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**To: Ms Nuriana Kartanbaeva**

National Program Officer

Regional office of the United Nations High Commissioner  
for Human Rights for Central Asia

1 June 2011

*Re: The Law of the Kyrgyz Republic "On the National Centre of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment"*

The Human Rights Implementation Centre (HRIC) is grateful for the opportunity to continue its involvement with the process of adoption of the legislative framework for the establishment of National Preventive Mechanism (NPM) for Kyrgyz Republic which will bring the Kyrgyz Republic in line with its commitments arising from the Optional Protocol to the UN Convention against Torture (OPCAT). We are delighted to have been involved in this process since 2009 and we very much welcome the presentation of the draft law *"On the National Centre of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment"* (Draft Law) to the legislator of Kyrgyz Republic. The present letter is to express our expert opinion and support to the Draft Law.

Initially, given our long standing involvement with the process of drafting the Draft Law, we would like to commend the very process which has culminated in the present Draft Law. The process was open and transparent, involving a variety of relevant stakeholders and there were a number of roundtables organised which provided for opportunities to comment on various drafts. Such an approach certainly mirrored the recommendation expressed by the UN Subcommittee on

Prevention of Torture (SPT).<sup>1</sup> Moreover, this has resulted in a Draft Law of excellent quality. Each article of the Draft Law is an example of carefully and skilfully drafted legal provisions which together reflect the requirements that Kyrgyz Republic undertook when it ratified OPCAT. The Draft Law echoes well the principles envisaged in OPCAT as well as the recommendations expressed by the SPT in relation to NPMs. The remainder of this letter will only touch upon the most central requirements of OPCAT thus providing some more detailed examples of the way the Draft Law mirrors the obligations of Kyrgyz Republic which it undertook when it ratified OPCAT.

The Draft Law takes note of the system for the prevention of torture that OPCAT seeks to establish in each state party to the instrument (see the Preamble to the Draft Law as well as Article 6). This is essential as it reflects the overarching aim of OPCAT as expressed in its Preamble and Article 1.

Turning to Article 1 of the Draft Law, we would like to commend the non-exhaustive list of places of deprivation of liberty and places of restriction of liberty. It is essential that these lists are not exhaustive as Article 4 of OPCAT requires that NPMs be given access to any existing or potential places of deprivation of liberty. This has been expressly highlighted also by SPT in its Guidelines on NPMs.<sup>2</sup>

Article 2 of the Draft Law embodies a crucially important aspect: the existence of the NPM in Kyrgyz Republic must not prejudice the mandates of other entities, like the Ombudsman's Office and non-governmental organisations (NGOs) to visit places of deprivation of liberty. This important principle has been recently expressed in no uncertain terms by the SPT<sup>3</sup> and is well reflected in this Article of the Draft Law.

Articles 5, 8, 10, 17 and 18 of the Draft Law embody the various requirements of OPCAT in relation to the independence of NPM. Article 18 of OPCAT requires that NPMs enjoy functional independence as well as independence of their personnel. The requirements of independence are very crucial for NPMs and as such have been also highlighted by the SPT in its Guidelines on NPMs.<sup>4</sup> These requirements extend to the manner of selecting and appointing individual members of NPMs; the way the NPM carries out all the various aspects of its mandate as well as to guarantees towards perceived independence. The Draft Law reflects these requirements well.

Articles 5 and 8 of the Draft Law reflect well the requirements of diversity of the NPM members in terms of gender, representation of minorities as well as diversity of professionalism and expertise as expressed in Article 18 of OPCAT and further clarified by the SPT.<sup>5</sup>

Article 19 of the Draft Law contains the crucially important provision for the immunities and privileges that NPM members must be afforded, as stipulated in Article 35 of OPCAT and emphasized by the SPT.<sup>6</sup>

Article 21 of the Draft Law sets out provisions in relation to the budget of NPM in Kyrgyz Republic and emphasises that funding must be provided so as to enable *effective* (emphasis added)

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<sup>1</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 16

<sup>2</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 24

<sup>3</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 5

<sup>4</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at paras 8, 9, 12, 18, 19 and 30

<sup>5</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 20

<sup>6</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 26

execution of NPM mandate. This stipulation mirrors the requirement embodied in Article 18 of OPCAT and the recommendation by the SPT.<sup>7</sup>

Finally, the Draft Law, especially in Articles 6, 7, 11, 15, 16, 20, 22, 23, 24, 25 and 26, provide detailed powers of the Kyrgyz NPM duly mirroring the requirements stipulated in Articles 3, 4, 19, 20, 21, 22 and 23 of OPCAT as well as guidance issued by the SPT in its Guidelines on NPMs. These related to, *inter alia*, unimpeded access to all places of deprivation of liberty and restriction of liberty, right to access any installations within such places, right of announced visits at any time, right to access all information and documentation, right to interview (also in private) those detained as well as anyone else the NPM members deem necessary, right to publish reports and comment on existing and draft legislation.

The Human Rights Implementation Centre welcomes the invitation to comment again on the draft legislation and remains at your disposal should there be any other ways in which we can support the process of tabling the Draft Law before the legislator of the Kyrgyz Republic.

Sincerely yours,

Dr Elina Steinerte

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<sup>7</sup> See: Guidelines on national preventive mechanisms. UN Doc CAT/OP/12/5 of 9 December 2010 at para 11