

- **Normative and Institutional Framework**

1. The Tian Shan Policy Center (TSPC) of the American University of Central Asia (AUCA) welcomed the constitutional, legislative, and policy reforms undertaken by the Kyrgyz Republic during the reporting period to enhance compliance, protection, and promotion of its international human rights obligations in particular with regard to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

2. The TSPC applauded the inclusion of significant measures for the protection and promotion of human rights into the new Constitution, which was adopted in June 2010 through a referendum as recommended in the previous UPR cycle.<sup>1</sup> It is commendable that Section II of the Constitution, Human Rights and Freedoms, recognizes most of the rights protected under the International Bill of Human Rights and other human rights treaties ratified by the Kyrgyz Republic. Additionally, article 6 of the Constitution establishes that international treaties to which the Kyrgyz Republic is a party shall be the constituent part of the national legal system.

3. The TSPC also welcomed the decision in December 2010 to ratify, as recommended in the first UPR cycle, the Second Optional Protocol to the International Covenant on Civil and Political Rights.<sup>2</sup> The TSPC regrets that no progress has been made to date for the ratification of the Rome Statute.

4. Following the ratification of the Optional Protocol on the Convention Against Torture (OPCAT) in 2008, and in compliance with the consequent obligations for its implementation, in July 2012 the Kyrgyz Republic established a National Preventive Mechanism (NPM) by adopting the law “On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment”<sup>3</sup> to create a system for the prevention of torture of persons detained in places of deprivation of or restraint of liberty.<sup>4</sup>

4. Furthermore, this law 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).

5. The TSPC assessed that the development of these mechanisms remains embryonic and further support, both financial and political, is needed by the Government to ensure the full implementation of the law and the effective and independent functioning of the NPM and the National Center.

6. The TSPC also considered as an important step demonstrating the political willingness of the Government to halt torture the decision in **March 2014** to make public the report of the Subcommittee on Prevention of Torture following the visit in September 2012.

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<sup>1</sup> Recommendations No. 5, 6, and 7.

<sup>2</sup> Recommendations No. 1, 2, 3, and 9.

<sup>3</sup> Law of the Kyrgyz Republic “On the National Center of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment,” 12 July 2012 N 104.

<sup>4</sup> Recommendations No. 15, 20, 21, 23, 24, 25, 50, 53, and 54.

7. During the reporting period, the TSPC also has participated in a number of expert committees along with representatives of relevant ministries, civil society, lawyers, and International Organizations, for the review of the Criminal Procedure Code and the Criminal Code. Consultations are still ongoing at the moment of writing. The TSPC considers this as a crucial reform to ensure full compliance by the Kyrgyz Republic with its international human rights obligations, to legally formalize and include safeguards for the prevention of torture, and to strengthen rule of law in the country.

- **Promotion and protection of human rights on the ground**

8. Inter-ethnic tensions and incidents between the Kyrgyz majority and the Uzbek minority characterized the beginning of this reporting period. In April 2010, violence erupted in Bishkek during protests organized for the increasing costs of living and a state of emergency was declared on 7 April. On 15 April, the President Kurmanbek Bakiyev resigned from office and fled to Kazakhstan first and Belarus then. The fragile political situation also led to increasing tensions between the Kyrgyz majority and the Uzbek minority. In May 2010, protests by ethnic Uzbeks were staged in Jalal Abad requesting an increased protection following consistent allegations of attacks against members of the community. These protests turned violent and initiated the process of escalation of violence.

9. In June 2010, violent clashes between Kyrgyz and Uzbeks erupted in Osh and quickly extended to other parts of the country. According to the researches carried out by the TSPC on the analysis of the monitoring activities of numerous international and national organizations as well as the information received by relevant Kyrgyz ministries, approximately 400 people were killed, 2,000 wounded, and several thousands displaced.<sup>5</sup>

10. In the aftermath of the incidents, it was reported that the General Prosecutor opened nearly 3,000 criminal cases connected with the riots in the south of the country.<sup>6</sup> According to the International Independent Commission on the Prevention of Torture, acts of torture, including beatings all over the body with fists, bully clubs, metal rods, or weapon handles, electric shocks, suffocation by gas masks or plastic bags, cigarette burns, and the removal of fingernails, was documented in almost every single case of detention.<sup>7</sup> Notably during this time, 85% of the detained were ethnic Uzbeks.<sup>8</sup>

11. Despite the issuance of a decree by the Prosecutor General to investigate the allegations of torture following the 2010 events, the TSPC is not aware of any

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<sup>5</sup> See A CHRONICLE OF VIOLENCE: The events in the south of Kyrgyzstan in June 2010 (Osh Region), Freedom House Kyrgyzstan, available at [http://www.freedomhouse.org/sites/default/files/Report\\_2\\_12\\_ENG\\_nett.pdf](http://www.freedomhouse.org/sites/default/files/Report_2_12_ENG_nett.pdf)

<sup>6</sup> See Sardarbek Bagishbekov and Ulugbek Azimov, "Guaranteeing Protection from Torture in Kyrgyzstan," Freedom House Kyrgyzstan, available at <http://inkg.info/literature/Guaranteeing%20Protection%20from%20Torture%20in%20Kyrgyzstan.pdf>

<sup>7</sup> AUCA/TSPC, 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, 2014, pg. 15, available at [https://auca.kg/uploads/Tian%20Shan%20Policy%20Center/EU%20TSPC/Preliminary%20Findings%20Final%2012%20Sept%20\[Engl\\_full%20version.pdf](https://auca.kg/uploads/Tian%20Shan%20Policy%20Center/EU%20TSPC/Preliminary%20Findings%20Final%2012%20Sept%20[Engl_full%20version.pdf), citing to "Отчет Международной независимой комиссии по исследованию событий на юге Кыргызстана в июне 2010", pg. 278 [Report of the International Commission For Investigating Events in the South of Kyrgyzstan in June of 2010, paragraph 278].

<sup>8</sup> Id. pg 2; citing to "Where is the Justice?" Interethnic Violence in Southern Kyrgyzstan and its Aftermath, Human Rights Watch, 2010, pg. 44

conviction, suspension, or removal of officials allegedly responsible for acts of torture or ill-treatment in accordance with the Kyrgyz penal code.

12. According to the information provided by the office of the General Prosecutor, between January 2012 and February 2014, 835 complaints of torture and ill-treatment were received. However, only 60 investigations were launched. Additionally, the office of the General Prosecutor reported to have opened 34 investigations in 2010 and 54 in 2011 but figures on the number of complaints received were not provided. Out of all the cases investigated, there have not been convictions in court.

12. During an event organized by the TSPC in April 2014 to present the final report of its research project *“Program to enhance the capacity of NGO’s and institutions to advocate for implementation of human rights decisions and standards to prevent torture”*, the office of the General Prosecutor reported that recently two cases have been finalized in court where the perpetrators were convicted based on article 305-1 of the Kyrgyz Criminal Code for acts of torture that were not related to the 2010 incidents.

13. The researches carried out by the TSPC during the reporting period, which included follow-up activities on the findings of the visits of the United Nations Special Rapporteur on Torture in 2011 and the Subcommittee on Prevention of Torture in 2012, confirmed that torture and ill-treatment appear to be systematic in Kyrgyzstan. Sources indicated that the vast majority of these acts are perpetrated by the Operational-Investigative Service of the Internal Affairs organs between apprehension and the initial phase of detention. Reportedly, torture and ill-treatment are mainly aimed at obtaining confessions or extorting money from the victim.

14. Of further concern is that 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 creating an inherent conflict of interest that jeopardizes the possibility for any kind of independent and effective investigation.

15. Moreover, independent and effective investigations are also hampered by flaws in the Code of Criminal Procedure. For example, article 165-1 foresees that investigations may occur only after a criminal case is initiated thus exclusively relying on the integrity and independence of the prosecutors. Additionally, under the current legal framework, the prosecutor may invest with investigative powers the same authorities that allegedly committed the crime. A further example of flaws in the legal framework contributing to the use of torture is the unclear definition of the concept of detention. This negatively affects the obligation by the law enforcement agencies to respect the judicial safeguards, including the presence of a defense lawyer, set forth in the Kyrgyz Constitutions and international law. Currently, the law recognizes these safeguards only when the apprehended is registered at the detention center and not immediately at the moment of arrest. Such provision allows the arresting authority to obtain a confession without the presence of a lawyer clearly creating the conditions for abuses and corruption.

16. In order to address these shortcomings, a revision of the Code of Criminal Procedure is ongoing. The TSPC calls on Kyrgyz authorities and civil society to use

this unique opportunity to enhance compliance with international human rights standards and obligations by incorporating definitions and safeguards into the national normative framework that ensure and adequate protection against torture. To support the Kyrgyz authorities and civil society, the TSPC, in cooperation with the Ludwig Boltzmann Institute of Human Rights, has started in February 2014 an 18-month project funded by the European Union to “*Strengthen the fight against torture and impunity in Kyrgyzstan: Prevention, Accountability, Remedy, and Reparation*” which include components on legislative reforms and standards for independent and effective investigations.

17. Based on the expertise acquired on the legal framework of Kyrgyzstan and the challenges faced by all stakeholders on the ground, the TSPC concluded that torture and ill-treatment occur for a number of reasons, including limited investigative capacities by Kyrgyz authorities in terms of independence and effectiveness, inadequate mechanisms to ensure the timely collection of forensic evidence, widespread corruption among all sectors of the society, sense of impunity by perpetrators deriving from consistent absence of prosecution of those officials allegedly responsible, lack of respect of judicial guarantees such as the presence of a defense lawyer, admission of confessions as evidence during trials despite allegations of torture, and inadequate provision of technical assistance by legal aid lawyers.

- **Recommendations:**

18. In accordance with the findings of its researches and continuous dialogue with Kyrgyz institutions, civil society organizations, and International organizations, the TSPC recommends the Government:

- 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;
- Prosecute all those officials found responsible of acts of torture and ill-treatment in compliance with the law and apply criminal or administrative sanctions as appropriate to all those officials who had part in such acts, have covered them, or have failed to report them;
- 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;
- 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.

## Tian Shan Policy Center contribution to UPR 2014 - Kyrgyzstan

- Ensure Kyrgyz legislation regarding the independent mechanism 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;
- 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;
- Increase compliance with international human rights obligations, Kyrgyz Constitution, and national legislation by guaranteeing the respect of all judicial safeguards and the right to a fair trial, including providing free and competent legal assistance from the moment of deprivation of liberty, timely and truthfully documenting all stages of detention, and ensuring that competent medical examinations are carried out at all places of detention to document allegations of torture;
- Provide adequate human and financial resources, along with continuous political support, to the National Preventive Mechanism and the Ombudsman in order to support their development as independent, effective, preventive, and investigative mechanisms on all allegations of torture and ill-treatment;
- Thoroughly investigate all allegations of torture in relation to the 2010 incidents without any kind of discrimination, including ethnic belonging, and review convictions that were based on the sole use of contested confessions;
- Continue to extend invitations to the Special Rapporteur on Torture and the Subcommittee on Prevention of Torture and implement the recommendations provided in their reports;
- Continue to extend cooperation to Kyrgyz civil society organizations and International organizations also by facilitating monitoring of places of detention and confidential interviews with detainees;
- Consistently and scrupulously fight corruption within all State’s institutions with particular emphasis on those institutions and officials involved in criminal cases and directly dealing with persons deprived of their personal liberty.