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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

Preliminary Report on Model Practices

The project is funded by the European Union

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Preliminary 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

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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 Kyrgyzstan.[1] The "Program to enhance the capacity of NGO's 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 Kyrgyzstan and 3) publish and disseminate those models to support more effective advocacy and on-going reform efforts in Kyrgyzstan.

This report serves as a preliminary assessment 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. Included in the preliminary report are a set of initial recommendations for Kyrgyzstan based on the most promising aspects of the models considered, and consultation with Kyrgyz Stakeholders. What follows below are those recommendations and details about the models from which they were taken. The models which had the most potential for Kyrgyzstan are highlighted, with additional practices listed for consideration. The purpose of the report is not to suggest that Kyrgyzstan 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 Kyrgyzstan.

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.

Summary Recommendations

Investigatory Mechanism:

Currently Kyrgyz Law foresees the prosecutor as having the right to institute all criminal proceedings and investigate all criminal cases, with the additional right to delegate the investigation to an investigator.[2] As the Office of the Prosecutor is tasked with all investigations and all prosecutions, it is faced with an inherent conflict of interest in cases where allegations of abuse arise in the context of an ongoing investigation, or as part of a legal proceeding, specifically where those allegations relate to an attempt to procure evidence.

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

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, Kyrgyzstan 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.

Recommendation #2:
Kyrgyz legislation regarding the independent mechanism should detail its personal jurisdiction and subject matter jurisdiction, its reporting and accountability structure, mechanism for submission of complaints, and any relevant statutes of limitation for complaints.

Recommendation #3:
Any model which is utilized in Kyrgyzstan must be fully funded and resourced. Without the necessary staff and support, independence will be impossible to achieve. Without proper resourcing, investigators will be forced to take short cuts and rely on other institutions, which will undermine their effectiveness.

Recommendation #4:
Kyrgyzstan 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.

Safeguards:

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

Currently, in Kyrgyzstan, "Detention," or "задержание" is defined as a "coercive procedural action," which essentially consists of imprisoning a suspected person for a short period (up to forty-eight hours) pending a judicial warrant."[3]

Articles 110 of the Criminal Procedural Code (CPC) and Article 49 of the Criminal Code, go on to describe Custody and the Deprivation of Liberty. 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.[4] Article 49 of the Criminal Code addresses the concept of

[3] Kyrgyz Criminal Procedural Code, Section 1 General Provisions, Chapter 1 Major Provisions, Article 5 Major Definitions Used in the Code, Major Terms, Detention (2013). Actual Text: задержание - мера процессуального принуждения, сущность которой состоит в лишении свободы подозреваемого на краткий срок (до сорока восьми часов) - до судебного решения

[4] Kyrgyz Criminal Procedural Code, Section 4 Procedural Measures of Restraint, Chapter 12 Preventive Measures, Article 110 (1) Detention (2013). Actual text: Статья 110. Заключение под стражу (1) Заключение под стражу в качестве меры пресечения применяется по судебному

Deprivation of Liberty or "лишение свободы."[5] 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.[6]

Further, Kyrgyz Law has challenges regarding the timing of its guarantees of procedural rights and protections for detainees. The Constitution guarantees the right to an attorney from the moment of factual deprivation of liberty, or "фактического лишения свободы." It does not define this moment. Article 40 in the CPC notes that right to an attorney begins from the moment of interrogation and that the right attaches from the moment of actual arrival at the detention facility.[7] Article 40 also generally lists all other "rights and responsibilities of suspects."[8] 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.[9]

Recommendation:

Kyrgyzstan should create a definition for factual detention "фактического задержания" which will clarify that a person is "factually 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.[10]

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.

[5] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013).

[6] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013). 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.

[7] 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.

[8] 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). 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.

[9] 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). 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.

[10] 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 Kyrgyzstan adopt a definition for the moment of factual detention or «момент фактического задержания», 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.

Safeguard #2 – Definition and Notice of Rights

As described above, a detained person's procedural rights should be explicitly defined and communicated to him or her from the moment of factual detention (as defined above). If there is no procedural protection between the moment of factual detention, through the moment of arrival and registration at a detention facility, these rights could be rendered meaningless. Further if there is no mechanism to ensure the effectuation of these rights, they are even less likely to be protected.

Recommendation #1

Kyrgyzstan should create a written list of the procedural rights which are guaranteed to all detained persons, and which could be easily distributed.

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 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).[11] 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 Kyrgyzstan, the individual must also be allowed to contact his or her consulate.

Safeguard #3 – Medical Examinations

In Kyrgyzstan, detainees currently should undergo a medical examination any time they are brought to a temporary detention ward. They should also undergo an examination any time the detainee, his council, or relatives complain of physical assault by the officers of any preliminary investigation or on-going investigation. Further a record should be made of this examination. The Administration of the temporary detention isolation ward is responsible for the aforementioned medical examination. [12]

Under Article 199 of the Kyrgyz Criminal Procedural Code, investigators can order a forensic examination or, in certain cases, request the Court to order a forensic examination.[13] There is a new

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. 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. At the moment however, 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 detainess. Further, a delay on amending the Constitution such that фактического задержания is used instead of фактического лишения свободы would not create a conflict of laws problem in the interim.

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

[12] 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 (5) Rights and Responsibilities of the Suspect (2013). Actual Text: 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.

[13] Criminal Procedural Code of the Kyrgyz Republic, Section 21 General Investigation Conditions, Chapter 25 Expert Examination Enforcement Article 199 (1) Procedure for Ordering Expert Examination (2013). Actual Text: Статья 199. Порядок назначения экспертизы (1) Признав необходимым назначение судебной экспертизы, следователь выносит об этом постановление, а в случаях, предусмотренных пунктом 3

law detailing the qualifications for experts in these examinations,[14] but it is still too early to tell how it will be implemented.

Recommendation #1

Kyrgyzstan should ensure that each temporary detention facility has at least two independent (from facility and prosecutorial structures) medical professionals on staff, or available at all times.

Recommendation #2

Detained persons should have a compulsory medical examination, which must be documented in writing and adhere to certain minimum standards, upon every entrance to the detention facility. Detained persons must also have the explicit right to request examination at any time. Once requested, examinations should take place within 24 hours.

Recommendation #3

Medical personal should keep a detailed record of findings from medical examinations. This record book should be available for inspection by the relevant investigative authority at any time necessary (bearing in mind any confidentiality concerns).[15] Prison staff should have a mandatory obligation to immediately report any sign of suspicious injury to the relevant medical personnel. Medical Personnel who verify such injuries, or observe them independently, must also document them in writing and immediately report to the relevant investigative authority.

International Standards

Kyrgyzstan 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). Kyrgyzstan has also signed, but not ratified, the Rome Statute of the International Criminal Court.[16]

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.

части второй статьи 32 настоящего Кодекса, возбуждает перед судом ходатайство, в котором указываются 1) основания назначения судебной экспертизы; 2) фамилия, имя и отчество эксперта или наименование экспертного учреждения, в котором должна быть произведена судебная экспертиза; 3) вопросы, поставленные перед экспертом; 4) материалы, предоставляемые в распоряжение эксперта.

[14] Law of the Kyrgyz Republic on forensic examination dated 24 June 2013, Art. 15.

[15] This is modeled, not on Bulgaria's medical record keeping, but on its practice for registration of detainees as described in an interview with police officers from the Regional Police Station 7 to TSPC researcher Bakhtiyor Avezdjanov April 2013.

[16] 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).

The most basic of these standards, is the definition of torture contained within the CAT Convention. As a State Party to the Convention, Kyrgyzstan 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.[17]

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."[18]

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, Kyrgyzstan 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).[19]

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. [20]

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

[17] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.
[18] International Covenant on Civil and Political Rights; 16 December 1966.
[19] Optional Protocol to the United Nations Convention Against Torture (OPCAT) Subcommittee on the Prevention of Torture http://www2.ohchr.org/english/bodies/cat/opcat/.
[20] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 13, 10 December 1984.

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."[21]

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.[22]

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.[23] 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.[24] These guidelines make it clear that no derogation is possible from the absolute prohibition against torture or ill-treatment and that all European States.

European standards impose a positive obligation to investigate all allegations or *other indications* of ill-treatment.[25] An express complaint is not necessary to trigger an investigation, while credible accounts of physical or psychological abuse trigger mandatory investigations.[26] 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."[27] 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."[28] Additionally, there must be a wide variety of channels available for individuals to complain.[29]

[21] 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.
[22] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15, 10 December 1984.
[23] The European Convention on Human Rights, Article 3, Council of Europe, 4 November 1950.
[24] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe 2009.
[25] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 13, Guideline III.1.1, 2009.
[26] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 9, Guideline III.1.1 and III.1.2, 2009.
[27] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 10, Guideline II.1, 2009.
[28] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 12, Guideline II.3.3, 2009.
[29] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 12, Guideline II.3.5, 2009.

Those conducting investigations must be independent from those implicated in the facts being investigated both hierarchically and practically.[30] Investigations must meet certain minimum standards including thoroughness of investigations as well as confidential and effective medical and forensic examinations.[31]

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.[32] 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.[33]

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,[34] 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.[35]

Latin America

Torture is broadly prohibited by the American Convention on Human Rights (ACHR), in article 5.2.[36] 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.[37] Both the Inter-American Court and State reports to the Inter-American Commission oversee the IACPPT.[38]

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*

[30] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 14, Guidelines IV.1.1-2, 2009.
[31] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 15-16, Guidelines IV.2.1-2, 2009.
[32] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 10, Guideline II.2, 2009.
[33] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 10, Guideline II.2, 2009.
[34] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 11, Guideline II.2.3, 2009.
[35] Eric Svanidze, Effective Investigation of Ill-Treatment: Guidelines on European Standards, Council of Europe, pg 9, Guideline II.2.5, 2009.
[36] 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."
[37] 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 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."
[38] 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)."

mental anguish."[39] 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 states "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."[40]

Overview on Kyrgyzstan:

Kyrgyzstan 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).[41] The judicial system of the Kyrgyz Republic is established by the Constitution and 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.[42]

The Constitution has supreme legal force and direct application in the Kyrgyz Republic.[43] The Constitution of the Kyrgyz Republic provides that individuals have the right to appeal to international bodies on human rights to protect their rights. International treaties, to which the Kyrgyz Republic is a party and have entered into force, are a constituent part of the Kyrgyz Legal system.[44] Kyrgyzstan further has the responsibility to restore the violated rights and compensate the victims, when such bodies find violations of rights.[45]

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

[39] This report by APT/CEJIL details Inter-American standards and state duties. http://www.apt.ch/content/files_res/JurisprudenceGuide.pdf.
[40] OAS, *Report on Citizen Security and Human Rights*, para 46, 2009, http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm.
[41] 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
[42] Constitution of the Kyrgyz Republic, Section VI Judicial Power in the Kyrgyz Republic, Article 93 (2010).
[43] Constitution of the Kyrgyz Republic, Article 6 (2010).
[44] Constitution of the Kyrgyz Republic, Article 6 (2010).
[45] Constitution of the Kyrgyz Republic, Article 41 para 2 (2010).

and other inhuman, cruel and degrading forms of treatment and punishment should not be subject to any limitations."[46]

The State of the Laws regarding the specific best practices detailed in this report are referenced in the below sections as they are relevant for comparison. 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), Kyrgyzstan 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.[47] 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).[48] The National Center has begun to take action by appointing the members of the coordination council for the Center and electing a Director of the Center, but as of the writing of this report, the National Center is not fully operational.

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 Akyikatchy (Ombudsman).[49] 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.

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.

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[46] 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.

[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; 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."

[48] The draft 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."

[49] 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 furture 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.

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.[50]

A report written for Freedom House Kyrgyzstan by two leading local human rights experts, documented some of these increases.[51] The report noted that within two months of the conflict, the General Prosecutor opened nearly 3000 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.[52] Notably during this time, 85% of the detained were ethnic Uzbeks.[53]Further, according to the International Independent Commission's report, mistreatment and prisoner abuse happened in almost every single case of detention.[54] 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.[55]

In April 2011, Prosecutor General Aida Salyanova, issued a decree specifically addressing torture and ordering the prompt investigation of all allegations.[56] To date, there is no evidence that Article 305-1 of the Kyrgyz Criminal Code, the article criminalizing torture, has been successfully utilized by the Office of the Prosecutor, resulting in a conviction and sentencing of an accused.[57]

It should also be noted that Kyrgyzstan has been the subject of several recommendations from United Nations Human Rights Council (including the Universal Periodic Review, country specific

[50] 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

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

[52] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kygyzstan, pg 2; citing to "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch , 2010, p. 49.

[53] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kygyzstan, pg 2; citing to "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch, 2010, p. 44

[54] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kygyzstan, pg 2; citing to Отчет Международной независимой комиссии по исследованию событий на юге Кыргызстана в июне 2010, г., p. 278 [Report of the International Commission For Investigating Events in the South of Kyrgyzstan in June of 2010, paragraph 278].

[55] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kygyzstan, pg 2; citing to Отчет Международной независимой комиссии по исследованию событий на юге Кыргызстана в июне 2010, г., p. 278 [Report of the International Commission For Investigating Events in the South of Kyrgyzstan in June of 2010, paragraph 279].

[56] 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.

[57] 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.

reporting and special procedures) as well as United Nations Treaty Bodies.[58] Several of these recommendations are specific to torture and ill treatment in detention.[59]

Best Practice Models For Investigations

This Project assesses best practices that will lead to the eradication of torture. For organizational purposes, the analysis of those practices has been split into the preventative safeguards that countries have utilized and the mechanisms for effective investigation. The above-mentioned recommendations take pieces from several of the best practices and highlight potential for implementation here in Kyrgyzstan.

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. The following portion of this preliminary report focuses on the later piece – investigations. In the context of these cases, 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. In the examples below, this reports examines states that have created structures for the investigation of allegations against the police or other state services.

Kyrgyzstan:

The question of independent investigations cannot be considered without first examining the current structure for investigations of all kinds of crimes. Investigation of all criminal cases is enforced 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, financial police and tax police agencies.[60] Investigations begin only upon the initiation of a prosecution.[61]

Currently Kyrgyz Law foresees the prosecutor as having the right to institute all criminal proceedings and investigate all criminal cases, with the additional right to delegate the investigation

[58] 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.

[59] 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.

[60] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 161 Investigation Agencies (2013). 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.

[61] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 165 (1) The beginning of an investigation (2013). 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.

to an investigator.[62] For purposes of the Code of Criminal Procedure for the Kyrgyz Republic, the term investigator is defined as:

"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."[63]

The term investigation is defined as:

"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."[64]

While the term investigator is broadly defined in the Code, the Office of the Prosecutor is tasked with ultimate responsibility for all investigations leading to prosecutions. This creates an inherent conflict of interest in cases where allegations of abuse arise in the context of an ongoing investigation, or as part of a legal proceeding, specifically where those allegations relate to an attempt to procure evidence.

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 legal process.[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 Internal Affairs Ministry Facilities and during this period, the abuse is largely perpetrated by the Operational-Investigative Service of the Internal Affairs organs.[67] Compounding the difficulty,

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

[63] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 1. Major Provisions Article 5 Major Definitions Used in the Code. (2013) 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.

[64] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 1. Major Provisions Article 5 Major Definitions Used in the Code. (2013) 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.

[65] Kyrgyz Criminal Procedural Code Section 1 General Provisions Chapter 2 Principles of Criminal Procedure Article 9(1) Protection by the Court (2013). 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 Kygyzstan, pg 4.

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

according to paragraph 3 of article 19 of the law "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 widespread corruption. Starting in 1992, the Police Public Complaints Authority (PPCA), was established as an independent body to monitor and supervise investigations by the police regarding complaints against the police. The Bureau of Special Investigations (BSI) and the Office of Professional Responsibility were also authorized to receive complaints regarding police misconduct. While the PPCA is a State-funded independent body, the BSI and the Office of Professional Responsibility are institutions within the Jamaican Constabulary Force (JCF).

Despite these attempts at progress, a 2007 Jamaican Justice System Reform project found that the current structures in place for the independent investigation of police were inadequate and not sufficiently independent and highlighted the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada as a possible model to emulate.[71]

In August 2010, the Jamaican government created the Independent Commission of Investigations (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.[72] It should be pointed out at the outset, that IDECOM is not focused exclusively on complaints of torture of detainees, but more broadly on any abuse committed by security forces. INDECOM's investigations focus on

[68] Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kygyzstan, 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). 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.

[71] 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.

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

analyzing patterns of abuse and profiles in order to provide some 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. 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 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. The Act also requires police officers 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,"[75] 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."[76] 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.[77]

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. When conducting an investigation, INDECOM has the same powers as a Judge of the Supreme Court, has primary responsibility for preserving the scene of an

[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.
[75] Article 4.1.b.i of the INDECOM Act.
[76] Article 4.1.C of the INDECOM Act.
[77] Articles 4.2 and 4.3 of the INDECOM Act.

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.

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 grant funding - locally and 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 continues to raise the alarm about lack of adequate resources to fully staff up and, despite the apparent independence in the substance and strategy of the work, the apparent reliance on the Finance Minister for budget approvals is severely hampering.

Guatemala

Guatemala emerged from a 36 year long civil war internal armed conflict in 1996. Over the course of that conflict, hundreds of thousands of people were killed and the door opened for organized crime to grow.[78] During this period, the Guatemalan army became increasingly involved in organized crime.[79] As the war ended, the network of those involved in organized crime, and their interrelatedness with state actors and state interests also grew.[80]

In 1999, a legislative reform effort to codify many of the Peace Accord agreements from the war period, in the form of a referendum, failed. However, this failure spurred Guatemalan NGOs, their international partners[81], as well as UN procedures[82] 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 and started its work in September 2007, following

[78] 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.

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

[80] 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.

[81] 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.

[82] 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."

ratification by the Guatemalan Congress. CICIG's mandate has been extended twice (in 2009 and 2011), through September 2013 at the time of writing, with its likely final extension until 2015.

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.[83] 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.[84]

CICIG focuses on high impact cases, typically implicating politically or economically powerful people. The theory of change and reform is best summed up in its most recent annual report: "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."[85]

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"[86] 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.[87]

The CICIG coordinates its work with the relevant government counterparts, including the Public Prosecutor's Office and the Attorney General. A Special Prosecutor's Office was also created for CICIG. The Special Anti-impunity Prosecutor's Office (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.[88] FECI was created in order to investigate cases selected and assigned to them by CICIG and the MP.

FECI currently has a coordination department, which is comprised of a general coordinator, assistant coordinator and a legal adviser - who are all CICIG staff. UEFAC (FECI) is a completely vetted unit – young prosecutors are recruited only after a careful evaluation. It has six prosecutors, three

[83] 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."
[84] A list of CICIG's institutional reform recommendations can be found here: http://cicig.org/index.php?page=institutional-reform.
[85] http://cicig.org/uploads/documents/2012/COM-067-20120911-DOC02-EN.pdf.
[86] Article 3.1 (a) of the CICIG Agreement.
[87] Article 3.1 (h) of the CICIG Agreement.
[88] http://cicig.org/uploads/documents/convenios/mp-cicig.pdf.

auxiliary prosecutors, six agents and two members each from the PNC and the Department of Criminal Investigation (DICRI). Its personnel have all passed a lie-detector test and been appointed directly by CICIG. [89] The main role of FECI is to support investigations in high-impact cases. 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 Commissioner against Impunity in Guatemala. The Coordination Department of the MP is responsible for representing CICIG before the MP authorities and for creating inter-institutional links pursuant to the instructions passed down by the Commissioner against Impunity in Guatemala.

While primary investigations 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.

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…"[90] 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.[91]

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

[89] ICG, Learning to Walk Without A Crutch: An Assessment of the International Commission Against Impunity in Guatemala, Latin America Report N°36 – 31 May 2011. http://www.crisisgroup.org/~/media/Files/latin-america/36%20Learning%20to%20Walk%20without%20a%20Crutch%20---%20The%20International%20Commission%20Against%20Impunity%20in%20Guatemala.pdf.

[90] 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

[91] 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.

enactment, local and international NGO's lobbied donor governments and agencies to pledge several million dollars for the initial months of operation

Northern Ireland

It is worth noting, that all European Member States (with the possible exception of Italy) have some form of external and internal mechanism for the investigation of complaints of police abuse.[92] In the majority of States, this competency rests within the Office of the Ombudsman, while in Belgium, Cyprus, France, Ireland, United Kingdom and Northern Ireland, specialized bodies were created whose sole responsibility and competence is the investigation of police misconduct.[93]

The current Office of the Police Ombudsman for Northern Ireland (OPONI) was established by a Police Act of Northern Ireland in 1998, replacing the former Independent Commission for Police Complaints (ICPC). It started operating in 2000.[94] 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.[95] Although called the Police "Ombudsman," OPONI could perhaps be more accurately described as a civilian body with responsibility for oversight of the Police Service of Northern Ireland (PSNI).[96]

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.[97] OPONI staff includes retired police officers and civilian lawyers.[98]

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

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[92] Prof. Dr. Monica den Boer, Prof. Dr. Roel Fernhout, Policing the Police: Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsman and their Competencies; Background Report for the Asia-Europe Foundation, 2008, pg. 9-10.
From the report surveying: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom, the authors found that only Italy did not seem to have an external (and internal) complaint mechanism competent to deal with complaints against the police. "In all other Member States of the European Union police oversight mechanisms are available. In a majority of Member States the national Ombudsman is competent to deal with police complaints. Other Member States have created specialized bodies with sole competence and responsibility for police complaints: Belgium, Cyprus, France, Ireland, United Kingdom and Northern Ireland. To complicate the picture, occasionally two independent oversight mechanisms have been called into being: in Finland (the Parliamentary Ombudsman and the Chancellor of Justice with largely the same tasks and powers) and in Malta (the Ombudsman and an independent Police Board; both are competent, although the Ombudsman tends to refer cases to the Police Board)." Competency to "deal with complaints," does not necessarily mean criminal proceedings, although depending on the country, review by the Ombudsman could result in referral for criminal charges.

[93] Prof. Dr. Monica den Boer, Prof. Dr. Roel Fernhout, Policing the Police: Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsman and their Competencies; Background Report for the Asia-Europe Foundation, 2008, pg. 10.

[94] 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.

[95] 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.

[96] 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

[97] About Us: Police Ombudsman for Northern Ireland. http://www.policeombudsman.org/modules/pages/about.cfm. 2013.

[98] Criminal Justice Inspection Northern Ireland, An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland September 2011, p.24

system, which is independent, impartial and designed to secure the confidence of the public and police. [99]

The 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.[100] 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 HET in such investigations.[101]

Complaints can only be made by "members of the public," thus police officers cannot bring complaints about other officers to OPONI.[102] The latter instances require the Police Ombudsman to report on the case to the Minister of Justice, Northern Ireland Policing Board and Chief Constable.[103]

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.[104] Magistrates are not specifically empowered to refer matters to the Police Ombudsman, but in certain cases may choose to do so.[105]

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."[106] The law requires the Police Ombudsman to send to police, and to any identified police officer, a copy of any complaint received.[107] This notice does not indicate that the officer is under investigation, but simply advises the officer that a complaint has been made.[108] 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

[99] Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, 2011
[100] 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
[101] RUC (Complaints etc) Regulations 2001.
[102] 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.
[103] Regulation 20 of the RUC (Complaints etc.) Regulations 2000.
[104] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, p. 21, 2011.
[105] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, p. 21, 2011.
[106] The Police Act of 1998, s. 52(3).
[107] 7.8 Regulation 6(2) of the RUC (Complaints etc) Regulations 2000.
[108] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, The receipt, Recording and Handling of Complaints, p. 23, 2011.

reported to their District Commanders.[109] 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.[110]

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." 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.[111]

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.[112]

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.[113] 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. The conduct of investigations is covered by the relevant conduct and complaint regulations.[114]

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.[115] The Police Ombudsman may also investigate alleged police misconduct without a complaint being received by calling it in himself.[116] 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.[117]

While it is current practice to conduct two sets of interviews – one criminal and one disciplinary in respect of the same issue.[118] Most officers voluntarily attend an interview, either as witness or

[109] Id.
[110] Id.
[111] The Police Act of Northern Ireland 1998, Section 53(6).
[112] Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended 31 March 2012, p.7.
[113] 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.
[114] See Police Act of Northern Ireland of 1998
[115] Criminal Justice Inspection Northern Ireland, An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland September 2011, p.7.
[116] The Police Act of Northern Ireland 1998 Section 55.
[117] Id.
[118] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police Act of Northern Ireland 1998, Investigations, p. 31, 2011.

suspect, voluntarily, but OPONI lacks the power to require their attendance and in cases of refusal must seek the aid of relevant police authorities.

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.[119]

Although the Police Ombudsman conducts investigations of police misconduct, he is excluded from related disciplinary hearings unless the officer complained about is not a senior officer and he and the presiding officer agree.[120]

There are no statutory limits on making of mal-administration complaints against the Police Ombudsman. In such cases, the re-examination of case files against police officers, the resolution of whose cases was allegedly mal-administered, is permitted.[121]

OPONI answers to the Northern Ireland Policing Board and must submit information on its financial and good governance practices ever year.[122] Additionally, OPONI undergoes a statutory review at least once every five years and submits a report to the Secretary of State of Northern Ireland.[123] Once received, the Secretary of State must publish and present the report to the Houses of Parliament.[124]

The Ombudsman is also required to submit statistical and general information on its functions to the Northern Ireland Police Board.[125] 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.[126]

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.[127] 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).[128]

In 2011/2012, OPONI received 3,336 complaints and 5,896 allegations.[129] Disciplinary hearings arising from Police Ombudsman investigations were concluded on six officers, two resigned prior to

[119] Id. at p. 33.
[120] The RUC (Conduct etc) Regulations 2000.
[121] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police (Northern Ireland) Act 1998, Mal-administration, p. 44, 2011.
[122] The Police Act of Northern Ireland 2000 Section 64.
[123] The Police Act of Northern Ireland Act 2000 Section 61(4).
[124] Id. at Section 61(6).
[125] Id. at Section 64.
[126] Id. at Section 57.
[127] Police Ombudsman, Statutory Report, Review – Section 61 (4) Police Act of Northern Ireland Act 1998, Mal-administration, p.10
[128] Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended 31 March 2012, p.7
[129] Annual Report and Accounts for the year ended 31 March 2012, Office of the Police Ombudsman for Northern Ireland, July 2012, page 19.

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.[130]

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.[131] During 2011/2012, failure in duty allegations (2,091) represented 35% of all allegations made.[132] "Oppressive behavior" (1,944 in 2011/2012) represented 33% of all allegations made.[133]

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.[134]

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.[135] 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.[136]

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.[137] 77% of those surveyed who were aware of OPONI were confident in its impartiality.[138] 72% of police officers subject to a formal investigation were satisfied with the Police Ombudsman, while only 52% of civilians were satisfied.[139]

[130] Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended 31 March 2012, p.7
[131] Northern Ireland Police Board, Human Rights Annual Report 2012, p.51
[132] Annual Report and Accounts for the year ended 31 March 2012, Office of the Police Ombudsman for Northern Ireland, July 2012, page 19.
[133] Id.
[134] Office of the Police Ombudsman for Northern Ireland, Analysis of Oppressive Behavior allegations received by the Office of the Police Ombudsman for Northern Ireland, 2000 – 2012, p.8
[135] Id. at p.16.
[136] Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended 31 March 2012, p.23.
[137] Id. at p.33.
[138] Id.
[139] Id. at p. 34.

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, with the view to ensuring its independence and impartiality.[140]Prosecutorial authorities were to be reformed through the administrative separation of their major functions.[141] The Reform Act contained provisions to establish an Investigative Committee attached to the Prosecutor's Office within the existing prosecutorial system.[142]

However, the practical experience of the Investigative Committee, over more than two years, showed the need for a clearer separation of the functions of prosecutor's supervision and pretrial investigation powers. NGOs have stated that the prosecutor's offices do not show initiative in starting investigations on torture cases. The 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.[143] In practice NGOs noted that the conflict between the function of criminal prosecution and function of supervision of preliminary investigation and investigation is usually solved in favor of strengthening the position of prosecution, rather than investigation of a suspects' complaint on torture and other violations.[144]

In an attempt to deal with the perceived and practical issues with independence, the Russian Government established the Investigative Committee as a separate, independent body outside of the existing prosecutorial system. The intention of this 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.[145]

Both legislative and practical steps have been 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

[140] 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.
[141] 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.
[142] 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.
[143] 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.
[144] 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.
[145] 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.

agency, accountable directly to the President, on a par with the Prosecutor's Office.[146]
The investigating agencies and institutions of the Investigative Committee are to exercise their powers independently of central and local government bodies and civil society associations and in strict compliance with Russian legislation. In addition, the bringing of any pressure to bear on investigating agencies or institutions of the Investigative Committee or their staff in order to influence a decision of the Committee or impede its work in any way will be an offence under the law.[147]

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,"[148] 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.

In 2010 – 2011, Public Verdict conducted a study on "Possibilities and limitations of investigation of malfeasance committed by law enforcement officers." That study allowed Public Verdict to critically observe "the legal and organizational aspects influencing the quality of review and investigation of complaints against law enforcement agencies."[149] That study, in combination with Public Verdict's many years of assisting victims of malpractice and interaction with law enforcement led Public Verdict to 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 unit 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.

This subordination would mean that the 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. These units

[146] Alternative report of Amnesty International to CAT review of 5th periodical of the Russian Federation, October 2012, p. 5.
[147] 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.
[148] Fund "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.
[149] 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.

would exist in all territorial divisions, with its administration located within the central office of the Investigative Committee of Russia.[150]

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. [151]

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.[152]

Following the initiative, new specialized investigative departments were created at the level of every Federal District[153] as well as, separately, in Moscow, in the Moscow Region, and in St. Petersburg, and at the central apparatus of the Investigative Committee.[154] 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.[155]

Best Practice Models on Safeguards

[150] 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.
[151] 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.
[152] 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.
[153] There are eight Federal Districts in total, between them encompassing the whole of the Russian Federation.
[154] The text of the respective Decree is available on the Investigative Committee's website: http://www.sledcom.ru/upload/iblock/a4c/a4cdc6b6dc00679897197909e1682a3d.pdf.
[155] Alternative report of Amnesty International to the Committee Against Torture, Review of 5th periodical report of the Russian Federation, October 2012, p. 5.

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. Among the many possibilities, a few are highlighted here as the most relevant for the current situation in Kyrgyzstan.

Complaints Procedures

Current Kyrgyz law does specify that a suspect has the right to file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor.[156] 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.[157] 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.

Georgia

On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units to be located within the Ministry of the Interior. [158] The Human Rights Unit of the Ministry of Internal Affairs is also actively involved in the process of internal monitoring.[159] MIA 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.[160]

The MIA 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.[161] 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 MIA staff, as well as to handle individual complaints of the citizens.

[156] 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); 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.

[157] 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. Actual Text: (3) 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.

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

[160] 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.

[161] 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.

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.

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.[162] 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.[163]

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 contains 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.[164] 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.

However, no centralized system for investigation of complaints has been set up because 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.

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[162] 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

[163] 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.

[164] 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).

Definition of Detention

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 procedures established by the law." Persons may only be detained in accordance with procedures established by law.[165] Currently in Kyrgyzstan, "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.[166]"

The other articles which describe detention proceedings explain the procedure for detention and the applicability of the procedural rights of the detained person. Article 95(1) of the Kyrgyz Criminal Procedural Code describes the "moment of factual delivery" or "с момента фактического доставления."[167] It does not 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." Article 40 also references the moment of actual arrival, but it specifies that this means arrival to the agency of preliminary investigation or "с момента фактического доставления его в орган дознания."[168]

The discussion below regarding Notice and Applicability of Procedural Safeguards, will explore the question of legal rights of detainees in greater detail, however of relevance here, both 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 arrival to the agency of preliminary investigation or "с момента фактического доставления его в орган дознания."[169] 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

[165] Constitution of the Kyrgyz Republic, Article 24.

[166] Kyrgyz Criminal Procedural Code, Section 1 General Provisions, Chapter 1 Major Provisions, Article 5 Major Definitions Used in the Code, Major Terms, Detention (2013).

[167] 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. 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.

[168]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).

[169]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).

the moment at which his or her official transcript is created in the facility "Протокол о задержании."

As described above, Articles 5 and 110[170] of the Criminal Procedural Code and Article 49[171] of the Criminal Code elaborate on Detention (задержание), Custody (заключение под стражу) and Deprivation of Liberty (лишение свободы). Article 5 defines detention, Article 110[172] discusses custody as a preventive measure which may be ordered based on a court order, during the course of legal proceedings and Article 49[173] describes Deprivation of Liberty as a condition imposed after a conviction by a court of law.

The CPC goes on to state that "the detained on the suspicion of committing a crime shall be placed in the temporary detention center. The procedure for and the conditions of custody for the detained shall be provided by the legislation of the Kyrgyz Republic."[174]

These differing definitions regarding custody, deprivation of liberty, and detention have created challenges regarding the assurance of procedural safeguards of detainees. While the CPC and Criminal Code define "detention," "holding in custody," and "deprivation of liberty," at no point is a clear definition provided for a "moment of factual detention," as referenced in the Criminal Procedural Code or "moment of factual deprivation of liberty" as referenced in the Constitution. These issues are further explored below.

Bulgaria

Detention legally occurs at the factual instance when someone is deprived of his or her freedom of movement,[175] 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 some steps to

[170] Kyrgyz Criminal Procedural Code, Section 4 Procedural Measures of Restraint, Chapter 12 Preventive Measures, Article 110 (1) Detention (2013). 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.

[171] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013).

[172] Kyrgyz Criminal Procedural Code, Section 4 Procedural Measures of Restraint, Chapter 12 Preventive Measures, Article 110 (1) Detention (2013).
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[173] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013).

[174] Criminal Procedural Code for the Kyrgyz Republic, Section IV Procedural Sanctions, Chapter 11 Detention of the Suspect, Article 98 Conditions for Custody of the Detained on the Suspicion of Committing a Crime (2013). Actual Text: Статья 98. Порядок содержания задержанных по подозрению в совершении преступления
Задержанные по подозрению в совершении преступления содержатся в изоляторах временного содержания. Порядок и условия содержания задержанных определяются законом Кыргызской Республики.

[175] 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."

address the issue.[176] One simple procedural step that they have taken involves reporting and registration requirements. 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.[177]

United States

As elaborated further below, the American Doctrine on detention and procedural safeguards stems from the Supreme Court case in *Miranda v. Arizona*.[178] 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.[179] 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.[180] 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."[181]

In the years since the original case, the Court has elaborated on what exactly constitutes "custody."[182] 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.[183] 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.

Notice and Applicability of Procedural Safeguards

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

[176] 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.
[177] Interview with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013
[178] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[179] *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.
[180] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[181] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[182] 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.
[183] *Maryland v. Shatzer* 130 S. Ct. 1213 (2010).

established by the law."[184] 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.[185]

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."

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."[186] The actual text of the Constitution refers to this moment as "фактического лишения свободы."[187]

As described in the report above, the term "лишение свободы," means the moment of deprivation of liberty; this term is currently defined under the Kyrgyz Criminal Code in Article 49.[188] Again, this article refers to a post-sentencing period where a person is convicted and sent to a penal colony, a penal settlement or a jail.[189] 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."

[184] Constitution of the Kyrgyz Republic, Article 31 (2010).
[185] Constitution of the Kyrgyz Republic, Article 26 (2010).
[186] 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.
[187] 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.
[188] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty. 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.
[189] See id.

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, 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) official have three hours, during which there appear to be no legal protections, to create the Protocol on the Detention of a suspect.

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."[190] Part 1 specifies several rights relevant to the safeguards against torture.[191] 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.[192]

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.[193]

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[190] 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). 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.

[191] Criminal Procedural Code 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."

[192] 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).

[193] 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). 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

Lastly, confessions alone shall not be the basis for a conviction, and the burden of proof rests on the accuser.[194]

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.[195] The Ministry of Interior (MoI) Instruction No. Iz-1711 of 15 September 2009 ("On the equipment of police detention facilities 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.[196]

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.[197] 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.[198]

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). [199] 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.[200] The declaration of rights and pamphlets describing each right is posted on the walls of interrogation rooms.[201] 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.[202] The

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пребывать в положении подозреваемого с момента вынесения органом следствия постановления о прекращении уголовного дела или привлечении его в качестве обвиняемого.

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

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

[196] 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").

[197] Bulgarian Criminal Procedural Code, Section 219 and 55 (1).

[198] Interview with Dinko Kanchev, Bulgarian Lawyers for Human Rights by TSPC researcher Bakhtiyor Avezdjanov April 2013.

[199] CPT/Inf 2012, p. 20.

[200] The Declaration of Rights, Bulgaria, See Appendix 2.

[201] Interview with police officers from the Regional Police Station 7, Sofia Bulgaria, April 2013 TSPC researcher Bakhtiyor Avezdjanov.

[202] CAT/C/BGR/4-5, p. 24.

logs are kept in detention facilities and a copy can be subpoenaed or shared upon the demands of a prosecutor.[203]

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.[204]

United States

As stated above, the American Doctrine on detention and procedural safeguards stems from the Supreme Court case in *Miranda v. Arizona*.[205] The Court in *Miranda* found that:

"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."[206]

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.[207] The Exclusionary Rule is a judicially created rule, which is aimed at deterring future violations of individual rights.[208] 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.[209] 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."[210] 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

[203] Interview with police officers from the Regional Police Station 7 April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[204] Bulgarian Criminal Procedural Code, Articles 427, 445, 451 to 453.
[205] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[206] *Miranda v. Arizona* 384 U.S. 436, 444 (1966).
[207] 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).
[208] *Arizona v. Evans*, 514 U.S. 1 (1951).
[209] *Arizona v. Evans*, 514 U.S. 1 (1951).
[210] *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920).

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.[211]

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 MIA 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.

At the same time, the MIA 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 MIA 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.[212]

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.[213] 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 did not have enough credit on their cell-phones to make calls.[214]

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

[211] *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).
[212] The Report on Implementation of 2011-2013 Action Plan for the Fight Against Ill treatment in Georgia p 17.
[213] Interview with police officers from the Regional Police Station 7 April 2013 TSPC researcher Bakhtiyor Avezdjanov.
[214] Interview with OSI-Sofia staff, Zvezda Vankova and Ivanka Ivanova, Sofia Bulgaria, April 2013 TSPC researcher Bakhtiyor Avezdjanov.

Torture and Inhuman or Degrading Treatment or Punishment (CPT) indicated that they had been put in a position to promptly notify their family or another third party of their situation.[215]

Interestingly, 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.[216]

Forensics and Medical Examinations of Detainees

As mentioned above, in Kyrgyzstan, detainees currently should undergo a medical examination any time they are brought to a temporary detention ward or any time a complaint is made regarding a physical assault perpetrated by the officers of a preliminary investigation or an on-going investigation.[217] Medical evaluations can serve a dual purpose, the first being monitoring detainees for strictly health related reasons, the second, often referred to as "forensic examinations," can also be utilized to gather and document evidence physical and psychological harm for legal purposes.[218] However, there is evidence that these examinations (in Kyrgyzstan) fall far short of international standards for investigations, which could turn up evidence of abuse.[219]

There are many factors, which combine to create barriers to effective medical evaluations and forensic investigations of allegations. One of the major barriers to effective investigations lies in the structural and functional dependence of medical examiners on State Authorities. Forensic examinations (those ordered by a judicial authority) are largely carried out by personnel within the Republican Bureau Forensic Examinations, which is housed within the Ministry of Health.[220] As of 2011, there was only one doctor on staff in a Temporary Detention Center (IVS) within all of Kyrgyzstan. As those Centers are under the control of the Ministry of the Interior, so are their medical personnel.[221] The MOI is the same structure which employs the police, police investigators and IVS staff, which complicates the situation in those cases where it is the police, investigators or IVS staff accused of perpetrating the abuse.

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[215] CPT/Inf 2012, p. 19

[216] Interview with OSI-Sofia staff April 2013 by TSPC researcher Bakhtiyor Avezdjanov.

[217] 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 (5) Rights and Responsibilities of the Suspect (2013). Actual Text: 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.

[218] This report uses the same definition for "forensic medical," as defined by Physicians for Human Rights in Ending Impunity: The Use of Forensic Medical Evaluations to Document Torture and Ill Treatment in Kyrgyzstan; A briefing paper by Physicians for Human Rights, Oct 2012 at footnote 2. https://s3.amazonaws.com/PHR_Reports/2012-kyrgystan-ending-impunity.pdf.

[219] Ending Impunity: The Use of Forensic Medical Evaluations to Document Torture and Ill Treatment in Kyrgyzstan; A briefing paper by Physicians for Human Rights, Oct 2012.
https://s3.amazonaws.com/PHR_Reports/2012-kyrgystan-ending-impunity.pdf.

[220] Provision on Republican Bureau of Forensic medical examinations under the Ministry of Health dated 27 March 2012. p. 25.

[221] Interview with Elena Halitova, August 2013, by TSPC staff.

Georgia

A new Code of Criminal Procedure (CPC) entered into force in Georgia in 2009 and transformed the whole criminal process from an inquisitorial to an adversarial one.[222] It introduced innovations such as: a jury system; a significant increase in the extent of the equality of arms of the parties in obtaining and submitting relevant evidence before the court; the role of the judge as an arbiter with no power to call evidence or to order the conduct of investigative measures on his/her own account; the burden of proof placed on the prosecution; a ban on the questioning of witnesses without their consent; the presence of the judge during the pre-trial stage; a reduction of detention during the preliminary investigation of a case; and a 12-month deadline for a decision on the case from the moment a person has been charged. While many challenges remain to address shortcomings in both Georgian legislation and practices, these changes among other innovations have all contributed to mitigating torture practices.[223]

In 2005, the Georgian Parliament amended the *Law on Imprisonment* which mandated medical examinations of prisoners in each case of taking and returning of the person from the penitentiary establishment, except for his or her taking or returning from the Court hearing.[224] The amended law obliges medical examiners to ask prisoners with any physical injuries about their source. The prisoner is not required to give detailed information or the names of the person concerned. The simple statement, that he has received these injuries during the moment of arrest or in the police custody is enough.

The aforementioned information is noted in so called "Krebsi" (Daily Notes) of the Penitentiary Department which is automatically transferred (via fax) to the Unit Supervising the Penitentiary Department and Human Rights Protection Unit of the Prosecution Service of Georgia.[225] Additionally, the law states that even if the prisoner did not give general information about the basis of his/her injuries, but the medical examination showed that the prisoner has injuries this information was sufficient to automatically start a preliminary investigation.[226]

According to Article 364 of the new CPC on alternative expertise, "each party has a right to acquire, on its own initiative and at its own expenses, an expert conclusion to determine the circumstances, which, according to his/her opinion, might assist him/her to defend his/her interests. The respective institution is obliged to carry out the expertise requested and paid for by the party. If the party so requests, the results of the expert conclusion must be attached to the criminal case and shall be

[222] 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.
[223] Universal Periodic Review for Georgia 2010, 28.
[224] E/CN.4/2006/6/Add.3, United Nations Special Rapporteur on Torture, Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Georgia in February 2005, p.209, 2007
[225] E/CN.4/2006/6/Add.3, United Nations Special Rapporteur on Torture, Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Georgia in February 2005, p.217, 2007
[226] Georgian Criminal Procedure Code, Article 263 on *Information Regarding the Alleged Conduct of the Crime.*

examined along with other evidence."[227] In this respect, the person does not need prior authorization from the Prosecutor's Office or a judge.

Moreover, Article 19 of the CPC states: "No evidence shall have a predetermined force. An investigator, prosecutor, judge, court shall assess legal evidence based on their intimate belief."[228] This provision can be interpreted as giving equal legal force to conclusions made by the state-appointed doctors and independent doctors. Nevertheless, in 2007, then Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, Manfred Nowak, reported that according to non-governmental sources, medical examinations were not independent and priority was given to conclusions issued by State appointed doctors or experts over those issued by independent experts.[229] In 2010, CAT raised the issue in its list of concerns to the Georgia and answers are pending.

In addition to the mandatory medical examinations of detainees, Georgia has recently instituted structural reforms of its Forensic Bureau in response to international criticism. While it is still a state structure, it is no longer under the Ministry of Justice, but instead is an independent legal entity of public law. Due to international and domestic criticism of the forensics structure in Georgia, on October 31, 2008, the Parliament of Georgia adopted the Law on Legal Entity of Public Law "Levan Samkharauli National Bureau of Forensic Expertise (NBFE)." Specifically, the fact that the NBFE was a part of the Ministry of Justice was structurally inconsistent with the international requirements for independence and impartiality of forensic services. The law entered into force on January 1, 2009, and created the new NBFE as an independent legal entity of public law rather than an institutional part of the Ministry of Justice.

Bulgaria

Bulgarian law provides access to an independent doctor to detainees from the very outset of detention if requested.[230] Medical examinations upon the arrival of a detainee are not mandatory, although some detention facilities have established a practice of examining all detainees upon arrival.[231] Further, while examination is not mandatory, OSI reported in 2011 that all detained persons that it interviewed during the monitoring of detention facilities were informed of their right to medical assistance and police officers adequately addressed such requests.[232]

[227] Georgian Criminal Procedure Code Article 364.
[228] Georgian Criminal Procedure Code Article 19.
[229] A/HRC/4/33/Add.2, Implementation of General Assembly Resolution 60/251 OF 15 March 2006 Entitled "Human Rights Council" Promotion and Protection of Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; Addendum Follow-up to the recommendations made by the Special Rapporteur Visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Kenya, Mexico, Nepal, Romania, Spain, Turkey, Uzbekistan and Venezuela (Bolivarian Republic of) parag 228, 15 March 2007.
[230] Instruction No. Iz-1711; CPT/Inf 2012, *citing* the CPC and the Law on the MIA
[231] Interview with OSI-Sofia staff by TSPC Researcher Bakhtiyor Avezdjanov, April 2013.
[232] OSI Sofia, National Report on "Independent Custody Visiting at Police Detention Facilities 2010 - 2011," p.20, 2012

An examination by a doctor of the detainee's choice can be carried out upon the person's request and at his/her expense. A copy of the medical certificate is drawn up after each examination and is to be given to the detainee or his/her lawyer. Further, the results of the examination and any prescriptions should be entered in a special register, and signed by the doctor. The presence of a police officer during the examination is possible only at the doctor's request.

Most recently, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) delegation reported that doctors called in by the police and medical staff working in intermediate detention facilities (IDF) recorded the objective medical findings, sometimes including a brief reference to allegations made by the person concerned, but failed for provide conclusion as to whether injuries observed were consistent with the person's allegations.[233] Nonetheless, the IDFs visited by the CPT complied with the requirement that all relevant cases be forwarded to the supervising prosecutor.[234]

The CPT also noted that although medical examination on admission took place, as a rule, on the day of arrival or the following day, medical record keeping was poor and often lacked detail, including in relation to traumatic injuries which may have resulted from ill-treatment. Moreover, no prison visited by the CPT in 2010 had a dedicated register for recording injuries observed on prisoners.[235] Bulgaria has a system for registration of detainees (not medical examinations), which may be worth consideration in concert with this model.[236]

Medical staff performing the examination of newly arrived detainees draw up a certificate which specifies in detail the characteristics, position and size of each injury, the statements made by the detainee, and the medical conclusion.[237] In instances where bodily injury is identified, the case should be immediately reported to the management, who should inform the supervising prosecutor and the General Directorate for the Execution of Punishments. Similar instructions are contained in Regulation № 2 of 22 March 2010 "On the terms and conditions for medical care in places of deprivation of liberty," issued by the Minister of Health and the Minister of Justice and concerning medical examinations at prisons.[238]

Reports of external forensic or medical experts are not binding on the court.[239] Thus, reports provided by independent medical experts do not have equal weight in court as opposed to evidence gathered by a state forensics expert. However, when the respective authority does not agree with the conclusions of the expert, it is obliged to provide justification for its decision.

[233] CPT/Inf 2012, p.16.
[234] Id.
[235] Id. at p. 56
[236] This process was documented by TSPC researcher Bakhtiyor Avezdjanov, as described in an interview with police officers in Bulgaria from the Regional Police Station 7.
[237] Order № L-6399 of 26 July 2010 issued by the Minister of Justice (concerning the internal order in investigation detention facilities)
[238] CPT/Inf 2012, p. 20
[239] Bulgarian Criminal Procedural Code, Article 154, Paragraph .1

The decision of the state medical expert is not necessarily final. A party to the case may request additional or different medical experts to examine evidence if they believe that the decision of the previous medical expert is not adequate. There is no fee for these additional examinations, but they must be approved by the court.[240]

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 Kyrgyzstan.

In the first 6 months of the project, TSPC and its researchers investigated several countries for consideration. Follow up was conducted on the models where the initial research demonstrated promise. The first of several field visits was also conducted to one of the selected countries, Bulgaria. Research is on-going and additional information and details will continue to be developed and made available online at https://www.auca.kg/en/tspc/.

The coming months will bring further field research and close collaboration with local stakeholders. There are several aims to this collaboration. TSPC intends to both disseminate the research it has conducted so far, as well as refine the recommendations based on feedback from the local stakeholders. TSPC will also attempt to meet with government officials and other involved parties in order to ascertain the potential for cooperation toward the mutual goal of eradicating torture in Kyrgyzstan.

This report should be used as a starting point for dialogue regarding reforms that have the potential to make an impact on the prevalence of torture and abuse in Kyrgyzstan. TSPC welcomes all feedback regarding the contents and preliminary recommendations contained herein. A final report detailing TSPC's complete research findings and recommendations will be completed and published in the Spring of 2014.

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[240] Interview with Dinko Kanchev, Bulgarian Lawyers for Human Rights, by TSPC research Bakhtiyor Avezdjanov, April 2013.

Appendix 1 – 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."[241] 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."[242]

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 is 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 by

[241] 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."

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

the police into killings by police and other complaints against the police. Amnesty International and Jamaican human rights organizations report 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 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."[243]

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 Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada as a possible model.[244]

The Independent Commission of Investigations (INDECOM)

In June 2008, a police (JCF) strategic review recommended disbanding the PPCA and replacing it with INDECOM. 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."[245] The Jamaican Parliament passed the INDECOM Act in March 2010, repealing and replacing the PPCA. The Governor General assented in April, and in 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.[246]

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

[243] Amnesty International. "Jamaica: A Long Road to Justice? Human Rights Violations under the State of Emergency," 2011.
244 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.
245 6.2.2.7: "The future of the PPCA," http://pcoa.gov.jm/files/jcf_strategic_review_2008.pdf.
246 INDECOM ACT, http://indecom.gov.jm/ici2010_act.pdf; INDECOM was then called ICI.

employment must be approved by a Committee.[247] 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 ($63.8 million Jamaican dollars) 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).[248] In its following year, INDECOM received roughly $200 million Jamaican dollars.[249] According to a submission by the NGO Jamaicans for Justice, the INDECOM 2012-2013 budget allotted has increased to 288 million Jamaican Dollars (about $USD 3 million).[250]

Powers

Under the Act, INDECOM investigation powers include inspection of "relevant public body or relevant Force, including records, weapons and buildings,"[251] 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."[252] 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.[253]

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

247 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.
248 Jamaican Gleaner, "INDECOM Gets Millions," December 1, 2010, http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html.
249 RJR News, "Shaw defends tripling INDECOM's budget," April 20, 2011, http://rjrnewsonline.com/local/shaw-defends-tripling-indecoms-budget.
250 Jamaica: Follow Up Report to CCPR, Jamaicans for Justice, Jamaica Forum for Lesbians, All-Sexuals and Gays, November 2012.
251 Article 4.1.b.i of the INDECOM Act.
252 Article 4.1.C of the INDECOM Act.
253 Articles 4.2 and 4.3 of the INDECOM Act.

down the hierarchy of the security forces and correctional system than did previously. This duty is clearly designed to break the culture of silence.[254]

INDECOM has used various strategies to further its work, including by citing rules and legislation to press Parliament and Government Ministers to coax action by 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's investigations also focused on analyzing patterns of abuse provide policy guidance and recommendations for future prevention.

While at the moment no such power exists, 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."[255]

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.[256]

Guatemala

Guatemala Background

It's difficult, if not impossible, to consider Guatemala's recent history, and its current criminal justice system, without noting that they are less than 10 years outside of a long and violent civil war. The 36 year long Guatemalan internal armed conflict, during which an estimated 200,000 mostly civilians were killed or were disappeared,[257] came to an end with the signing of the 1996 peace

[254] 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.
[255] http://jamaica-gleaner.com/gleaner/20120817/lead/lead9.html.
[256] For INDECOM's most recent full quarterly report, see http://indecom.gov.jm/Release/Report%20to%20Parliament.pdf.
[257] 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.

accords.[258] 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;[259] 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,[260] the period corresponding to parts of both the Lucas Garcia and Rios Montt military regimes. The environment created by war 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, now organized crime groups, continue operating in impunity.[261]

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,[262] as well as UN procedures[263] 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[264] 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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[258] Agreement on a Firm and Lasting Peace, December 29, 1996, http://www.sepaz.gob.gt/index.php/agreement-12.

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

[260] 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.

[261] 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.

[262] 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.

[263] 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."

[264] 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.

In the years leading up to the CICIG Agreement, reports by Guatemalan and International human rights organizations[265] and UN procedures[266] 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[267] and threats against human rights defenders.

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), The Public Prosecutors Office (MP) 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.[268]

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 for 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."[269]

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[265] 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.

[266] A/HRC/4/20/Add.2, 19 Feb. 2007. Based on available statistics from 2005, the study reports a conviction rate of 1.4% in cases involving "crimes against life.

[267] 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.

[268] 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.

[269] http://www.crisisgroup.org/~/media/Files/latin-america/Guatemala/043-police-reform-in-guatemala-obstacles-and-opportunities.pdf.

"[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."[270]

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).[271] 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 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."[272] 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.[273] 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.[274]

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

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)

[270] 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.
[271] 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.
[272] Washington Office on Latin America, http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/WOLA_Policing_Final.pdf.
[273] 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.
[274] http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/152764-cicig-apoyara-investigacion-de-agentes-de-la-pnc.

prosecutorial authority,[275] 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 by 2015.

After Guatemalan Vice President Eduardo Stein signed the CICIG agreement with the UN[276] 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.[277] 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.[278] 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 in a maximum security prison, the four suspects were killed just before they were to be questioned by FBI agents helping in the investigation.[279] A few days later, Stein admitted that organized crime had infiltrated the Guatemalan Police.[280] 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 embedded fully within the national justice system. It is funded by international donors and is administered by the UNDP. [281] 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.[282]

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[275] 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.

[276] "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.

[277] 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.

[278] 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.

[279] 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.

[280] *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.*

[281] 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.

[282] 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."

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. 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 Guatemala on February 27, 2008.[283]

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).[284] After one year of operations, CICIG had raised from donors nearly $USD 14 million.[285] CICIG has generally worked with a budget of around $USD 15 million per year. The United States supported CICIG, in FY12, with approximately $USD 5 million.[286]

[283] http://cicig.org/uploads/documents/convenios/mp-cicig.pdf.
[284] 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.
[285] http://cicig.org/uploads/documents/informes/INFOR-LABO_DOC01_20080901_EN.pdf.
[286] http://rules.house.gov/Media/file/PDF_112_1/legislativetext/HR2055crSOM/psConference%20Div%20I%20-%20SOM%20OCR.pdf.

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.[287] 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.[288] The Constitution states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation."[289]

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.[290] For example, the Ministry of Interior (MoI) Instruction No. Iz-1711 of 15 September 2009 ("On the equipment of police detention facilities 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.[291] 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

[287] European Affairs – History of EU Bulgaria Relations. http://www.euaffairs.government.bg/index.php?page=en_BG-EU Accessed June 16, 2013.
[288] Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29; Bulgarian Penal Code Article 287.
[289] Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29.
[290] 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).
[291] 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).

against detainees.[292] 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.[293]

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 and [294] 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." [295]

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. [296] 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.[297]

Prosecutors supervise the pre-trial investigation and can give mandatory instructions and even undertake investigation directly.[298] Under the 2006 CPC, police must inform prosecutors within 24 hours of any criminal investigation that has been opened.[299] For an investigation to be opened there must be sufficient information regarding the alleged crime.[300] Once an investigation is opened, it

[292] State Gazette #9/26.01.2007 in force from 27 February 2007.
[293] 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) .
[294] CAT/C/BGR/4-5, p. 4.
[295] Constitution of Bulgaria, Article 5, Paragraph 4
[296] Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1).
[297] Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1)
[298] Criminal Code of Procedure of the Republic of Bulgaria, Section 46 (2).
[299] Criminal Code of Procedure of the Republic of Bulgaria, Section 212.
[300] Criminal Code of Procedure of the Republic of Bulgaria, Section 207 (1).

must conclude within two months. In exceptional circumstances, and by permission of the prosecutor, the investigation can be extended.[301]

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 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.[302]

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. The Code of Ethics of police staff and Instruction No. Iz-1711 of 15 September 2009, both contain specific obligations for the police to report acts of violence or inhuman or degrading treatment to their superiors. 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.

Detention and Notice

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.[303] 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.[304]

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

[301] Criminal Code of Procedure of the Republic of Bulgaria, Section 234 (3).
[302] CAT/C/BGR/4-5, p. 25.
[303] Ed Cape and Zara Namoradze, *Effective Criminal Defense in Eastern Europe*, p. 98 (2012).
[304] Id., p. 98

hours.[305] 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.[306] 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.[307]

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. To ensure that the factual moment of detention is reported, detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station.[308] As was also mentioned, 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.[309]

The declaration of rights and pamphlets describing each right are plastered on the walls of interrogation rooms.[310] Pamphlets aimed at police officers that list guidelines for treatment of detainees are also placed on the walls of interrogation rooms.

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. There are no special phones in police stations which arrested persons can use to notify someone of their detention.[311] 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.[312] 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. [313]

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. 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.[314]

[305] The Law on the Ministry of Internal Affairs of Bulgaria, Section 63.
[306] Criminal Procedure Code of Bulgaria, Section 64 (2).
[307] The U.S. State Department, *Report on the Republic of Bulgaria*, 2011.
[308] Interview by TSPC researcher with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013.
[309] Criminal Code of Procedure of the Republic of Bulgaria, Section 219 and 55 (1).
[310] Interview by TSPC researcher with police officers from the Regional Police Station 7, Sofia Bulgaria, April 2013.
[311] Interview by TSPC researcher with police officers from the Regional Police Station 7.
[312] Interview by TSPC researcher with OSI-Sofia staff, Zvezda Vankova and Ivanka Ivanova, Sofia Bulgaria, April 2013.
[313] CPT/Inf 2012, p. 19.
[314] Interview by TSPC researcher with OSI-Sofia staff April 2013.

Medical Assistance

Bulgaria has also adopted a set of mostly promising safeguards surrounding medical examinations and assistance for detainees. Those safeguards were discussed in detail in the preceding report, so they will not be repeated here.

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.[315] 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.[316]

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."[317] 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.[318]

Interrogation Guidelines

The 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."[319]

Similarly, pursuant to MoI Guideline No. Iz-1711, special rooms for police interviews should be set up at police stations.[320] 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 full electronic recording of the questioning, and the video- and audio recordings are to be kept for 30 days.[321]

[315] Criminal Procedure Code of Bulgaria, Article 116 (1).
[316] Criminal Procedure Code of Bulgaria, Article 167.
[317] Criminal Procedure Code of Bulgaria, Article 422 (4).
[318] Criminal Procedure Code of Bulgaria, Article 287.
[319] Criminal Procedure Code of Bulgaria, Article 138 (1-3).
[320] Guideline Iz-1711of 15 September 2009.
[321] CPT/Inf 2012, p. 15.

OSI staff in Bulgaria interviewed by AUCA 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.

Appendix 2 – DECLARATION

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 MiA

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[322], 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 MiA department of employment)

Signature: _____

Witness _____

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

Signature: _____

(Witness)

Refusal of to sign this declaration, certified by a witness:

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

Signature: _____

(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.

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

Appendix 3 - Glossary / Приложение 3 - Глоссарий

- 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.

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Information about the European Union:

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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.

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