

programme
For the Kyrgyz Republic

**Program to Enhance the
Institutions to Advocate for
Implementation of Human Rights
Decisions and Standards to
Prevent Torture
For the Kyrgyz Republic
*Final Report on Model Practices***



The project is funded by
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FINAL REPORT OF RESEARCH FINDINGS

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

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List of abbreviations

BSI Bureau of Special Investigations
CEH UN Historical Clarification Commission report

Summary Recommendations

Investigatory Mechanism:

Recommendation #1:

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

Recommendation #2:

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

Recommendation #3:

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

Recommendation #4:

The Kyrgyz Republic should create a procedural mechanism where a third party prosecutor (person or entity separate from the existing office of the prosecutor) may apply to the presiding judge, for permission to join a criminal case. The applicant should have standing to apply for intervention at any time during the investigation or trial 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.

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.

International Standards

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

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

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

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the

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

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

Taking this a step further, a wide range of international specialists collaborated to create a set of standards which specifically address effective documentation and investigation of torture. The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Manual) 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 other competent authorities.⁹

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

Regional Standards – Europe and Latin America

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

Europe

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

⁸ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, para. 1.

European standards impose a positive obligation to investigate all allegations or *other indications* of ill-treatment.¹⁵ An express complaint is not necessary to trigger an investigation, while credible accounts of physical or psychological abuse trigger mandatory investigations.¹⁶ In

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 *use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish*²⁹ Further, where the UNCAT definition spells out torture as being *the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish*²⁹ The IACPPT expands the specific purposes that might fall under the category to include *the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish*²⁹

A report by the Organization of American States on citizen security and human rights also *declares that the use of force or coercion to affect 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*³⁰

Overview on the Kyrgyz Republic:

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

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

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

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

A report written for Freedom House Kyrgyzstan by two leading local human rights experts, documented some of these increases.⁴² The report noted that within two months of the conflict, the General Prosecutor opened nearly 3,000 criminal cases connected with the riots in the south of the country, with many of those cases accompanied by massive human rights violations including torture, illegal detention, and mistreatment during detention.⁴³ Detention of citizens in investigation of ethnic conflicts in 2010 in the south of the country occurred in violation of procedural rights. During the course of detention, law enforcements officials did not introduce themselves and did not explain the grounds for detention which is a violatiop"qh" fgvc"pgguø"tki jvu" under the legislation of the Kyrgyz Republic.⁴⁴ Further, according to0048400()-9(int)-3(389.21 Tm

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

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

It should also be noted that the Kyrgyz Republic has been the subject of several recommendations from United Nations Human Rights Council (including the Universal Periodic Review, country specific reporting and special procedures) as well as United Nations Treaty Bodies.⁵⁰ Several of these recommendations are specific to torture and ill treatment in detention[(re)7(c)4(omm)-3(e)4(nda)4(ti)-3(ons)-3018001nd(n)10()] TJEQBT1 0 0 1 115.46 611.9(7(n)10(

Best Practice Models For Effective Investigations

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

The Code of Criminal Procedure for the Kyrgyz Republic guarantees all persons access to judicial protection of his or her rights and freedoms at any stage of the criminal proceeding.⁶⁵ At this stage of proceedings, a challenge.

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

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

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

Guatemala

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

In 1999, a legislBT BT/F23(on t)] v-39(IN)-14(.)] TJ

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

provided by any person, official or private entity, non-governmental organization, international the State and any decentralized autonomous or semi-corporate organization

CICIG also coordinates its work with the relevant government counterparts, including the Public

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

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

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

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

The Police Ombudsman of Northern Ireland is appointed by Her Majesty the Queen, as a named person for a fixed term of seven years. The Police Ombudsman is accountable to the Northern Ireland Assembly, through the Minister for Justice. The status of the Office of the Police Ombudsman is that of a non-departmental public body (NDPB) administrated through the Department of Justice.¹¹² OPONI staff includes retired police officers and civilian lawyers.¹¹³ Although OPONI realizes the benefits of having former police officers act as its investigators, it is slowly moving away from the practice to improve its independence. For example, a program to train investigators has been established and a group of trainee investigators from purely ekxknkcp"dcem i tqwp fu"ku"uqqp"vq"lqkp"QRQPkøu"tcpmu0¹¹⁴

Ontario, Canada

Background

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

¹⁰⁵

member of the public had been wounded or killed.¹¹⁵

Following the publication of the 1989 Task Force on Race Relations and Policing Report,¹¹⁶ the Police Service Act was amended¹¹⁷ and SIU was formed in 1990. SIU is described as an "independent civilian police agency" established by the Attorney General of Ontario, led by a Director and composed of civilian investigators.¹¹⁸

A report looking at police cooperation with the SIU¹¹⁹ made 25 recommendations to improve SIU effectiveness and address SIU and police cooperation. These recommendations included an "order" that clearly set out the duties of police officers during SIU investigations. This new regulation (Ontario regulation 267/10)¹²⁰ first came into effect on January 1, 1999 and most recently was amended in 2011.¹²¹

Mandate

The mandate of the SIU is to maintain confidence in Ontario's police services by assuring the public that police actions resulting in serious injury, sexual assault or death are subjected to rigorous, independent investigations. Incidents which fall within this mandate

267/10¹³⁴ all Ontario police services are under a legal obligation to immediately notify the SIU of incidents of serious injury, allegations of sexual assault, or death involving their officers.¹³⁵

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

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

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

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

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

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

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

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

Georgia

On Jan 16, 2001, the Georgian Minister of Interna

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with the

detention registry forms include two boxes ó one for the factual detention and the other for when

Regarding the right to legal assistance, English Language translations of Article 24(5) of the Constitution should be kept safe, such person shall be granted an opportunity to protect himself/herself personally, enjoy qualified legal aid from a lawyer as warranted. The actual deprivation of liberty is the period of imprisonment.

Under the current interpretation of Article 49 of the Criminal Code, deprivation of liberty refers to a post-sentencing period where a person is convicted and sent to a penal colony, a penal settlement or a jail. 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 is 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, when a person is deprived of liberty by state officials. Thus guaranteeing that at a minimum the state shall ensure that the right to legal aid is not limited by state officials.

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 *fygvpvkqp* *hceknkv* *{0* *Ctvkeng* *" 62* *" cnuq* *" igpgtcnn* *{* *" nkuvu* *" cnn* *" qvjgt* *" ötkijvu* *" cpf* *" tgurqpukdknkvkgu* *" qh* *uwurgevuö*¹⁹⁸ Part 1 specifies several rights relevant to the safeguards against torture. Most notably a suspect has the right to know what he is suspected of, to have a copy of his rights, to refuse to make statement and to have counsel from the moment of first interrogation, and in case of detention ó from the moment of actual arrival to the agency of preliminary investigation.¹⁹⁹

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

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

of the previously mentioned rights immediately after their detention.²⁰⁹

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

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

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

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

United States

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

²⁰⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Bulgarian Government on the Visit to Bulgaria Carried out by the CPT*, 4-

custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards

Project Methodology and Timeline:

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APPENDIX

Country Profiles

Jamaica

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

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

The Independent Commission of Investigations (INDECOM)

Bay and Mandeville

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

In mid-August 2012, Justice Minister Golding came out in favor of adding prosecutorial powers certain agencies to be conferred with the powers to prosecute the cases that they investigate, because I think it would lead to a more

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

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In one ecug"c" itqwr"qh" gkijv" rqnkeg"qhhkegtu"ejcmngpigf"KPFGEQOøu"cwvhority in section 21 of the INDECOM Act to compel their cooperation in a shooting case on the grounds that their

Guatemala

Guatemala Background

The 36 year long Guatemalan internal armed conflict, during which an estimated 200,000 mostly civilians were either killed or disappeared,²⁴⁴

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

ncem"qh" tguqwtegu" cpf" rqnkvkecn" yknn0" WU" Uvcvg" Fgrctv o gpv" tgrqtvu" otgxgcngf" vjcv" RPE" cwvjqtvkvgu" qhvgp" qrv" vq" vtcpuhgt" rqnkeg" tcvjgt" vjcp" uwdlgev" vjgo" vq" lwfkecn" rtqeguug00²⁵⁶ In 2011, it was reported that the ORP received 1,814 complaints, which included 15 complaints of killings, six forced disappearances, 138 illegal detentions, 68 thefts, 14 rapes, 117 threats, and 323 cases of abuse of authority. In 2011, ORP investigated 1,259 police officers, 95 of whom were subsequently dismissed and 537 of whom were exonerated.²⁵⁷ In early 2012, the Minister of Interior said that the ORP would lead a team ó with support from CICIG - to investigate possible cases of corruption and determine if any organized crime structures remained within the ministry.²⁵⁸

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

International Commission Against Impunity in Guatemala (CICIG)

Following a previously negotiated agreement (CICIACS) whose mandate was struck down by the Guatemalan Constitutional Court in 2004 for impinging on the Public Prosecutors (MP) prosecutorial authority,²⁵⁹ the International Commission Against Impunity in Guatemala (CICIG) was established by agreement between the United Nations (Department of Political Affairs) and the Government of Guatemala in late 2006 and started its work in September 2007, following ratification by the Guatemalan Congrguu0" Vjg" EKEK I 0u" o c p f c v g" j c u" d g g p" g z v g p f g" three times (in 2009 and 2011, and 2013), and as stated in the main report, will likely phase out its work in 2015.

After Guatemalan Vice President Eduardo Stein signed the CICIG agreement with the UN²⁶⁰ on December 12, 2006, in January 2007 VP Stein started conferring with political parties to explain uq o g" qh" vjg" c i t g g o g p v u 0" f g v c k n u" c p f" n q d d { " q p" k v u" d g j c n h 0²⁶¹ On February 19, 2007, the main Guatemalan Daily *Prensa Libre* came out with an article which cited the Vice President as uc { k p i " v j c v " q t i c p k | g f " e t k o g " g h h g e v k x g n { " j c f " e q p v t q n " q h " u k z " q h " I w c v g o c n c 0 u " 4 4 " f g r c t v o g p v u " c p f " c " foothold in three others.²⁶² That same day three Salvadoran members of the Central American Parliament (PARLACEN) and their driver traveling to Guatemala were tortured, shot to death and then set on fire in their car. Four police officers, including the head of the organized crime unit of the Guatemalan Police, were arrested and charged with the murders. While in their cells

²⁵⁶ Washington Office on Latin America, http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/WOLA_Policing_Final.pdf.

²⁵⁷ <http://www.state.gov/j/drl/rls/hrrpt/2011/wha/186518.htm>. The National Civilian Police Force has a total of roughly 25,000 people.

²⁵⁸ <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/152764-cicig-apoyara-investigacion-de-agentes-de-la-pnc>.

²⁵⁹ The Constitutional Court struck down CICIACS because it infringed on the exclusive prosecutorial authority of the Public Prosgewwt0u" qh h k e g. " E q t y g " f g " E q p u w k w e k p e n k f c f. " I w c v g o c n c. " Q r k p k > p " E q p u w m w k x c. " G z r g f k g p v g " P q l " 3 4 7 2 - 2 0 0 4, 5 August 2004.

²⁶⁰ " o C i t g g o g p v " d g v y g g p " v j g " W p k v g f " P c v k q p u " c p f " v j g " U v c v g " q h " I w c v g o c n c " q p " v j g " g u v c d i k u j o g p v " q h " c p " k p v g t p c v k p e n " E q o o k u u k q p " C i c k p u w " I m p u n i t y i n I w c v g o c n c " * : E K E K I 0 u. 0 " <http://cicig.org/index.php?page=mandate>. Signed 12 December 2006 in New York.

²⁶¹ Y c u j k p i v q p " Q h h k e g " q p " N c v k p " C o g t k e c. " 0 C f x q e c v g u " c i c k p u w " K o r w p k v { < " C " E c u g " U w f { " q p " J w o c p " T k i j v u " Q t i c p k | k p i " k p " I w c v g o c n c. 0 " L e p w c r y 2 0 0 9, http://www.wola.org/publications/advocates_against_impunity_a_case_study_on_human_rights_organizing_in_guatemala.

²⁶² N q t g p c " U g l k q " c p f " E c t n q u " O g p q e c n. " 0 E t k o g p " q t i c p k | c f q. " v t c u " f l r w c e k q p g u y c n e c n f " c u. 0 " *Prensa Libre*

Ceeqtkp i"vq"EKKEK I øu"8th report, it is comprised of 162 national and international officials, 72 of

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

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

Complaints of misconduct made to the Chief Constable, the Northern Ireland Policing Board, the Department of Justice or the Public Prosecution Service should immediately be referred to the Police Ombudsman.²⁹³ Magistru101 0 0 1 BT1 0 0 1 70.944 696.58 Tm0 g[(ha)4(ve)4(a)4(dut).1 Tm[(Ma78

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

Informal resolution simply means that the complaint is resolved locally by the chief of police of the police force to which the complaint relates, again, only if the complainant consents to the proposed resolution. If an informal resolution fails then the Police Ombudsman shall investigate. In 2011/2012, 501 complaints were considered suitable for informal resolution but only 300

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

Vjg" o quv" eq o o qp" v{ rg" qh" cmng icvkqp" ku" c" õhcknwtg" kp" fww{.ö" y jkej" o gcpu." hqt" gzc o rng." vjg" conduct of a police investigation, a failure to investigate, a failure in communication, issues associated with detention and the treatment and questioning of suspects.³¹⁶ During 2011/2012, failure in duty allegations (2,091) represented 35% of all allegations made.³¹⁷ õQrrtguukxg" dgjcxkqtö"3.;66"kn 2011/2012) represented 33% of all allegations made.³¹⁸

Oppressive behavior is classified into sub-groups:

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

Since March 2008, the majority (63%) of oppressive behavior allegations were classified within the subtype other assault, 27% of allegations were classified as oppressive conduct or harassment and r 470.3aepof e(re)70(unlaETful/u76(o)-79(a)4(c-3(whirica)5(130c)4(ti)-3(nrr)] TJEsnd)72)-2(pe66on)-

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

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

Russia

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

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

³²⁸ Policies and Procedures Relating to OPONI, Section 2.9

³²⁹ Id. at Section 64.

³³⁰ ng (ru-RU)BDC 4p5BDC BT/F2 8.04 Tfl 0 0 19(e)11(d)-6(u)-6(r)5(e)11(s)12(R)-4(e)11(l)9(a)-3(t)-5-257(-)-3(S)FY 0 3of quese1(c)-3(t)-5(i)-5C7(most)4/5n6e12(R)-4(e)11(l)9(a)-3(t)-5-257(o6e6e12(R)-4(e)11(l)9(a)-3(t)-5-26&CID 30&BDC BT1 0 0 1 e)

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

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

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

Bulgaria

Background

In 2000, Bulgaria gained the status of candidate country with the European Union. On 25 April 2005, Bulgaria signed the treaty of accession to the EU, giving it active observer status. Finally on 1 January 2007, Bulgaria fully acceded.³⁴¹ This process however re

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

It is also explained to Detainees that they have the right to contact someone to give notification of custody orally at the moment of detention and in writing through the declaration of rights,

Interrogation Guidelines

Vjg" Dwnictkcp" ERE" rtqxfku" k o rqtvcpv" kpvgttqi cvkqp" i wkfgnkpgu<" õ3+" Vjg" kpvgttqi cvkqp" qh" vjg" 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 qh"htgg"pcttcvkqp."kh"jg"qt"ujg"ykujgu."gxgt{vjkip"vjcv"jg"qt"ujg"mpqyu"kp"tgncvkqp"vq"vjg"ecugö³⁷²

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

OSI staff in Bulgaria, interviewed by AUCA/TSPC researche

**SAMPLE DECLARATION
(Based on Bulgarian Model)**

Date and time (hour) of signature:

First, middle (patronymic), and last names of the detained person: _____

certifies that upon detention (arrest), he or she was made aware of his/her rights and declares:

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

Signature: _____

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

Signature: _____

3) _____ health problems that demand medical and result in:
Have/Do not Have

Chart of best practice model countries

	<p>through the Minister of Justice for Northern Ireland. The Police Ombudsman is appointed by Royal Warrant for a term of seven years. The Police Ombudsman does not carry out his/her functions on behalf of the Crown.</p>	<p>ineffective as it could not conduct its own investigations and relied heavily on police.</p> <p>In August 2010 the Jamaican government created INDECOM to investigate actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons.³⁸⁰</p>	<p>started its work in September 2007.</p> <p>FECI was created as part of the original CICIG Agreement and the Bilateral Cooperation Agreement signed between the Public Prosecutor's Office (MP) and CICIG Guatemala on February 27, 2008.³⁸¹</p>	<p>SIU, police services investigated its own officers in Ontario, or in some instances, another police service was assigned to conduct the investigation. Over time, public concern grew about the integrity of the process in which police officers investigated other police officers. The lack of confidence led to the creation of the SIU.</p>
<p>Oversight/ Monitoring and Reporting</p>	<p>The investigative functions of OPONI operate independently of the Government to ensure that the government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be.³⁸³</p> <p>OPONI answers to the Northern Ireland Policing Board and must submit information on its financial and good governance practices ever year.³⁸⁴</p> <p>OPONI undergoes a statutory</p>	<p>INDECOM must submit annual reports to parliament along with other reports as requested.</p> <p>Complaint</p>		

review at least once every five years and submits a report to the Secretary of State of Northern Ireland. Once received, the Secretary of State must publish and present the report to the Houses of Parliament.

The Companies Act 2006 is statutory. It requires a company to produce an Annual Report, Corporate Plan and Accounts and have them presented to Parliament. It is also obliged to produce reports as

Any expenditures not proposed in
the annual budget

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.

Powers

for as long as reasonably necessary.

Following a recent supreme court decision (July 30, 2013), INDECOM has the power to initiate and conduct prosecutions (though the Director of Public Prosecutions may still take over or cancel a prosecution)

			<p>Government to adopt measures necessary to ensure the safety of witnesses, victims and all those who assist in its investigations, offer its good offices and advice to the relevant State authorities with respect to the adoption of such measures, and monitor their implementation;</p> <p>(j) Select and supervise an investigation team made up of national and foreign professionals of proven competence and moral integrity, as well as such administrative staff as is required to accomplish its tasks;</p> <p>(k) Take all such measures it may deem necessary for the discharge of its mandate, subject to and in accordance with the provisions of the Guatemalan Constitution; and</p> <p>(l) Publish general and thematic reports on its activities and the results thereof, including recommendations pursuant to its mandate.</p>	
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Relation to

OPONI has no prosecutorial powers. The Police Ombudsman

Prosecutor

Chart of alternative practice model countries

Country	Bulgaria	Georgia	
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	prevention of torture.	Preventative Mechanisms (NPM) to undertake all effective measures to fight against ill-treatments, particularly investigate all facts of ill-treatments, punish offenders and give compensation to victims.	investigating police abuse cases.
When they were formed	In the 2008 amendments to the MIA, the position of police investigator was introduced. This was aimed at expanding the range of investigating authorities and ensuring the timely, lawful and efficient investigation in the pre-trial phase.	On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units (HRU) to be located within the Ministry of the Interior. ⁴¹⁶	In April 2012 special departments were created within the Investigative Committee for the specific purpose of investigating crimes allegedly committed by police and other law enforcement officials, though the Committee has not made public whether any clear and exhaustive criteria exist for referral of cases to these special departments.

Oversight and monitoring

In the event that violations are established, the management of the respective facility is given binding instructions to rectify these, unless they constitute a criminal offence. It is also an established practice for the relevant district prison facilities, and specifically on instances of use of force and auxiliary devices against inmates. Timely whistle-blowing and notification of the institutions of alleged or suspected torture by officers of these institutions is the right of the aggrieved party

In 2007, in order to enhance the fight against torture, inhuman and degrading treatment a

Ins eary0

but also of the media and non-governmental organizations.⁴¹⁷

Timely whistle blowing and notification is the right of aggrieved party and also media, NGO.

NGOs are given opportunity to exercise public control over MOI bodies.⁴¹⁸

In all ministries and other institutions concerned by the provisions of Article 13 of the Convention, there are internal control bodies in place whose functions include receipt of, and follow-up on, complaints and queries.

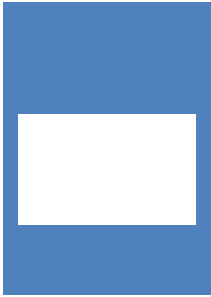
detention facilities

actions committed by Ministry of Internal

Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labour and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions.

Bulgarian legislation contains a number of provisions concerning action to be taken with respect to reporting cases of ill-treatment. Pursuant to Section 205(2) of the Criminal Code of Procedure (CPC), public officials are under a legal obligation to immediately report to their superiors any facts related to a criminal offence, which may have come to their knowledge. Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities.

The Kyrgyz Republic



the Kyrgyz Republic recently adopted the National Preventative Mechanism. On July 12, 2012, the President signed the law, passed by Parliament on June 8, 2012, to create the National Center to Prevent Torture and other Inhumane and Degrading Treatment and Punishment.⁴³⁸

Kenesh.

respective budgets for the Office of the Prosecutor or other relevant ministerial

Proposed Amendments – Criminal Procedural Code of the Kyrgyz Republic

<u>Current law - Russian version</u>	<u>Proposed version in Russian</u>	<u>Proposed version in English</u>
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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.”