



**Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment  
KYRGYZSTAN**

**Alternative NGO report to the UN Committee against Torture (CAT)  
Prepared by Physicians for Human Rights (PHR)**

*To be submitted for the 2<sup>nd</sup> periodic review of Kyrgyzstan, CAT, 51<sup>st</sup> Session  
Geneva, 28 Oct 2013 – 22 Nov 2013*

**Physician for Human Rights' Role in Preventing Torture through Training and Documentation**

Physicians for Human Rights (PHR) is an independent organization that uses medicine and science to stop mass atrocities and severe human rights violations against individuals. PHR is a committed leader in global anti-torture efforts, most notably through its role in the creation of *The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, commonly known as the "Istanbul Protocol."<sup>1</sup> PHR's Senior Medical Advisor, Dr. Vincent Iacopino, was one of the main authors and organizers of this three-year effort undertaken by 75 experts in law, health, and human rights from 40 organizations in 15 countries.<sup>2</sup> The Istanbul Protocol delineates a scientific method of documenting human rights violations and outlines a set of internationally-recognized standards for investigating such violations and reporting findings to a judiciary.

The Istanbul Protocol establishes a standard manner by which professionals are to document the facts surrounding an alleged instance of torture or ill treatment so that responsible parties may be identified and prosecuted or to help provide other forms of redress for a victim.<sup>3</sup> Each forensic medical report discusses all the pertinent facts, such as the circumstances of the evaluation, a summary of the subject's

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<sup>1</sup> United Nations High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HR/P/PT/8/Rev.1 (Aug. 9, 1999). [hereinafter Istanbul Protocol]

<sup>2</sup> Physicians for Human Rights, Documenting Torture Internationally, <http://physiciansforhumanrights.org/issues/torture/international-torture.html> (last visited Sep. 30, 2013).

<sup>3</sup> Istanbul Protocol 17.

story, both a physical and psychological examination, and a professional interpretation of the consistency between the allegations of abuse along with the physical and psychological findings of the examinations.<sup>4</sup> Combining impartially-collected evidence with expert analysis, the Istanbul Protocol yields forensic medical evaluations that can independently corroborate a victim's allegations of abuse, give credibility to defense claims that confessions were obtained under duress, or help elucidate patterns of torture or ill treatment that constitute wider human rights violations.

### **International Recognition and Standards**

The United Nations adopted the Istanbul Protocol in 1999 and it has since been recognized by a range of international human rights bodies, including the Committee against Torture.<sup>5</sup> The broad recognition and support for the Istanbul Protocol is a result of the legitimacy of its reporting standards – guidelines against which the effectiveness of torture investigations can be measured.

### **Forensic Medical Evaluations**

Documenting individual cases in a systematized manner may produce a body of evidence that points towards a pattern of widespread abuse.<sup>6</sup> The degree of consistency between clinical findings and the subject's alleged abuse is evaluated by the medical professional and described along a spectrum of Istanbul Protocol terminology. These terms range from 'not consistent' to 'diagnostic of' particular claims of torture or ill treatment. Describing results in this way allows the medical professional to convey his or her interpretation of the examination findings in a meaningful and standardized manner to an investigator, judge, or other party.

### **Physical Evidence**

A medical professional conducting a forensic medical evaluation begins by taking a complete medical history. The subject is also asked to describe the nature of his or her detention, abuse, and resultant injuries. Restating the victim's experience provides the evaluator with a point of reference against which to assess the consistency of exam findings with the narrative account.

The effects of torture and ill treatment manifest physically in myriad ways either acutely or chronically. Understanding the particular method of torture, its severity, and the injury's location on the body often assists in the interpretation of physical findings. Many methods of torture can result in characteristic scar patterns (whipping), other distinct markings on the skin (application of electricity or other burn agents), or characteristic musculoskeletal and nerve injuries (various forms of suspension or stretching of limbs).<sup>7</sup> Blunt force trauma, with or without instrumentation, may result in contusions, abrasions, or lacerations, though such markings are more difficult to associate with a particular time or manner of abuse.<sup>8</sup> Other methods (severe beatings to the head) may not lead to any physical findings, but may be closely associated with other observable conditions such as reduced cognitive abilities.<sup>9</sup> Importantly, a

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<sup>4</sup> Istanbul Protocol 18; Physicians for Human Rights, Ending Impunity 12 (2012).

<sup>5</sup> Physicians for Human Rights, Ending Impunity 11-12 (2012).

<sup>6</sup> Physicians for Human Rights Toolkit, The Aim of Medical Documentation, <http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-2-istanbul-protocol-standards-for-medical-documentation-of-torture-and-medical-ethics/documenting-the-allegations/documenting-the-allegations/> (last visited Sep. 30, 2013).

<sup>7</sup> Physicians for Human Rights Toolkits, Physical Evidence of Torture, <http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-2-istanbul-protocol-standards-for-medical-documentation-of-torture-and-medical-ethics/an-overview-of-the-istanbul-protocol/physical-evidence-of-torture/> (last visited Sep. 30, 2013).

<sup>8</sup> Istanbul Protocol 37.

<sup>9</sup> Physicians for Human Rights Toolkits, Physical Evidence of Torture, <http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-2-istanbul-protocol-standards-for-medical-documentation-of-torture-and-medical-ethics/an-overview-of-the-istanbul-protocol/physical-evidence-of-torture/> (last visited Sep. 30, 2013).

lack of physical or psychological evidence in no way indicates an absence of abuse. Indeed, many forms of torture are specifically designed to leave very little, if any, physical evidence.

### **Psychological Evidence**

While torture is an “extraordinary” life event that may have a profound psychological impact on one who experiences it, a wide range of factors determines whether there are psychological consequences as well as the degree of that impact.<sup>10</sup> As such, psychological evidence cannot be presupposed nor can one assume that the outcome from a particular form of torture is the same.<sup>11</sup> However, some psychological reactions and symptoms have been regularly documented in torture victims.<sup>12</sup> The most common of these responses are post-traumatic stress disorder (PTSD) and major depression.<sup>13</sup> A range of other issues may exist as well, including but not limited to avoidance and emotional numbing, hyper-arousal, sense of foreshortened future, dissociation and depersonalization, somatic complaints, substance abuse, and neuropsychological impairment.<sup>14</sup> Symptoms that fall within the scope of anxiety and mood disorders are evaluated under the two most prominent classifications systems, the International Classification of Disease (ICD-10) and the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).<sup>15</sup> As with physical evidence, the absence of psychological trauma does not necessarily indicate the absence of torture or ill treatment.

### **Physicians for Human Rights’ Project in Kyrgyzstan**

Between December 2011 and February 2012, PHR conducted ten forensic medical evaluations of detainees who have alleged torture and ill treatment while in State custody. These evaluations – done at the request of victims’ attorneys and in accordance with Istanbul Protocol standards – were conducted by three clinicians representing over thirty years of experience documenting medical evidence of torture and other abuses. Each individual gave his or her informed consent to having their case information used anonymously. One subject, Azimjan Askarov, gave informed oral consent to be identified.

The findings of the PHR forensic medical experts inform this report. They present independent, impartial, and scientific documentation of torture and ill treatment. The findings also illustrate the ineffectiveness of current government efforts to prevent torture, an inability or unwillingness to promptly and impartially investigate allegations of abuse, and the persistent use of statements made as a result of torture in courts of law. These findings directly contravene the State’s obligations under the UN Convention against Torture (CAT) by perpetuating an environment that permits the use of torture.

### **Overall Findings**

The ten forensic medical evaluations yield insights that reinforce a need for action to correct the ongoing practice of torture and ill treatment of detainees in Kyrgyzstan. Each case evaluated by PHR volunteers returned physical and/or psychological evidence highly consistent with the alleged abuse.

The high level of brutality experienced by those evaluated is demonstrated by the consistent reports of blunt trauma to the head or asphyxiation resulting in traumatic brain injury. Eight of the ten individuals examined by PHR volunteers demonstrated clinical evidence of such an injury. Every subject was:

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<sup>10</sup> Istanbul Protocol 45.

<sup>11</sup> Istanbul Protocol 45.

<sup>12</sup> Istanbul Protocol 45.

<sup>13</sup> Istanbul Protocol 45.

<sup>14</sup> Istanbul Protocol 46-47.

<sup>15</sup> Istanbul Protocol 48. \*Note: more current version is DSM-V, released May 2013: <http://www.psychiatry.org/practice/dsm/dsm5>.

...threatened with physical and/or psychological harm, which included death threats and threats of sodomy, the planting of evidence, and threats to family members, including rape. All of the alleged victims reported enduring severe beatings that included punches, kicks, or blows with blunt objects. Two individuals reported suffering *falanga* (beating the soles of the feet). Four individuals reported experiencing asphyxiation with a plastic bag, a gas mask, or a chemical. One individual was shot in the chest by a police officer, suffered life-threatening injuries, and was taken to the emergency room in hemorrhagic shock.<sup>16</sup>

The forensic medical evaluators documented bruises and loss of consciousness as the most common form of acute sequelae, coupled with lacerations and abrasions from blunt trauma.<sup>17</sup> The aforementioned traumatic brain injury represents the most common form of chronic physical sequelae observed by the evaluators, while post-traumatic stress disorder (PTSD) and major depression were the most routinely-observed chronic psychological sequelae.<sup>18</sup>

The torture was reportedly motivated by the desire to obtain confessions from the victims for alleged crimes. All but one individual succumbed to the torture and signed a confession in an attempt to halt the abuse. Azimjan Askarov, the well-known human rights defender, has resisted attempts to procure his confession, and is currently in prison serving a life sentence.

## **Violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment**

### **Article 2: Kyrgyz Government Has Not Taken Effective Measures to Prevent Torture**

Article 2 obligates State Parties to take all necessary action to prevent acts of torture within its jurisdiction.<sup>19</sup> The treaty also explicitly states that torture cannot be justified for any reason, including internal political instability.<sup>20</sup> To that end, State Parties are obliged to take effective measures to combat the practice of torture. The decision to include the qualifying word ‘effective’ is notable, as it illuminates the treaty’s purpose of generating concrete actions to prevent torture; mere rhetoric will not suffice. While the Kyrgyz government has taken affirmative steps towards greater legislative harmony with CAT, the State Report identifies the need to take further steps so as to increase the “effectiveness and transparency” of law enforcement agencies.<sup>21</sup> From the medical evidence documented by PHR volunteers, it is clear that torture is employed in Kyrgyzstan. The culture of impunity that facilitates the use of torture may be attributable to a wide range of factors, but it is the responsibility of the Kyrgyz government to do all that it can – within its noted constraints – to effectively confront the issue and curb torture practices.

Implementing legislative, administrative, or judicial decisions is a difficult but critical step in eradicating torture and ill treatment. From its work in Kyrgyzstan, PHR observed a number of elements that contribute to the use of torture, most notably a dearth of local capacity to conduct forensic medical evaluations as well as the independence to do so free from external pressures.<sup>22</sup> The methods and severity of the torture documented by PHR during the course of the ten evaluations strongly indicate a

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<sup>16</sup> Physicians for Human Rights, Ending Impunity 15 (2012).

<sup>17</sup> Physicians for Human Rights, Ending Impunity 15 (2012).

<sup>18</sup> Physicians for Human Rights, Ending Impunity 15 (2012).

<sup>19</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>20</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(2), Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>21</sup> Committee against Torture, Second periodic report of States parties due in 2002, submitted in response to the list of issues transmitted to the State party pursuant to the optional reporting procedure: Kyrgyzstan 47, Sep. 13, 2012, CAT/C/KGZ/2.

<sup>22</sup> Physicians for Human Rights, Ending Impunity 3 (2012).

wider practice of torture. The existence of this pattern demonstrates that the measures taken by the Kyrgyz authorities to date have not had the desired impact in preventing the practice of torture.

The following narrative is excerpted from a medical-legal affidavit prepared by a PHR clinician after conducting a forensic evaluation of a detainee in Kyrgyzstan between December 2011 and February 2012. Key details have been changed or omitted in order to shield the identity of the victim. The narrative illustrates the way in which a lack of ineffective preventive measures allows for the persistent use of torture and ill treatment:

*Mr. S is a 28 year-old man who was arrested at his home in July, 2010...Shortly after Mr. S returned home, two men in civilian clothes came to his door and asked about occupants in the next apartment...He was forcefully pulled out of his apartment and punched in the kidneys and chest. He was taken to the police department where...Mr. S was kicked and punched many times. After the severe beating, he noted blood in his urine for about two weeks. He reported that a gas mask was placed on his head several times, and each time he lost consciousness for an unknown period of time. He was also forced to eat hot peppers. Mr. S recalls being questioned about 'his crime' and was asked about his neighbor's car...Mr. S reports that his upper back was pierced with needles dipped in acid, causing a burning sensation and bleeding. Mr. S was given no food or water, and begged for something to drink...He reports he was not given any medical care for his injuries. After enduring the abuse described above, he was forced to write a confession in which he acknowledged killing two people...In April 2011, Mr. S was again subjected to severe beatings that resulted in a head concussion and left him unable to walk...In addition, Mr. S was forced to cut the skin on his own abdomen with a razor blade...After being forced to cut himself Mr. S was taken to a shower by officers who applied salt to the open wounds, causing intense pain... Prior to his release in May, 2011, Mr. S also endured beating on the soles of his feet (falanga) with a baton. His feet became swollen and he couldn't walk for approximately two weeks... PHR's evaluation of Mr. S revealed that he suffers from major depression and symptoms of PTSD and somatization. Mr. S also had post-concussive syndrome due to traumatic brain injury as evidenced by his chronic headache, memory impairment, and hearing loss, among other symptoms...He was also found to have scars that corroborated his allegations of abuse. PHR's affidavit will be entered as evidence to support his allegations of torture and ill treatment.<sup>23</sup>*

### **Articles 12 and 13: Lack of Prompt, Impartial, and Competent Investigations**

Articles 12 and 13 require State Parties to ensure prompt, impartial, and competent investigations where there is either a reasonable belief that an act of torture has been committed or where an individual has alleged such abuse.<sup>24</sup> Compliance with these treaty obligations was a concern enumerated in the Committee against Torture's list of issues prior to reporting.<sup>25</sup> Despite the recognition of this issue, the problem persists in direct violation of CAT.

None of the ten individuals examined by PHR had prior access to an independent medical investigator.<sup>26</sup> Only two had contact with a forensic physician, but neither was evaluated in accordance with Istanbul Protocol Standards. Prompt and impartial investigations can document the scientific evidence needed to corroborate allegations of abuse and lead to successful prosecutions – prosecutions that are required under Article 7 of CAT.<sup>27</sup> Barring proper investigations, the permissive environment that allows perpetrators of torture to act with impunity will remain unchanged.

Critical to any forensic medical investigation is the independence of the investigator. The Istanbul Protocol states that "In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or

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<sup>23</sup> Physicians for Human Rights, Ending Impunity 45-46 (2012).

<sup>24</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 12-13, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>25</sup> Committee against Torture, List of issues prior to the submission of the second periodic report of Kyrgyzstan 3, Jun. 23 2009, CAT/C/KGZ/Q/2.

<sup>26</sup> Physicians for Human Rights, Ending Impunity 2 (2012).

<sup>27</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 7, Dec. 10, 1984, 1465 U.N.T.S. 85.

for other substantial reasons, States must ensure that investigations are undertaken through an independent commission of inquiry or similar procedure.”<sup>28</sup> Such independence is lacking in Kyrgyzstan.

Currently, investigations are conducted by members of the accused agency.<sup>29</sup> Government physicians are often fearful of reprisals if thorough examinations are done, thereby resulting in cursory and meaningless evaluations, at best.<sup>30</sup> The well-documented abuse of Azimjan Askarov is a clear manifestation of this practice; after one severe beating, Askarov required hospitalization. A forensic medical evaluation by a government physician concluded that his injuries were the results of a punch from a fellow inmate or a fall. Askarov reported to the PHR evaluator that the government examination took a mere ten minutes and was done in the presence of the prosecutor and a law enforcement official, both of which exerted pressure on the government physician.<sup>31</sup> Askarov’s request for an independent medical evaluation was withdrawn after police officers threatened his life.<sup>32</sup> This represented the only forensic medical evaluation undergone by any of the ten cases investigated by PHR.

Before PHR’s training, Kyrgyz medical professionals had not received any training on the medical documentation of torture and ill treatment.<sup>33</sup> If capacity building efforts are fostered within Kyrgyzstan to perform competent and independent investigations, the government must dedicate sufficient resources to the endeavor as well as show that it has the political will to fully investigate all reasonable allegations of abuse. Though the creation of the National Preventive Mechanism is encouraging, it is still in its early stages and must be bolstered by a continued commitment to its mission.

The following narrative is excerpted from a medical-legal affidavit prepared by a PHR clinician after conducting a forensic evaluation of a detainee in Kyrgyzstan between December 2011 and February 2012. Key details have been changed or omitted in order to shield the identity of the victim. The narrative illustrates the reluctance of the government to allow for impartial investigations into allegations of abuse:

*Mr. N is a 33 year-old man who is married and has three children... Mr. N was arrested the day after he had hung political posters in the streets of Bishkek... He was arrested and beaten at his home by police in plain clothes on July 7, 2005... He was denied legal counsel and accused of being a provocateur and threatening public safety. Mr. N reported being beaten with police batons, and punched and kicked all over his body, including his head and genitals, and losing consciousness. He was also forced to stand for prolonged periods of time with his legs spread apart and knees bent. On several occasions police threatened to rape him with a police baton if he did not sign a confession... On the day of his release, he had photographs taken of his injuries. He visited a government forensic physician, who refused to examine him after learning that Mr. N’s injuries occurred while in police custody... On examination by PHR, Mr. N was found to have neurological symptoms and findings that are highly consistent with a post-concussion syndrome – a sequela of non-penetrating traumatic brain injury... Mr. N’s psychological assessment revealed post-traumatic stress disorder using the diagnostic criteria of the DSM-IV TR... PHR’s affidavit will be entered as evidence to support his allegations of torture and ill treatment.<sup>34</sup>*

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<sup>28</sup> Istanbul Protocol 18.

<sup>29</sup> Criminal Procedure Code, art. 163 (Kyrg.).

<sup>30</sup> Physicians for Human Rights, Ending Impunity 2 (2012).

<sup>31</sup> Physicians for Human Rights, Ending Impunity 17-18 (2012).

<sup>32</sup> Physicians for Human Rights, Ending Impunity 18 (2012).

<sup>33</sup> Physicians for Human Rights, Ending Impunity 2 (2012).

<sup>34</sup> Physicians for Human Rights, Ending Impunity 43-44 (2012).

### **Article 15: Judiciary's Continued Use of Statements Made as a Result of Torture**

Article 15 requires that each State Party ensures that a statement that has been determined to have been obtained under torture cannot be presented in any proceeding.<sup>35</sup> Such a prohibition is to discourage the use of torture, as it erases the legal utility of a confession. Article 81 of the Kyrgyz Criminal Procedure Code would benefit from language explicitly prohibiting the use of such statements or forced “confessions.”<sup>36</sup> Currently, it is widely reported that confessions obtained under torture are regularly admitted in Kyrgyz courts of law.

Interviews with relevant stakeholders reveal that the Kyrgyz legal system has come to depend on “confessions,” often obtained through torture, because of the low-level of investigative capacity in the law enforcement community.<sup>37</sup> Into that void steps the perceived need for such “confessions” and thus, torture. This only contributes to the culture of impunity in Kyrgyzstan.

The following narratives are excerpted from medical-legal affidavits prepared by PHR clinicians after conducting forensic evaluations of detainees in Kyrgyzstan between December 2011 and February 2012. Key details have been changed or omitted in order to shield the identities of the victims. The narratives illustrate the extent to which government authorities go to secure “confessions” and use them effectively in courts of law:

*Mr. C is a 33 year-old farmer who was arrested on his way to Bishkek to sell potatoes...The officers accused him and the other passengers in the taxi of transporting drugs...He was detained for four days and subjected to repeated beatings on the back of his head with rifle butts, batons, and fists... He also suffered beatings to the stomach, legs, and soles of his feet (falanga)... The police threatened anal rape and to kill him during this time. He was thrown to the floor and beat unconscious when he refused to sign [a] confession. The police arranged for him to meet with a female defense lawyer who advised him to sign the confession... The police reportedly threatened to kill him if he did not agree to sign a confession and appear in court. The police also instructed him on how to prepare and use the illegal drugs that he was accused of possessing so that the court could confirm his status as a ‘user.’... Mr. C’s examination by PHR clinicians demonstrated signs and symptoms of mild traumatic brain injury and post-concussive syndrome. The PHR forensic evaluation will be submitted to support a civil case for reparation and compensation.<sup>38</sup>*

*Mr. Z is a 27 year-old single man who works odd jobs. Police officers twice seized him and accused him of drug possession because he once had an active heroin addiction. When he was detained in 2010, he was beaten with truncheons on the back, legs, arms, and feet, which resulted in painful bruising and swelling. His feet became so swollen he was unable to walk for two weeks. He was beaten on the head and suffered loss of consciousness. Electric shocks were applied to his arms, legs, and stomach. At the time of his arrest, he was on maintenance methadone for heroin addiction and suffered symptoms of withdrawal when police officers refused to make the medication available to him. Under the threat of more physical and psychological abuse, Mr. Z was forced to confess in 35 criminal cases... PHR’s evaluation of Mr. Z revealed clinical evidence of traumatic brain injury... His psychological evaluation revealed symptoms of post-traumatic stress disorder... He was also found to have major depression... The PHR medical affidavit will be entered as evidence to support his allegations of torture and ill treatment.<sup>39</sup>*

### **Conclusion**

Despite considerable advances in legislative and administrative obligations under CAT, the Kyrgyz government faces considerable challenges to eliminating torture and ill treatment. PHR applauds the efforts of the Committee against Torture to assist State Parties in eliminating torture and ill

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<sup>35</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>36</sup> Criminal Procedure Code, art. 81 (Kyrg.).

<sup>37</sup> Physicians for Human Rights, Ending Impunity 3 (2012).

<sup>38</sup> Physicians for Human Rights, Ending Impunity 44-45 (2012).

<sup>39</sup> Physicians for Human Rights, Ending Impunity 46-47 (2012).

treatment. It is hoped that this report will assist the Committee in drafting further recommendations to Kyrgyzstan in order to end torture within its borders.

Physicians for Human Rights urges the authorities of Kyrgyzstan to:

- Recognize and institutionalize Istanbul Protocol standards through legislative and administrative actions.
- Provide health professionals who conduct forensic medical evaluations and investigations with comprehensive training and other resources necessary to fulfill their duties.
- Finalize and support the operation of the National Preventive Mechanism, empowered to conduct independent visits of detention facilities to identify and prevent the practice of torture.
- Ensure the independence of forensic medical investigations.
- Ensure timely access to a competent and independent medical investigator upon the request of a detainee.
- Ensure that forensic medical evaluations of detainees are conducted in private. Presence of a law enforcement agent, prison official, or prosecutorial representative is strictly prohibited.
- Ensure that health professionals conducting forensic medical investigations are free from harassment.
- Improve the effectiveness and transparency of law enforcement investigations so as to avoid reliance in the criminal justice system upon forced “confessions.”
- Amend Article 81 of the Kyrgyz Criminal Procedure Code to explicitly prohibit the use of statements obtained under torture.