

The European Union's European Instrument for Democracy and Human Rights
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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

Policy brief



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

Final training workshops

**Preventing Torture:
Investigation, Accountability, Monitoring**

Policy paper

Bishkek
April 2014

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1. Executive Summary

The use of torture, ill behaviors by law enforcement authorities, and an inadequate respect of the rule of law, including the violation of judicial safeguards of detainees, continue to remain major challenges in the Kyrgyz Republic. However, the Tian Shan Policy Center considers as positive the fact that Kyrgyz authorities acknowledge these shortcomings and are proactively looking for solutions to address them.

In its attempt to support the Kyrgyz authorities and contribute to promote the respect and protection of human rights, the Tian Shan Policy Center implemented a project researching best practices on independent investigative models to initiate a dialogue on mechanisms that may be adopted by the Kyrgyz Republic to prevent further violations and ensure accountability for those who have committed them.¹

State and non-State interlocutors reported to the Tian Shan Policy Center their beliefs that the reasons for the use of torture are multiple. Among the most common responses gathered during the research and the continuous dialogue with all the relevant stakeholders, it was reported that extracting confessions, incompetence of and lack of training for law enforcement officials, peer pressure, corruption, extortion of money, and even ethnic discrimination are at the base of these violations.

These elements greatly affect the trust by the public in the judicial system and adversely reflect on the perception of the strength of the State potentially hampering the reform process initiated after the 2010 events. The Tian Shan Policy Center's field and desk research showed that the establishment of independent investigative mechanisms in other countries, such as Jamaica, Canada, and Northern Ireland, reduced violence from occurring and contributed to building public confidence in the justice system and the State.

The Tian Shan Policy Center presented its final report during Conference held in Bishkek in April 2014. This policy paper summarizes the presentations, discussions, and outcomes of the training workshop. The Tian Shan Policy Center stressed that the presentation of best practices from other countries was not to have the Kyrgyz Republic to adopt one of them but rather make aware State officials, the Ombudsman, the National Preventive Mechanism, and relevant non-governmental organizations, of models and mechanisms for further discussion and the design of a model that is appropriate within the Kyrgyz legal system and culture.

The Tian Shan Policy Center pledged to continue to support the dialogue between Kyrgyz authorities and civil society in their attempt to increase the compliance and respect of human rights in the country in this crucial moment of the Kyrgyz history. Moreover, the ongoing legislative reforms, including the drafting of a new Criminal Procedure Code, represent a fundamental turning point for the consolidation of democracy in Kyrgyzstan and the creation of independent mechanisms based on experiences where they achieved their goals and mandates may prove critical for a prosperous and peaceful future of the Kyrgyz Republic.

¹ Detailed information on the TSPC project and findings are available at https://auca.kg/en/tspc_eu_torture_prevention_project/.

2. Introduction

The Tian Shan Policy Center [TSPC], with the American University of Central Asia, has undertaken a European Union grant-funded initiative² to facilitate research-based policy reform in the Kyrgyz Republic.

The “Program to enhance the capacity of NGOs and institutions to advocate for implementation of human rights decisions and standards to prevent torture” aimed at seeking to:

- 1) Document legal and institutional practices that are effectively used by European, Eurasian and countries of Latin America and the Caribbean to prevent torture and abuse in detention, along with relevant international standards;
- 2) Share with and train advocates and public officials on the model reforms and facilitate a dialogue on the best ways to replicate or adapt elements from those models in the Kyrgyz Republic; and
- 3) Publish and disseminate those models to support more effective advocacy and on going reform efforts in the Kyrgyz Republic.

The TSPC carried out desk and field research to achieve the aforementioned objectives and produce a set of recommendations for the development and implementation of policies and legislation in the Kyrgyz Republic to prevent torture. Based on the outcome of the research and the identification of the most appropriate best practices, TSPC invited experts from Jamaica, Northern Ireland, and Canada to the public launch of its research at its Conference on 28 April, 2014.

The aim of the conference was to provide stakeholders from all sides of the issue with examples and models, which have been identified as potentially useful in the fight for the eradication of torture in the Kyrgyz Republic and to facilitate a dialogue about the way forward in the Kyrgyz Republic. TSPC also simultaneously released a report detailing these models, other relevant examples found in the experience of Guatemala, Russia, United Kingdom, Georgia, Bulgaria, and United States and additional data for suggested corresponding law reform. In order to maximize the impact and outcomes of the training workshop and offer a competent and focused forum for discussion, TSPC invited the largest possible spectrum of Kyrgyz institutions and civil society relevant for the prevention of torture, as well as relevant international organizations and experts on this topic.

TSPC succeeded in securing an active and substantial participation by the Deputy Speaker of the Parliament, the Director of Criminal and Investigative Proceedings Department of the Kyrgyz Republic General Prosecutor’s Office, heads of relevant departments within the Prosecution office, the Head and members of the recently established National Prevention Mechanism, representatives of the Human Rights Committee of the Parliament, Ombudsman office, Ministries of Interior, Justice, and Health, representatives of the Open Society Justice Initiative and the NGO network Coalition Against Torture, a member of the United Nations Subcommittee on Prevention of Torture for Kyrgyzstan (SPT) who headed the SPT delegation in their

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visit to Kyrgyzstan in 2012, the Office of the High Commissioner for Human Rights (OHCHR), the Organization for Security and Cooperation in Europe (OSCE), and the Ludwig Boltzmann Institute of Human Rights (BIM).

The main outcomes of the training workshops, including the recommendations for the development of policies and legislation based on the current situation in Kyrgyzstan and the lessons learned from the experiences analyzed in the sessions, are summarized and outlined in this policy paper after consultation with a number of stakeholders. The follow up on these recommendations will be ensured by TSPC through the implementation, in cooperation with BIM in 2014 - 2015, of a new EU-funded program "Strengthening the fight against torture and impunity in Kyrgyzstan: Prevention, Accountability, Remedy, and Reparation."

3. Overview of the concerns related to torture in Kyrgyzstan

Throughout the training workshop, all participants, including State officials, agreed that the use of torture continues to be widespread in Kyrgyzstan and that the lack of accountability for the perpetrators of these acts remains one of the most pressing concerns. This acknowledgment represents, in the TSPC's opinion, a positive sign demonstrating the willingness by authorities to address the concerns and the readiness by civil society to provide a significant contribution to mechanisms, policies, and legislative reforms aimed at preventing torture.

This positive environment for a constructive and action-oriented dialogue was also welcomed by the Head of the SPT who praised the Kyrgyz authorities for the progress achieved since his last visit. However, despite the progress, the Deputy Speakers of the Parliament, the General Prosecutors Office, the office of the Ombudsman, and representatives of the civil society recognized that torture remains endemic within the Kyrgyz system and more efforts are required to effectively address the issue.

A number of stakeholders stressed that torture continues to occur due to significant flaws in the law enforcement and judiciary systems. In particular, representatives of civil society stressed that the power of the police to obtain a confession immediately upon arrest, the limited resources available to investigate cases, the absence of competent and independent forensic experts during the investigative phase of crimes, a high level of corruption, the failure by judges to dismiss evidence allegedly obtained with torture and order impartial and timely investigations into these allegations represent some of the main reasons affecting the current situation in Kyrgyzstan.

Among the main policy proposals presented during the training workshop by the participants, TSPC concluded that most were in accordance with the findings of its research. These proposals included legislative reforms aimed at strengthening the prevention of torture, clarify terminology in the Criminal Procedure Code such as the definitions of detainee and suspect, and the moment of detention from which procedural safeguards have to be guaranteed, the effective establishment of an independent investigations mechanism to ensure that the agency in charge of the investigation is not the same authority that is allegedly responsible for the acts of torture, and increase public scrutiny..

4. Model Investigation mechanisms

Based on the outcome of its research, TSPC used the training workshop to introduce the participants to a number of examples of investigation mechanisms from foreign experiences with the aim of initiating a discussion on a system that may be appropriate for the Kyrgyz situation.

The participants were initially trained on international standards for effective and independent investigations, including the applicable normative framework in Kyrgyzstan and the available jurisprudence. Particular emphasis was given to the obligations by State authorities to promptly and impartially investigate allegations of torture and ill-treatment either upon receipt of complaints or *ex officio* if reasonable ground to believe torture occurred is found.

The experts highlighted to Prosecutors, representatives of relevant ministries, and civil society the main principles required for investigations, namely institutional independence of the officials responsible, adequacy and thoroughness in the collection and analysis of testimonies and information, competence of the officials both in terms of skills and enquiry powers granted to them, implementation of appropriate measures aimed at victims' protection, promptness of the investigations, and public scrutiny to ensure accountability of the perpetrators.

The dialogue then moved to practical examples of mechanisms to promote impartial investigations. The expert from Jamaica shared his experience with regard to the establishment of the Independent Commission of Investigations (INDECOM) to investigate actions by members of the security forces that result in death or injury to persons or the abuse of the rights of persons following a rampant trend of homicides by the police.

The expert explained the legal status of INDECOM, including its independence from police and judicial authorities and its broad mandate. As described, the INDECOM mandate covers misconduct by police ranging from death or injury of civilians to damage of property or requests for bribery by police officials, its investigation powers such as inspection of relevant public body or relevant force, including records, weapons and buildings. Police have an obligation to inform INDECOM after an incident but an investigation can also be prompted by the public through a dedicated hotline. The expert also discussed INDECOM's financial status explaining that currently the Parliament approves the budget. However, INDECOM also has the ability to seek external funding to guarantee independence in its operations.

According to the expert, the independence of a mechanism investigating allegations of crimes, torture, and ill-treatment carried out by the police is key to eliminate impunity and promote accountability. Policy and legislative measures adopted for INDECOM to achieve this goal that can be transferred to Kyrgyzstan included the ability for INDECOM to arrest and summon police officers, to compel them to testify, to indict them for perjury if proven untruthful in their statements, to search their houses, to recover documents, and ultimately to have an independent oversight on the actions and activities of the police.

Kyrgyz Prosecutors, State officials, and civil society were subsequently provided with

an in-depth overview of the mechanism adopted in Northern Ireland to independently investigate complaints submitted against the Police. This mechanism established by law is the Police Ombudsman for Northern Ireland (OPONI) and it is mandated to provide an effective, efficient, and accountable Police Complaints system for a wide range of cases, from complaints of incivility to criminal conducts. Additionally, OPONI has exclusive jurisdiction for cases on the police and especially for cases where a death has resulted from the conduct of a police officer.

OPONI, which is a civilian body with oversight on the actions of the Police, is accountable to the Northern Ireland Assembly, through the Minister for Justice and its staff includes retired police officers and civilian lawyers. OPONI's investigators have full police powers and, in accordance with the law and a memorandum of understating signed with policing bodies, can request and obtain any relevant information from the Police, enter premises, and arrest police officers. OPONI investigates both the disciplinary and criminal aspects of the complaints received and it has a duty to refer criminal findings of its investigations to the Director of Public Prosecutions. OPONI does not participate in the prosecution or disciplinary hearings following the investigations but it can submit confidential recommendation. However, in order to comply with the principle of public scrutiny, it is made public that OPONI submitted recommendations on specific cases.

With regard to the main reforms that led to the almost complete elimination of torture in Northern Ireland that could be pursued in the Kyrgyz Republic, the expert indicated the introduction of audio and video recording for all the interrogations, the establishment of a National Preventive Mechanism composed by, among others, forensic and medical experts, the creation of an Ombudsperson for prisons with exclusive jurisdiction on deaths in detention, and a substantial reform of the police system. The latter included a change in the composition of the police by offering a retirement package to a number of officers to facilitate the inclusion of better trained officers with particular attention to ensuring a balance in ethnic and gender composition of the new police force, the adoption of a code of ethics tailored to the European Convention on Human Rights, and the switch from considering success based on the number of confessions extorted to the use of various interrogation techniques to obtain an accurate picture of the events and significant information from the detainees. Moreover, the establishment of a policing board composed of independent stakeholders and parliamentarians from all parties proved critical to ensuring accountability and respect for the rule of law.

Lastly, the expert from Canada reported to the participants that in an effort to overcome public concern about accountability of police officers, especially in cases in which civilians were killed or seriously wounded, a Special Investigations Unit (SIU) with independent civilian investigators was established. He also stressed that one of the reasons for creating SIU was to increase the level of confidence by the public towards the Police drawing a parallel between the Canadian and Kyrgyz experience where the public had lost faith in the ability of the police to serve and protect due to the widespread perception of the lack of accountability for wrongdoings.

As a consequence, the Police Service Act was amended mandating SIU to investigate police actions resulting in serious injury, sexual assault or death upon receipt of reports by the police service involved or complaints received by the public, including

victims, their relatives, or even media. The law also states that police officers are obliged to cooperate with SIU and the Director, who cannot be a police officer and generally is a lawyer with a background on prosecution, can lay criminal charges against police officers after the conclusion of the investigations. An independent prosecution unit is then competent to prosecute these charges.

Analyzing the policies and actions implemented to support the successful work of SIU that may be applicable to the Kyrgyz situation. The expert indicated that, upon receipt of the report of an incident, communication among witness and subject police officers had to be prevented until the conclusion of the interrogations by SIU to avoid concerted statements. Additionally, the witness officers are obliged to share their notes with the investigators.

Furthermore while noting that any system is subject to tampering, the participants were informed that the use of video cameras in police stations and cellblocks was fundamental to reducing the number of allegations and cases of torture and ill-treatment. Additionally, the installation of in-car police cameras also contributed to drastically decreasing misbehaviors by the police. Based on the evidence collected through these tools, defense councils were able to stop prosecution of the accused where their rights had been violated. Furthermore, following the repetition of allegations of acts by the police aimed at impairing respiratory functions of the accused which were then followed by a confession, the Canadian Appellate Court ruled that no such statement would be admissible in court if not videotaped.

5. Legislative reforms

In recent years, the Kyrgyz Republic has undertaken, and it is still undergoing, significant legislative and policy reforms aimed at fighting and preventing torture. The review of the Criminal Procedure Code, which is integral to the establishment of an effective system to eliminate torture, is currently in process and a first draft is expected to be submitted to the Parliament by Fall of this year.

In TSPC's view, which was fully shared by the participants at the training workshop, the reform should aim at the establishment of a system where detainees are comprehensively protected and allegations are promptly investigated by effective and independent bodies, immediately upon the receipt of a complaint, or in any case in which there are reasonable grounds for believing that torture has occurred.

TSPC and the participants agreed on the necessity to ensure the independence of investigations of allegations of acts of torture or ill-treatment.

These objectives can be achieved by clarifying roles, responsibilities, and obligations of law enforcement authorities and the application of procedural safeguards, including the right to remain silent and the right to a defense council immediately upon arrest. Additionally, a meaningful reform has to overcome the problems that were affecting the fulfillment of international human rights obligations and the respect of the rule of law under the current legislation, such as the uncertainty of elements like the definition of moment of detention or apprehension that often affected the judicial guarantees of the arrested individuals. During the policy discussion on this topic, it

was agreed that the Kyrgyz Republic should adopt a legislation that ensures the broadest possible protection.

Along with reforming the Criminal Procedure Code to comply with its national and international legal obligations, TSPC, State officials, and civil society organizations advocated for increased efforts by the Kyrgyz Republic to strengthen the National Preventive Mechanism and the Ombudsman office by ensuring availability of adequate human and financial resources, supporting their ability to operate independently and without fear of repercussions, and granting access to all prisons, detention centers, and temporary detention facilities. Moreover, these mechanisms and their representatives should be allowed to access all the necessary information, including registries, files of detainees, and medical records, and carry out confidential interviews with detainees and prisoners to conduct accurate monitoring activities and gather data to assess progress and shortcomings and propose recommendations to address pressing concerns.

Finally, the participants also recommended the identification of independent and qualified forensic experts and medical staff to conduct physical examinations of detainees upon arrival to the detention centers and immediately after allegations of torture are submitted or reasonable suspicions torture occurred are found.

6. Recommendations

Based on the analysis of the findings of TSPC's research, the presentations by the experts on investigatory mechanisms, and the discussions and proposals made during the training workshop, TSPC recommends the following:

- Recommendation #1:

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

- Recommendation #2:

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

- Recommendation #3:

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

- Recommendation #4:

The Kyrgyz Republic should create a procedural mechanism where a third party prosecutor (person or entity separate from the existing office of the prosecutor) may apply to the presiding judge, for permission to join a criminal case. The applicant should have standing to apply for intervention at any time during the investigation or trial phase 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. If granted, this power would also prompt prosecutors to open a case, or appeal to judge to order prosecutor to open it.

- Recommendation #5:

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

- Recommendation #6:

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

- Recommendation #7

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

- Recommendation #8

Procedural rights must attach from the moment of factual detention, and this must be communicated to the detained person. Rights should be communicated, at minimum, orally upon the moment of factual detention and then should be given to the detained person in writing, in a language he or she understands, upon the arrival at the first official facility (police station or detention facility). If the detainee does not speak the

official or state language, he or she must be provided with a translator. If he or she is not a citizen of the Kyrgyz Republic, the individual must also be allowed to contact his or her consulate.



TSPC program manager and researcher explain the main findings of the project



Representatives of the General Prosecution Office proactively participate in the discussion on judicial guarantees



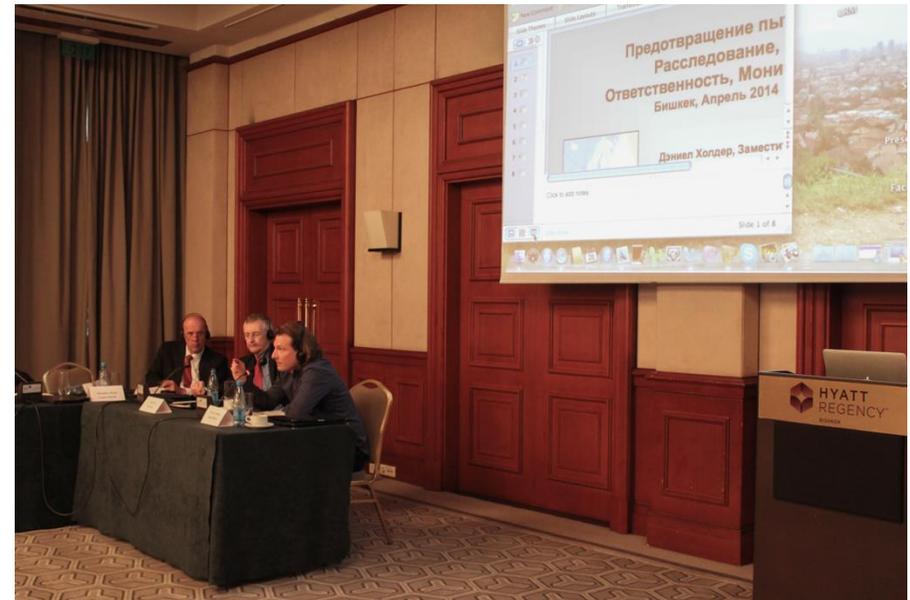
Bekturganov Malik- Prosecutor General representative



Mr. Hamish Campbell answers questions on the experience on independent investigation mechanisms from Jamaica



Mr Arman Danielyan, Subcommittee on Prevention of Torture and Ulugbek Azimov, Chairman of Coordinating Council of NPM Kyrgyzstan



Experts on independent investigation mechanisms dialogue with Kyrgyz authorities and civil society



International experts – Jamaica, Canada, Northern Ireland



Almagul Tyrdymambetova – “Golos Svobody”

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Information about the European Union:

“The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.”

Information about the Tian Shan Policy Center:

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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