministry.

The MP may require the cooperation of any official and administrative authority of any governmental bodies for the performance of its duties. These bodies are required to cooperate without delay and must provide any documents or reports that the MP requests within the legal time periods and the terms set out in the requests. Lastly, the MP directs the National Civilian Police (PNC), which is part of the Ministry of the Interior, in the investigative phase of criminal proceedings and in executing arrest orders.[252]

An ICG report on police reform reported that the "MP prevented detectives from working at the crime scene, although police are supposed to carry out investigations under their guidance and supervision. These problems are complicated by duplication of functions, since prosecutors have their own specialized Division of Criminal Investigation (DICRI). According to members of the homicide unit, DICRI would do almost the entire investigation, using police only for security during court-ordered searches. But the new police unit [crimes against life unit] now investigates all murders in Guatemala City, while DICRI is responsible for manslaughter cases and technical analysis, such as blood work and ballistics."[253]

"[DICRI] is comprised of expert professionals in various sciences and reports directly to the Attorney General. DICRI is in charge of the planning and execution of criminal investigation operations including the collection of evidence and other trial requirements. The Department is composed of the Sub-Office of Criminal Investigation Operations and the Sub-Office of Criminal Investigations. Currently, the labs and technicians of this unit are part of the Institute of Forensic Sciences [hereinafter INACIF]. Only a team of field investigators that carry out police investigation tasks remain in the original Department."[254]

The National Civilian Police (PNC) also has an internal police mechanism for investigating security force abuse and misconduct in the Office of Professional Responsibility (ORP).[255] The functions of the ORP are to detect and investigate or provide support in the investigation of all serious instances of abuse, corruption and inappropriate or criminal conduct in which members of the PNC appear to be involved. ORP can initiate investigations - of its own accord, upon

[252] ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011." http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf.
[253] http://www.crisisgroup.org/~/media/Files/latin-america/Guatemala/043-police-reform-in-guatemala-obstacles-and-opportunities.pdf.
[254] ABA Rule of Law Initiative report "Prosecutorial Reform Index for Guatemala, May 2011." http://www.americanbar.org/content/dam/aba/directories/roli/guatemala/guatemala_prosecutorial_reform_index_2011.authcheckdam.pdf.
[255] Combined fifth and sixth periodic reports of States parties due in 2011, submitted in response to the list of issues (CAT/C/GTM/Q/6), April 3, 2012, para 63.

receiving complaints, or upon the request of an authority - into actions committed by police that may warrant criminal prosecution. The ORP has at times suffered from poor leadership and a lack of resources and political will. US State Department reports "revealed that PNC authorities often opt to transfer police rather than subject them to judicial processes."[256] In 2011, it was reported that the ORP received 1,814 complaints, which included 15 complaints of killings, six forced disappearances, 138 illegal detentions, 68 thefts, 14 rapes, 117 threats, and 323 cases of abuse of authority. In 2011, ORP investigated 1,259 police officers, 95 of whom were subsequently dismissed and 537 of whom were exonerated.[257] In early 2012, the Minister of Interior said that the ORP would lead a team – with support from CICIG - to investigate possible cases of corruption and determine if any organized crime structures remained within the ministry.[258]

Guatemala also has the mechanism of the complementary prosecutor, or Querellente Adhesivo, which allows for third parties to work in concert with the investigatory and prosecutorial structures described above. As it is described in detail in the preceding report, it will not be revisited here, however it worth mentioning in the context of the complete picture of available mechanisms for the investigation of claims of state abuse.

International Commission Against Impunity in Guatemala (CICIG)

Following a previously negotiated agreement (CICIACS) whose mandate was struck down by the Guatemalan Constitutional Court in 2004 for impinging on the Public Prosecutors (MP) prosecutorial authority,[259] the International Commission Against Impunity in Guatemala (CICIG) was established by agreement between the United Nations (Department of Political Affairs) and the Government of Guatemala in late 2006 and started its work in September 2007, following ratification by the Guatemalan Congress. The CICIG's mandate has been extended three times (in 2009 and 2011, and 2013), and as stated in the main report, will likely phase out its work in 2015.

After Guatemalan Vice President Eduardo Stein signed the CICIG agreement with the UN[260] on December 12, 2006, in January 2007 VP Stein started conferring with political parties to explain some of the agreements' details and lobby on its behalf.[261] On February 19, 2007, the main Guatemalan Daily *Prensa Libre* came out with an article which cited the Vice President as saying that organized crime effectively had control of six of Guatemala's 22 departments and a foothold in three others.[262] That same day three Salvadoran members of the Central American Parliament (PARLACEN) and their driver traveling to Guatemala were tortured, shot to death and then set on fire in their car. Four police officers, including the head of the organized crime unit of the Guatemalan Police, were arrested and charged with the murders. While in their cells

[256] Washington Office on Latin America, http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/WOLA_Policing_Final.pdf.
[257] http://www.state.gov/j/drl/rls/hrrpt/2011/wha/186518.htm. The National Civilian Police Force has a total of roughly 25,000 people.
[258] http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/152764-cicig-apoyara-investigacion-de-agentes-de-la-pnc.
[259] The Constitutional Court struck down CICIACS because it infringed on the exclusive prosecutorial authority of the Public Prosecutor's office, Corte de Constitucionalidad, Guatemala, Opinión Consultiva, Expediente No. 1250-2004, 5 August 2004.
[260] "Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala ('CICIG')," http://cicig.org/index.php?page=mandate. Signed 12 December 2006 in New York.
[261] Washington Office on Latin America, "Advocates against Impunity: A Case Study on Human Rights Organizing in Guatemala," January 2009, http://www.wola.org/publications/advocates_against_impunity_a_case_study_on_human_rights_organizing_in_guatemala.
[262] Lorena Seijo and Carlos Menocal, "Crimen organizado, tras diputaciones y alcaldías," *Prensa Libre*, February 19, 2007, http://www.prensalibre.com/noticias/Crimen-organizado-diputaciones-alcaldias_0_145785815.html.

in a maximum security prison, the four suspects were killed just before they were to be questioned by FBI agents helping in the investigation.[263] A few days later, VP Stein admitted that organized crime had infiltrated the Guatemalan Police.[264] Not long afterwards, despite resistance from Rios Montt's FRG Party, Otto Perez Molina of the Patriot Party (PP) and Alvaro Colom of the National Unity for Hope Party (UNE) got behind the CICIG agreement, and the President sent CICIG to the Congress for debate and ratification. Ultimately, because of the way in which the measure came to the floor, CICIG needed to pass Congress by a two-thirds majority, which it narrowly did on August 1, 2007 with all members from the PP, UNE and GANA political parties unanimously in support.

CICIG is an independent commission with a UN affiliation that is fully embedded within the national justice system. It is funded by international donors and its budget is administered by the UNDP. [265] CICIG's mandate is to "support, strengthen, and assist" state institutions investigating and prosecuting crimes committed in connection with the activities of organized crime groups and clandestine security organizations.[266]

Powers

CICIG has the power to 1) collect information from any person, official or private entity; 2) promote criminal prosecutions by filing criminal complaints and join a criminal proceeding as a complementary prosecutor; 3) Provide technical advice in investigations and advise State bodies in the implementation of such administrative proceedings against state officials; 4) Report to the authorities the names of civil servants who have allegedly committed administrative offenses and act as an interested third party in the administrative disciplinary proceedings; 5) Guarantee confidentiality to witnesses, victims, experts or collaborators who assist CICIG; 6) Request statements, documents, reports and cooperation from any official or state administrative authority of the State – Officials are obligated to comply with such request without delay; 7) Request the Public Prosecutor and the Government to ensure the safety of witnesses, victims and all those who assist in its investigations, and provide advice to authorities on adoption and implementation of such measures; 8) Request and supervise an investigation team of proven competence and moral integrity; 9) Publish general and thematic reports on its activities and the result thereof, including recommendations pursuant to its mandate.

Structure and Funding

CICIG is comprised of a Commissioner (who is appointed by the UN Secretary General) —who also serves as the legal representative—and the following units: Political Affairs, Department of Investigations and Litigation (including police, legal and financial investigation sections), Department of Information and Analysis, Department of Administration, Department of Security and Safety, and the Press Office.

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[263] Washington Office on Latin America, "Advocates against Impunity: A Case Study on Human Rights Organizing in Guatemala," January 2009, http://www.wola.org/publications/advocates_against_impunity_a_case_study_on_human_rights_organizing_in_guatemala.

[264] *Francisco González Arrecis, "Eduardo Stein: Crimen se infiltra en Estado,"* Prensa Libre, *February 24, 2007, http://prensalibre.com/noticias/Eduardo-Stein-Crimen-infiltra_0_145786683.html.*

[265] Canada, Denmark, the European Union, Finland, Germany, Ireland, Italy, Mexico, Netherlands, Norway, the Open Society Foundation, Spain, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Argentina, Chile, Colombia and Uruguay contribute to CICIG's functioning by providing security contingents.

[266] The full text of the agreement can be found here: http://cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=14. Note that CICIG is a "non-UN organ, functioning solely in accordance with the provisions of this agreement."

According to CICIG's 6th report, it is comprised of 162 national and international officials, 72 of whom perform substantive tasks (45%), 62 work in security (38%) and 28 perform administrative duties (17%). 67% of staff members are male and 33% are female. Excluding the largely male Security Department, the male-female ratio of Commission personnel is 58:42.

- 45% substantive duties
- 38% security duties
- 17% administrative duties
- 67% male
- 33% female[267]

As described in the main report, CICIG also works in close association with The Special Anti-impunity Prosecutor's Office (FECI). FECI was created as part of the original CICIG Agreement and the Bilateral Cooperation Agreement signed between the Public Prosecutor's Office (MP) and CICIG on February 27, 2008.[268] A recent analysis has recommended that FECI should be elevated to be a "Division of the Public Prosecutor's Office."[269]

CICIG is an independent body from the political, organizational and financial standpoints, as its budget is funded entirely with the support of donor countries, international organizations and foundations, which are administered by the UN Development Programme (UNDP).[270] After one year of operations, CICIG had raised from donors nearly $USD 14 million.[271] CICIG has generally worked with a budget of approximately $ 15 million USD per year. The United States supported CICIG, in FY12, with approximately $5 million USD.[272]

Recent Successes

CICIG's success was described in its most recent report stating "significant progress has been made in the investigation and preparatory phases of cases, in contrast to the "bottlenecking" experienced at intermediary and trial phases. In the five criminal cases that went to trial, five judgments were passed down and eighteen sentences were issued. The most influential factors in case progress in Guatemala are linked to the admission of CICIG into proceedings as a complementary prosecutor; the evaluation of technical evidence; expert witness evidence and statements; celerity of proceedings in a number of cases; and the award of constitutional appeals filed by CICIG to address misinterpretations of the law by certain judges."[273] During the period covered, from September 2012 through August 2013, there were 95 complaints with 31 open investigations.[274]

The report also describes its successes in the arena of interagency coordination. It stated that cooperation had improved with the Public Prosecutor's Office (MP), the Ministry of the Interior

[267] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 4
[268] http://cicig.org/uploads/documents/convenios/mp-cicig.pdf.
[269] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 24-25
[270] Canada, Denmark, the European Union, Finland, Germany, Ireland, Italy, Mexico, Netherlands, Norway, the Open Society Foundation, Spain, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Argentina, Chile, Colombia and Uruguay contribute to CICIG's functioning by providing security contingents.
[271] http://cicig.org/uploads/documents/informes/INFOR-LABO_DOC01_20080901_EN.pdf.
[272] http://rules.house.gov/Media/file/PDF_112_1/legislativetext/HR2055crSOM/psConference%20Div%20I%20-%20SOM%20OCR.pdf.
[273] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 9
[274] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 11

and the units of the different prosecution bureaus and the National Civil Police (PNC). This cooperation was due to:

"A) Criminal investigation and prosecution: through the joint work with and continual training of prosecutors, assistant prosecutors, investigators, analysts, PNC corporals and officers to draft investigation plans, conduct procedural activities, and hold analytical and police exercises (procedural and operative techniques).

B) Security: through the joint work and rotation of contingents, reintegrating 10 officers into the Ministry of the Interior and selecting 16 recently graduated PNC officers, who joined CICIG to receive facility security and protection of persons training, after undergoing a training and selection procedure. The management procedures undertaken with counterparts have produced results such as the implementation of the actions set forth in the 2012-2013 CICIG Work Plan at the Public Prosecutor's Office (MP), in particular at the Special Anti-Impunity Prosecutor's Bureau (FECI)"[275]

Northern Ireland

Northern Ireland's history has been plagued by violent conflict, characterized by divisions between its people, based largely on issues of religion and nationality between the Protestant or unionist community who looked to Britain for political parentage, versus the Catholic or nationalist community, which believed in a unified Irish Republic independent for Britain. This period of violent conflict is sometimes referred to as the "Time of Troubles." In the mid-1990s political negotiations took place that eventually led to a multi-party peace agreement, commonly known as the Good Friday Agreement, which was approved by referendum in and signed on April 10, 1998.

Inadequate policing and justice systems played a massive role in the prolonged period of violence in Northern Ireland. Not surprisingly, policing reform was a central tenet of the Good Friday Agreement.[276] The drafters of the Agreement believed that the policing principles of protection of human rights and professional integrity and should be unambiguously accepted and actively supported by the entire community.[277] To achieve these objectives, an Independent Commission on Policing of Northern Ireland (ICPNI) was established.

ICPNI began work in June 1998. It was tasked with considering the future policing arrangements for Northern Ireland, and the Agreement specifically stated that its proposals should ensure "there are open, accessible and independent means of investigating and adjudicating upon complaints against the police."[278]

ICPNI found that the problems faced by the police service in Northern Ireland were unique in that police operated in a divided society, with its own particular history and culture. However, many of the issues were problems that affected recruitment, training, management, structures, accountability, funding, attitude and style similar to those confronting police services in democratic societies elsewhere.[279] For example, concerns over accountability to the community; diversity in police services in terms of ethnicity, religion and gender; practices that recognize and

[275] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 23
[276] The Northern Ireland Peace Agreement, Policing and Justice, Section 1
[277] Id., Section 2
[278] "Winning the Race: Policing Plural Communities", Her Majesty's Inspectorate of Constabulary, October 1997
[279] A New Beginning: Policing in Northern Ireland (Patten Report), Independent Commission on Policing for Northern Ireland, September 1999

uphold the human dignity and the rights of individual citizens while providing them with effective protection from wrongdoing.[280]

In creating new policing bodies, the Independent Police Commission applied the following tests:

> "1. Does this proposal promote effective and efficient policing?
> 2. Will it deliver fair and impartial policing, free from partisan control?
> 3. Does it provide for accountability, both to the law and to the community?
> 4. Will it make the police more representative of the society they serve?
> 5. Does it protect and vindicate the human rights and human dignity of all?"[281]

On the issue of accountability, the Independent Police Commission commented that "accountability places limitations on the power of the police, but it should also give that power legitimacy and ensure its effective use in the service of the community."[282] The Commission focused on accountability because it believed that a police force accountable to the community it served would be more effective in prevailing against crime.[283]

In evaluating what complaints mechanism to implement, the ICPNI looked to Professor Philip Stenning's guidelines of a system that is "accessible, fair to complainants and police officers, respectful of human rights and dignity, open and accountable, timely, thorough, impartial, independent and should take account of both the 'public interest' and the interests of the parties involved in the complaint."[284]

Prior to the Good Friday Agreement, investigation of police abuse was left for the Independent Commission for Police Complaints (ICPC), which suffered from many flaws, the main problem being that the police themselves investigated the complaints made against them.[285] Due to the inadequacy of the ICPC, the Secretary of State for Northern Ireland appointed Dr. Maurice Hayes to conduct a review of the police complaints system in Northern Ireland. Dr. Hayes found that Northern Ireland needed a mechanism that was independent in practice and perception.[286] Thus, Dr. Hayes recommended the establishment of a Police Ombudsman for Northern Ireland.[287] In 1998, the Office of the Police Ombudsman for Northern Ireland replaced the former Northern Ireland complaints body.

Procedure

Complaints can only be made by "members of the public," who have had occasion to be well informed as to the facts of the incident.[288] Hence, OPONI is not under duty to investigate complaints brought by police officers against fellow officers. However, if a police officer brings such a complaint, OPONI can investigate it, but under a special provision for investigations on own accord.[289] Such investigations also require the Police Ombudsman to report to the Minister of Justice, Northern Ireland Policing Board and Chief Constable.[290] In practice, no real obstacles

[280] Id., p.3
[281] Id., p.6
[282] Id., p.7
[283] "Winning the Race: Policing Plural Communities", Her Majesty's Inspectorate of Constabulary, October 1997
[284] Stenning, P., "Review of Part 9 (Complaint Procedure) of the British Columbia Police Act as amended by Section 36 of SBC 1997, c.37"
[285] Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland; Committee on the Administration of Justice, 2011, p. 14
[286] Establishment of Office, http://www.policeombudsman.org/modules/infoPoliceOfficers/index.cfm/id/3
[287] Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland by Dr. Maurice Hayes, 1997.
[288] Northern Ireland Human Rights Commission, Report pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights in Police, p.2, June 2012
[289] The Police Act of 1998, s. 55(6)
[290] Regulation 20 of the RUC (Complaints etc.) Regulations 2000.

exist when police officers report on their fellow officers to OPONI for misconduct against civilians.[291]

Complaints can be made by directly contacting OPONI either in person, in writing or phone; a switchboard can be reached 24/7. Complaints can also be made directly to police officers who have a duty to report them to OPONI.[292]

Complaints of misconduct made to the Chief Constable, the Northern Ireland Policing Board, the Department of Justice or the Public Prosecution Service should immediately be referred to the Police Ombudsman.[293] Magistrates are not specifically empowered to refer matters to the Police Ombudsman, but in certain cases may choose to do so.[294]

The Police Ombudsman is required, on receipt of a complaint: "(a) to record and consider each complaint made or referred to him… and (b) to determine whether it is a complaint to which subsection 4 applies (the subsection applies to a complaint about the conduct of a member of the police force which is made by, or on behalf of, a member of the public)."[295] The law requires the Police Ombudsman to send to police, and to any identified police officer, a copy of any complaint received.[296] This notice does not indicate that the officer is under investigation, but simply advises the officer that a complaint has been made.[297] The notices form the basis of the system of tracking and trending of complaints against individual officers. Police officers who are subject to 3 or more complaints in a twelve months period are reported to their District Commanders.[298] Police officers also receive notice when the complaint is transferred or closed. If a police officer is the subject of a complaint, and that complaint is to be investigated, then the Police Ombudsman must notify the officer as well. Yearly, roughly 3,000 such notices are sent to police officers.[299]

The Chief Constable of PSNI is required to take immediate steps to preserve evidence upon receipt or notification of a complaint.[300] This duty must be carried out even if the Ombudsman shall or may assume responsibility for the investigation.[301] Where allegations involve physical injury, it is advisable to make immediate arrangements for a medical or a forensic investigation.[302]

Section 53(1) of the Police Act requires that the Police Ombudsman "shall consider whether the complaint is suitable for informal resolution and for that purpose may make such investigations as he thinks fit. Section 53(2) of the Act states that "A complaint is not suitable for informal resolution unless (a) the complainant gives his consent; and (b) it is not a serious complaint."[303]A

[291] Interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King with OPONI, Belfast, Northern Ireland, 3 December 2013
[292] OPONI interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[293] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, pg 21, 2011.
[294] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, pg 21, 2011.
[295] The Police Act of 1998, s. 52(3).
[296] 7.8 Regulation 6(2) of the RUC (Complaints etc) Regulations 2000.
[297] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, pg 23, 2011.
[298] Id.
[299] Id.
[300] The Police Act of 1998, s. 52
[301] Policies and Procedures Relating to OPONI, Section 2.29
[302] Id.
[303] The Police Act of 1998, s. 50 (1)(e)(a-b)

serious complaint alleges that the conduct complained of resulted in the death of, or serious injury (a fracture, damage to an internal organ or impairment of bodily function).

Informal resolution simply means that the complaint is resolved locally by the chief of police of the police force to which the complaint relates, again, only if the complainant consents to the proposed resolution. If an informal resolution fails then the Police Ombudsman shall investigate. In 2011/2012, 501 complaints were considered suitable for informal resolution but only 300 complainants agreed to the informal resolution process, with 74% of matters dealt with through informal resolution being successfully resolved.[304]

If an informal resolution fails then the Police Ombudsman shall investigate the complaint and its allegations.[305]

When police officers retire they cannot be the subject of discipline for actions during their service as police officers, unless they are suspected of criminal offences committed during their term of service.[306] The retirement rule was introduced during the peace talks in Northern Ireland in 2000 as a means to allow police staff unwilling to accept restructuring to leave PSNI without repercussions.[307]

The Police Ombudsman is excluded from conducting investigations into matters that have occurred more than a year before the complaint is reported unless new evidence is available or the case is considered to be grave or exceptional.[308] OPONI is also excluded from investigating cases that were examined by the prior oversight mechanism unless there is new evidence in the case.[309] While this does not need to be a bar to a investigation of unresolved issues, there are reports that it has been over-used to justify the refusal to further investigate old claims. [310] The Police Ombudsman may also investigate alleged police misconduct without a complaint being received by calling it in himself.[311] The matters which the Police Ombudsman can call in himself include use of excessive force by police officers, death following police contact and attempts to pervert the course of justice, among other violations.[312]

There are no statutory limits on making of mal-administration complaints against the Police Ombudsman. Cases of mal-administration include cases of failure of duty, for example, the failure to properly investigate a complaint. In such cases the re-examination of case files against police officers, the resolution of whose cases was allegedly mal-administered, is permitted.[313]

Statistics

In 2011/2012, OPONI received 3,336 complaints and 5,896 allegations.[314] Disciplinary hearings arising from Police Ombudsman investigations were concluded on six officers, two resigned

[304] The Police Act of Northern Ireland 1998, Section 53(6).
[305] The Police Act of Northern Ireland 1998, Section 53(6).
[306] Id. at p. 33.
[307] CAJ and OPONI interviews by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[308] Criminal Justice Inspection Northern Ireland, An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland September 2011, p.7.
[309] CAJ interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[310] CAJ interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[311] The Police Act of Northern Ireland 1998 Section 55.
[312] Id.
[313] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, Mal-administration, p. 44, 2011.
[314] For Northern Ireland, July 2012, page 19

prior to hearing, two were found not guilty, and two officers initially received either a caution or a fine but these were overturned at a Chief Constable Review.[315]

The most common type of allegation is a "failure in duty," which means, for example, the conduct of a police investigation, a failure to investigate, a failure in communication, issues associated with detention and the treatment and questioning of suspects.[316] During 2011/2012, failure in duty allegations (2,091) represented 35% of all allegations made.[317] "Oppressive behavior" (1,944 in 2011/2012) represented 33% of all allegations made.[318]

Oppressive behavior is classified into sub-groups:

- oppressive conduct/harassment – police acting in threatening manner or repeated searches for no legitimate reason;
- other assault – pushing or other physical abuse without justification;
- serious non sexual assault – assault that results in serious injury, i.e. broken bones; and sexual assault – assault which is sexual in nature.[319]

Since March 2008, the majority (63%) of oppressive behavior allegations were classified within the subtype other assault, 27% of allegations were classified as oppressive conduct or harassment and 8% as unlawful/unnecessary arrest or detention.[320] Of the 3,336 complaints received by the Office during 2011/12, 1,777 (53%) were referred for formal investigation while the remaining 1,559 (47%) were dealt with or, at the time of reporting were being considered, by the Initial Complaints Office, the body which normally receives complaints.[321]

The Northern Ireland Statistics and Research Agency collected data for the OPONI's annual report for the years 2011/2012. The research showed that 85% of surveyed persons who had heard of the Police Ombudsman thought that it was independent from the police.[322] 77% of those surveyed who were aware of OPONI were confident in its impartiality.[323] 72% of police officers subject to a formal investigation were satisfied with the Police Ombudsman, while only 52% of civilians were satisfied.[324]

Oversight and Reporting

OPONI answers to the Northern Ireland Policing Board and must submit information on its financial and good governance practices ever year.[325] Additionally, OPONI undergoes a statutory review at least once every five years and submits a report to the Secretary of State of Northern Ireland.[326] Once received, the Secretary of State must publish and present the report to the Houses of Parliament.[327] Moreover, the Ombudsman's office will also be expected to produce an annual report, and as such reports are requested by the Secretary of State. The report should

[315] report and Accounts for the Year Ended 31 March 2012, p. 7
[316] Northern Ireland Police Board, Human Rights Annual Report 2012, p. 51
[317] page 19
[318] id.
[319] Office of the Police Ombudsman for Northern Ireland, Analysis of Oppressive Behavior Allegations received for Northern Ireland 2000- 2012 p. 8
[320] Id. at p. 16
[321] Annual report and Accounts for the Year Ended 31 March 2012, p. 23
[322] Id. at p.33
[323] id.
[324] Id. at p. 34
[325] The Police Act of Northern Ireland 2000 Section 64.
[326] The Police Act of Northern Ireland Act 2000 Section 61(4).
[327] Id. at Section 61(6).

include analysis of trends in respect of complaints, for example how certain police practices led to a higher number of complaints.[328] The Ombudsman is also required to submit statistical and general information on its functions to the Northern Ireland Police Board.[329] The board, in turn, is responsible for the issuance of reports on the state of human rights and other issues concerning OPONI and the police of Northern Ireland.[330]

Additionally, those who are not satisfied with any aspect of the Police Ombudsman's service or actions, be they civilians or members of the police force, have a right to make a complaint either verbally or in writing directly to it.[331] In the 2011/2012 reporting period, 23 complaints were accepted against the Ombudsman (compared to the 3,336 complaints that the Ombudsman received that year against the Police).[332]

Russia

Following its most recent visit to Russia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported that "a significant proportion of the detained persons interviewed by the CPT's delegation made allegations of recent ill-treatment by law enforcement officials. [333] Cases of torture or severe ill-treatment in Russia occur at the time of questioning by operational officers, either during the initial period of deprivation of liberty or, and sometimes also, during periods when remand prisoners were returned to the custody of law enforcement agencies for further investigative purposes, with a view to obtaining confessions or information.[334]

The newly created Investigative Committee is based on recommendations provided by a Russian NGO, Public Verdict. The NGO conducted a study, which, combined with many years of assisting victims of malpractice and interaction with law enforcement, also enabled them to craft a detailed set of recommendations addressing the effectiveness and independence of investigations in Russia. Their recommendations call for the creation of a special unit on malfeasance, committed by law enforcement officials, within the Investigative Committee of Russia. These specialized units would be both functionally and structurally independent to ensure full investigation of the alleged abuses. Public Verdict proposed that in order to ensure this independence, the special units would have to be subordinated to the Regional Investigative Committee of Russia or through dual subordination to the head of the Regional Investigative Committee of Russia and the central apparatus of the Investigative Committee of Russia, with the most ideal situation being the subordination of the special unit of the Investigative Committee of Russia to the Central office on investigating allegations of crimes committed by officers of the Interior Ministry, the Federal Drug Control Service and the Federal Penitentiary Service.

[328] Policies and Procedures Relating to OPONI, Section 2.9
[329] Id. at Section 64.
[330] Id. at Section 57.
[331] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police Act of Northern Ireland Act 1998, Mal-administration, p.10
[332] Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended 31 March 2012, p.7
[333] Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 27 April to 6 May 2011, CPT/Inf (2013) 1, p.13 http://www.cpt.coe.int/documents/rus/2013-01-inf-eng.htm.
[334] Id.

This subordination would mean that the units and their staff would answer only to the central office of the Investigative Committee of Russia and would not be accountable to the leadership of district departments, regional or district offices of the Investigative Committee of Russia. These units would exist in all territorial divisions, with its administration located within the central office of the Investigative Committee of Russia.[335]

Public Verdict also proposed that the competency of these units would include the investigation of crimes committed by officers of the Interior Ministry, the Federal Penitentiary Service and the Federal Drug Control Service. These crimes could take place during reception and pre – investigation verification of all allegations of crimes by officers of above services, as well as during any procedural decisions on the allegations and investigations into initiated cases. Considering this competency, all territorial divisions and regional and district offices of the Investigative Committee of Russia, should immediately transfer all information regarding these types of crimes, by these agencies, to the relevant special unit. [336]

The recommendations also specified detailed guidelines for ensuring reporting and communicating of all allegations, complaints and medical information regarding suspicious physical injuries. Importantly the report emphasizes the necessity to ensure that these units are sufficiently resourced and supported, to ensure not only the efficacy of the work, but the safety of the relevant officers.[337]

New specialized investigative departments were in fact created at the level of every Federal District[338] as well as, separately, in Moscow, in the Moscow Region, and in St. Petersburg, and at the central apparatus of the Investigative Committee.[339] As Amnesty International reports, this initiative could lead to real progress in combating impunity for human rights violations, including torture and other ill-treatment. However, the effectiveness of this measure still remains to be seen. There are just three members of staff in every newly created department in each Federal District, and ten members of staff in each of the departments in Moscow, Moscow Region and St. Petersburg respectively. As this stage it seems that this initiative has not been provided with resources and capacity required to address the enormity of the task facing each of the newly created departments and in Russia as a whole. There are other problems, in that at the moment the Investigative Committee has not indicated publicly whether there are any clear and exhaustive criteria according to which specific cases are referred to the newly created departments for consideration and in what circumstances. Considering the above, the specialized investigative departments have some significant obstacles in their way to be addressed before they can begin effectively investigating allegations on an on-going basis, let alone deal with any past cases.[340]

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[335] Id.

[336] Public Verdict, http://www.publicverdict.org/topics/library/10137.html, April 3, 2012. Originally titled in Russian: Предложения по спецподразделению в СКР по расследованию преступлений, совершенных сотрудниками правоохранительных органов.

[337] Public Verdict, http://www.publicverdict.org/topics/library/10137.html, April 3, 2012. Originally titled in Russian: Предложения по спецподразделению в СКР по расследованию преступлений, совершенных сотрудниками правоохранительных органов.

[338] Public Verdict, http://www.publicverdict.org/topics/library/10137.html, April 3, 2012. Originally titled in Russian: Предложения по спецподразделению в СКР по расследованию преступлений, совершенных сотрудниками правоохранительных органов.

[339] The text of the respective Decree is available on the Investigative Committee's website: http://www.sledcom.ru/upload/iblock/a4c/a4cdc6b6dc00679897197909e1682a3d.pdf.

[340] Alternative report of Amnesty International to the Committee Against Torture, Review of 5th periodical report of the Russian Federation, October 2012, pg. 5.

Bulgaria

Background

In 2000, Bulgaria gained the status of candidate country with the European Union. On 25 April 2005, Bulgaria signed the treaty of accession to the EU, giving it active observer status. Finally on 1 January 2007, Bulgaria fully acceded.[341] This process however required Bulgaria to take steps to come in line with EU standards on a variety of issues, including torture, state abuse and other related concerns. In reviewing the mechanisms that Bulgaria has created and active steps that have been taken, it should be noted that political will and popular support for these actions was very strong over the last decade, in order to facilitate EU membership as expeditiously as possible.

Law on Torture

Bulgaria has national law at both the Constitutional and secondary levels explicitly preventing torture.[342] The Constitution states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation."[343]

According to Article 287 of the Penal Code, any public official acting in an official capacity who, in person or through another person, employs unlawful means of coercion to obtain information, a confession, a deposition or a conclusion from an accused, a witness or an expert witness, shall be punished by imprisonment for a term of 3 to 10 years and by deprivation of the rights under Article 37, for example the right to hold a certain state or public office and the right to practice a certain profession or activity. However, Article 287, only applies to criminal proceedings, and leaves out many basic aspects of torture in its description, thus leaving international observers concerned that the prohibitions, while strong, are not fully in conformity with international obligations.

Various internal laws, for example at the Ministry Level, describe obligations of police and other state officers in the protection of rights of detained persons.[344] For example, the above-stated Ministry of Interior (MoI) Instruction No. Iz-1711, which requires police officers to notify detainees of rights immediately.[345] Moreover, Article 9 of Guideline No. Iz-2451 of the MoI on the procedure to be followed by the police upon detention of persons at the structural units of the MoI, on the furnishing of premises for the accommodation of detainees and the order therein, expressly prohibits any actions, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment whatsoever, or any act of discrimination against detainees.[346] Article 10 of Guideline No. Iz-2451 also states that a member of the police force who has

[341] European Affairs – History of EU Bulgaria Relations. http://www.euaffairs.government.bg/index.php?page=en_BG-EU Accessed June 16, 2013.
[342] Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29; Bulgarian Penal Code Article 287.
[343] Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29.
[344] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Bulgarian Government on the Visit to Bulgaria Carried out by the CPT*, p.17 (CPT/Inf 2012); State Gazette #9/26.01.2007 in force from 27 February 2007; Committee Against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention 3 December 2010*, p. 4-5 (CAT/C/BGR/4-5).
[345] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Bulgarian Government on the Visit to Bulgaria Carried out by the CPT*, p.17 (CPT/Inf 2012).
[346] State Gazette #9/26.01.2007 in force from 27 February 2007.

become witness to the acts under Article 9, shall intervene to prevent or put an end to any such act and shall report it to his/her superior.[347]

Despite a long list of domestic legislation aimed at torture prevention and Constitutional provisions empowering international legal instruments, the UN Committee against Torture remains concerned that a comprehensive definition of torture incorporating all the elements of Article 1 of the Convention is not included in the Penal Code and that torture is not criminalized as an autonomous offence in law, as required under the Convention.

Bulgaria has additionally ratified all major UN and EU legal instruments pertinent to torture[348] and Article 5, Paragraph 4 of the Constitution of the Republic of Bulgaria of 1991 provides that "Any international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise." [349]

Investigations

Despite many disparate investigatory mechanisms, no centralized system for investigation of complaints has been set up. Each ministry and government agency (MoI, Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labor and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions. If an internal body finds that an offender must be criminally charged, it can file a complaint with the prosecutor's office, but it cannot independently prosecute claims. [350] Prosecutors may refuse to prosecute only if the alleged act is not a crime, the statute of limitations has run, the potential defendant could not be otherwise held criminally liable, or there is insufficient evidence to prove the charges.[351]

Prosecutors supervise the pre-trial investigation and can give mandatory instructions and even undertake investigation directly.[352] Under the 2006 CPC, police must inform prosecutors within 24 hours of any criminal investigation that has been opened.[353] For an investigation to be opened there must be sufficient information regarding the alleged crime.[354] Once an investigation is opened, it must conclude within two months. In exceptional circumstances, and by permission of the prosecutor, the investigation can be extended.[355]

In the event that violations are established, the management of the respective facility is given binding instructions to rectify these, unless they constitute a criminal offence. It is also an established practice for the relevant district prosecutor's office to send a report about any incident in prison facilities, and specifically about instances of use of force and auxiliary devices

[347] Committee Against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention 3 December 2010*, p. 4-5 (CAT/C/BGR/4-5) .
[348] CAT/C/BGR/4-5, pg 4.
[349] Constitution of Bulgaria, Article 5, Paragraph 4
[350] Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1).
[351] Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1)
[352] Criminal Code of Procedure of the Republic of Bulgaria, Section 46 (2).
[353] Criminal Code of Procedure of the Republic of Bulgaria, Section 212.
[354] Criminal Code of Procedure of the Republic of Bulgaria, Section 207 (1).
[355] Criminal Code of Procedure of the Republic of Bulgaria, Section 234 (3).

against inmates. Timely whistle-blowing and notification of the institutions of alleged or suspected torture by officers of these institutions is the right of the aggrieved party but also of the media and non-governmental organizations.[356]

Safeguards

While Bulgaria has largely left control in the Office of the Prosecutor and other State mechanisms on the investigatory and prosecution ends of the spectrum, it has established a number of successful, and relatively inexpensive, safeguards to address the prevention of torture and cruel, inhuman or degrading treatment.

Complaints / Reporting

Bulgarian legislation contains a number of provisions concerning action to be taken with respect to reporting cases of ill-treatment. Pursuant to Section 205(2) of the Criminal Code of Procedure (CPC), public officials are under a legal obligation to immediately inform the prosecutor's office of any facts related to a criminal offence, which may have come to their knowledge. Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities. This, along with the aforementioned Code of Ethics of police staff, requiring reporting to superiors for any acts of violence, there is a robust reporting requirement scheme in Bulgaria.

Detention and Notice

As stated above, following the fall of Communism in Bulgaria, its criminal justice process moved away from inquisitorial to a more adversarial one: limiting the importance of the pre-trial stage and placing a greater emphasis on the independent collection of evidence at trial.[357] Pre-trial detention was brought into line with international standards, moving the power to order pre-trial detention from the prosecutor to the judge, and introducing an adversarial bail hearing. The power to issue warrants for searches and surveillance was also given to the courts.[358]

The Law on the Ministry of Interior (LMoI) contains a list of grounds on which a person, including a criminal suspect, may be detained by the police on their own authority for a maximum of 24 hours.[359] However, a prosecutor may order the detention for up to 72 hours of an accused person with the aim to bring him/her before the court competent to remand persons in custody.[360] Hence, the total period during which persons may be deprived of their liberty prior to being brought before a judge is 96 hours. Detention with a judicial permission can last for a period of up to two years.[361]

As described in the report above, in Bulgaria, detention is defined as occurring at the factual instance, at which point rights must be read, by the detaining officers, to the detained person. Importantly, this form records multiple procedural moments for the protection of detainees' rights. Not only must the form register the detainee, but it differentiates between the detention in

[356] CAT/C/BGR/4-5, pg. 25.
[357] Ed Cape and Zara Namoradze, *Effective Criminal Defense in Eastern Europe*, pg. 98 (2012).
[358] Id., pg. 98
[359] The Law on the Ministry of Internal Affairs of Bulgaria, Section 63.
[360] Criminal Procedure Code of Bulgaria, Section 64 (2).
[361] The U.S. State Department, *Report on the Republic of Bulgaria*, 2011.

the field and the registration at the police station.[362] This is important to ensure compliance with the Bulgarian law surrounding the notice requirements of rights. As rights must be given both orally and in writing, it is important to fix the times when the rights should have been given (ie orally at the time of factual detention, and in writing at the time of charging).[363]

It is also explained to Detainees that they have the right to contact someone to give notification of custody orally at the moment of detention and in writing through the declaration of rights, which they must sign in four copies. Somewhat problematically, there are no special phones in police stations which arrested persons can use to notify someone of their detention.[364] Instead, police officers generally allow detainees to use either their own or police officers' phones to make calls. Open Society Institute (OSI) staff interviewed by Tian Shan Policy Center researchers in Bulgaria admitted that some police officers refuse to give their phones to detainees by claiming that they did not have enough credit on their cell-phones to make calls.[365] Nonetheless, the same OSI staff stated that the right to notification of custody in monitoring of detention facilities is generally observed. Similarly, the EU Commission for Prevention of Torture (CPT) delegation indicated that they had been put in a position to promptly notify their family or another third party of their situation. [366]

OSI – Sofia held a year-long program which distributed cell phones to police officers for detainee use in order to notify of custody. The program was extremely successful in decreasing instances of police officers' refusal of cell-phone use to detainees for notification of custody. This suggests that issues with the right to notification of custody may ultimately come down to a shortage of resources as opposed to other potential underlying issues.[367]

Burden of Proof

Safeguards against torture are also contained in the provisions of the CPC regarding the burden of proof. Most importantly, the prosecution's case and the verdict cannot be based solely on the accused person's confession.[368] Further, a re-enactment of a crime is only allowed subject to the condition that it is not degrading for the persons involved in it and does not pose any danger for their health.[369]

The CPC allows re-opening of a criminal case "by virtue of a judgment of the European Court of Human Rights a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms has been established that has a considerable importance for the case."[370] Moreover, where the judge finds that the rights of the criminal defendants were violated, the case is sent back to the pre-trial stage. Further, procedural violations at the pre-trial stage lead to exclusion of the evidence collected in violation of the procedure.[371]

[362] Interview by TSPC researcher with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013.
[363] Criminal Code of Procedure of the Republic of Bulgaria, Section 219 and 55 (1).
[364] Interview by TSPC researcher with police officers from the Regional Police Station 7.
[365] Interview by TSPC researcher with OSI-Sofia staff, Zvezda Vankova and Ivanka Ivanova, Sofia Bulgaria, April 2013.
[366] CPT/Inf 2012, pg. 19.
[367] Interview by TSPC researcher with OSI-Sofia staff April 2013.
[368] Criminal Procedure Code of Bulgaria, Article 116 (1).
[369] Criminal Procedure Code of Bulgaria, Article 167.
[370] Criminal Procedure Code of Bulgaria, Article 422 (4).
[371] Criminal Procedure Code of Bulgaria, Article 287.

Interrogation Guidelines

The Bulgarian CPC provides important interrogation guidelines: "1) The interrogation of the accused party shall take place in daytime, except where it may suffer no delay; 2) Before an interrogation, the respective body shall establish the identity of the accused party; 3) The interrogation of the accused shall begin with the question whether he or she understands the charges pressed against him/her, after which the accused party shall be asked to tell in the form of free narration, if he or she wishes, everything that he or she knows in relation to the case."[372]

Similarly, pursuant to MoI Guideline No. Iz-1711, special rooms for police interviews should be set up at police stations.[373] The Instruction contains detailed provisions on the manner in which these interview rooms are to be equipped (e.g. the environment should not be in any way intimidating, there should be no weapons or threatening objects, all participants in the interview should have similar chairs, etc.). The rooms are also to be fitted with equipment for making a full electronic recording of the questioning. The video- and audio recordings are to be kept for 30 days.[374]

OSI staff in Bulgaria, interviewed by AUCA/TSPC researchers, stated that interrogation rooms do not always meet the legal requirements, especially in older facilities. Moreover, OSI staff noted that due to lack of space, sometimes interrogations occur in offices of police investigators where evidence from other cases is on display, including weapons. Thus, these offices sometimes intimidated interrogated persons.

Georgia

During his visit to Georgia in 2005, the UN Special Rapporteur on Torture, Manfred Nowak, received credible allegations of the use of torture and ill-treatment.[375] Georgian authorities responded by undertaking several efforts to combat the persistence of torture and ill-treatment, including the adoption of a zero-tolerance policy, the development of an anti-torture action plan, the strengthening of safeguards, the implementation of judicial reform and the improvement of prison conditions. Although issues of impunity still remain, the great majority of persons detained by police or in prisons is treated fairly.

According to Article 17(2) of the Constitution of Georgia; "Honor and dignity of an individual is inviolable. Torture, inhuman, cruel and degrading treatment or punishment shall be impermissible." Further, Article 18 (4) states that "physical or mental coercion of an arrested [person] or a person otherwise restricted in his/her liberty shall be impermissible. Physical or mental coercion of a detained person or a person whose liberty is restricted otherwise shall be impermissible." Respect for human honor and dignity by police when discharging their duties is guaranteed by the Law of Georgia on Police. According to the law, police officers who use disproportionate force must prove the force's proportionality and inevitability.

[372] Criminal Procedure Code of Bulgaria, Article 138 (1-3).
[373] Guideline Iz-1711of 15 September 2009.
[374] CPT/Inf 2012, pg 15.
[375] CIVIL AND POLITICAL RIGHTS, INCLUDING: THE QUESTIONS OF TORTURE AND DETENTION; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, E/CN.4/2006/6/Add.3 23 September 2005, pg 4.

The new Code of Criminal Procedure (CPC) entered into force introduced innovations such as: the role of the judges as an arbiter with no power to call evidence or to order the conduct of investigative measures on his/her own account; a ban on the questioning of witnesses without their consent; the presence of the judge during the pre-trial stage; and a reduction of detention during the preliminary investigation of a case.

Moreover, the new CPC improved defendants' rights from the moment of initiation of the investigation until the pronouncement of the final judgment. For example, the transfer operational activities to pre-trial investigation under the strict control of a judge; setting of strict time limits, i.e. 60 days for investigation; making testimony of witnesses voluntary in the pre-trial stage of investigation; and construction of judicial investigation on the principle of direct examination of the evidence and principle of orality. The reforms led to the reduction of torture.

One of its most important additions to ensure fairness in proceedings is Article 364, which gives each party in a case the right to acquire, on its own initiative and at its own expenses, an expert conclusion to determine the circumstances, which might assist him/her to defend his/her interests, without the permission of a judge or prosecutor. A defendant may carry out a private investigation independently, or with assistance of defense counsel, to lawfully obtain and present evidence, to request obligatory conduct of an investigative action and to request submission of evidence necessary to counter charges or alleviate criminal responsibility, and to participate in the investigative action carried out on his/her motion and/or a motion of his/her defense counsel. The CPC also provides that investigators, prosecutors or judges have no right to recommend defense counsel to a defendant.

SAMPLE DECLARATION
(Based on Bulgarian Model)

Date and time (hour) of signature:
First, middle (patronymic), and last names of the detained person: _____
certifies that upon detention (arrest), he or she was made aware of his/her rights and declares:

1) _____ an attorney of own choosing and at own cost
Request/Do not Request
Signature:_____

2) _____ legal aid from a duty lawyer, under the *Law on the*
Request/Do not Request *right to legal aid*
Signature:_____

3) _____ health problems that demand medical and result in:
Have/Do not Have
_____
(a detainee's description of an illness or symptoms)
Signature:_____

4) _____ medical examination of own choosing and at own cost
Request/Do not Request
Signature:_____

5) _____ medical examination by a doctor
Request/Do not Request
Signature:_____

6) _____ a relative or another person to be notified of my
Request/Do not Request detention
Signature:_____

7) _____ the right to visitation to receive packages or food
Was made aware of/Not made
Aware of
Signature:_____

8) _____ special dietary requirements
Have/Do not Have
Signature:_____

9) Immediately upon detention, I was made aware of the rights under Art. 63, 64, and 65 of the MoI

Signature:_____
(Detainee)

10) _____ contact with consular services for notification of my detention to the relevant authorities
Request/Do not Request

Signature:_____
(Detainee)

The declaration was filled out with the aid of an interpreter/translator

_____
(first, middle, last name, citizen's number[376], id number, permanent address)

Signature:_____
(Detainee)

Signature:_____
(Interpreter/translator)

The detainee was illiterate and unable to fill-out the declaration, thus it was filled-out by an official, as willed by the detainee, in the presence of a witness who certifies the truth of information in this declaration.

Official _____
(first, middle, last name, rank/post and the MoI department of employment)

Signature: _____

Attesting Witness _____
(first, middle, last name, citizen's number permanent address)

Signature: _____
(Attesting Witness)

Refusal of to sign this declaration, certified by a attesting witness:
(first, middle, last name, citizen's number permanent address)

Signature: _____
(Attesting Witness)

Note: This declaration must be filled-out in two copies: one to be added to the orders for arrest and added to the case-file; and one is for the detainee. Fill-out line 10 of the declaration, if the detainee is a foreigner or a Bulgarian, with a foreign citizenship.

[376] A unique 10 digit number possessed by Bulgarian citizens

Glossary

- Deprivation of Liberty / лишение свободы
    - As defined by Article 49 of the Kyrgyz Criminal Code, Deprivation of Liberty is the period after a conviction by a court of law, when a person is isolated from society and sent to a penal colony, penal settlement, or prison.

    - «Лишение свободы заключается в принудительной изоляции осужденного от общества путем направления его в колонию-поселение или помещения в исправительную колонию общего, усиленного, строгого, особого режима либо в тюрьму» (ст.49 УК КР).

- Detention / задержание
    - As defined by Article 5 of the Kyrgyz Criminal Procedural Code, detention is a coercive procedural action, which essentially consists in imprisoning a suspected person for a short period (up to forty-eight hours) pending a judicial warrant.

    - «мера процессуального принуждения, сущность которой состоит в лишении свободы подозреваемого на краткий срок (до сорока восьми часов) - до судебного решения» (ст.5 УПК КР).

- Factual Deprivation of Liberty / фактическое лишение свободы
    - The Kyrgyz Constitution Article 24(5), uses the term "фактическое лишение свободы." This term, literally translated, means factual deprivation of liberty. As described above, "лишение свободы" is defined in Article 49 of the Kyrgyz Criminal Code. By inserting "фактическое," the drafters likely meant to refer to "момент заключения под стражу," as the moment at which a person is entitled to qualified legal aid from a lawyer or an attorney.

    - В Конституции КР ст. 24 (5) используется термин «фактическое лишение свободы». Как указано выше, определение термина «лишение свободы» дается в ст. 49 Уголовного Кодекса КР. Добавляя к данному словосочетанию слово «фактическое», авторы, скорее всего, имели в виду «момент заключения под стражу», т.е. тот момент, начиная с которого лицу предоставляется возможность получения квалифицированной юридической помощи адвоката или защитника.

- Holding in Custody / Заключение под стражу
    - As defined by Article 110 of the Kyrgyz Criminal Procedural Code, "putting in custody" ("заключение под стражу") is a measure of restraint which may be ordered based on a court's decision in relation to a person accused of an offence punishable with a term of imprisonment of more than three years.

    - «Заключение под стражу в качестве меры пресечения применяется по судебному решению в отношении обвиняемого в совершении преступлений, за которые уголовным законом предусмотрено наказание в виде лишения свободы на срок свыше трех лет при невозможности применения иной более мягкой меры пресечения» (ст. 110 (1) УПК КР).

- Moment of apprehension / Factual Detention / фактического задержания

- For purposes of this report, the “moment of apprehension” will be defined as the moment of factual detention. It will refer to the moment at which an individual’s freedom of movement is limited by the police, investigators or any other Ministry of Internal Affairs official. “Factual detention,”(“фактического задержания”) is currently referenced in Kyrgyz Legislation, in Article 44 of the Criminal Procedural Code. This term is not defined, however when reading Kyrgyz Criminal Procedural Code Articles 95(1), 44 and 40 together, it could be interpreted to mean that “factual detention” is currently intended to be defined as the moment at which the detained person arrives at the detention facility («момент фактического доставления в орган дознания»), or the moment at which his or her official transcript (“протокол о задержании”) is created in the facility. For purposes of this report’s recommendations, factual detention or “фактического задержания” will be defined as the moment when an individual’s freedom of movement is limited.

- В рамках данного отчета, «момент заключения под стражу» определяется как момент фактического задержания и относится к моменту, когда свобода действия лица ограничивается полицией, следователями или другими представителями МВД.
  Термин «фактическое задержание» упоминается в текущем законодательстве КР, в частности – в ст.44 УПК КР. Отдельного определения для этого термина не существует. Однако, при чтении статей 95(1), 44 и 40 УПК КР «фактическое задержание» может быть интерпретировано, как момент фактического доставления задержанного в орган дознания или момент составления протокола о его задержании. В рамках отчета, термин «фактическое задержание» будет определяться как момент ограничения свободы действий данного лица.

Chart of best practice model countries

Country	Northern Ireland	Jamaica	Guatemala	Ontario, Canada
Mechanisms	Office of the Police Ombudsman of Northern Ireland (OPONI): OPONI is a civilian body completely independent from all government institutions in Northern Ireland, including the general Ombudsman for Northern Ireland.[377] Although called the Police "Ombudsman," OPONI could be more accurately described as a civilian body with responsibility for oversight of the Police Service of Northern Ireland (PSNI).[378]	Independent Commission of Investigations (INDECOM) INDECOM is a Commission of Parliament	The International Commission Against Impunity in Guatemala (CICIG). CICIG was created through an agreement between the United Nations and the Government of Guatemala. CICIG focuses on investigating illegal security groups and clandestine security organization. It supports national institutions in their prosecution and though technical assistance.[379] It works closely with The Special Anti-impunity Prosecutor's Office (FECI), which was created as part of the original CICIG.	Special Investigations Unit (SIU) The SIU is an independent, arm's length agency of the government (Ministry of the Attorney General of Ontario), led by a Director and composed of civilian investigators. The mandate of the SIU is to maintain confidence in Ontario's police services by assuring the public that police actions resulting in serious injury, death, or allegations of sexual assault are subjected to rigorous, independent investigations.
Creation of Mechanism	OPONI was established under the Police Act of 1998. It was made as a corporation solely accountable to the Assembly,	From 1992 until the founding of INDECOM, Jamaica had a Police Public Complaints Authority PPCA. The PPCA was determined to be	CICIG was established by agreement between the United Nations and the Government of Guatemala in late 2006 and	The SIU was formed in 1990 under a new Police Services Act.[382] Prior to the establishment of the

[377] OPONI, interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[378] Department of Justice of UK, a consultation paper on the Future Operation of the Office of the Police Ombudsman for Northern Ireland, p. 9, 2012
[379] Agreement on the International Commission Against Impunity: http://cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=14. Note that CICIG is a "non-UN organ, functioning solely in accordance with the provisions of this agreement."
[382] Ontario Police Services Act [see Section 113 - http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm] 1990

	through the Minister of Justice for Northern Ireland. The Police Ombudsman is appointed by Royal Warrant for a term of seven years. The Police Ombudsman does not carry out his/her functions on behalf of the Crown.	ineffective as it could not conduct its own investigations and relied heavily on police. In August 2010 the Jamaican government created INDECOM to investigate actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons.[380]	started its work in September 2007. FECI was created as part of the original CICIG Agreement and the Bilateral Cooperation Agreement signed between the Public Prosecutor's Office (MP) and CICIG Guatemala on February 27, 2008.[381]	SIU, police services investigated its own officers in Ontario, or in some instances, another police service was assigned to conduct the investigation. Over time, public concern grew about the integrity of the process in which police officers investigated other police officers. The lack of confidence led to the creation of the SIU.
Oversight/ Monitoring and Reporting	The investigative functions of OPONI operate independently of the Government to ensure that the government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be.[383] OPONI answers to the Northern Ireland Policing Board and must submit information on its financial and good governance practices ever year.[384] OPONI undergoes a statutory	INDECOM must submit annual reports to parliament along with other reports as requested. Complaints about INDECOM go through the judicial system. –. As a Commission of Parliament, complaints might also be directed to the Justice Ministry or Parliament.	As the CICIG is an agreement between the Guatemalan government and the United Nations, the CICIG Commissioner submits periodic reports to the UN Secretary General. CICIG publishes annual reports as well as thematic reports on its website, in accordance with section 3(k) of the CICIG agreement. Article 11 of CICIG Agreement: "The United Nations reserves the right to terminate its cooperation	The SIU Director reports to the Ministry of the Attorney General - through the Assistant Deputy Attorney General for Agency Relations - (MAG) of Ontario.[386] MAG is not involved in operational matters with SIU, but administers the budget; MAG hires through competitive process and/or appointment the SIU Director. The Director reports the results of investigations to the MAG.

[380] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf
[381] http://cicig.org/uploads/documents/convenios/mp-cicig.pdf.
[383] Department of Justice of UK, a consultation paper on the Future Operation of the Office of the Police Ombudsman for Northern Ireland, p. 11, 2012
[384] Section 64 of the Police (Northern Ireland) Act 2000
[386] The annual report can be found here: http://www.siu.on.ca/pdfs/ar_2012_13__english___acessible.pdf (2012-2013)

	review at least once every five years and submits a report to the Secretary of State of Northern Ireland. Once received, the Secretary of State must publish and present the report to the Houses of Parliament. The Ombudsman's office is statutorily required to produce an Annual Report, Corporate Plan and Accounts and have them presented before Parliament. It is also obliged to produce report as requested by the Secretary of State. The Annual Report also includes an analysis of trends of complaints. . OPONI also produces a business plan every year that lists the office's objectives and targets for the year and the resources available.[385]		with the State if: (a) The State fails to provide full cooperation with CICIG in a manner that will interfere with its activities; (b) The State fails to adopt legislative measures to disband clandestine security organizations and illegal security groups during the mandate of CICIG; (c) CICIG does not receive adequate financial support from the international community." Article 12 of CICIG Agreement: "Any dispute between the parties concerning the interpretation or application of this Agreement shall be settled by negotiation between the parties or by any other mutually agreed mode of settlement."	
Funding	During the reporting year ending in March 2012 OPONI's budget was $13,830,744. Staffing was the highest expens with the 139 OPONI staff costing $6,022,000.	INDECOM is considered a Commission of Parliament and receives its funding as a direct grant by the Parliament - to which it must report. It is also free to seek supplementary funding by way of	CICIG Article 7 states that: "1. The expenditures of CICIG shall be met from voluntary contributions by the international	The approximate SIU budget for 2011-12 and 2012-13 was $8.3 million Canadian Dollars, which is approximately $7.5 million USD

[385] The Police Act of Northern Ireland Act 2000 Section 61(4)

	Any expenditures not proposed in the annual budget must be approved by the Northern Ireland Department of Justice.[387]	grant funding - locally and internationally. The INDECOM Act states that its budget is subject to approval by the Minister of Finance. For its first year of activities, INDECOM received $86 million Jamaican Dollars, which is roughly equivalent to $USD 900,000. The majority of INDECOM's budget comes from the Bureau of Special Investigations with the remainder from the Ministry of Justice's budget that covered the Police Public Complaints Authority (PPCA).[388] In its following year, INDECOM received roughly $200 million Jamaican dollars.[389] According to NGO reports, the 2012-2013 budget allotment has increased to 288 million Jamaican Dollars (about $USD 3 million).[390]	community. 2. The Executive Branch will provide to CICIG the offices and other installations required for CICIG to appropriately carry out its functions" CICIG is funded entirely with the support of donor countries, international organizations and foundations.[391] After one year of operations, CICIG had raised from donors nearly $USD 14 million.[392] CICIG has generally worked with a budget of around $15 million per year. The United States supported CICIG, in FY12, with approximately $USD 5 million.[393]	The Budget is administered by MAG Agency Relations Division; MAG office manages the budgets of multiple offices and can move money around between offices as needed.

[387] Management Statement / Financial Memorandum for the Office of the Police Ombudsman of Northern Ireland; October 2012; prepared by the Department of Justice, pg 18.
[388] Jamaican Gleaner, "INDECOM Gets Millions," December 1, 2010, http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html
[389] RJR News, "Shaw defends tripling INDECOM's budget," April 20, 2011, http://rjrnewsonline.com/local/shaw-defends-tripling-indecoms-budget
[390] Jamaican Gleaner, "INDECOM Gets Millions," December 1, 2010, http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html
[391] Canada, Denmark, the European Union, Finland, Germany, Ireland, Italy, Mexico, Netherlands, Norway, the Open Society Foundation, Spain, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Argentina, Chile, Colombia and Uruguay contribute to CICIG's functioning by providing security contingents.
[392] http://cicig.org/uploads/documents/informes/INFOR-LABO_DOC01_20080901_EN.pdf
[393] http://rules.house.gov/Media/file/PDF_112_1/legislativetext/HR2055crSOM/psConference%20Div%20I%20-%20SOM%20OCR.pdf

Powers	OPONI investigates complaints against the Police Service of Northern Ireland, the Belfast Harbour Police, the Larne Harbour Police, the Belfast International Airport Police and Ministry of Defence Police in Northern Ireland and the Serious Organised Crime Agency when its staff operates in this jurisdiction. The Office is also responsible for the investigation of criminal allegations made against staff of the UK Borders Agency while exercising the powers of constable in Northern Ireland. The Police Ombudsman has exclusive jurisdiction for cases where a death has resulted from the conduct of a police officer which precludes the involvement of the PSNI, including Historical Inquiries Team in such investigations. OPONI is not under duty to investigate complaints brought by police officers against fellow	INDECOM investigative powers include inspection of any public body or police force, including records, weapons, and buildings, and to compel the submissions from these bodies reports of incidents and complaints concerning members of the security forces and officials. The mechanism can obtain a warrant and itself access reports, documents, evidence, weapons, forensic data, enter premises and locations, take charge of the scenes of incidents, and retain information and documentation it obtains for as long as necessary. INDECOM can also "take such steps as are necessary to ensure that the responsible heads and officers submit to the Commission reports of incidents/complaints concerning conduct of the of members of the Security Forces and officials."[395] INDECOM aim is to investigate actions by the security forces that	Article 3 of the CICIG legislation give it powers to (a) Collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States; (b) Promote criminal prosecutions by filing criminal complaints with the relevant authorities. The Commission may also, in accordance with this Agreement and the Code of Criminal Procedure, join a criminal proceeding as a private prosecutor (querellante adhesivo) with respect to all cases within its jurisdiction; (c) Provide technical advice to the relevant State institutions in the investigation and criminal prosecution of crimes committed by presumed members of illegal security groups and clandestine security organizations and advise	SIU investigations consist of a number of tasks, including: •examining the scene and securing all physical evidence •monitoring the medical condition of anyone who has been injured •seeking out and securing the cooperation of witnesses •interviewing police witnesses •seizing police equipment for forensic examination •consulting with the coroner if there has been a death •notifying next of kin and keeping the family of the deceased or injured parties informed.[398] The SIU has a limited jurisdiction. The Unit conducts investigations into police activity where someone has been seriously injured, alleges sexual

[395] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf

	officers. The investigative functions of the OPONI operate independently of the Government in order to respect its principle that Government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be. Policing bodies are statutorily required to share all information requested by OPONI, but OPONI has no such duty.[394]	result in death, injury, or abuse of a person's rights.[396] For the purpose of carrying out an investigation, the Commissioner and the investigative staff have the powers, authorities, and privileges of a constable. INDECOM may at any time require any member of the Security Forces, a specified official or any other person who, in its opinion, is able to give assistance in relation to an investigation, to furnish a statement or produce any document or thing in connection with the investigation that may be in the possession or under the control of that member, official or other person.[397] INDECOM has access, following receipt of a warrant, to any reports, documents and all other evidence, including any weapons, photographs and forensic data, and to retain any records, documents or other property	State bodies in the implementation of such administrative proceedings as may be required against state officials allegedly involved in such organizations; (d) Report to the relevant administrative authorities the names of civil servants who in the exercise of their duties have allegedly committed administrative offences so that the proper administrative proceedings may be initiated, especially those civil servants or public employees accused of interfering with the Commission's exercise of its functions or powers, without prejudice to any criminal proceedings that may be instituted through the Office of the Public Prosecutor; (e) Act as an interested third party in the administrative disciplinary proceedings referred	assault or has died. he jurisdiction captures cases where the police conduct in question causes serious injury or death to another police officer. In addition, it includes incidents of serious injury or death connected to the conduct of a police officer at the time of the incident, regardless of the fact that the individual may no longer be a police officer at the time of the Unit's investigation.

[398] Ontario Police Services Act [see Section 113 - http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm].; See also, regulation 267/10 (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100267_e.htm

[394] RUC (Complaints etc) Regulations 2001

[396] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf; INDECOM was then called ICI

[397] Claim No: 2011 HCV 06344, 2012-05-25, Case Number: 2011HCV06344, http://supremecourt.gov.jm/sites/default/files/judgments/2012/Williams,%20Gerville%20et%20al%20v%20The%20Commissioner%20of%20the%20Independent%20Commissioner%20of%20Investigations,%20The%20Attorney%20General%20and%20The%20Director%20of%20Public%20Prosecutions.pdf, Paragraph 142

		for as long as reasonably necessary. Following a recent supreme court decision (July 30, 2013), INDECOM has the power to initiate and conduct prosecutions (thought the Director of Public Prosecutions may still take over or cancel a prosecution)	to above; (f) Enter into and implement cooperation agreements with the Office of the Public Prosecutor, the Supreme Court, the Office of the Human Rights Ombudsman, the National Civilian Police and any other State institutions for the purposes of carrying out its mandate; (g) Guarantee confidentiality to those who assist the Commission in discharging its functions under this article, whether as witnesses, victims, experts or collaborators; (h) Request, under the terms of its mandate, statements, documents, reports and cooperation in general from any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity, and such officials or authorities are obligated to comply with such request without delay; (i) Request the Office of the Public Prosecutor and the	

			Government to adopt measures necessary to ensure the safety of witnesses, victims and all those who assist in its investigations, offer its good offices and advice to the relevant State authorities with respect to the adoption of such measures, and monitor their implementation; (j) Select and supervise an investigation team made up of national and foreign professionals of proven competence and moral integrity, as well as such administrative staff as is required to accomplish its tasks; (k) Take all such measures it may deem necessary for the discharge of its mandate, subject to and in accordance with the provisions of the Guatemalan Constitution; and (l) Publish general and thematic reports on its activities and the results thereof, including recommendations pursuant to its mandate.	
Relation to	OPONI has no prosecutorial powers. The Police Ombudsman	INDECOM has gained the power to	The Special Anti-impunity	After the SIU investigates and collects evidence, the Director

Prosecutor	must refer cases of criminal police abuse to Public Prosecutions upon the completion of an investigation. The Public Prosecutor's Office cannot participate in OPONI investigations. Any complaints of police abuse made to the Public Prosecution Service should immediately be referred to the Police Ombudsman.[399]	prosecute within the last year.	Prosecutor's FECI was created in order to investigate cases selected and assigned to them by CICIG and the MP, in accordance with the competency framework. FECI main function is to support investigative activities in cases that, due to the form in which they were executed and the characteristics of the perpetrators, shock the population, put witnesses and evidence in danger and weaken the public's confidence in police and Public Prosecutor's Office authorities. The Public Prosecutor's (MP) office brings all cases but CICIG can join as 'querellante adhesivo (complementary prosecutor)	must decide whether, based on the evidence, there are reasonable grounds to lay a charge. If the Director lays a charge, the Crown Attorney prosecutes the charge. Once the SIU has laid a charge against a police officer, the Unit refers the matter to the Justice Prosecutions of the Criminal Law Division at the Ministry of the Attorney General, which prosecutes the charge. The SIU, as an investigative agency, is not involved in the prosecution, although it does participate by preparing the Crown brief and assisting the Crown. The Crown Attorney must determine whether there is a reasonable prospect of conviction, which is a higher test than reasonable grounds. If the case meets this test, the case goes to court, where the Crown must prove beyond a reasonable doubt that a criminal offence occurred. While the SIU publicly announces when it has laid a

[399] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, p. 21, 2011

				charge against a police officer, the Unit releases limited information regarding the basis of that charge in order to protect the fair trial interests of that police officer and the community. Whether or not an officer who has been charged by the SIU is subject to employment consequences by her or his employer is a matter entirely within the purview of the police service.
Structure and staffing	The Police Ombudsman of Northern Ireland is appointed by Her Majesty the Queen, as a named person for a fixed term of seven years. The Police Ombudsman is accountable to the Northern Ireland Assembly, through the Minister for Justice. The status of the Office of the Police Ombudsman is that of a non-departmental public body (NDPB) administrated through the Department of Justice. OPONI staff includes retired police	The INDECOM Commissioner is appointed for a five year term by the Prime Minister, after consultation with the Leader of the Opposition, and should possess the qualifications to hold office as a Judge of the Supreme Court. The INDECOM Act envisioned five 'Directors of Complaints' to lead five regional offices, though only three regional offices presently exist. Though INDECOM may appoint and employ employees as needed, under the Act, the terms and conditions of employment must be approved by a	CICIG is comprised of a Commissioner, who is appointed by the UN Secretary General who also serves as the legal representative, and the following units: Political Affairs, Department of Investigations and Litigation (including police, legal and financial investigation sections), Department of Information and Analysis, Department of Administration, Department of Security and Safety, and the Press Office. FECI has three offices of	Led by the Director, the SIU consists of roughly 85 staff members. The SIU Director may not be a current or former police officer (in practice, all have been former Crown Attorneys). Four investigative supervisors (three full-time and one acting supervisor position), two forensic identification supervisors and 14 investigators work out of the SIU's Mississauga head office. Of the 14 investigators, 8 have no previous policing backgrounds. Their investigative experience

	officers and civilian lawyers.[400] The police force was under a temporary special measure where hiring had to be 50/50 from the minority/majority groups. That changed only recently when they reached 30% from the minority group.[401]	Committee.[402] INDECOM is composed of a Commissioner, Assistant Commissioner, five investigation teams (ideally with 10 investigators per team), a forensic unit of seven people and a legal team of four people. Of the approximately 80 INDECOM staff, about 10 or so are former/retired police officers.	prosecutors, each of which is made up of a public prosecutor, and assistant prosecutors, all of whom work for the Public Prosecutor's Office (MP). It also has a secretary and a clerk. Finally, two National Civil Police (PNC) officers and two investigators from the Department of Criminal Investigations of the MP (DICRI) complete the coordination department. According to the CICIG's 6th report, it is comprised of 162 national and international officials, 72 of whom perform substantive tasks (45%), 62 work in security (38%) and 28 perform administrative duties (17%). 67% of staff members are male and 33% are female. Excluding the largely male Security Department, the male-female ratio of Commission personnel is[403]	comes from having worked in areas such as national security and intelligence, immigration, the legal profession, workplace health and safety, and professional regulation. In addition to this, a total of 39 regional investigators and 10 forensic investigators are stationed across the province and deployed on an as-needed basis. To fulfill its mandate effectively, the SIU is also supported by an Executive Officer, Legal Counsel, Administrative Manager, Communications Coordinator, Outreach Coordinator, Training Coordinator, and an administrative staff composed of transcribers, a central registry clerk, a budget and inventory clerk, an information technology systems analyst and administrative assistants.

[400] About Us: Police Ombudsman for Northern Ireland. http://www.policeombudsman.org/modules/pages/about.cfm. 2013
[401] Interview from Sarah and Bach's research trip in Belfast
[402] INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf; A/HRC/16/52/Add.3, Human Rights Council, Sixteenth session findings and recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Jamaica, 12 to 21 February 2010.
[403] CICIG's 6th report, Sept 2012-Aug 2013 , http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf. page 4

Mechanism / Process for complaints	Complaints to OPONI can only be made by "members of the public".[404] Special rules apply when complaints are brought by police officers against fellow officers. The Police Ombudsman is required, on receipt of a complaint: "(a) to record and consider each complaint made or referred to him… and (b) to determine whether it is a complaint to which subsection 4 applies."[405] The law requires the Police Ombudsman to send to police and to any identified police officer a copy of any complaint received.[406] Police officers who are subject to three or more complaints in a twelve months period are reported to their District Commanders.[407] Complaints can be made by directly contacting OPONI either	The INDECOM Act allows a person to submit a complaint regarding the conduct of a member of the security forces or any specified official which (a) resulted in the death of or injury to any person or was intended or likely to result in such death or injury; (b) involved sexual assault; (c) involved assault or battery by the member or official; (d) resulted in damage to property or the taking of money or of other property; (e) although not falling within any of the preceding paragraphs, is in the opinion of the Commission of a grave or exceptional nature.[409] Section 11 of the Act also states that officers shall inform INDECOM of incidents "in practice, INDECOM is called, by police, to the scene of any shooting by police. There is a hotline for the public to call in and report shootings which is routed to the appropriate regional team, the police are	Detainees should complain on their own initiative. CICIG decides what cases to investigate and join as complementary prosecutor.	The SIU is mandated to investigate any interaction involving police where there has been death, serious injury or allegations of sexual assault. All Ontario police services are under a legal obligation to immediately notify the SIU of incidents of serious injury, allegations of sexual assault, or death involving their officers. Incidents which fall within its mandate must be reported to the SIU by the police service involved and/or may be reported by the complainant or any other person. The SIU is also notified of incidents by complainants themselves or their families, members of the media, lawyers, coroners and those in the medical profession. Any member of the public can also notify the SIU of an incident by calling the SIU

[404] Northern Ireland Human Rights Commission, Report pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights in Police, p.2, June 2012
[405] The Police Act of 1998, s. 52(3)
[406] 7.8 Regulation 6(2) of the RUC (Complaints etc) Regulations 2000
[407] Id.
[409] A/HRC/16/52/Add.3, Human Rights Council, Sixteenth session findings and recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Jamaica, 12 to 21 February 2010

	in person, in writing or phone; a switchboard can be reached 24/7. Complaints can also be made directly to police officers who have a duty to report them to OPONI.[408]	expected to inform INDECOM, … There has been more (and less) compliance with this requirement by police, but interestingly, citizens who witness police shootings are increasingly calling to report them on INDECOM's hotline."[410]		directly..

[408] OPONI interview by TSPC researchers Bakhtiyor Avezdjanov and Sarah King, Belfast, Northern Ireland, 3 December 2013
[410] Meeting with INDECOM leaders, October 23, 2013. And Personal communication via email between TSPC researcher MK and the NGO Jamaicans for Justice, November 19, 2012

Chart of alternative practice model countries

Country	Bulgaria	Georgia	Russia
What are the mechanisms	Despite many disparate investigatory mechanisms, no centralized system for investigation of complaints has been set up. Each ministry and government agency (MoI, Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labor and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions. If an internal body finds that an offender must be criminally charged, it can file a complaint with the prosecutor's office, but it cannot independently prosecute claims. [411] In 2008 the Internal Security Directorate was established. It is directly subordinated to the Minister and is to perform internal control on the officers' performance, including	On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units (HRU) to be located within the Ministry of the Interior. [412] The Human Rights Unit of the Ministry of Internal Affairs is also actively involved in the process of internal monitoring.[413] The Main Division of Human Rights Protection and Monitoring Unit, is contained within the administration of the Ministry of Internal Affairs. The HRU works closely with the Public Defender's Office, under the Ombudsman. They cooperate to tasked with identify illegal actions committed by Ministry of Internal Affairs personnel, including human rights violations, and handling individual citizen complaints. To fulfill the requirements set forth in the OPCAT, Georgia created the National	The Reform Act contained provisions to establish an Investigative Committee attached to the Prosecutor's Office within the existing prosecutorial system.[414] However, in practice the Investigative Committee showed the need for a clearer separation of the functions of prosecutor's supervision and pretrial investigation powers.[415] NGOs have stated that the prosecutor's offices do not show initiative in starting investigations on torture cases. The Russian Government established the Investigative Committee as a separate, independent body outside of the existing prosecutorial system, in an attempt to deal with the perceived and practical issues of independence of the prosecutor's office in

[411] Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1).
[412] The division was created by Decree N10 of the Minister of Internal Affairs of January 16, 2001;
[413] The division was created by Decree N10 of the Minister of Internal Affairs of January 16, 2001;
[414] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf, para. 250.
[415] The 5th periodical report of Russia to the Committee Against Torture, online:
CICIG (agreement between Guatemalan gov't and UN) - CICIG Commissioner submits periodic reports to the UN Secretary General; not sure about complaints, to UNDPA, or SG's office?
, para. 251.

	prevention of torture.	Preventative Mechanisms (NPM) to undertake all effective measures to fight against ill-treatments, particularly investigate all facts of ill-treatments, punish offenders and give compensation to victims.	investigating police abuse cases.
When they were formed	In the 2008 amendments to the MIA, the position of police investigator was introduced. This was aimed at expanding the range of investigating authorities and ensuring the timely, lawful and efficient investigation in the pre-trial phase.	On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units (HRU) to be located within the Ministry of the Interior.[416]	In April 2012 special departments were created within the Investigative Committee for the specific purpose of investigating crimes allegedly committed by police and other law enforcement officials, though the Committee has not made public whether any clear and exhaustive criteria exist for referral of cases to these special departments.
Oversight and monitoring	In the event that violations are established, the management of the respective facility is given binding instructions to rectify these, unless they constitute a criminal offence. It is also an established practice for the relevant district prosecutor's office report on any incidents in prison facilities, and specifically on instances of use of force and auxiliary devices against inmates. Timely whistle-blowing and notification of the institutions of alleged or suspected torture by officers of these institutions is the right of the aggrieved party	In 2007, in order to enhance the fight against torture, inhuman and degrading treatment as well as improve and coordinate monitoring of the relevant reforms, an Inter-agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established *via* Presidential Decree No. 3691. The Council has defined certain important objectives that included preventive measures, protection and rehabilitation of the victims of torture and	In January 2011, the Investigative Committee was instituted as a stand-alone agency, accountable directly to the President, on a par with the Prosecutor's Office.[422] The Investigative Committee exercises its powers independently of central and local government bodies and civil society associations, is required to be in compliance with Russian legislation. In addition, exerting pressure on the Investigative

[416] The division was created by Decree N10 of the Minister of Internal Affairs of January 16, 2001;

	but also of the media and non-governmental organizations.[417] Timely whistle blowing and notification is the right of aggrieved party and also media, NGO. NGOs are given opportunity to exercise public control over MOI bodies.[418] In all ministries and other institutions concerned by the provisions of Article 13 of the Convention, there are internal control bodies in place whose functions include receipt of, and follow-up on, complaints and queries. The Code of Ethics of police staff and Instruction No. Iz-1711 of 15 September 2009 contain specific obligations for the police to report to their superiors acts of violence or inhuman or degrading treatment Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation	capacity-building of law enforcement officials to investigate allegations of ill-treatment. In addition to that, the council aimed to facilitate cooperation among governmental agencies, international and non-governmental sector as well as support to the creation of the National Preventive Mechanism. The HRUt was created in the Department of Supervision over Prosecutors' Activities in the territorial organs of the Ministry of Interior of the Chief Prosecutor's Office of Georgia.[419]One of the main aims of the Unit is to: "Monitor and react to the information regarding the alleged violations of human rights, identify and respond to the facts of torture, inhuman, cruel and degrading treatment or punishment which took place at the Prosecution Services, pre-trial detention facilities, prisons and other places of restriction of liberty."[420] On a daily bases the Human Rights Protection Unit of the Chief Prosecutor's Office of the Ministry of Justice receives information from the Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia on	Committee and its staff to influence or impede its work is a punishable offense.[423] Units and its staff would answer only to the central office of the Investigative Committee of Russia and would not be accountable to the leadership of district departments, regional or district offices of the Investigative Committee of Russia. "Public control over securing human rights in facilities" established supervising Public Commission – has right to enter detention centers after notification of Director without screening. In reality Commissioners are screened and get refusal.[424]

[422] Alternative report of Amnesty International to CAT review of 5th periodical of the Russian Federation, October 2012, p. 5.
[417] CAT/C/BGR/4-5, p. 25.
[418] CAT 2010 p 25
[419]Presidential Decree #68 of March 31, 2009
[420] Decree of the Minister of Justice # 275 regarding the Statute of the Department of Legal Security of the Prosecution Service of Georgia, Article 4 (3) (a).

	detention facilities	data concerning on all facts of bodily injuries of prisoners.[421]	
Reporting requirements	There is an Inspectorate Department under the Supreme Cassation Prosecutor's Office, and similar control bodies (inspectorates) also operate with appellate prosecutors' offices around the country. These perform inspections in relation to incoming violation reports or established omissions or irregularities. The results of monitoring, as well as of disciplinary inspections of the performance of duties of service, are summarized and analyzed, and the relevant proposals are submitted to the Prosecutor General for adoption of disciplinary and other punitive measures.	The Prosecution HRU systematically collects information from the Ministry of Corrections and Legal Assistance related to the bodily injuries of the prisoners inflicted by the time of placement at the penitentiary establishment. Based on the given information, Prosecution HRU conducts visits to the places of deprivation of liberty in order to prevent ill treatment, and in cases where inhuman treatment exists, unit ensures to correspond by taking relevant steps.[425]For the purpose of dissemination of information, the web-page on the Human Rights Protection Unit was created within the web-site of the Chief Prosecutor's Office where relevant information is provided on Unit's activity and contact details.[426]	**X**
Funding	**As these mechanisms are not stand alone investigation units created solely for the investigation of torture, their funding structure is not included here**		
Powers			

[423] The 5th periodical report of Russia to the Committee Against Torture, online: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.RUS.5_en.pdf para. 254.
[424] Public Verdict, http://www.publicverdict.org/topics/library/10137.html, April 3, 2012. Originally titled in Russian: Предложения по спецподразделению в СКР по расследованию преступлений, совершенных сотрудниками правоохранительных органов.
[421] Implementation Report of 2008-2009 Action Plan against Torture, Inhuman, Cruel and Degrading Treatment or Punishment in Georgia (Report period June 12 2008 –December 31 2009) p. 6
[425]The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill treatment in Georgia
[426] Decree of the Minister of Justice # 275 regarding the Statute of the Department of Legal Security of the Prosecution Service of Georgia, Article 4 (3) (a).
See at: http://www.justice.gov.ge/index.php?sec_id=250&lang_id=GEO

	The Law on the Ministry of Interior (LMoI) contains a list of grounds on which a person, including a criminal suspect, may be detained by the police on their own authority for a maximum of 24 hours.[427] However, a prosecutor may order the detention for up to 72 hours of an accused person with the aim to bring him/her before the court competent to remand persons in custody.[428] Hence, the total period during which persons may be deprived of their liberty prior to being brought before a judge is 96 hours. Detention with a judicial permission can last up to two years.[429]	The MIA HRU systematically carries out the internal monitoring of TDIs and monitors the health condition of persons placed there. The existence of a Public Defender office, under the Ombudsman, which is tasked with identifying illegal actions committed by Ministry of Internal Affairs personnel, including human rights violations, and handling individual citizen complaints. In Georgia's case, it cooperates closely with the Main Division of Human Rights Protection and Monitoring Unit, which is within the administration of the Ministry of Internal Affairs The Human Rights Unit of the Ministry of Internal Affairs is also actively involved in the process of internal monitoring	The Investigation Committee officials are investigating as conventional crimes (murder, rape, etc.), and official misconduct, including against police and other law enforcement agencies, which in turn exercises operational support for investigators for ordinary criminal cases. As a result, receiving complaint about the misconduct by an employee of such an agency, the investigator of the SKR was actually forced to investigate the case involving a "colleagues", which eliminates the objectivity and independence of the investigation.
Relation to Prosecutor	Reports of investigations into abuse are conducted by the Inspectorate Department, which is a part of the Prosecutor's Office. Prosecutors supervise the pre-trial investigation and can give mandatory instructions and even undertake investigation directly.[430] Under the 2006 CPC, police must inform prosecutors within 24 hours of any criminal investigation that has been opened.[431]	The Office of Prosecutor General of Georgia conducts the investigation that lead to a judicial prosecution. However, all pertinent ministries have an internal human rights unit which investigates violations within the relevant agency. Ministry of Internal Affairs also has a General Inspection unit, which is tasked to identify human rights violations and other illegal	Until 2011, the Prosecutor's Office was responsible both for investigating suspected serious crimes and prosecuting these in the courts (in 2007 the newly created Investigative Committee carried out the investigation function, however, it remained a sub-division within the Prosecutor's Office). In January 2011, the Investigative Committee was instituted as a stand-alone agency, accountable directly to the President

[427] The Law on the Ministry of Internal Affairs of Bulgaria, Section 63.
[428] Criminal Procedure Code of Bulgaria, Section 64 (2).
[429] The U.S. State Department, *Report on the Republic of Bulgaria*, 2011.
[430] Criminal Code of Procedure of the Republic of Bulgaria, Section 46 (2).
[431] Criminal Code of Procedure of the Republic of Bulgaria, Section 212.

		actions committed by Ministry of Internal Affairs and send investigative results to the Prosecutors' Office of Georgia. Pursuant to Section 205(2) of the Criminal Code of Procedure (CPC), public officials are under a legal obligation to immediately inform the prosecutor's office of any facts related to a criminal offence, which may have come to their knowledge. In 2005, the Prosecutor's Office become part of the Ministry of Justice. It issues Guidelines on Preliminary Investigation into allegations of torture, inhuman and degrading treatment, recommendations of international experts.	on a par with the Prosecutor's Office.[432]
Structure and staffing	The Internal Security Directorate oversees the MIA; the Inspectorate Department within the Prosecutor's Office monitors and disciplines officials of the prosecutor's office; the Supreme Judicial Council; and the Social Support Directorate within the Child Protection Department.	A monitoring group was created within the main HRU, which consists of four persons and carries out unexpected visits to all TDIs throughout Georgia.[433] A Public Defender's office exists under the Ombudsman. It is tasked with identifying illegal actions committed by personnel of the Ministry of Internal Affairs, including human rights violations. It also handles individual citizen complaints. It cooperates closely with the Main	On April 18, 2012 the head of the SKR signed Order № 20 on the establishment of a special unit to investigate crimes committed by law enforcement officials. According to the order, it allocated 60 investigators across the country and should not only investigate criminal cases, but also to carry out pre-investigative checks on all incoming allegations.[434] Specialized investigative departments were

[432] Alternative report of Amnesty International to CAT review of 5th periodical of the Russian Federation, October 2012, p. 5.
[433] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill-treatment in Georgia, released by the Ministry of Justice of Georgia, p 2-3, 2012.
[434] Resume of the Russian NGO Shadow report to UN CAT 2006-2012 eng. p. 7]

		Division of Human Rights Protection and Monitoring Unit, which is within the administration of the Ministry of Internal Affairs. According to experts in the Council of Europe, an Independent Investigative Body is about to be established, but to date this has not occurred.	created at the level of every Federal District as well as, separately, in Moscow, in the Moscow Region, and in St. Petersburg, and at the central apparatus of the Investigative Committee[435]
Mechanism of complaints	The law guarantees easily accessible and confidential complaint mechanisms. Detainees may independently collect and submit evidence of abuse, including medical evidence; this is given the same weight in court as evidence procured by the state and prosecution. Detainees have the right to submit complaints and petitions to UN and Council of Europe human rights bodies; the prison administration has no right to open and check these. To ensure that the factual moment of detention is reported, the detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station. No centralized system for investigation of complaints has been set up because each Ministries and government agency (MOI,	In case a detainee makes any kind of complaint against the detaining officer or employee of TDI, the monitoring unit immediately sends the complaint, and any appended document, to the chief monitoring body of Ministry of Internal Affairs – General Inspection, which is tasked to identify human rights violations and other illegal actions committed by the MIA staff, as well as to handle individual complaints of the citizens. General Inspection investigates offences committed by the staff of the MIA based on the disciplinary regulation of MIA and Police Ethics Code. All complaints transferred to General Inspection by the monitoring unit are sent to the Prosecutors' Office of Georgia, which initiates an investigation. The law guarantees easily accessible and confidential complaint mechanisms. The Ministry of Corrections and Legal Assistance initiated a practice, where special	Detainees have the right to address proposals, applications, and complaints to central and local government bodies and civil service organizations. Those addressed to a procurator, court or other state body empowered to monitor places of forced detention, the Human Rights Commissioner of the Russian Federation, the human rights commissioners of the constituent entities, the pubic watchdog commissions or the European Court of Human Rights are not censored and are forwarded to the addressee without delay. Judicial bodies, law enforcement agencies, central and local government bodies, civil society organizations and associations, and the Human Rights Commissioner of the Russian Federation and the human rights commissioners in the constituent entities cooperate in the review of these

[435] There are eight Federal Districts in total, between them encompassing the whole of the Russian Federation.

	Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labour and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions. Bulgarian legislation contains a number of provisions concerning action to be taken with respect to reporting cases of ill-treatment. Pursuant to Section 205(2) of the Criminal Code of Procedure (CPC), public officials are under a legal obligation to immediately inform the prosecutor's office of any facts related to a criminal offence, which may have come to their knowledge. Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities.	complaints envelopes are disseminated to the prisoners.[436] The complaint envelopes clearly explain the rights of the persons deprived of liberty apart from being used merely as envelopes. The prohibition of torture, inhuman, severe or degrading treatment is on the top of the list of rights. Special boxes are installed for depositing the complaint envelopes. The operation of these boxes is monitored by social service, internal monitoring bodies of Ministry of Corrections and Legal Assistance and Public Defender. The complaint envelopes are numbered and the correspondence is registered in special registration journal..[437]	submissions. While there is an established protocol for receiving these complaints, detainees in some oblasts have no feasible way to file a complaint against torture or abuse, have their applications and complaints routinely searched and examined, and try to submit their complaints and applications via unofficial channels such as through relatives, defense lawyers, or themselves after being released. That said, some detention facilities do provide measures to eliminate obstacles put in place by their personnel to submit complaints, such as by special post boxes.

[436] See also: The United Kingdom- Her Majesty's Prison Order #2510 Prisoner's Request and Complaints Procedures, Feb. 21, 2002. Northern Ireland- official government page explaining prison complaint mechanisms, including info on complaints boxes: http://www.nidirect.gov.uk/make-a-complaint-to-prison-service; India- complaint boxes are installed in only certain federal regions. By way of example, the Times of India details how 1,000 complaints boxes were installed in Mumbai. http://articles.timesofindia.indiatimes.com/2012-11-26/mumbai/35366412_1_complaint-boxes-police-stations-satyapal-singh

[437] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill-treatment in Georgia, released by the Ministry of Justice of Georgia in 2012.

The Kyrgyz Republic

What are the mechanisms	Date Formed	Oversight and monitoring	Funding	Powers	Relation to Prosecutor	Structure and staffing	Mechanism of complaints
The Office of the Prosecutor has the ultimate responsibility, under the Constitution for all investigations leading to prosecutions. In addition to investigation of complaints,	2012	The Office of the Prosecutor retains ultimate oversight responsibility for investigations The National Center for the Prevention of Torture must report annually to the Jogorku	The National Center for the Prevention of Torture is state funded. 12 330 500 сом were allocated for 2014.[439] All other investigative activities are funded via the total	The law on the NPM aims to create "a system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment of persons detained in places of deprivation of or restraint of liberty." The law also aims to create and define the procedures of organization and functioning for an independent center	In addition to the Constitutional oversight, the law on Prosecutor's Office of the Kyrgyz Republic. This law gives the prosecutor powers of supervision over the legality of holding detainees in custody as well as supervision of the conditions of that detention.[441] Those powers of supervision include, among	Bakyt Rysbekov was appointed as the first Director of the National Center. According to the Law he will serve in this position for a two-year term. The National Center has begun to take action by appointing the members of the	Current Kyrgyz law does specify that a suspect has the right to file complaints about actions of an investigator conducting preliminary investigation, actions and decisions of the investigator, prosecutor.[443] These complaints can be filed by a complainant, defense council, legal guardian or designated representative. A decision by a judge as to the lawfulness of the

[439] http://www.tushtuk.kg/society/10645_v_2014_iz_gosbyudjeta_na_soderjanie_natstsentra_po_predotvrascheniyu_pyitok_vyideleno_bolee_12_mln_somov/
[441] Law on Prosecutor's Office of the Kyrgyz Republic, Article 37.
[443] Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings Defending their rights and interests or the rights and interests of people they represent. Article 40(12) Rights and Responsibilities of the Suspect (2013); 40 (12) to lodge complaints against actions of investigative bodies, actions and decisions of the investigator, prosecutor. Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings defending their rights and interests or the rights and interests of people they represent. Article 56 (10) Rights and Responsibilities of a Civil Defendant (2013) 10) to serve pleadings, make complaints against actions of the investigator, actions and decisions of the investigator, prosecutor, court. Actual Text 40(12) приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора. Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings defending their rights and interests or the rights and interests of people they represent. Article 56(10) Rights and Responsibilities of a Civil Defendant (2013); 10) выступать в прениях сторон, приносить жалобы на действия работника органа дознания, действия и решения следователя, прокурора, суда.

the Kyrgyz Republic recently adopted the National Preventative Mechanism. On July 12, 2012, the President signed the law, passed by Parliament on June 8, 2012, to create the National Center to Prevent Torture and other Inhumane and Degrading Treatment and Punishment.[438]		Kenesh.	respective budgets for the Office of the Prosecutor or other relevant ministerial activities.	for the monitoring of detention centers and the prevention of torture, to be named the "National Center of the Kyrgyz Republic on Prevention of torture and other cruel, inhuman or degrading treatment or punishment".[440] According to the Law: develop a strategy for the prevention of torture and ill-treatment and improve detention conditions, coordination and monitoring of its performance, participation in its implementation; ensuring the effective	other things, the authority to visit the institutions, interrogate detainees, examine materials from the investigation, and ensure that the administration in places of detention observes the rights of detainees.[442]	coordination council as well as hiring some of the required staff. According to the Law, staff will include: 1) Deputy Director (1 unit); 2) Department of preventive visits • Head of Department - Chief Expert (1 unit); • Expert (2 units); 3) Coordination Division, organizational and analytical work • Head of	actions must be made within 5 days.[444] However, there are few details about how this right can be not only ensured, but made meaningful. It is further unclear how this right is operationalized as it relates to complaints against arresting authorities while a suspect is in custody. If a detainee makes a complaint about torture, or other form of abuse, at the hands of state officials, that complaint may be investigated by the same investigatory structures responsible for the investigation of the

[438] United States State Department Bureau of Democracy, Human Rights and Labor; Country Reports on Human Rights for 2012, Kyrgyz Republic; http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper; The law of the Kyrgyz Republic "On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment."

[440] Law of the Kyrgyz Republic "On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment," 12 July 2012 N 104.

[442] Law on Prosecutor's Office of the Kyrgyz Republic, Article 38.

[444] Kyrgyz Criminal Procedural Code, Part V. Motions and Petitions, Section 15 Appeal from Actions and Decisions of State Bodies and Officials Administering Proceedings on a Criminal Case, Article 131(3) Complaints Against Actions or Decisions of an Investigator or Procurator. (3) 3) A judge shall check the legality and validity of the action (or inaction) and decisions of the investigator, prosecutor, not later than five days from the date of receipt of the appeal at the hearing with the participation of the applicant and his counsel , legal representative or representative, if they are involved in a criminal case , other persons whose interests are directly affected by the appealed action (or inaction) or the decision , as well as with the participation of the prosecutor. Absence of the persons, timely informed of the time of the complaint, and who do not insist on its consideration with their participation, shall be an obstacle for the consideration of the complaint by the court. Actual Text: Судья проверяет законность и обоснованность действий (бездействия) и решений следователя, прокурора не позднее чем через пять суток со дня поступления жалобы в судебном заседании с участием заявителя и его защитника, законного представителя или представителя, если они участвуют в уголовном деле, иных лиц, чьи

				functioning of a system of regular preventive visits; development and implementation of educational and training activities; contribute to improving the legal and regulatory framework; interaction with public authorities to ensure efficient operation; forming public intolerance to torture and ill-treatment; promote international cooperation in the fight against torture.		Department - Chief Expert (1 unit); • Expert (4 units); 4) Documentation Specialist (1 unit); 5) Executive Assistant (1 unit); 6) Accounting (1 unit); 7) Financial and economic activity (1 unit).	original criminal, or administrative, inquiry[445]

интересы непосредственно затрагиваются обжалуемым действием (бездействием) или решением, а также с участием прокурора. Неявка лиц, своевременно извещенных о времени рассмотрения жалобы и не настаивающих на ее рассмотрении с их участием, не является препятствием для рассмотрения жалобы судом.

[445] Code of Criminal Procedure Chapter 2 Article 8 of the Participation of the prosecutor in criminal proceedings (1) Supervision of the correct and uniform application of legislation bodies exercising operative investigation and effect, provided the Prosecutor's Office of the Kyrgyz Republic within its competence

Proposed Amendments – Criminal Procedural Code of the Kyrgyz Republic

Current law - Russian version Русская версия настоящего Кодекса	Proposed version in Russian Русская версия предлагаемых частей	Proposed version in English Английская версия предлагаемых частей
Статья 5. Определение основных понятий, содержащихся в настоящем Кодексе Основные понятия:	Статья 5. Определение основных понятий, содержащихся в настоящем Кодексе Основные понятия: **Задержание**- это ограничение свободы передвижения лица следователем или по его поручению органом дознания. **Момент задержания -** это момент ограничения свободы передвижения лица следователем или по его поручению органом дознания	Article 5. Definitions of basic concepts contained in this Code: **Detention**- limitation of a person's freedom of movement by investigator or by inquiry body on his/her behalf. **Moment of detention**- moment of limitation of a person's freedom of movement by investigator or by inquiry body on his/her behalf
Статья 39. Подозреваемый (1) Подозреваемым является лицо: 1)в отношении, которого возбуждено уголовное дело; 2) в отношении которого по подозрению в совершении преступления применено задержание до избрания	Статья 39. Задержанный/Подозреваемый (1) Задержанный 1) как только лицо становится задержанным оно остается в статусе задержанного до тех пор, пока не поймет, что обладает полным контролем над своей свободой	Article 39. Detainee/Suspect (1) Detainee 1) once a person becomes a detainee and remains a detainee until he/she understands that he/she has regained complete control over his/her freedom of movement or until he/she becomes a

меры пресечения. (2) Орган следствия не вправе держать задержанного в положении подозреваемого свыше 48 часов. К моменту истечения указанного срока орган следствия обязан освободить задержанного либо предъявить обвинение и избрать меру пресечения. При необходимости избрания в отношении обвиняемого меры пресечения в виде заключения под стражу или домашнего ареста следователь с согласия прокурора обращается с ходатайством в суд в порядке, установленном Уголовно-процессуальный Кодексом КР. (3)Орган следствия обязан уведомить близких родственников задержанного о времени и месте его содержания. (4) Лицо перестает пребывать в положении подозреваемого с момента вынесения органом следствия постановления о прекращении уголовного дела или привлечении его в качестве обвиняемого. (В редакции Законов КР от 25 июня 2007 года N 91, 14 июля 2008 года N 142)	передвижения либо до того, как он/она становится подозреваемым; 2) лицо/ орган следствия, осуществившее задержание, обязано немедленно уведомить координирующего или дежурного адвоката по гарантированию бесплатной юридической помощи и не приступать к дальнейшим процессуальным действиям без присутствия адвоката; (2) Подозреваемым является лицо: 1) в отношении которого возбуждено уголовное дело; 2) в отношении которого по подозрению в совершении преступления применено задержание до избрания меры пресечения; 3) Лицо перестает пребывать в статусе подозреваемого с момента вынесения органом следствия постановления о прекращении уголовного дела или привлечении его в качестве обвиняемого. (3) Орган следствия не вправе держать задержанного в статусе подозреваемого свыше 48 часов. К моменту истечения указанного ср	suspect; 2) the person / investigation body exercising detention shall immediately notify the coordinating or duty counsel by guaranteed free legal aid and not to initiate further proceedings without a advocate’s presence; (2) A suspect is a person: 1) against whom a criminal case was launched; 2) in respect to whom, on suspicion of committing a crime, detention is applied as a preventive measure; 3) a person ceases to be a suspect from the moment when investigation body decides to discontinue the investigation of a criminal case or when he is brought in as a defendant. (3) The investigating body is not entitled to keep the suspect detained for more than 48 hours. By the time of expiration of that period, the investigating body must release the suspect or indict him and

	ока орган следствия обязан освободить подозреваемого либо предъявить обвинение и избрать меру пресечения. При необходимости избрания в отношении обвиняемого меры пресечения в виде заключения под стражу или домашнего ареста следователь обращается с ходатайством в суд в порядке, установленном настоящим Кодексом.	choose a preventive measure. If it is necessary, for the accused to be remanded in to custody or house arrest, the investigator must request permission from the court in the manner prescribed by this Code.
Статья 40. Права и обязанности подозреваемого	Статья 40. Права и обязанности задержанного и подозреваемого	Article 40. Rights and responsibilities of the detainee and suspect
(1) Подозреваемый имеет право:	1) Задержанный имеет право:	1) Rights of Detainee:
1) знать, в чем он подозревается; 2)получить копии постановления о возбуждении против него уголовного дела, протокола задержания; 3)получить письменное разъяснение его прав; 4) иметь защитника с момента первого допроса, а при задержании с момента фактического доставления его в орган дознания; 5)давать показания или отказаться от дачи показания; 6) давать показания на родном языке или языке, которым владеет; 7)пользоваться услугами переводчика;	2) знать основания для его задержания; 3) незамедлительно уведомить или сообщить своим близким или родственникам об основаниях, времени и месте его задержания; 4) иметь защитника с момента задержания; 5) иметь право доступа для адвоката по его или ее выбору с момента фактического задержания; 6) не давать показания против себя; 7) хранить молчание; представлять доказательства; отказаться от дачи показаний 8) давать показания на родном языке или	2) to know the reason for his detention; 3) right to immediate notification or message to close ones and relatives about the reasons for his/her detention, time and place of detention; 4) to have an attorney from the moment of detention; 5) access to lawyer of his/her choosing from the moment of factual detention; 6) not to testify against oneself; 7) to remain silent; exhibit evidences; withhold evidences; 8) to give evidence in native language or the language he/she speaks;

8) представлять доказательства; 9) заявлять ходатайства и отводы; 10) знакомиться с протоколами следственных действий, проведенных с его участием, и подавать замечания, которые вносятся в протокол; 11) участвовать с разрешения следователя в следственных действиях, проводимых по его ходатайству или ходатайству защитника либо законного представителя; 12)приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора. (2) Подозреваемый обязан: 1) являться по вызову органа, ведущего расследование дела; 2)подчиняться распоряжениям следователя, прокурора. (3)Подозреваемый может подвергаться по требованию органа, ведущего расследование дела: 1) досмотру, а также личному обыску; 2)врачебному осмотру, дактилоскопированию, запечатлению, изъятию образцов биологического происхождения (крови, выделений человеческого организма); 3) освидетельствованию;	языке, которым владеет; 9) пользоваться услугами переводчика; 10) получить копии постановления о возбуждении (включая Изложение прав) совместно с любыми другими документами, к которым он или она были причастны знакомиться с протоколами следственных действий, проведенных с его участием и подавать замечания, которые вносятся в протокол; 11) приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора. Статья # Права и обязанности подозреваемого 1) Подозреваемый имеет право: 2) все права перечисленные в ст.40 g.1; 3) представлять доказательства; 4) заявлять ходатайства и отводы; 5) участвовать с разрешения следователя в следственных действиях, проводимых по его ходатайству или ходатайству защитника либо законного представителя; 6) Подозреваемый обязан:	9) use the services of an interpreter; 10) to receive a copy of the protocol of detention(including statement of rights) along with any other procedural documents that he or she was a party to review protocol of investigative activity he was involved in, and submit comments, which are included in the report; 11) to lodge complaints against actions of the inquiry, the actions and decisions of the investigator, the prosecutor. Article # Right and responsibilities of suspect 1) Suspect has rights to: 2) All rights listed in art. 40.1; 3) adduce evidence; 4) bring petitions and objections; 5) with the permission of the investigator, participate in investigation carried out at his/her request or the request of defense counsel or legal representative; 6) The suspect must: 7) to appear when summoned by the investigating the case; 8) comply with the orders of the investigator and the prosecutor;

4) экспертизе. (4)Подозреваемый имеет также другие права и несет другие обязанности, предусмотренные настоящим Кодексом. (5)При каждом доставлении подозреваемого в изолятор временного содержания, а также при поступлении жалобы от него самого, его защитника, родственников о применении к нему физического насилия со стороны работников органов дознания и следствия он подлежит обязательному медицинскому освидетельствованию с составлением соответствующего документа. Обязанность проведения медицинского освидетельствования возлагается на администрацию изолятора временного содержания.	7) являться по вызову органа, ведущего расследование дела; 8) подчиняться распоряжениям следователя, прокурора; 9) Подозреваемый по требованию органа, ведущего расследование дела, может подвергаться: 10) досмотру, а также личному обыску; 11) врачебному осмотру, дактилоскопированию, запечатлению, изъятию образцов биологического происхождения (крови, выделений человеческого организма); 12) освидетельствованию; 13) экспертизе. 14) Подозреваемый имеет также другие права и несет другие обязанности, предусмотренные настоящим Кодексом. 15) При каждом доставлении подозреваемого в изолятор временного содержания (ИВС), а также при поступлении жалобы от него самого, его защитника, родственников о применении к нему физического или иного насилия, со стороны работников органов дознания и следствия он подлежит обязательному медицинскому освидетельствованию с	9) The suspect may be subjected to, at the request of the agency conducting the investigation: 10) frisk inspection, as well as a personal search; 11) medical examination, fingerprinting, photographing, seizure of samples of biological origin (blood, secretions of the human body); 12) examination; 13) Forensic Medical Examination 14) A suspect has other rights and carries out other duties as provided herein. 15) Each time the suspect is brought to the detention center, as well as a complaint is received from his/her, lawyer, relatives of the application to him/her of physical violence on the part of employees of inquiry and investigation, he/she shall be subject to mandatory medical examination with records. The duty of medical examination rests with the administration of the detention facility, and results should be promptly informed to applicant.

	составлением соответствующего документа. Обязанность проведения медицинского освидетельствования возлагается на администрацию изолятора временного содержания, результаты которой немедленно сообщается заявителям.	
Статья 44. Защитник (1) Защитник - лицо, осуществляющее защиту прав и интересов подозреваемого, обвиняемого, подсудимого, свидетеля по уголовному делу и оказывающее им юридическую помощь. (2) В качестве защитников на следствии участвуют адвокаты. В суде в качестве защитника могут быть допущены близкие родственники, законные представители подсудимого и сотрудник уполномоченного государственного органа по защите детей. (3) Защитник участвует в деле с момента первого допроса подозреваемого (обвиняемого), свидетеля или фактического задержания подозреваемого (обвиняемого). (4)Если явка защитника, избранного подоз реваемым или обвиняемым, невозможна	Статья 44. Защитник (1) Защитник - лицо, осуществляющее защиту прав и интересов задержанного, подозреваемого, обвиняемого, подсудимого, свидетеля по уголовному делу и оказывающее ему/ей юридическую помощь. (2) В качестве защитников на следствии участвуют адвокаты. В суде в качестве защитника могут быть допущены близкие родственники, законные представители подсудимого и сотрудник уполномоченного государственного органа по защите детей (3) Задержанный, подозреваемый, обвиняемый, подсудимый или свидетель имеет право на защитника с момента фактического задержания. Защитник должен быть вовлечен в	Article 44. Defender (1) Defender - person exercising the rights and interests of the detainee, suspect, accused, defendant or witness in a criminal case and who provide them with legal assistance. (2) Advocate appears for the defendant. In the court as a defendant can be allowed close relatives, legal representatives of the defendant and a member of the authorized state body for the protection of children. (3) The detainee, suspect, accused, defendant or witness has the right to a defense attorney from the moment of detention. The defense attorney should be involved upon request of such person from the moment of detention and must be involved in the case no later than the first interrogation.

в течение двадцати четырех часов с момента фактического задержания или заключения под стражу, следователь вправе предложить подозреваемому или обвиняемому пригласить другого защитника либо принимает меры к назначению защитника через профессиональную организацию адвокатов. (5) Одно и то же лицо не может быть защитником двух подозреваемых, обвиняемых, подсудимых, свидетелей, если интересы одного из них противоречат интересам другого. (В редакции Законов КР от 13 марта 2003 года N 61, 16 июля 2012 года N 114)	дело по требованию этого лица с момента задержания и должен быть вовлечен в дело не позднее первого допроса. (4) Если явка защитника, избранного подозреваемым или обвиняемым, невозможна в течение 24 часов с момента фактического задержания или заключения под стражу, следователь должен предложить подозреваемому, обвиняемому, подсудимому другого защитника через профессиональную организацию адвокатов, чтобы новый защитник принял меры которые предпринимались первоначальным защитником. (5) Одно и то же лицо не может быть защитником двух подозреваемых, обвиняемых, подсудимых, свидетелей, если интересы одного из них противоречат интересам другого.	(4) If the defender chosen by the suspect or the accused is not available within 24 hours of the actual arrest or detention, the investigator must offer the suspect another attorney, to take the measures intended to be taken by the original counsel, from a professional organization of lawyers. (5) The same person cannot act as an advocate for any two suspects, accused, defendants, witnesses, if the interests of one of them are contrary to the interests of the other.
Статья 95. Порядок задержания лица, подозреваемого в совершении преступления (1) Протокол о задержании лица, подозреваемого в совершении преступления, составляется не позднее	Статья 95. Порядок задержания лица, задержанного/подозреваемого в совершении преступления (1) Протокол задержания должен включать в себя следующие элементы:	Article 95. The detention order of a detainee/suspect on committing a crime (1) Protocol of detention must include the following elements:

трех часов с момента фактического доставления задержанного. В протоколе о задержании указываются основания и мотивы, место и время задержания (с указанием часа и минут), результаты личного обыска. Протокол объявляется подозреваемому в присутствии защитника, при этом ему разъясняются права, предусмотренные статьей 40 настоящего Кодекса. Протокол задержания подписывается лицом, его составившим, задержанным и его защитником. О произведенном задержании следователь обязан письменно сообщить прокурору в течение двенадцати часов с момента составления протокола задержания. (2) Задержанный должен быть допрошен в соответствии с правилами, предусмотренными статьей 191 настоящего Кодекса.	1) изложение прав (чтобы включали все права задержанного согласно ст. 40 наст. Кодекса); 2) время (с указанием часов и минут), и дата задержания; 3) время (с указанием часов и минут) и дата составления протокола задержания; 4) должность и ФИО уполномоченного должностного лица либо иного лица выступающего в официальном качестве, составившего протокол задержания и Изложение прав; 5) ФИО задержанного; 6) физическое состояние на время задержания; 7) физическое состояние на время составления протокола задержания ; 8) основания задержания результаты личного обыска. (2) Изложение прав должно содержать права задержанного согласно статье 40. Оно должно быть составлено в момент фактического задержания как определено в статье 5 настоящего кодекса. По объективным, чрезвычайным положениям, протокол задержания может быть составлен сразу после доставления задержанного в орган следствия. Если изложение прав или протокол о задержании не составлен незамедлительно, его отсрочка должна	1) statement of rights (to include all rights for detainee enumerated in art.40 of this Code); 2) date (with indication of hour and minute) and time of detention; 3) time (with indication of hour and minute) and date of creation of the protocol of detention; 4) title and full name of the public official or other person acting in an official capacity, creating the protocol and statement of rights; 5) full name of detainee; 6) physical condition at the time of detention; 7) physical condition at creation of protocol; 8) reasons for detention the results of the personal search. (2) The Statement of rights must include all rights contained in article 40 for detainee. The statement of rights must be drawn up at the moment of detention as defined in article 5 of current code. In objective, emergency circumstances, the protocol of detention may be drawn up immediately after detainee’s delivery to inquiry body/preliminary investigation body. If the statement of rights, or protocol of detention, is not drawn up immediately, its delay must be explained to and

	быть разъяснена и утверждена расследующим судьей[446]. Если ситуация не квалифицирована как реальное чрезвычайное положение (genuine emergency), любые доказательства полученные в период задержания будут рассмотрены как незаконные. Остальная часть протокола задержания должна быть составлена незамедлительно по доставлению в орган дознания, при любых других обстоятельствах не позднее, чем три часа после доставления.	approved by the investigative judge.[447] If the circumstances do not qualify as genuine emergency, any evidence obtained as a result of the detention will be considered illegal. If it did not take place at the moment of detention, the remainder of the protocol of detention should be filled out immediately upon arrival to the place of interrogation, and in any case no later than three hours after arrival.
	(3) Копия протокола с перечнем прав и обязанностей незамедлительно вручается задержанному и в течение 12 часов передается прокурору.	(3) A copy of the report with a list of rights and obligations must be immediately given to the detained and handed over within 12 hours to the prosecutor.
	(4) Каждое задержанное лицо в срочном порядке и в любом случае до истечения 48 часов с момента задержания должно быть доставлено в суд для	(4) Each detainee, promptly and in any event before the expiration of 48 hours from the moment of detention, must be brought to court for a decision on the legality of his detention.
		(5) In case of an appeal of the decision on detention, the detainee's complaint shall be forwarded promptly to the court. The

[446] The investigative judge does not exist under the current version of the CPC, as of December 2013, however it is being considered as an additional entity in the process. This person would participate in the initial stages of investigation of the detainee/suspect, but would not be the presiding judge over the determination of guilt or innocence of the accused.
* термин «судья по расследованию» не существуют в настоящей версии УПК, по состоянию на декабрь 2013 года, однако на данный момент находится на рассмотрении. Это лицо будет участвовать на первоначальных этапах расследования задержанного/подозреваемого, но не будет председательствующим судьей по определении виновности или невиновности обвиняемого.
[447] The investigative judge does not exist under the current version of the CPC, as of December 2013, however it is being considered as an additional entity in the process. This person would participate in the initial stages of investigation of the detainee/suspect, but would not be the presiding judge over the determination of guilt or innocence of the accused.

	решения вопроса о законности его задержания. (5) В случае обжалования задержания жалоба задержанного незамедлительно направляется в суд. Жалоба рассматривается судом одновременно с ходатайством следователя об избрании меры пресечения, если оно было заявлено или проверкой законности задержания по правилам, предусмотренным статьей 97-1 настоящего Кодекса.	complaint will be considered by the court along with the petition from the investigator requesting the measure of restraint, in order to determine legality of detention under the rules provided in Article 97-1 of this Code.

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The Tian Shan Policy Center (TSPC) is an innovative nonprofit, public interest organization focused on research, analysis, and implementation of appropriate and effective public policy in the nations and communities of Central Asia. TSPC specializes in the critical fields of strategic development policy, human rights, and sustainable environment programs, and through its efforts strives to strengthen good governance as the bedrock for efforts to better the lives of the peoples of our emerging countries.

Contact Information:

Delegation of the European Union to the Kyrgyz Republic
21, Boulevard Erkindik , 5th Floor
Bishkek, the Kyrgyz Republic
Tel: +996 312 261 003
Fax: +996 312 261 007
www.delkgz.ec.europa.eu

Tian Shan Policy Center
American University of Central Asia
205 Abdymomunov St.
Bishkek, Kyrgyz Republic
Tel: +996 312 661 119 Ext. 308
tspc@mail.auca.kg
www.auca.kg/en/tspc