



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Visit to Kyrgyzstan undertaken from 11 to  
22 September 2018: observations and  
recommendations addressed to the national  
preventive mechanism**

**Report of the Subcommittee\*, \*\***

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\* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 26 February 2019. On 11 July 2019, the national preventive mechanism requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

\*\* The annexes to the present document are being circulated as received, in the language of submission only.

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## I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment carried out its second visit to Kyrgyzstan from 11 to 22 September 2018. Kyrgyzstan acceded to the Convention against Torture on 5 September 1997 and acceded to the Optional Protocol on 29 December 2008.
2. The Subcommittee members conducting the visit were: Victor Zaharia (head of the delegation), Marija Definis-Gojanovic, Kosta Dragan Mitrovic, Abdallah Ounnir, June Caridad Pagaduan Lopez and Aneta Stanchevska. The Subcommittee was assisted by three human rights officers from the Office of the United Nations High Commissioner for Human Rights, two United Nations security officers and four interpreters.
3. The Subcommittee visited 22 places of deprivation of liberty, including temporary and pretrial detention facilities, prison colonies, children's institutions and psychiatric and psychoneurological institutions (see annex I). The Subcommittee held meetings with relevant authorities of Kyrgyzstan, the national preventive mechanism, the Ombudsman's Office, members of civil society and the United Nations Resident Coordinator (see annex III).
4. The principal objectives of the visit were (a) to visit a range of places of deprivation of liberty in order to assist the State party in fully implementing its obligations under the Optional Protocol, to strengthen the protection of persons deprived of their liberty from the risk of torture and ill-treatment and (b) to provide advice and technical assistance to the national preventive mechanism of Kyrgyzstan and to consider the extent to which the Kyrgyz national authorities are supporting its work and responding to its recommendations, taking account of the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5). In addition, the Subcommittee aimed to monitor the implementation of the recommendations made by the Subcommittee following its first visit to the country from 19 to 28 September 2012 (CAT/OP/KGZ/1 and Corr.1). The visit provided an opportunity for the Subcommittee to review the progress in implementing the recommendations contained in the previous report and the remaining efforts of the State party.
5. The Subcommittee held meetings with members of the national preventive mechanism, which permitted the Subcommittee to examine the mechanism's mandate and working methods and to consider how best to improve the effectiveness of the mechanism. In order to better understand how the mechanism works in practice, the Subcommittee also visited, together with the national preventive mechanism, a place of deprivation of liberty, which had been chosen by the mechanism (see annex II). That visit was led by the national preventive mechanism, with the members of the Subcommittee as observers.
6. At the end of the visit, the delegation presented its confidential preliminary observations orally to government authorities and officials and the national preventive mechanism.
7. In the present report, the Subcommittee sets out observations and recommendations addressed to the national preventive mechanism of Kyrgyzstan. The recommendations are made in accordance with the Subcommittee's mandate to offer training and technical assistance to, and to advise and assist, the national preventive mechanism, in accordance with article 11 (b) (ii) and (iii) of the Optional Protocol. The report remains confidential unless the national preventive mechanism decides to request the Subcommittee to make it public, in accordance with article 16 (2) of the Optional Protocol.
8. The Subcommittee draws the attention of Kyrgyzstan and the national preventive mechanism to the Special Fund established under the Optional Protocol, as only recommendations contained in those Subcommittee visit reports that have been made public can form the basis of applications for the funding of specific projects under the Special Fund.

9. The Subcommittee wishes to express its gratitude to the national preventive mechanism for its assistance and cooperation relating to the planning and undertaking of the visit. It also encourages the mechanism to take on board and follow up on the recommendations contained in the report and incorporate them into its methodology and strategic planning.

## II. National preventive mechanism

10. On 12 July 2012, Kyrgyzstan established, through the law on the national preventive mechanism (No. 104), the National Centre for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The National Centre was registered as a State body and started its activities in March 2014 upon completion of its first recruitment cycle.

11. The national preventive mechanism is composed of two bodies: the coordination council, which is the superior administrative body, and an executive body, comprising 25 staff members, who are selected by the director of the mechanism upon recommendation by the coordination council. The mechanism is managed by the coordination council,<sup>1</sup> and consists of 11 members, including the Ombudsman, 2 members of the parliament (1 nominated by the parliamentary majority, the other by the opposition) and 8 civil society representatives. The coordination council decides the mechanism's strategy, adopts the methodology and annual programme of preventive visits, submits recommendations to the State and analyses laws and regulations. It also appoints the director and deputy director of the mechanism.

12. Pursuant to the law,<sup>2</sup> the national preventive mechanism is an independent body that organizes and performs its activities independently and enjoys functional and organizational independence. The modalities and procedures of the formation of the coordination council and recruitment of staff, as well as the rights and responsibilities of each, have been enumerated in the law.

13. The Subcommittee takes note of the concerning fact that the coordination council is currently paralysed and unable to exercise its important functions. This is due to the lack of quorum caused by resignation or departure of some members, and the supposed indolence of the parliament with regard to enforcing the process of elections of the new members.

14. The national preventive mechanism conducts three types of visits to places of deprivation of liberty: comprehensive inspections, as programmed by the coordination council; special inspections, planned on the basis of complaints received by the mechanism; and interim visits, which are follow-up visits to ensure the implementation of the recommendations from the previous visits.<sup>3</sup> The mechanism issues reports and recommendations following each visit, some of which are accessible to the public. An annual report is sent to the parliament by 1 March each year and should be accompanied by the financial statements of the National Centre. In general, there seems to be a lack of interest by the parliament in considering those reports, since the hearing for the 2016 report was largely delayed and the hearing for the 2017 report remained pending at the time of drafting the present report. The recommendations of the national preventive mechanism are generally taken lightly by high-ranking governmental authorities but seem to bear some weight at the operational level.

15. The Subcommittee notes that there are general misconceptions about the role of the mechanism, especially expectations regarding the investigation of cases of torture and ill-treatment. The efficiency of the mechanism tends to be assessed by the number of complaints it receives and the number of criminal cases initiated by the authorities, which is contrary to the spirit of the Optional Protocol and the preventive mandate of the national preventive mechanism envisaged therein.

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<sup>1</sup> Jointly with the director, as envisaged in article 5 of the law on the national preventive mechanism.

<sup>2</sup> Articles 5 and 17 of the law on the national preventive mechanism.

<sup>3</sup> All three types of visits are envisaged in article 23 of the law on the national preventive mechanism.

16. The Subcommittee also notes with concern the exclusion from the new Criminal Code of articles related to criminal liability for obstructing the activities of the National Centre. Provisions relating to such obstruction have subsequently been transferred to a code of misconduct, which eliminates criminal responsibility for acts of obstruction and infringement on the mandate and activities of the mechanism.

17. The Subcommittee observes that funding for the National Centre and its activities has been sustainable and timely, although further adjustments to the mechanism's budget would enhance the mechanism's capacity to better implement its mandate. The National Centre has developed a need for additional staff to cover geographic and thematic areas that are not already covered by its current composition.

18. As a general observation, the Subcommittee believes that the Government of Kyrgyzstan should enhance its efforts in supporting the mandate of the national preventive mechanism, by first and foremost understanding its mandate as envisaged in the Optional Protocol, and thereafter strengthening financial and strategic support for the mechanism, including by giving visibility to its recommendations and enforcing their implementation.

### **III. Recommendations addressed to the national preventive mechanism**

#### **A. Recommendations relating to legal, institutional and structural issues**

##### **1. Understanding of the mandate**

19. During its visit, the Subcommittee perceived the existence of divergent views about the mandate of the national preventive mechanism, including inside the National Centre itself. The law on the national preventive mechanism (art. 5) establishes the National Centre as a legal State entity, created to assist the national authorities in fulfilling their obligations under the Optional Protocol. The main tasks of the mechanism are enumerated in article 6 of the same law.

20. However, the Subcommittee would like to draw attention to the mandate of national preventive mechanisms as set out in the Optional Protocol and stress that it is of a preventive nature.<sup>4</sup> National preventive mechanisms should not undertake inspections and investigations regarding, or adjudicate on, complaints concerning torture and ill-treatment, even if they encounter such cases while carrying out their visiting function. As a general rule, the role of a national preventive mechanism is to seek to identify patterns and detect systemic risks of torture, and to assist the State to overcome them, for instance by providing practical and strategic recommendations to officials at the places of deprivation of liberty after each visit and to relevant State authorities.

**21. The Subcommittee encourages the national preventive mechanism to conduct an exercise among its staff and the members of the coordination council to clarify the scope and restrictions of the mechanism's mandate as prescribed by law, to ensure a common understanding. This exercise should also be conducted with stakeholders whose mandates may overlap or approach that of the mechanism, in order to establish a mutual understanding of their functions and identify grounds for cooperation.**

**22. The Subcommittee recommends that the mechanism convey to the national authorities its mandate and clarify any misunderstandings or expectations that are not in line with the provisions of the Optional Protocol, through direct dialogue at the ministerial and parliament levels. In doing so, the mechanism should make sure to establish and maintain appropriate channels of communication and dialogue with relevant authorities and advocate for working sessions with them.**

23. Despite the fact that the law on the national preventive mechanism does not provide for any legal basis for the mechanism to handle individual complaints, the mechanism may receive complaints from detainees on various issues while exercising its mandate. As

<sup>4</sup> Articles 4, 19 and 20 of the Optional Protocol.

rightly prescribed by law, the mechanism is advised to avoid handling individual complaints on torture or ill-treatment itself, but to ensure the referral of those to the relevant authorities and to follow up on them closely and periodically. With regard to complaints on matters related to other issues, such as conditions of detention, the mechanism should inform interviewees of the possible avenues for submitting complaints, and to whom the complaint should be addressed. On a case-by-case basis, the mechanism may advise detention centre authorities on ways to solve humanitarian-related issues about which they have received a complaint; however, this is only to avoid irreparable harm and does not alter the fact that the mechanism cannot and must not handle individual complaints. Irrespective of this fact, the mechanism may use the data gathered from the individual complaints and analyse their content with a view to addressing more general trends and gaps in the legal and detention systems, and for constructing the basis of the recommendations to the State authorities.

**24. The Subcommittee recommends that the national preventive mechanism establish clear guidelines on modalities of interaction and follow-up with the Ombudsman's Office, especially with regard to matters related to visits to places of deprivation of liberty and individual complaints, in order to avoid duplication and interference with each other's competence.**

**25. The Subcommittee also recommends that the national preventive mechanism ensure that the scope of places of deprivation of liberty is sufficiently broad in the law, so as to not restrict the mandate of the mechanism and to avoid certain places of deprivation of liberty falling outside of the mechanism's competence due to a restrictive definition in the law. This should include non-traditional places and forms of detention, including but not limited to house arrest, boarding and Islamic schools (madrasas) and refugee camps.<sup>5</sup>**

## **2. Structure and independence**

26. The Subcommittee notes with satisfaction the involvement of civil society members in the composition of the coordination council, which is the strategic core of the national preventive mechanism. However, it is of the utmost concern to the Subcommittee that this important body is currently paralysed due to the lack of quorum.<sup>6</sup> Four of eight members of the coordination council from civil society have either resigned or left their posts, and no new vacancies had been announced as at the time of drafting the present report. Moreover, someone to fill the position of Ombudsman has yet to be nominated and the two parliamentarian members of the coordination council attend its sessions only sporadically.

**27. The Subcommittee recommends that the national preventive mechanism, through its director, publish as soon as possible an invitation for non-commercial organizations<sup>7</sup> to nominate candidates for membership in the coordination council.<sup>8</sup> The Subcommittee believes that in instances where the coordination council is unable to take decisions, the director of the national preventive mechanism should proceed to decisions with the help of the remaining members of the coordination council, as the law on the national preventive mechanism (art. 5) states that the National Centre is managed by both the coordination council and the director. This is to ensure continuity in the exercise of the mandate of the National Centre and its functioning, and should not constitute a basis for inaction by the national preventive mechanism. On the other hand, the National Centre should use all possible channels to compel the parliament to form a working committee to review proposals for candidates for membership of the coordination council.<sup>9</sup>**

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<sup>5</sup> See CAT/C/57/4 and Corr.1, annex.

<sup>6</sup> Pursuant to article 12 of the law on the national preventive mechanism, the quorum is set at seven members.

<sup>7</sup> Term used in the law on the national preventive mechanism.

<sup>8</sup> As prescribed in article 10 of the law on the national preventive mechanism.

<sup>9</sup> Article 10 of the law on the national preventive mechanism.

28. During its mission, the Subcommittee gathered information suggesting a possible intention of the parliament to alter the modalities of the appointment of the director of the national preventive mechanism and, more generally, the mandate of the mechanism.

29. **In this regard, the Subcommittee wishes to reiterate that any changes made to the law on the national preventive mechanism and affecting its current structure should ensure that the mechanism remains fully independent, in accordance with articles 17 and 18 of the Optional Protocol.**

30. **As a general observation, the Subcommittee recommends that the national preventive mechanism adopt a more proactive stance in issues relating to its functioning and mandate, and assume its independence as granted to it under the Optional Protocol and national legislation. The Subcommittee also recommends that the mechanism carefully preserve deadlines mentioned in the applicable law for the election of new members from the parliament or from civil society organizations, and work with all stakeholders, including to advocate among them to make sure that the quorum in the coordination council is constantly assured.**

### 3. Human and financial resources

31. The National Centre currently functions with 25 staff, predominantly lawyers, who are in charge of conducting field visits to places of deprivation of liberty. Pursuant to article 25 of the law on the national preventive mechanism, groups conducting field visits should comprise a minimum of two persons, one of which should be a member of the coordination council or an employee of the National Centre.

32. However, since the establishment of regional teams in the Naryn, Talas and Batken regions, the National Centre has been facing challenges in fulfilling its mandate in those regions, due to lack of staff for constituting monitoring teams as prescribed by law. The mechanism must therefore engage external experts from civil society organizations to constitute its teams. The Subcommittee was not able to understand the modalities of recruiting external experts when there was a need, including with respect to selection criteria and remuneration scales, and requests the national preventive mechanism to clarify this matter in its response to the present report.

33. Notwithstanding, special attention should be accorded to the selection criteria of those experts, especially with regard to knowledge and experience in the subject matter and proven independence, as otherwise the exercise could reflect negatively on how the national preventive mechanism is perceived by other stakeholders.

34. **The Subcommittee reminds the national preventive mechanism that the evaluation of its financial needs must take into account all its activities mandated under the Optional Protocol, including travel and transportation costs, as well as the costs for collaborating with external experts for field visits and training. It is through a mapping exercise that the mechanism can conduct a real needs-based assessment and request from the State realistic budget provisions that cover all necessities of the mandate of the mechanism.**

35. **Recalling that article 18 (3) of the Optional Protocol obliges States parties to provide national preventive mechanisms with the resources necessary to undertake their work, the Subcommittee reiterates that the national preventive mechanism should seek to be provided with a budget sufficient for the accomplishment of all its core mandated tasks and to be granted the institutional autonomy to use its resources. Such funding should be provided through a separate line in the national annual budget referring specifically to the mechanism (see CAT/C/57/4 and Corr.1, annex, paras. 11–12). The funding should be at such a level as to allow the mechanism to carry out its visiting programme, to engage outside experts as and when appropriate, to increase its human resources and to regularly benefit from training, in accordance with its workplan.**

36. In order to ensure the functional and operational independence of the national preventive mechanism and with a view to clearly identifying the nature and extent of additional needs, the mechanism has to enter into constructive dialogue with the relevant

State authorities to ascertain what the mechanism needs to permit it to properly fulfil its mandate in accordance with the provisions of the Optional Protocol. The Optional Protocol does not prohibit the national preventive mechanism from raising funds from private or foreign donor agencies in order to compensate for extrabudgetary activities not covered by the State-allotted funds. It should be borne in mind that such fundraising does not render the national preventive mechanism less independent, and that the financial autonomy of the mechanism is a fundamental prerequisite for its independence.

**37. The Subcommittee recommends that the national preventive mechanism evaluate its financial needs to more effectively fulfil its mandate under the Optional Protocol, including the need for external experts, travel costs and extra staff as necessary, and that it submit proposals to the government authorities concerning its financial needs. This must be done following the yearly planning of the mechanism's activities, in order to enhance the mechanism's chance of absorbing appropriate funding.**

#### **4. Access to places of deprivation of liberty**

38. The law on the national preventive mechanism provides sufficient legal grounds for access to all places of deprivation of liberty in Kyrgyzstan. Upon its establishment in 2012, however, the mechanism encountered problems ranging from denial of access to long delays in accessing certain places of deprivation of liberty, in particular those belonging to the State Committee on National Security.<sup>10</sup>

39. The Subcommittee observed with satisfaction, however, that the number of such incidents have substantially decreased as the national preventive mechanism has gained greater visibility. A few access problems remain, caused by individuals not familiar with the mandate of the mechanism.

40. The Subcommittee wishes to remind the national preventive mechanism about the scope of article 4 of the Optional Protocol, with regard to places of deprivation of liberty. Pursuant to that article, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. Places and forms of deprivation of liberty include not only prisons and police stations, but also house arrest, closed centre for foreigners and asylum seekers, centres for children, social care homes, hospital and psychiatric institutions and facilities for military personnel. Special boarding or religious schools may also constitute places of deprivation of liberty.

41. The Subcommittee also wishes to emphasize to the national preventive mechanism that access to places of deprivation of liberty should be unconditional,<sup>11</sup> including access to any section of detention facilities to which access has been requested, irrespective of, for instance, the level of danger it may present, and to any documentation held by the facility, including of a medical, judicial or administrative nature. This entails unrestricted access to all detainees for the purposes of conducting confidential interviews. Therefore, authorities must not restrict the access of staff of the mechanism to their facilities on the basis of security concerns for that staff, because of high-risk behaviour or contagious illness of some inmates, or on confidentiality grounds.

**42. The Subcommittee recommends that the national preventive mechanism ensure that it has access to all places of deprivation of liberty around the country and that they are visited regularly, and that the annual visiting plans include a broad definition of places of deprivation of liberty. In deciding which ward or section to visit, the mechanism should not be influenced by remarks made by staff of detention facilities regarding some inmates and some sections, and should not differentiate between different categories of detainees while conducting interviews and observing conditions and safeguards.**

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<sup>10</sup> The institution responsible for internal security matters and intelligence.

<sup>11</sup> Article 20 of the Optional Protocol.

## 5. Visibility and awareness

43. The Subcommittee notes with satisfaction that most of the authorities it met with have a general knowledge about the national preventive mechanism and its existence in Kyrgyzstan. However, the mandate of the mechanism and its *raison d'être* have not yet been fully grasped by the majority of the State authorities, including parliamentarians and the judiciary. This highlights the lack of sufficient visibility of the mechanism and points towards a lack of understanding of the role of the mechanism and the nature of its work, which has a detrimental effect on its efficiency. There is little knowledge of the mechanism and its mandate among other relevant stakeholders, including persons deprived of liberty, civil society actors and the public in general. Such a lack of understanding can in turn lead to unfounded expectations and therefore tarnish the mechanism's credibility in the long run.

44. Furthermore, the Subcommittee observed that the nature of the national preventive mechanism as a separate institution from that of the Office of the Ombudsman could be significantly improved. It was clear that persons deprived of liberty did not understand that the mechanism was distinct from the Ombudsman. The Subcommittee is of the view that this lack of visibility as a separate institution may have a detrimental effect on the mechanism's efficiency and credibility and, therefore, on the prevention of torture and ill-treatment.

45. The Subcommittee is also concerned about the confusion between the roles of the national preventive mechanism and the institutions of the Ombudsman and the Prosecutor General's Office, particularly since both of the latter also have their own visiting mandates to cover places of deprivation of liberty. The national preventive mechanism should be clearly identified as such in all its meetings, written communications with the authorities and visits to places of deprivation of liberty as the legal entity in charge of assisting Kyrgyzstan in fulfilling its obligations under the Optional Protocol.<sup>12</sup>

**46. The Subcommittee recommends that the national preventive mechanism enhance its institutional visibility through public-awareness campaigns and other promotional activities with a broad spectrum of stakeholders, including preparing material on its mandate and activities and distributing it in places of deprivation of liberty, among relevant public authorities and among civil society, lawyers and members of the judiciary. The objective is to ensure an identity for the mechanism that is distinct from other visiting bodies and from civil society. The Subcommittee also recommends that the mechanism take steps to make its mandate and work better known and recognized as the key component in the country's system for prevention of torture and ill-treatment.**

**47. In addition, the reports of the national preventive mechanism need to be better publicized in order to encourage and assist the authorities in the implementation of its recommendations. The mechanism should, whenever it is pertinent to its mandate, make its recommendations public in order to raise awareness of the status of the State's advancement in fulfilling its obligations relating to torture prevention. Annual and thematic reports of the mechanism can foster its identity and promote the image and mandate of the mechanism among the public, and should therefore become public.**

**48. The Subcommittee also recommends that the national preventive mechanism meet with the relevant public authorities directly, in particular with the parliament, in order to discuss the implementation of its recommendations, in accordance with article 22 of the Optional Protocol. Finally, the mechanism should disseminate its annual reports and make its findings public, including by transmitting them to the Subcommittee, for the purposes set out in the Optional Protocol. Annual reports of the mechanism must be sent to the parliament and published, independently from whether they have been heard by the parliament, as the mechanism is entitled to use its reports in ways it deems appropriate for the advancement of its mandate and in particular the implementation of its recommendations.**

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<sup>12</sup> Article 5 of the law on the national preventive mechanism.

## B. Recommendations on methodological issues relating to visits

49. In order to assist and advise the national preventive mechanism in its task of protecting persons deprived of their liberty, the Subcommittee visited, together with the national preventive mechanism, a place of deprivation of liberty (see annex II). In the present section and on the basis of observations from the joint visit, the Subcommittee is making the following recommendations concerning preparations for visits to places of detention, the methods to be used during such visits and steps to be taken following their completion.

### 1. Prior to visits

#### Strategy and procedure

50. The Subcommittee welcomes the classification in the law on the national preventive mechanism of the three types of preventive visits carried out by the mechanism, and the inclusion in the law of a brief explanation of the methodology for each type. However, the mechanism should develop more in-depth and separate methodologies for each type of visit and the aspects not covered by the law. While the frequency of visits can vary, the mechanism should ensure that all places of detention are regularly visited and that visits remain unannounced.

51. The Subcommittee was informed that the national preventive mechanism had in the past conducted, and may again conduct, joint visits with the Prosecutor General's Office. The Subcommittee finds this practice inconsistent with the aim and mandate of the mechanism, which is prevention of torture, rather than inspection of places of detention.

**52. The Subcommittee reminds the national preventive mechanism of its prevention mandate, based on which it should refrain from conducting joint visits with other State entities, especially the Prosecutor General's Office. This is to preserve the principles of independence and impartiality, the preventive mandate of the mechanism and the trust between persons deprived of liberty and the mechanism.**

53. As indicated by the national preventive mechanism during the Subcommittee's visit, it has conducted over four thousand visits to places of deprivation of liberty since its establishment. While the Subcommittee acknowledges the great number of visits conducted, it reminds the mechanism that the number of visits does not constitute the most appropriate indicator for the performance. More appropriate indicators include the number of reports submitted, the number of recommendations made and how many among them were followed up on, implemented or not implemented, and the general decrease in the number of cases of torture and ill-treatment and trends in that area.

**54. The Subcommittee recommends that the national preventive mechanism adopt a methodological approach, not solely for preventive visits<sup>13</sup> but also for all other activities and functions it performs, that is based on the concept of prevention of torture.<sup>14</sup> To this end, it is highly recommended that the mechanism adopt standard operating procedures for visits, including methodologies for interviews with both detainees and staff in the places of deprivation of liberty, as well as for methods of follow-up, and that it apply them consistently. The standard operating procedures can be revised according to emerging needs and in compliance with the mandate of the national preventive mechanism.**

**55. It is of the utmost importance that the national preventive mechanism spend a sufficient amount of time on the meticulous preparation of every activity, in particular preventive visits. Every member of a team that conducts a visit must know in advance what their attributed role is and what is expected from them, as well as the overall dynamics of the visit.**

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<sup>13</sup> As characterized in article 23 of the law on the national preventive mechanism.

<sup>14</sup> As set out in the guidelines on national preventive mechanisms (CAT/OP/12/5) and in the Office of the United Nations High Commissioner for Human Rights publication *Preventing Torture: The Role of National Preventive Mechanisms* (2018).

56. **The Subcommittee recommends that all members of the national preventive mechanism, including members of the coordination council, employees of the National Centre and experts involved, receive training on the methodology of visits to places of deprivation of liberty, including on planning and organizing a visit.**

57. **The Subcommittee recommends that the national preventive mechanism develop a targeted strategy for each visit. Such strategies should be based on the type and size of the institutions, knowledge of the seriousness of human rights issues and the mechanism's ability to follow up on its recommendations.**

## 2. During visits

### (a) Visibility

58. While noting that the authorities of the detention centre the Subcommittee visited jointly with the national preventive mechanism were familiar with the staff of the mechanism, the Subcommittee is concerned that the mechanism has not always made itself and its mandate clearly known to the authorities nor has it been clearly identified as the national preventive mechanism. The visiting team must be presented in a way that distinguishes it from the staff of the detention facility and from other actors conducting visits to places of detention.

59. **The Subcommittee recommends that the national preventive mechanism clearly explain, at the beginning of every visit, its mandate to the authorities as well as its working methods, including the necessity to conduct confidential interviews. The Subcommittee is of the opinion that an appropriate and complete presentation to the authorities, especially on the mandate and objective of the visit, will contribute to the visibility and effectiveness of the mechanism. In addition, the visiting team should be clearly identified as representing the national preventive mechanism, by, for instance, through the use of badges or vests, and should provide an information leaflet to the authorities and detainees.**

60. **The Subcommittee believes that the personnel of the national preventive mechanism should at all times maintain a formal distance from the staff of the detention facility, despite their possible familiarity or acquaintance with them. This element of professionalism is crucial to the mechanism's credibility and to gaining the trust of the detainees.**

### (b) Interviews

61. During the joint visit, the Subcommittee noted that the members of the national preventive mechanism were not clearly identified as such, did not always introduce themselves to detainees as being from the mechanism and did not explicitly explain their mandate. The principle of confidentiality and the voluntary nature of interviews were almost never mentioned.

62. In addition, some "exchanges of information" with detainees, including introducing the national preventive mechanism members, were conducted collectively, in the presence of detention officers. The monitoring team had difficulty selecting interviewees and resorted to open questions, such as "Do you have any complaints?", addressed to groups of detainees in the presence of guards from the facility. Moreover, on at least one occasion the members of the mechanism followed the recommendation of the administration as to what cells to enter and what cells to avoid.

63. **The Subcommittee recommends that members of the national preventive mechanism introduce themselves to the interviewee with their name and the position they occupy within the mechanism. The interviewer should explain the mandate of the mechanism, placing particular emphasis on its preventive nature. The express consent of the interviewee should also always be obtained and it should be made clear that the interview is voluntary and confidential and can be interrupted at any time at the interviewee's request. The Subcommittee is of the opinion that an appropriate and complete presentation builds trust with the interviewee and facilitates communication and information-sharing. Furthermore, the members of the mechanism should never**

**consult the administration, or be influenced by it, as to whom they should interview; this is at the sole discretion of the national preventive mechanism. The perception of guards regarding the dangerousness of the inmates should not discourage or influence the mechanism in the implementation of its visit plans.**

64. **The Subcommittee recommends that the location where the individual interview takes place be carefully chosen to ensure that the content of the interview remains confidential, meaning out of sight and hearing of any third party, so that the principle of do no harm is applied without exception. It should also indicate and encourage the interviewees to report any reprisal they might face subsequent to the visit and, if necessary, conduct follow-up visits.**

65. The Subcommittee noted that the interviews took place in a very formal and rather mechanical manner and in an uncomfortable setting, which was not conducive to the creation of a trusting relationship between the members of the national preventive mechanism and the persons interviewed. In addition, scant information was provided to the interviewed person about the mechanism and the objectives of the visit, which can create unfounded expectations as to what the mechanism can do in individual cases. The interviewer should avoid informal contacts with detention officers, as it may affect perceptions of the credibility and independence of the interviewer and the mechanism.

66. **The Subcommittee recommends that the national preventive mechanism conduct private individual interviews with detainees. The location where the interviews takes place needs to create an environment where the interviewee feels at ease; if possible, spaces familiar to detainees should be used. It is further recommended that the mechanism prepare a leaflet that describes its mandate and working methods, explains the concept of informed consent and provides contact information. Finally, the interviewer should always maintain formal and professional relations with detention officers.**

67. The Subcommittee noted the excessive reliance of the staff on their checklists and questionnaires. While the checklist helps staff remember the objectives of the visit, strict adherence thereto is counterproductive and prevents the natural flow of conversation with the interviewee. Moreover, the Subcommittee observed that the content of the checklist was rather problematic, as it did not reflect key aspects of the mandate of the national preventive mechanism and focused excessively on the material conditions of detention.

68. The Subcommittee noted that on several occasions interviews had touched on matters unrelated to the mandate of the national preventive mechanism, such as the reason for the detention, requests for release or other judicial procedure issues. While understanding the difficulties in keeping interviews focused on the mandate of the mechanism, the Subcommittee believes the mandate should be the primary focus of an interview. To help keep interviews focused on the mandate, members of the mechanism should refrain from advising interviewees, offering to provide services and making promises that they are not able to fulfil as they do not fall within the prevention mandate.

69. **The Subcommittee recalls that the purpose of interviews is to assist the national preventive mechanism in understanding the situation of persons deprived of their liberty in order to make recommendations to prevent future cases of torture and ill-treatment. Should other issues arise during the course of interviews, the monitoring team should draw the attention of detainees to the appropriate means and mechanisms of addressing such issues, but not seek to address those issues themselves, as the role of the mechanism is strictly prevention. The Subcommittee also reminds the mechanism that the reliance on standardized forms and questionnaires should be minimized, as systematic use of standardized checklists and forms can prevent the specificities of each case from being taken into account.**

70. **The Subcommittee recommends that the management of the national preventive mechanism ensure that all staff in charge of preventive visits have received specific training on interviewing techniques and ascertain that persons who conduct interviews have fully assimilated the training and have, for example, passed a mock evaluation.**

**(c) Confidentiality**

71. The Subcommittee observed during the joint visit with the national preventive mechanism that the mechanism's staff did not hesitate to discuss the content of the complaints in the presence of the guards and with the administration of the place of detention. This proves a lack of familiarity with the principle of confidentiality among the staff of the mechanism, and a lack of awareness of how failing to uphold that principle can negatively affect the detainees, who remain in the place of detention long after the mechanism's visit. This raises serious concerns in the matter of trust by detainees in, and their perception of, the mechanism and its position on the issue of reprisals.

**72. The Subcommittee underlines the importance of the principle of confidentiality with regard to the working methodology and the success of the national preventive mechanism. It recommends that the mechanism organize a training session, as a matter of priority, on issues of confidentiality and the principle of do no harm.<sup>15</sup> It is of the utmost importance that the mechanism and its monitoring teams understand how to integrate these principles into their work in order to avoid exposing detainees to any type of reprisal.**

**(d) Debriefing the head of the institution**

73. The Subcommittee is concerned that, while a short briefing was provided to the authorities at the end of the visit, it did not address the main issues that were identified during the visit. The debriefing focused mainly on individual complaints and almost no systemic issue was raised. The Subcommittee noted that before the debriefing, the monitoring team coordinated only summarily to decide on what findings and recommendations to share with the head of the facility. Moreover, the authorities were not alerted to the need to protect from reprisals detainees and personnel of the detention centres who had been interviewed.<sup>16</sup>

**74. The Subcommittee recommends that systematic and constructive debriefings should normally be given as soon as possible to those responsible for the facilities visited. They should include the preliminary observations and recommendations when appropriate and emphasize matters calling for immediate action or action of a pressing humanitarian nature.**

**(e) Reprisals**

75. The Subcommittee is disturbed that the national preventive mechanism lacks a strategy on preventing persons who are interviewed during visits from being subjected to reprisals or threats from staff of detention facilities and fellow detainees. An agreed and approved methodology on reprisals, which has been assimilated by all members, is essential to the work of the mechanism and its interactions with detainees.

76. Moreover, the Subcommittee notes with great regret that the national preventive mechanism failed to preserve the principle of confidentiality and divulged the identities of the interviewees, including minors, along with the content of their complaints, to the director of the detention facility. In its activities, the mechanism must, through all means necessary, avoid doing harm, even when trust and amical relations have been established between the monitoring team and staff of the detention facility. The Subcommittee underlines the need to always seek to protect detainees who have been interviewed from possible reprisals, even when there appears to be little risk.

77. The Subcommittee noted that, at its final debriefing, the national preventive mechanism did not mention to the authorities of the institution that any form of intimidation or reprisal against persons deprived of their liberty constitutes a violation of the State party's obligations.<sup>17</sup>

<sup>15</sup> See paragraphs 75–79 below.

<sup>16</sup> Article 21 of the Optional Protocol.

<sup>17</sup> Article 13 of the Convention against Torture and article 21 of the Optional Protocol.

78. **The Subcommittee highly recommends that the national preventive mechanism, as a matter of priority, prepare a comprehensive methodology and strategy on prevention of reprisals and ensure that its staff are familiar with the content and how to implement it. The approach should be focused on prevention, confidentiality and the principle of do no harm.**

79. **The Subcommittee recommends that the national preventive mechanism always consider there to be a risk of intimidation, sanctions or reprisals and, therefore, that it take steps to address that risk. As a preventive measure, the issues of possible reprisal should always be mentioned. In addition to the precautions mentioned above, the mechanism should warn the authorities that any kind of reprisal is impermissible and will be reported, and that the mechanism will follow up in order to satisfy itself that those responsible have been subjected to appropriate penalties. The mechanism should also, inter alia, undertake preventive follow-up visits.**

### **3. After the visit**

#### **(a) Post-visit reports**

80. The Subcommittee took note with satisfaction of the established, although not envisioned in the law, practice of the national preventive mechanism to draft reports destined for the relevant authorities two to seven days following the visit to a place of deprivation of liberty.

81. While the Subcommittee encourages this practice, it notes that the report of the joint visit conducted with the Subcommittee contained an excessive amount of factual information and focused on the mechanism's findings on minor issues rather than a reflection of the more systemic findings of the visit. The recommendations formulated in the visit report did not necessarily reflect those findings. Moreover, the report did not contain an assessment of the degree to which the detention facility had implemented the recommendations of the previous visit.

82. **The Subcommittee recommends that the national preventive mechanism continue with the practice of preparing a report with concerns and recommendations after each visit conducted (CAT/OP/12/5, paras. 36–37). If the mechanism deems it appropriate under its mandate, it may release the report as a public document, while ensuring the confidentiality of any personal data.**<sup>18</sup>

83. **The Subcommittee recommends that the national preventive mechanism train its members on reporting techniques, formulation of recommendations and follow-up strategies. It should be borne in mind that each visit report should focus on prevention, on clearly highlighting any problems that exist and on proposing solutions in the form of practical recommendations. The recommendations must be concrete and well-founded, should be directed towards developing practicable preventive measures to deal with shortcomings in systems and practices, and should also take account of the relevant national and international norms in the field of prevention of torture and other ill-treatment, including recommendations of the Subcommittee. Following the transmittal of the report, the mechanism should develop a strategy for following up on the recommendations and using the report as a platform for dialogue with the authorities of the visited institution as well as with the relevant ministries.**

#### **(b) Annual reporting**

84. The Subcommittee observes that the national preventive mechanism has refrained from publishing its annual reports that have not been heard by the parliament. The Subcommittee is also unclear as to the procedures followed by the mechanism in preparing its annual reports.

85. **Pursuant to article 23 of the Optional Protocol, the Subcommittee encourages the national preventive mechanism to consider ways in which it can publicize its**

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<sup>18</sup> Article 21 of the Optional Protocol.

annual reports, irrespective of whether they have been heard by the parliament. For instance, the mechanism could release its annual reports, noting that the report is due to be heard by the parliament on a set date.

#### IV. Next steps

86. The Subcommittee commends the national preventive mechanism for its will, and its dedication to the goal of preventing torture and other cruel, inhuman or degrading treatment or punishment. It also notes that the law on the mechanism is rather solid, and recommends that the mechanism focus on its internal working methods and practices, following the recommendations of the Subcommittee in the present report.

87. As indicated in the present report, it is of significant importance that the national preventive mechanism ensure that its preventive mandate is well understood both by staff of the mechanism and by members of the coordination council. This entails identifying the dos and don'ts under the mandate of the mechanism, as well as shortcomings and training needs in aspects such as strategic planning, methodology and working methods, including a strategy in the areas of confidentiality and reprisals and the protocols necessary for prompt implementation.

88. The Subcommittee reiterates that the national preventive mechanism should use the independence granted to it under the Optional Protocol and national legislation. It is for the mechanism to lead the cause of prevention of torture in places of deprivation of liberty and to assist Kyrgyzstan in fulfilling its obligations under the Optional Protocol.<sup>19</sup> In this regard, the mechanism should not hesitate to publicly advocate in support of its mandate where confronted with obstacles, and clarify misunderstandings and misleading expectations among authorities when such authorities are assessing the utility of having a national preventive mechanism in Kyrgyzstan.

89. The Subcommittee also recommends that the national preventive mechanism increase its international cooperation with other such mechanisms in order to reinforce its capacities, share information and practices and develop its working methods so as to improve its ability to discharge adequately its responsibilities under the Optional Protocol.

90. The Subcommittee regards its visit and the present report as the continuation of a constructive dialogue with the national preventive mechanism of Kyrgyzstan. It notes that the Office of the United Nations High Commissioner for Human Rights stands ready to provide technical assistance and advice to the mechanism to reinforce its capacity to prevent torture and ill-treatment in all places of deprivation of liberty in the State party and to make the common goal of prevention a reality.

91. The Subcommittee recalls that prevention of torture constitutes an ongoing and wide-ranging obligation of the State party, the likelihood of whose achievement is greatly enhanced by an efficient national preventive mechanism. The Subcommittee encourages the national prevention mechanism to review and strengthen its working methods and to ensure that members avail themselves of training courses to improve their ability to discharge the mechanism's responsibilities under the Optional Protocol, including through assistance from the Office of the United Nations High Commissioner for Human Rights in following up on the recommendations in the present report.

92. The Subcommittee also encourages the national preventive mechanism to transmit its annual reports to the Subcommittee, and reaffirms its readiness to help in achieving the shared aims of preventing torture and ill-treatment and ensuring that commitments are translated into action.

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<sup>19</sup> Articles 5 and 6 of the law on the national preventive mechanism.

93. The Subcommittee recommends that, in accordance with article 12 (d) of the Optional Protocol, the national preventive mechanism of Kyrgyzstan enter into dialogue with the Subcommittee on the implementation of the Subcommittee's recommendations, and that it do so within six months of receipt of the present report. The Subcommittee also recommends that the mechanism initiate discussions with the Subcommittee on the arrangements for such a dialogue at the time of the submission of its reply to the present report.

94. The Subcommittee recommends that the national preventive mechanism make the present report public, and requests that the Subcommittee be notified of the mechanism's decision in this regard.

## **Annex I**

### **List of places of deprivation of liberty visited by the Subcommittee**

#### **I. Temporary detention places (“IVS”) and other places under Police**

1. Leninskiy District Police Station in Bishkek
2. Osh Oblast (Province) Police Department
3. GOM Ak-Bura (City Police Division) in Osh
4. GOM Sulaiman- To’o (City Police Division) in Osh
5. Reception and distribution centre (for undocumented persons) in Osh
6. IVS of Bishkek City Police Department
7. IVS of Osh City Police Department
8. IVS of Jalal-Abad City Police Department
9. IVS of Kara-Suu District Police Department
10. IVS of Uzgen District Police Department
11. IVS of Suzak District Police Department

#### **II. Pretrial detention places (“SIZO”) under the State Penitentiary Service (“GSIN”)**

1. Facility # 21 in Bishkek (referred to as “SIZO # 1” informally)
2. Facility # 25 in Osh (referred to as “SIZO # 5” informally)
3. SIZO in Jalal Abad

#### **III. Detention places under the National Security Committee**

1. SIZO of the National Security Committee in Bishkek
2. SIZO of the National Security Committee in Osh

#### **IV. Correctional detention places (“colonies”) under GSIN**

1. Colony # 27 in Bishkek
2. Colony # 19 in Bishkek
3. Colony # 42 in Osh

#### **V. Facilities for Children and Adolescents**

1. Juvenile Crime Prevention Centre in Bishkek
2. Children’s psycho-neurological facility in Belovodsk

#### **VI. Medical facilities**

Chym-Korgon Psychiatric Hospital

## **Annex II**

### **List of places of deprivation of liberty jointly visited by the national preventive mechanism and the Subcommittee**

IVS GUVD of Bishkek

## Annex III

### List of officials and other persons with whom the Subcommittee met

#### I. National level

##### A. Authorities

1. Coordinating Council of Human Rights
2. Natalia Nititenkov, Parliament
3. Ainurd Altybaevai, Parliament
4. Mivlan Zheenchoroevi, Parliament
5. Taalaibek Mambetaitov, Parliament
6. Kozhokulova Asel Turusbekovna, Third Secretary of Ministry of Foreign Affairs
7. Syrgatayeva Aynura Kulmamatovng, Deputy Head of International Department, State Services of Execution of Punishment
8. Baybosunov Azamat Medetovich, Inspector, State Services of Execution of Punishment
9. Oskon Bayev K.Zh., Deputy Head of SVR Department, Ministry of Internal Affairs
10. Bekemov T.I., Chief Inspector, Ministry of Internal Affairs
11. Balmuhambetov T.B., Inspector, Ministry of Internal Affairs
12. Sarybayev Sh.K., Inspector, Ministry of Internal Affairs
13. Bonushev M.Sh., Deputy Head of SKM Department, Ministry of Internal Affairs
14. Makhmutov R.A., Head of SS Department, Ministry of Internal Affairs
15. Zhaynosboyev A., Deputy Head of SPENM Department, Ministry of Internal Affairs
16. Sadiyeva A.K., Chief Inspector of GSh Department, Ministry of Internal Affairs
17. Khamdamov Zh.M., Deputy Head of GSh Department, Ministry of Internal Affairs
18. Turgun Bayeva, Chief Specialist, Ministry of Labour and Social Development
19. Omuskamova S.T., Specialist, Ministry of Education and Science Zhorgoyev A.U., State Committee of National Security
20. Amrakulov I.A., State Committee of National Security

##### B. National Preventive Mechanism

1. Sulaimanov Nurdin, Director
2. Dinara Sayarova, Deputy Director
3. Dzhabbarov Litkin, Member of Coordinating Council
4. Numetova Dilyara
5. Maydunov Bokhat
6. Turdubekova Nazgul
7. Zhaparov Kamaldin
8. Kasplekulov Banyt

9. Begolieva Altynai

**C. Ombudsman**

1. Kolopov A.S., Head of Department (Torture)
2. Yerlan Alimbaev, Deputy Ombudsman
3. Sunzhow Toktomambetou, Specialist on External Affairs

**D. General Prosecutor's Office**

1. Karmabekov U.K.
2. Tiklek Kudaiarov
3. Asylbels Akmatov
4. Dzhamilia Wzhamanbaeva
5. Jyrgal Ismailov

**E. Bar Association**

1. Toktomambetov Stalbek
2. Sparov Nurjaz
3. Kyigyrova Arman
4. Jyrgal Babaev

**F. United Nations Agencies and International Organizations**

1. Resident Coordinator of the UN Country Team of Kyrgyzstan
2. UNFPA
3. OHCHR
4. WFP
5. UNICEF
6. UNAIDS

**G. Civil society**

1. Coalition against Torture
2. Human Rights Movement
3. Soros Foundation
4. Open Spectrum
5. Center Alternativa HRM
6. CPPI
7. Bir Duino (One World)
8. Kylym Shamy

**Regional level**

**A. Authorities**

1. Office of the Public Prosecutor in Osh
2. Ministry of Internal Affairs – Osh City and Province Police Departments
3. Nurdinov Malik, Head of the Department of Internal Affairs of the Osh province

4. Ibraim uulu Ulanbek, Deputy Prosecutor of the Jalal-Abad region
5. Abdyrasulov Rustam, Deputy Prosecutor of the Osh city
6. Shakiev Emilbek, Deputy Head of the SIZO of the State Committee for National Security of the Osh city and Osh province
7. Isakov Rustambek, Representative of the Security Service of the State Committee for National Security of the Osh city and Osh province
8. Karamurzaeva Aizahamal, Third Secretary of the Plenipotentiary Representation of the Ministry of Foreign Affairs in the South
9. Bekturov Nurlan, Senior Prosecutor of the Prosecutor's Office of the Osh province
10. Chekirguzov Nuraly, Deputy Head of the SIZO No. 5

**B. Civil society**

1. Positive Dialogue
  2. Friend
  3. ECHR
  4. Bir Duino (One World)
  5. Center for Cooperation for International Protection
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