The project is funded by the European Union

The project is implemented by the Tian Shan Policy Center / American University of Central Asia

Preliminary Report of Research Findings

rights decisions and standards to prevent torture

TABLE OF CONTENTS

Abstract

The Tian Shan Policy Center, with the American University of Central Asia, has undertaken a European Union grant-funded initiative to facilitate research-based policy reform in Kyrgyzstan.[1] The –Program to enhance the capacity of NGO‘s and institutions to advocate for implementation of human rights decisions and standards to prevent torture,‖ is seeking to 1) document legal and institutional practices that are effectively used by European, Eurasian and countries of Latin America and the Caribbean to prevent torture and abuse in detention, along with relevant international standards 2) share with and train advocates and public officials on the model reforms and facilitate a dialogue on the best ways to replicate or adapt elements from those models in Kyrgyzstan and 3) publish and disseminate those models to support more effective advocacy and on-going reform efforts in Kyrgyzstan.

This report serves as a preliminary assessment of TSPC‘s research findings to date. This includes both desk research and field research of countries, which have been identified as potential models for consideration in the effort to prevent torture and abuse in detention. Included in the preliminary report are a set of initial recommendations for Kyrgyzstan based on the most promising aspects of the models considered, and consultation with Kyrgyz Stakeholders. What follows below are those recommendations and details about the models from which they were taken. The models which had the most potential for Kyrgyzstan are highlighted, with additional practices listed for consideration. The purpose of the report is not to suggest that Kyrgyzstan wholly adopt any of the systems currently utilized by the States below. It is instead to highlight aspects of models, which have the potential to be useful, in combination with other actions, in the fight for the eradication of torture in Kyrgyzstan.

The purpose of this report is also to encourage dialogue among civil society, government and other interested stakeholders about the preliminary results of TSPC‘s research. More information

Recommendation #1:
In order to ensure the practice of meaningful, independent investigations in cases where there have been allegations of torture or other forms of abuse of detained persons, by state officials, Kyrgyzstan must establish a system where such investigations are not performed exclusively by the existing investigatory or prosecution structures accused of, or having a stake in the outcome of, the abuse.

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

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

Recommendation #4:
Kyrgyzstan should create a procedural mechanism where a third party prosecutor (person or entity separate from the existing office of the prosecutor) may apply to the presiding judge, for permission to join a criminal case. The applicant should have standing to apply for intervention at any time

Deprivation of Liberty or –лишение свободы.‖[5] It states that Deprivation of Liberty is defined as the period after a conviction by a court of law, when a person is isolated from society and sent to a penal colony, penal settlement, or prison.[6]

Further, Kyrgyz Law has challenges regarding the timing of its guarantees of procedural rights and protections for detainees. The Constitution guarantees the right to an attorney from the moment of factual deprivation of liberty, or –фактического лишения свободы.‖ It does not define this moment. Article 40 in the CPC notes that right to an attorney begins from the moment of interrogation and that the right attaches from the moment of actual arrival at the detention facility.[7] Article 40 also generally lists all other –rights and responsibilities of suspects.‖[8] Article 39 of the CPC defines –suspect‖ as person against whom a criminal case was initiated, in respect to which, the detention is applied on suspicion of committing a crime, before any preventive measure is taken. A person ceases to be a suspect from the moment when the investigative body renders a decision to dismiss a criminal case or involves him as accused person.[9]

Recommendation:

Kyrgyzstan should create a definition for factual detention –фактического задержания‖ which will clarify that a person is –factually detained,‖ or –apprehended‖ from the moment at which his or her freedom of movement is limited, and all procedural safeguards should be triggered from that point.[10]

решению в отношении обвиняемого в совершении преступлений, за которые уголовным законом предусмотрено наказание в виде лишения свободы на срок свыше трех лет при невозможности применения иной более мягкой меры пресечения.

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

[6] Kyrgyz Criminal Code Section 3 Punishment, Chapter 9 Definition and Goals of Punishment. Types of Punishment, Article 49 (1) Deprivation of Liberty (2013). Actual Text: Статья 49. Лишение свободы
(1) Лишение свободы заключается в принудительной изоляции осужденного от общества путем направления его в колонию-поселение или помещения в исправительную колонию общего, усиленного, строгого, особого режима либо в тюрьму.

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

[8] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 40 Rights and Responsibilities of the Suspect (1) generally and (1)(4) (2013). Actual Text: Статья 40. Права и обязанности подозреваемого (1) Подозреваемый имеет право: 1) знать, в чем он подозревается; 2) получить копии постановления о возбуждении против него уголовного дела, протокола задержания; 3) получить письменное разъяснение его прав; 4) иметь защитника с момента первого допроса, а при задержании - с момента фактического доставления его в орган дознания; 5) давать показания или отказаться от дачи показания; 6) давать показания на родном языке или языке, которым владеет; 7) пользоваться услугами переводчика; 8) представлять доказательства; 9) заявлять ходатайства и отводы; 10) знакомиться с протоколами следственных действий, проведенных с его участием, и подавать замечания, которые вносятся в протокол; 11) участвовать с разрешения следователя в следственных действиях, проводимых по его ходатайству или ходатайству защитника либо законного представителя; 12) приносить жалобы на действия работника органов дознания, действия и решения следователя, прокурора.

[9] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 39 (1) and (4) Suspect (2013). Actual Text Статья 39. Подозреваемый (1) Подозреваемым является лицо: 1) в отношении которого возбуждено уголовное дело; 2) в отношении которого по подозрению в совершении преступления применено задержание до избрания меры пресечения; Статья 39(4) (4) Лицо перестает пребывать в положении подозреваемого с момента вынесения органом следствия постановления о прекращении уголовного дела или привлечении его в качестве обвиняемого.

[10] As described in this report in the section entitled –Notice and Applicability of Procedural Safeguards,‖the Kyrgyz Constitution utilizes the term –фактического лишения свободы‖ in order to describe –factual detention.‖ However, a literal translation of the term would actually be –factual deprivation of liberty.‖ While that is the literal translation, it appears that the intended definition of фактического лишения свободы, is one which reflects

Safeguard #2 Definition and Notice of Rights

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

Recommendation #1

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

Recommendation #2

Procedural rights must attach from the moment of factual detention, and this must be communicated to the detained person. Rights should be communicated orally upon the moment of factual detention and then should be given to the detained person in writing, in a language he or she understands, upon the arrival at the first official facility (police station or detention facility).[11] If the detainee does not speak the official or state language, he or she must be provided with a translator. If he or she is not a citizen of Kyrgyzstan, the individual must also be allowed to contact his or her consulate.

Safeguard #3 Medical Examinations

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

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

---

. Ultimately, it would be advisable to streamline the terms between the Constitution and CPC, such that they are uniform and reflect the current understanding within the Kyrgyz Legal and Judicial practice. At the moment however, amending the CPC to define the factual detention, –фактического задержания‖ as the moment at which a person‘s freedom of movement is limited would suffice to create the appropriate moment for ensuring procedural safeguards are given to detainess. Further, a delay on amending the Constitution such that фактического задержания is used instead of фактического лишения свободы would not create a conflict of laws problem in the interim.

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

[12] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 40 (5) Rights and Responsibilities of the Suspect (2013). Actual Text: При каждом доставлении подозреваемого в изолятор временного содержания, а также при поступлении жалобы от него самого, его защитника, родственников о применении к нему физического насилия со стороны работников органов дознания и следствия он подлежит обязательному медицинскому освидетельствованию с составлением соответствующего документа. Обязанность проведения медицинского освидетельствования возлагается на администрацию изолятора временного содержания.

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

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

Recommendation #1

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

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or

Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, –is intended to

mental anguish.‖[39] Further, where the UNCAT definition spells out torture as being intentionally inflicted for certain –such purposes as‖ obtaining information or a confession, etc… the IACPPT expands the specific purposes that might fall under the category to include –any other purpose.‖

A report by the Organization of American States on citizen security and human rights also outlines States‘ duty to investigate. It states –The duty of the State to investigate conduct affecting the enjoyment of the right protected in the [American] Convention applies, irrespective of the agent to which the violation may eventually be attributed. In those cases where conduct is attributed to individuals, the lack of serious investigation could compromise the international responsibility of the State. In cases where the conduct may involve the participation of its agents, States have a special duty to clarify the facts and prosecute those responsible. Lastly, in cas

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

Best Practice Models For Investigations

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

The eradication of torture involves both safeguards for its prevention, as well as a robust system for effective and independent investigations of allegations of torture. The following portion of this preliminary report focuses on the later piece – investigations. In the context of these cases, there is the investigation into the original crime that the suspect is detained for, and then the subsequent investigation into the allegation of torture or abuse. In the examples below, this reports examines states that have created structures for the investigation of allegations against the police or other state services.

Kyrgyzstan:

The question of independent investigations cannot be considered without first examining the current structure for investigations of all kinds of crimes. Investigation of all criminal cases is enforced by investigators of agencies of prosecution and agencies of the Ministry of Internal Affairs. In specific cases, criminal investigations can also fall under the National Security agencies, the agency of Kyrgyz Republic on drug control of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, financial police and tax police agencies.[60] Investigations begin only upon the initiation of a prosecution.[61]

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

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

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

[60] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 161 Investigation Agencies (2013). Actual Text: Статья 161. Органы следствия Следствие по уголовным делам производится в соответствии с определенной настоящим Кодексом подследственностью следователями органов прокуратуры, внутренних дел, национальной безопасности, по контролю наркотиков, уголовно-исполнительной системы, финансовой полиции и таможенных органов.

[61] Kyrgyz Criminal Procedural Code Section 21 General Investigation Conditions Article 165 (1) The beginning of an investigation (2013). Actual Text: Статья 165. Начало производства следствия

(1) Следствие производится только после возбуждения уголовного дела. Производство таких следственных действий, как осмотр места происшествия и назначение экспертизы возможно и до возбуждения уголовного дела.

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

–officer of prosecutorial agencies, police officer, national safety officer, tax police officer, customs officer of criminal-procedural system of Ministry of Justice of Kyrgyz Republic, authorized to conduct investigation on a criminal case.‖[63]

The term investigation is defined as:

–procedural form of pretrial actions of authorized agencies within the stipulated herein authorities to discover, establish and secure circumstances of a case and charge those who committed the crime with criminal liability.‖[64]

While the term investigator is broadly defined in the Code, the Office of the Prosecutor is tasked with ultimate responsibility for all investigations leading to prosecutions. This creates an inherent

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

CICIG is an independent, UN affiliated, hybrid national-international commission with strong powers of investigation and a mandate to –support, strengthen, and assist‖ state institutions investigating and prosecuting crimes committed in connection with the activities of organized crime groups and clandestine security organizations.[83] The CICIG‘s mandate is broader than investigation and its functions include such activities as identifying the structures, activities, modes of operation and sources of financing of ‗parallel power‘ groups, promoting the dismantling of these organizations and the prosecution of individuals involved in their activities. CICIG also recommends the legal and institutional reforms necessary for eradicating clandestine security organizations preventing their re-emergence.[84]

CICIG focuses on high impact cases, typically implicating politically or economically powerful people. The theory of change and reform is best summed up in its most recent annual report: –the prosecution of senior former officials conveys a clear message to the people. With a good investigation, there is no such thing as the perfect crime and the accused party's power is irrelevant, as is the time that has passed since they committed the crime. There must be no doubt as to the fact that such individuals will be brought to justice sooner or later.‖[85]

Under the Agreement, CICIG has the power to –Collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States‖[86] and –any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity‖ is obligated to comply with requests for –statements, documents, reports and cooperation‖ without delay.[87]

auxiliary prosecutors, six agents and two members each from the PNC and the Department of Criminal Investigation (DICRI). Its personnel have all passed a lie-detector test and been appointed directly by CICIG. [89] The main role of FECI is to support investigations in high-impact cases. The cases overseen by FECI depend upon whether the case fulfills the requirements set forth in CICIG's

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

Northern Ireland

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

The current Office of the Police Ombudsman for Northern Ireland (OPONI) was established by a Police Act of Northern Ireland in 1998, replacing the former Independent Commission for Police Complaints (ICPC). It started operating in 2000.[94] Critics of the early legislation forming OPONI stated that it was not sufficiently independent from existing investigatory structures. Subsequent lobbying resulted in the Police (Northern Ireland) Act 2000 and then the Police (Northern Ireland) Act 2003 in order to accomplish additional reforms.[95] Although called the Police –Ombudsman,‖ OPONI could perhaps be more accurately described as a civilian body with responsibility for oversight of the Police Service of Northern Ireland (PSNI).[96]

reported to their District Commanders.

hearing, two were found not guilty, and two officers initially received either a caution or a fine but these were overturned at a Chief Constable Review.[130]

The most common type of allegation is a –failure in duty,‖ which means, for example, the conduct of a police investigation, a failure to investigate, a failure in communication, issues associated with detention and the treatment and questioning of suspects.[131] During 2011/2012, failure in duty allegations (2,091) represented 35% of all allegations made.[132] –Oppressive behavior‖ (1,944 in 2011/2012) represented 33% of all allegations made.[133]

Oppressive behavior is classified into sub-groups:
oppressive conduct/harassment – police acting in threatening manner or repeated searches for no legitimate reason;
other assault –

Alternative Investigatory Practice - Russia

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

In April 2012, special departments were established within the Investigative Committee for the specific purpose of investigating crimes allegedly committed by police and other law enforcement officials. This, according to the Investigative Committee‘s press statement, was in response to an initiative by Russian human rights NGOs, and specifically –Public Verdict,‖[148]

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

Public Verdict also proposed that the competency of these units would include the investigation of crimes committed by office

In the context of this report, the term –safeguards‖ refers to the legal and practical measures that can be taken in order to prevent and eradicate torture and abuse of detainees. Safeguards could be everything from the legal –right to an attorney‖ to minimum levels of funding for investigations. In the compilation of this research, a variety of safeguards were considered for study. Among the many possibilities, a few are highlighted here as the most relevant for the current situation in Kyrgyzstan.

Complaints Procedures

Current Kyrgyz law does specify that a suspect has the right to file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor.[156] These complaints can be filed by a complainant, defense council, legal guardian or designated representative. A decision by a judge as to the lawfulness of the actions must be made within 5 days.[157] However, there are few details about how this right can be not only ensured, but made meaningful. It is further unclear how this right is operationalized as it relates to complaints against arresting authorities while a suspect is in custody.

Georgia

On Jan 16, 2001, the Georgian Minister of Internal Affairs created Human Rights Units to be located within the Ministry of the Interior. [158] The Human Rights Unit of the Ministry of Internal Affairs is also actively involved in the process of internal monitoring.[159] MIA HRU systematically carries out the internal monitoring of TDIs and monitors the health condition of persons placed there. For this purpose, a monitoring group is created within the main unit, which consists of four persons and carries out unexpected visits to all TDIs throughout Georgia.[160]

The MIA HRU also ensures the timely and effective handling of the complaints in order to disclose

General Inspection investigates offences committed by the staff of the MIA based on the disciplinary regulation of MIA and Police Ethics Code. All complaints transferred to General Inspection by the monitoring unit are sent to the Prosecutors‘ Office of Georgia, which initiates an investigation.

Additionally, the Ministry of Corrections and Legal Assistance initiated a practice, now seen in multiple countries, where special complaints envelopes are disseminated to the prisoners.[162] The complaint envelopes clearly explain the rights of the persons deprived of liberty apart from being used merely as envelopes. The prohibition of torture, inhuman, severe or degrading treatment is on the top of the list of rights. Special boxes are installed for depositing the complaint envelopes. The operation of these boxes is monitored by social service, internal monitoring bodies of Ministry of Corrections and Legal Assistance and Public Defender. The complaint envelopes are numbered and the correspondence is registered in special registration journal. 40,000 envelopes were distributed within the first half of 2011.[163]

Alternative Complaints Reporting Practice - Bulgaria

Bulgarian legislation contains a number of provisions concerning action to be taken in respect of cases of ill-treatment. Notable among these provisions are the several sections which discuss mandatory reporting. Section 205 (2) of the Criminal Code of Procedure (CPC), which mandates that public officials immediately inform the prosecutor‘s office of any facts related to a criminal offence which may have come to their knowledge. The Code of Ethics of police staff and Instruction No. Iz-1711 of 15 September 2009 contains specific obligations for the police to report to their superiors acts of violence or inhuman or degrading treatment. Ministry of Interior (MoI) Instruction Article 10 of Guideline No. Iz-2451 also states that a member of the police force who has become witness to the acts under Article 9, shall intervene to prevent or put an end to any such act and shall report it to his/her superior.[164] Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities.

However, no centralized system for investigation of complaints has been set up because each ministry and government agency (MoI, Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labor and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions.

[162] Guide04 Tf317(obli)F53 Tm[(P)(/t[( )]p(A)-7(T1 0AW*nBT/F7 8.04 Tf792.12)24051)4(r)-1F53 Tm[4manda

Definition of Detention

Article 24(3) of the Constitution of the Kyrgyz Republic states that –no one may be arrested (арестован), kept in custody (содержаться под стражей) or be deprived of freedom (лишенным свободы) except by court decision and solely on the basis of and in accordance with the procedures established by the law.‖ Persons may only be detained in accordance with procedures established by law.[165] Currently in Kyrgyzstan, –Detention,‖ or –задержание‖ is defined as a "coercive procedural action, which essentially consists in imprisoning a suspected person for a short period (up to forty-eight hours) pending a judicial warrant.[166]‖

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

As described above, Articles 5 and 110[170]

address the issue.[176] One simple procedural step that they have taken involves reporting and registration requirements. To ensure that the factual moment of detention is reported, the detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station.[177]

United States

As elaborated further below, the American Doctrine on detention and procedural safeguards stems

established by the law.‖[184] The Constitution also enshrines the right of all persons to be presumed innocent until proven guilty, and that all doubts should be resolved in favor of the accused.[185]

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

Regarding the right to legal assistance, English Language translations of Article 24(5) of the Constitution of the Kyrgyz Republic state that from –the moment of actual detention a person should be kept safe, such person shall be granted an opportunity to protect himself/herself personally, enjoy qualified legal aid from a lawyer as well as have an attorney.‖[186] The actual text of the Constitution refers to this moment as –фактического лишения свободы.‖[187]

As described in the report above, the term –лишение свободы,‖ means the moment of deprivation of liberty; this term is currently defined under the Kyrgyz Criminal Code in Article 49.[188] Again, this article refers to a post-sentencing period where a person is convicted and sent to a penal colony, a penal settlement or a jail.[189] Under this interpretation, the Constitution could be said to effectively mean that the right to legal aid would not ensue until after the first instance legal proceedings had finished. It would seem that this interpretation would be counter to any intention the drafters would have had.

Importantly, the moment referenced in the Constitution, adds the word –factual‖ or –фактического‖ to the earlier referenced –cu n

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

This must all be read and considered jointly with existing procedural guarantees contained within the Criminal Code and the Criminal Procedural Codes, as referenced above. While this section will not redefine detention, it is important to note that there is no clear, legally significant definition for the period between when a person is –apprehended‖ or encounters the police and the moment at which they factually enter the detention or interrogation facility. Further, as detailed in CPC Article 95(1) official have three hours, during which there appear to be no legal protections, to create the Protocol on the Detention of a suspect.Tm[(would)-9(ha)4(ve)4ld9.

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

Bulgaria

As mentioned above, in Bulgaria, the police have a

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

Any procedural actions restricting or otherwise affecting the rights of persons involved in criminal proceedings, e.g. forced medical treatment, stricter regime of imprisonment, replacement of the penalty of probation with imprisonment, or transfer of convicted felons, may only be performed subject to a court order.[204]

United States

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

–the prosecution may not use statements, whether exculpatory or inculpatory, stemming from

to the exclusionary rule, including times when evidence was also discovered from an independent source, the evidence would have been found despite the violation of rights, the discovery of the evidence was to tenuously linked to the illegal action, and when the violation of rights (for example problems with a search warrant) was in good faith.[211]

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

Interestingly, OSI – Sofia held a year-long program which distributed cell phones to police officers for detainee use in order to notify of custody. The program was extremely successful in decreasing instances of police officers' refusal of cell-phone use to detainees for notification of custody. This suggests that issues with the right to notification of custody may exist due to a lack of resources and not police incompetence or ill will.[216]

Forensics and Medical Examinations of Detainees

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

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

---

[215] CPT/Inf 2012, p. 19

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

[217] Criminal Procedural Code of the Kyrgyz Republic, Section 2 Court and Parties to the Criminal Process Chapter 6 Participants of Criminal Proceedings Defending Their Rights and Interests or the Rights and Interests of Persons They Represent, Article 40 (5) Rights and Responsibilities of the Suspect (2013). Actual Text: При каждом доставлении подозреваемого в изолятор временного содержания, а также при поступлении жалобы от него самого, его защитника, родственников о применении к нему физического насилия со стороны работников органов дознания и следствия он подлежит обязательному медицинскому освидетельствованию с составлением соответствующего документа. Обязанность проведения медицинского освидетельствования возлагается на администрацию изолятора временного содержания.

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

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

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

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

Georgia

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

In 2005, the Georgian Parliament amended the

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

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

In addition to the mandatory medical examinations of detainees, Georgia has recently instituted structural reforms of its Forensic Bureau in response to international criticism. While it is still a state structure, it is no longer under the Ministry of Justice, but instead is an independent legal entity of public law. Due to international and domestic criticism of the forensics structure in Georgia, on October 31, 2008, the Parliament of Georgia adopted the Law on Legal Entity of Public Law –Levan

An examination by a doctor of the detainee‘s choice can be carried out upon the person‘s request

The decision of the state medical expert is not necessarily final. A party to the case may request additional or different medical experts to examine evidence if they believe that the decision of the previous medical expert is not

Appendix 1 Country Profiles

Jamaica

Jamaica Background

The relevant human rights standards related to the prevention of torture in Latin America were largely covered in the body of this report so they will not be repeated here. However, a few country specific details are worth noting. Following a country visit in 2010, the report of the Special Rapporteur on Torture, Manfred Nowak, said –Torture is not defined in criminal legislation in Jamaica, nor is Jamaica a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This might explain why during the mission, the Special Rapporteur observed that the term –torture‖ was not part of the Jamaican lexicon. However, its absence in the law does not mean that it does not exist in practice.‖[241] In its concluding observations, the Human Rights Committee said –While noting that torture is prohibited under the Charter of Fundamental Rights and Freedoms, the Committee is concerned that torture is not defined as a separate offence under the State party‘s criminal legislation. The Committee is also concerned about the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the insufficient sanctions imposed on the perpetrators.‖[242]

In Jamaica, the focus is largely on the perpetration of offenses related to extra judicial killings by security forces and other forms of police abuse. Historically, three agencies were mandated to receive and investigate complaints regarding police misconduct: the Police Public Complaints Authority (PPCA), the Bureau of Special Investigations (BSI) and the Office of Professional Responsibility. The BSI and the Office of Professional Responsibility are institutions within the Jamaican Constabulary Force (JCF) – the police –, while the PPCA is a State-funded independent body. According to a report by Amnesty International, The Police Public Complaints Authority (PPCA) was established in 1992 as an independent body to monitor and supervise investigations by

[241] A/HRC/16/52/Add.3, Human Rights Council, Sixteenth session findings and recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Jamaica, 12 to 21 February 2010. See also, Jamaica, concluding observations of the human rights committee, CCPR/ â γ t eee û M C

the police into killings by police and other complaints against the police. Amnesty International and Jamaican human rights organizations report that the –PPCA had limited effectiveness and independence as it could not conduct its own investigations and relied on the police force to conduct some of its investigations. It lacked the authority to make final determinations on criminal charges and to obtain statements from police officers if they were not willing to co-operate. The PPCA was understaffed and under-resourced. It therefore enjoyed a very low level of public confidence.‖[243]

The failure to hold responsible perpetrators of violent crime and to hold to account police officers accused of involvement in unlawful killings or extrajudicial executions, combined with widespread corruption, eroded confidence in the institutions of the state over many years. To try and address this, the government set up the Jamaican Justice System Reform project in 2007 to review the justice system and develop strategies and mechanisms for its modernization. The Task Force said that the current structures in place for the independent investigation of police were inadequate and not sufficiently independent and highlighted the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada as a possible model.[244]

The Independent Commission of Investigations (INDECOM)

In June 2008, a police (JCF) strategic review recommended disbanding the PPCA and replacing it with INDECOM. The JCF review states –For some time, the MNS (Ministry of National Security) and the Ministry of Justice have expressed concern regarding a general lack of integrity, increasing corruption and misuse of public funds across the public service … The ICI will benefit from greater resources and improved capacities and neutral investigation arrangements, as well as bring further assurance of independence in the oversight process.‖[245] The Jamaican Parliament passed the INDECOM Act in March 2010, repealing and replacing the PPCA. The Governor General assented in April, and in As described in the preceding report, in August 2010 the Independent Commission of Investigations (INDECOM) began its operations as a Commission of Parliament to investigate actions by members of the security forces and other agents of the state resulting in death or injury or abuse of rights.[246]

Structure

The INDECOM Commissioner is appointed for a five-year term by the Prime Minister, after consultation with the Leader of the Opposition, and should possess the qualifications to hold office as a Judge of the Supreme Court. The Act envisioned five ‗Directors of Complaints' to lead five regional offices, though only three regional offices presently exist. Though INDECOM may

employment must be approved by a Committee.[247] For its first year of activities INDECOM received $86 million Jamaican Dollars, which is roughly equivalent to $USD 900,000. The majority of INDECOM's budget ($63.8 million Jamaican dollars) comes from the Bureau of Special Investigations with the remainder from the Ministry of Justice's budget that covered the Police Public Complaints Authority (PPCA).[248] In its following year, INDECOM received roughly $200 million Jamaican dollars.[249] According to a submission by the NGO Jamaicans for Justice, the INDECOM 2012-2013 budget allotted has increased to 288 million Jamaican Dollars (about $USD 3 million).[250]

Powers

Under the Act, INDECOM investigation powers include inspection of –relevant public body or relevant Force, including records, weapons and buildings,‖[251] and to –take such steps as are necessary to ensure that the responsible heads and responsible officers submit to the Commission reports of incidents and complaints concerning the conduct of members of the Security Forces and specified officials.‖[252] Articles 4.2 and 4.3 provide INDECOM access, following receipt of a warrant, to any reports, documents and all other evidence, including any weapons, photographs and forensic data, and to retain any records, documents or other property for as long as reasonably necessary. In addition INDECOM is provided access and may enter any premises or location. INDECOM also has the power to take charge of and preserve the scene of any incident.[253]

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

The INDECOM Act also requires any member of the Security Forces, or an official who either becomes aware of or is involved in any incident, to take the necessary steps to ensure that a report is made to INDECOM. Purposefully, the duty of reporting incidents to INDECOM extends lower

247 The Committee includes (a) the Speaker, as chairman, (b) the President of the Senate: (c) the person designated by the Prime Minister as Leader of Government business in the House of Representatives (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of' Representatives: and (e) the person designated by the Prime Minister as Leader of Government business in the Senate: (F) the person designated by the Leader of the Opposition as Leader of Opposition business in the Senate and (g) the Minister responsible for the public service.

248 Jamaican Gleaner, –INDECOM Gets Millions,‖ December 1, 2010, http://jamaica-gleaner.com/gleaner/20101201/lead/lead81.html.

249 RJR News, –Shaw defends tripling INDECOM's budget,‖ April 20, 2011, http://rjrnewsonline.com/local/shaw-defends-tripling-indecoms-budget.

250 Jamaica: Follow Up Report to CCPR, Jamaicans for Justice, Jamaica Forum for Lesbians, All-Sexuals and Gays, November 2012.

251 Article 4.1.b.i of the INDECOM Act.

252 Article 4.1.C of the INDECOM Act.

253 Articles 4.2 and 4.3 of the INDECOM Act.

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

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

While at the moment no such power exists, in mid-August 2012, Justice Minister Golding came out in favor of adding prosecutorial powers to strengthen INDECOM‘s authority and remove its reliance on the Director of Public Prosecutions (DPP). Golding was quoted as saying –I am of the view that there is a place for certain agencies to be conferred with the powers to prosecute the cases that they

accords.[258]

In the years leading up to the CICIG Agreement, reports by Guatemalan and International human rights organizations[265] and UN procedures[266] chronicled the substantial weaknesses of the Guatemalan police and judiciary, the infiltration by military and former military officers allied with organized crime groups into key government positions, and ongoing and increasing violence[267] and threats against human rights defenders.

Justice System Overview

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

The MP may require the cooperation of any official and administrative authority of any governmental bodies for the performance of its duties. These bodies are required to cooperate without delay and must provide any documents or reports that the MP requests within the legal time periods and the terms set out in the requests. Lastly, the MP directs the National Civilian Police (PNC), which is part of the Ministry of the Interior, in the investigative phase of criminal proceedings and in executing arrest orders.[268]

An ICG report on police reform reported that the –MP prevented detectives from working at the crime scene, although police are supposed to carry out investigations under their guidance and supervision. These problems are complicated by duplication of functions, since prosecutors have their own specialized Division for Criminal Investigation (DICRI). According to members of the homicide unit, DICRI would do almost the entire investigation, using police only for security during court-ordered searches. But the new police unit [crimes against life unit] now investigates all murders in Guatemala City, while DICRI is responsible for manslaughter cases and technical analysis, such as blood work and ballistics.‖[269]

265

–[DICRI] is comprised of expert professionals in various sciences and reports directly to the

prosecutorial authority,[275] the International Commission Against Impunity in Guatemala (CICIG) was established by agreement between the United Nations (Department of Political Affairs) and the Government of Guatemala in late 2006 and started its work in September 2007, following ratification by the Guatemalan Congress. The CICIG‘s mandate has been extended three times (in 2009 and 2011, and 2013), and as stated in the main report, will likely phase out its work by 2015.

After Guatemalan Vice President Eduardo Stein signed the CICIG agreement with the UN[276] on December 12, 2006, in January 2007 VP Stein started conferring with political parties to explain some of the agreements‘ details and lobby on its behalf.[277] On February 19, 2007, the main Guatemalan Daily *Prensa Libre* came out with an article which cited the Vice President as saying

Bulgaria

Background

In 2000, Bulgaria gained the status of candidate country with the European Union. On 25 April 2005, Bulgaria signed the treaty of accession to the EU, giving it active observer status. Finally on 1 January 2007, Bulgaria fully acceded.[287] This process however required Bulgaria to take steps to come in line with EU standards on a variety of issues, including torture, state abuse and other related concerns. In reviewing the mechanisms that Bulgaria has created and active steps that have been taken, it should be noted that political will and popular support for these actions was very strong over the last decade, in order to facilitate EU membership as expeditiously as possible.

Law on Torture

Bulgaria has national law at both the Constitutional and secondary levels explicitly preventing torture.[288] The Constitution states –No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation.‖[289]

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

Various internal laws, for example at the Ministry Level, describe obligations of police and other state officers in the protection of rights of detained persons.[290] For example, the Ministry of Interior (MoI) Instruction No. Iz-1711 of 15 September 2009 (–On the equipment of police detention facilities and the rules applicable to them‖) reiterates the duty of police officers to inform detained persons of the previously mentioned rights immediately after their detention.[291] Moreover, Article 9 of Guideline No. Iz-2451 of the MoI on the procedure to be followed by the police upon detention of persons at the structural units of the MoI, on the furnishing of premises for the accommodation of detainees and the order therein, expressly prohibits any actions, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment whatsoever, or any act of discrimination

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

against detainees.[292] Article 10 of Guideline No. Iz-2451 also states that a member of the police force who has become witness to the acts under Article 9, shall intervene to prevent or put an end to any such act and shall report it to his/her superior.[293]

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

Bulgaria has additionally ratified all major UN and EU legal instruments pertinent to torture and [294] Article 5, Paragraph 4 of the Constitution of the Republic of Bulgaria of 1991 provides that –Any international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise.‖ [295]

hours.[305] However, a prosecutor may order the detention for up to 72 hours of an accused person with the aim to bring him/her before the court competent to remand persons in custody.[306] Hence, the total period during which persons may be deprived of their liberty prior to being brought before a judge is 96 hours. Detention with a judicial permission can last up to two years.[307]

As described in the report above, in Bulgaria, Detention is defined as occurring at the factual instance, at which point rights must be read, by the detaining officers, to the detained person. To ensure that the factual moment of detention is reported, detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station.[308] As was also mentioned, the law obliges the investigating authority to inform the criminal defendant of his/her rights at the time of charging him/her in writing and orally at the factual moment of detention.[309]

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

It is also explained to Detainees that they have the right to contact someone to give notification of

Medical Assistance

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

Burden of Proof

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

Appendix 2 – DECLARATION

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

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

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

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

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

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

6) _____ a relative or another person to be notiMC t1 0 0 14-6(w4(r m)20( )-9(lawETBT

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

Signature:_____

(Detainee)

10) _____ contact with consular serviceo.48 76.,g noti ceoure the Mmy upon ETBT1

Appendix 3 - Glossary -

Deprivation of Liberty / лишение свободы

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

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

Detention / задержание

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

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

Factual Deprivation of Liberty / фактическое лишение свободы

The Kyrgyz Constitution Article 24(5), uses the term –фактическое лишение свободы.‖

на срок свыше трех лет при невозможности применения иной более мягкой меры пресечения» (ст. 110 (1) УПК КР).

Moment of apprehension / Factual Detention / фактического задержания

For purposes of this report, the –moment of apprehension‖ will be defined as the moment of factual detention. It will refer to the moment at which an individual‘s freedom of movement is limited by the police, investigators or any other Ministry of Internal Affairs official. –Factual detention,‖(–фактического задержания‖) is