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Re: Draft Law of the Kyrgyz Republic 'On the National Mechanism for Prevention of Torture and Other Inhuman, Degrading Treatment or Punishment'

22 August, 2010

Dear Mr Azimov and members of the Working Group,

On behalf of the Human Rights Implementation Centre (HRIC) of the University of Bristol I would like to congratulate you and your colleagues for the commitment and professionalism that you continue to display in your unremitting efforts to assist the Kyrgyz Republic to meet its obligations under the Optional Protocol to the UN Convention against Torture (OPCAT). I am delighted to see that the work is progressing and that in such a relatively short period of time since I last had the opportunity to review the draft law on the National Preventive Mechanism (NPM) in late Fall 2009, the draft law has advanced even further. As I noted in my comments on earlier draft, the proposed legislation is of outstanding quality and the present draft takes it yet further.

I have carefully studied the advanced draft that was considered by your Working Group at the end of June 2010 and have noted some comments that you perhaps may wish to consider. I would like to underline that most of these observations are points of clarification that the Working Group may wish to discuss and some of them reflect the comments made by the Working Group already.

Article 2 deals with the various definitions of terms used in the text of the draft law. It appears though that the definition of 'place of deprivation of liberty' is perhaps somewhat limited as it refers to 'a place designated for holding an individual'. This does not fully mirror the definition provided for in Article 4 of OPCAT, which also includes unofficial detention places and facilities under the definition of the term 'deprivation of liberty'. Moreover, OPCAT places emphasis upon the authority to detain a person as opposed to a place where a person is being held and it would appear that the current wording in Article 2 of the draft law does not fully reflect this.

Article 8 lists various powers of the Coordinating Council; I would like to suggest that the Coordinating Council should also be empowered to call for roundtables and discussions with various stakeholders, including civil society and academia to examine torture and ill-treatment strategies in the country.

Article 9 (2) provides that the annual report of the NPM must contain names of officials and institutions that have failed to comply with the recommendations of the NPM. While this provision strengthens the mandate of the NPM considerably, the Working Group may wish to revise the wording used, keeping in mind that the role of the NPM is also to assist the authorities. The principle of cooperation embodied in the OPCAT might thus be better met.

Article 9(6) also provides that the annual reports of the NPM must be published in official printed mass media; however Article 23 of OPCAT also requires that state would bear the costs of such publication and dissemination.

Article 12 deals with the mandate of the Monitoring Centre. Notably, this provision omits the so-called regular, comprehensive visits and only mentions preventive visits. There thus appears be a slight inconsistency between the two types of visits defined in Article 2 and also with Article 18 which refers to both types of visits by the Monitoring Centre.

Article 13(2) lists restrictions applicable to those who wish to become members of the NPM. This list however, while excluding officials of criminal justice system, does not say anything about those who, for example, are employed in psychiatric institutions. Certainly if such professionals were to be part of the NPM, a situation of conflict of interest could arise as they would be expected to carry out visits to the places of their employment. The Working Group may therefore wish to consider the wording of this provision.

Among the reasons for excluding an existing member of the NPM from the NPM, Article 14(4)(2) lists a valid judgement that has come into force against the individual in question who is a member of the NPM. This appears rather far-reaching as would potentially include any type of judgment, even if that would be something like divorce proceedings. The Working Group may thus wish to consider restricting this provision to criminal proceedings only.

While Article 15 stipulates the budgetary provisions for the financing of the NPM, overall the draft law does not allow forming a clear picture as to how the decisions over budget priorities would be taken among the Consultative Council and the Monitoring Centre.

Finally, Article 20 deals with the very important aspect of privileges and immunities of the NPM members. It does however provide rather broad immunity if compared to Article 35 of OPCAT which requires only 'such privileges and immunities as are necessary for the independent exercise of their functions'. The Working Group may therefore wish to consider wording of this provision.

I would like to once again emphasize that the current draft law is an excellent effort to bring the Kyrgyz Republic in line with the obligations arising to it from the provisions of

OPCAT. The above comments are only some points of detail that may assist you and your colleagues to further perfect this excellent draft law.

Please do not hesitate to contact the HRIC if I or my colleagues can be of any further assistance.

Sincerely yours,

Dr Elina Steinerte