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To: Mr Bahtiyar Kadyrov

Member of the Jogorku Kenesh (Parliament)
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CC: Ms Nuriana Kartanbaeva

National Program Officer

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

23 August, 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) has received your request to review 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). The Draft Law is the core element in bringing the Kyrgyz Republic in line with its commitments arising from the OPCAT. We note that it has been presented to the legislator of the Kyrgyz Republic. The present letter is to express our expert opinion on the Draft Law.

Initially, given that our involvement with the process of drafting the Draft Law started back in 2009, we would like to commend the 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 takes on board the recommendation expressed by the UN Subcommittee on Prevention of Torture (SPT).¹ The Draft Law echoes well many of the principles envisaged in OPCAT as well as the recommendations expressed by the SPT in relation to NPMs.

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, prevention of torture and other ill-treatment, 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 provided there. 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.² Therefore the current wording of Article 1 of Draft Law ensures that the NPM will have access to places of deprivation and restriction of liberty that currently exist in the Kyrgyz Republic as well as to any such places which may arise in the future. It is crucial that such flexibility is maintained.

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 by the SPT.³ It is therefore important that this provision is retained as the NPM is to work within the system of prevention, which may and indeed should involve other actors.

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.⁴ 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; the way NPM is funded as well as to guarantees towards perceived independence. It is important that Kyrgyz NPM is afforded strongest guarantees of independence possible.

Article 18 of OPCAT requires that members of NPM are diverse in terms of their professional capacities as well as gender and minority representation. These requirements are further clarified by the SPT which has required that NPM members collectively must possess the necessary expertise and experience for the effective function of NPM.⁵ Special attention appears to have been paid to the need to maintain the gender balance (Article 5 of Draft Law) as well as the required diversity of expertise among the NPM members (Article 8 of Draft Law). Equally, Article 8(2) of Draft Law lists categories of persons who cannot become members of NPM, such as judges and officers of penitentiary institutions which is a crucial aspect supporting the perceived independence of the NPM and reflects the recommendation by the SPT that states should ensure independence of NPM

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

² Ibid; para 24

³ Ibid; para 5

⁴ Ibid; paras 8, 9, 12, 18, 19 and 30

⁵ Ibid; paras 17 and 20

by refraining from appointing to it members who hold positions which could raise questions of conflict of interest.⁶

Article 19 of the Draft Law contains the provision for the immunities and privileges that NPM members must be afforded, as stipulated in Article 35 of OPCAT and emphasized by the SPT.⁷

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) execution of NPM mandate, recognising the requirements in Article 18 of OPCAT and the recommendation by the SPT.⁸

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 recognises 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. These provisions form the core of NPM mandate as set out in OPCAT and current Draft Law reflects these requirements well.

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 examining the Draft Law by the legislator of the Kyrgyz Republic.

Sincerely yours,

Dr Elina Steinerte
Prof Rachel Murray

⁶ Ibid; para 18

⁷ Ibid; para 26

⁸ Ibid; para 11