



**Program to Enhance the
Institutions to Advocate for
Implementation of Human Rights
Decisions and Standards to
Prevent Torture**

Policy brief

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1. Executive Summary

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

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

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

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

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

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

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

2. Introduction

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

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

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

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

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

3. Overview of the concerns related to torture in Kyrgyzstan

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

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

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

4. Model Investigation mechanisms

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

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

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

an in-depth overview of the mechanism adopted in Northern Ireland to independently investigate complaints submitted against the Police. This mechanism established by law is the Police Ombudsman for Northern Ireland (OPONI) and it is mandated to provide an effective, efficient, and accountable Police Complaints system for a wide

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

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

Furthermore while noting that any system is subject to tampering, the participants were informed that the use of video cameras in police stations and cellblocks was fundamental to reducing the number of allegations and cases of torture and ill-treatment. Additionally, the installation of in-car police cameras also contributed to drastically decreasing misbehaviors by the police. Based on the evidence collected through these tools, defense councils were able to stop prosecution of the accused where their rights had been violated. Furthermore, following the repetition of allegations of , a0(in)-11()-140poli)-2retreada0(i(sti)-4(g)a)4(0(i-3(ons (re)imga)4(ti)3 gsp)7((i(sti)-2(-1

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

Along with reforming the Criminal Procedure Code to comply with its national and international legal obligations, TSPC, State officials, and civil society organizations advocated for increased efforts by the Kyrgyz Republic to strengthen the National Preventive Mechanism and the Ombudsman office by ensuring availability of adequate human and financial resources, supporting their ability to operate

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. W

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

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

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

Bekturganov Malik- Prosecutor General representative

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

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

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

International experts – Jamaica, Canada, Northern Ireland

