

Compliance with the International Covenant on Civil and Political Rights KYRGYZSTAN

Alternative NGO report to the United Nations Human Rights Committee (HRC) Prepared by Physicians for Human Rights (PHR)

*To be submitted for the 2nd periodic review of Kyrgyzstan, ICCPR, 110th Session
Geneva, 10 Mar 2014 – 28 Mar 2014*

Physicians for Human Rights' Project in Kyrgyzstan

Physicians for Human Rights (PHR) has worked to implement Istanbul Protocol standards for the effective investigation and documentation of torture and ill treatment in Kyrgyzstan during the past 3 years. Our project has consisted of three primary activities: 1) assessment of torture and ill treatment practices, 2) capacity building and training for medical and legal experts on the effective investigation and documentation of torture and ill treatment, and 3) policy reform activities. PHR's forensic medical experts have conducted approximately 10 forensic medical evaluations of alleged torture and ill treatment in Kyrgyzstan using Istanbul Protocol standards. PHR has conducted three week-long trainings for medical and legal experts on the effective medical documentation of torture and ill treatment and provided individual mentoring of several independent, non-governmental medical experts. To date, only several state forensic experts have been trained on Istanbul Protocol standards for effective forensic medical evaluations of alleged torture and ill treatment. PHR is currently working with the Kyrgyz Ministry of Health Care to develop policies, procedures, and model trainings for forensic experts to become qualified to conduct forensic medical evaluations of alleged torture and ill treatment. PHR is also in the process of providing recommendations to the Expert Working Group on the Criminal Procedure Code (CPC) to ensure the implementation of Istanbul Protocol standards for the effective investigation and documentation of torture and ill treatment standards in the Kyrgyz Republic. We are also in the process of developing an Istanbul Protocol National Plan of Action for Kyrgyzstan in conjunction with civil society and government stakeholders (see Annex I). While we are encouraged by the Ministry's interest and willingness to train state forensic experts, we remain concerned that the new Forensic Law and current drafts of the CPC do not ensure the right of individual suspects, defendants, and witnesses to a prompt evaluation (less than 24 hours) by qualified, non-governmental forensic or other specialized experts in accordance with Istanbul Protocol Standards.

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

PHR is an independent organization that uses medicine and science to stop mass atrocities and severe human rights violations against individuals. Physicians are uniquely situated to advocate for the protection of human rights, as there are clear parallels between "concepts of human rights and the well-established principle of health-care ethics."¹ In its efforts to prevent torture around the world, PHR leverages the expertise and impartiality of physicians and other health professionals to effectively and credibly document human rights violations.

¹ 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, 11, U.N. Doc. HR/P/PT/8/Rev.1 (Aug. 9, 1999). [hereinafter Istanbul Protocol].

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.”² The Istanbul Protocol outlines a set of internationally-recognized standards and methodologies for investigating and documenting torture and ill treatment for legal proceedings so that perpetrators are held accountable and to help provide redress for victims. 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.

Forensic medical reports discuss the pertinent facts, including a summary of the subject’s allegations of torture, often both a physical and psychological examination, and a professional evaluation of the consistency between the allegations of abuse and the clinical examination findings.³ Combining impartially-collected evidence with expert analysis, the Istanbul Protocol methodology enables forensic medical evaluations that may independently corroborate a victim’s allegations of abuse, assess 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 (UN) adopted the Istanbul Protocol in 1999 and it has since been recognized by a range of international human rights bodies, including the UN Human Rights Council (formerly the UN Commission on Human Rights).⁴ The broad recognition and support for the Istanbul Protocol is a result of the legitimacy of its reporting standards.

The degree of consistency between clinical findings and the subject’s alleged abuse is described along a spectrum of Istanbul Protocol terminology. These terms range from “not consistent with” to “virtually 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 health professional conducting a forensic 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, both acutely and 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, other distinct markings on the skin, or characteristic musculoskeletal and nerve injuries.⁵

² 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]

³ Istanbul Protocol 18; Physicians for Human Rights, Ending Impunity: The Use of Forensic Medical Evaluations to Document Torture or Ill Treatment in Kyrgyzstan, 12 (2012). Accessible at: https://s3.amazonaws.com/PHR_Reports/2012-kyrgyzstan-ending-impunity.pdf (last visited Feb. 13, 2013). [hereinafter Ending Impunity].

⁴ Physicians for Human Rights, Ending Impunity 11-12 (2012).

⁵ 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).

Methods such as 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.⁶ Importantly, a 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 someone who experiences it, a wide range of factors determine the extent and severity of the psychological consequences in each person. As such, psychological evidence cannot be presupposed nor can one assume that the outcome from a particular form of torture is always the same.⁷ However, some common psychological reactions and symptoms have been documented in torture victims.⁸ The most common of these responses are post-traumatic stress disorder (PTSD) and major depression.⁹ 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-V).¹⁰ As with physical evidence, the absence of psychological trauma does not necessarily indicate the absence of torture or ill treatment.

Physicians for Human Rights' Forensic Evaluation of Torture and Ill Treatment in Kyrgyzstan

Between December 2011 and February 2012, PHR conducted ten forensic medical evaluations of Kyrgyz 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 a variety of violations of the International Covenant on Civil and Political Rights (ICCPR), the most notable of which is the practice of torture and ill treatment. The findings not only document the use of torture but also illustrate the ineffectiveness of current government efforts to prevent torture, an inability or unwillingness to promptly and impartially investigate allegations of torture, and the persistent use of statements obtained through use of torture in courts of law. This perpetuation of an environment that permits the use of torture contravenes Kyrgyzstan's obligations under the ICCPR.

Overall Findings of PHR's Forensic Evaluations of Ten Kyrgyz Detainees

The findings of the ten forensic medical evaluations reinforce a need 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 the detainees evaluated is evident through consistent reports of blunt trauma to the head or asphyxiation resulting in traumatic brain injury. Eight of the ten

⁶ 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).

⁷ Istanbul Protocol 45.

⁸ Istanbul Protocol 45.

⁹ Istanbul Protocol 45.

¹⁰ Istanbul Protocol 48.

individuals examined by PHR experts demonstrated clinical evidence of such an injury. Every subject was “...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.”¹¹

The most common form of acute sequelae PHR evaluators observed on the detainees were bruises and loss of consciousness, coupled with lacerations and abrasions from blunt trauma.¹² 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.¹³

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 International Covenant on Civil and Political Rights

Article 7: Despite Official Calls to End Torture, Practice Continues

Article 7 obligates State Parties to respect an absolute prohibition on torture or cruel, inhuman, or degrading treatment or punishment.¹⁴ Although some rights under the ICCPR can be derogated in times of public emergency, the Covenant explicitly states that the prohibition of torture cannot be curtailed under any circumstance, thereby highlighting the importance with which the ban on torture is viewed.¹⁵ Reinforcing the absolute nature of the right to be free from torture and ill treatment, the Human Rights Committee (HRC) asks the Kyrgyz government about what measures have been taken to foster a zero-tolerance policy against torture.¹⁶

From the medical evidence documented by PHR medical experts, it is clear that torture continues to be employed in Kyrgyzstan, in direct violation of the ICCPR. The methods and severity of the torture PHR documented in Kyrgyzstan are “typically observed in countries where perpetrators routinely practice torture with impunity” and thus strongly indicate a wider practice of torture.¹⁷ 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. 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 a lack of independence to conduct evaluations free from external pressures.¹⁸

Article 2: Efforts to Respect and Ensure Rights under the ICCPR Have Proven Ineffective

Article 2 obligates State Parties to take the necessary measures to “give effect to the rights recognized in the present Covenant.”¹⁹ The inclusion of such language makes it incumbent upon the Kyrgyz government to take positive steps to ensure ICCPR rights; mere rhetoric will not suffice. While it is

¹¹ Physicians for Human Rights, Ending Impunity 15 (2012).

¹² Physicians for Human Rights, Ending Impunity 15 (2012).

¹³ Physicians for Human Rights, Ending Impunity 15 (2012).

¹⁴ International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 (1976).

¹⁵ International Covenant on Civil and Political Rights, art. 4.

¹⁶ Human Rights Committee, List of issues in relation to the second periodic report of Kyrgyzstan 3, Aug. 22, 2013, C/PR/C/KGZ/Q/2.

¹⁷ Physicians for Human Rights, Ending Impunity 2 (2012).

¹⁸ Physicians for Human Rights, Ending Impunity 3 (2012).

¹⁹ International Covenant on Civil and Political Rights, art. 2(2).

laudable that Kyrgyzstan is party to various international treaties and has domestic legislation against torture, the Kyrgyz government must do more to ensure the right to be free from torture is respected in order to meet their ICCPR obligations. The documented instances of torture indicate that current efforts have proven ineffective.

The following narrative is excerpted from a medical-legal affidavit prepared by a PHR clinician after conducting a forensic evaluation of a Kyrgyz detainee between December 2011 and February 2012. Key details have been changed or omitted in order to protect the identity of the victim. The narrative illustrates the way in which a lack of 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.²⁰

Articles 9 and 10: Inadequate Access to Capable, Independent Forensic Evaluators

Allegations must be investigated by competent and independent bodies in order to ensure that accountability can be achieved and to have a deterrent effect on future acts of torture and ill treatment. 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 for other substantial reasons, States must ensure that investigations are undertaken through an independent commission of inquiry or similar procedure."²¹ Such capacity and independence are lacking in Kyrgyzstan and result in violations of the ICCPR.

Inadequate Access to Independent Forensic Evaluators

ICCPR Articles 9 and 10 hold State Parties accountable for ensuring the security of persons as well as for guaranteeing the rights and human dignity of those in detention, respectively.²² Torture and ill treatment of detainees violate the liberty and security of individuals protected by the ICCPR. Such abuse may be curtailed through enhanced accountability, an essential component of which is proper documentation of ill treatment by medical professionals.

²⁰ Physicians for Human Rights, Ending Impunity 45-46 (2012).

²¹ Istanbul Protocol 18.

²² International Covenant on Civil and Political Rights, art. 9, 10..

Of the ten individuals examined by PHR, none had previously obtained access to an independent medical investigator.²³ Only two had contact with a forensic physician, but neither was evaluated in accordance with Istanbul Protocol Standards. As is explained below, the forensic physician was provided by the state and the prosecutor and police officer were present during the forensic evaluation. Without access to forensic evaluators, abuse will go undocumented, thereby making it more difficult to hold the State accountable for the actions of its agents.

Inadequate Capacity

The inadequate access to forensic medical evaluations may be due in part to the low capacity level of the health professionals in Kyrgyzstan. In fact, before PHR conducted capacity-building activities in the country between October 2011 and April 2012, Kyrgyz medical professionals had never received any training on the medical documentation of torture and ill treatment.²⁴ Despite this clear lack of capacity, the Kyrgyz government is taking steps that exacerbate the problem rather than mitigating it. PHR recently reviewed the Law of the Kyrgyz Republic on Forensic Examination (hereinafter “Forensic Law”) that was passed by passed by parliament.

We are deeply concerned that the Forensic Law: 1) fails to ensure the application of internationally accepted forensic standards, 2) fails to ensure the independence of private forensic experts, 3) arbitrarily excludes qualified private forensic experts from conducting forensic examinations, and 4) fails to ensure the protection against torture and ill treatment (see Annex II). In its current state, the Forensic Law contradicts its stated goal of independent, impartial and competent forensic examinations by failing to establish international standards of forensic practice and by implementing state control over certification and recertification of both state and private forensic experts, including the power to terminate certifications and implement sanctions against state and private forensic experts. Such policies are inconsistent with international norms of forensic practice and will undermine the capacity of both state and private forensic agencies and experts to serve the rights of Kyrgyz citizens and execute their duties in accordance with Kyrgyz law.

The Forensic Law effectively denies victims of torture the discovery of evidence and full documentation that would support their allegations. Qualifications, not governmental affiliation, ought to be the main criterion for permission to conduct evaluations. Kyrgyzstan’s refusal to consider non-governmental physicians qualified to provide forensic evidence in cases where the State stands accused is completely incompatible with Istanbul Protocol principles and standards.

Given Kyrgyzstan’s great need for competent experts in this area, the Forensic Law would unnecessarily impede efforts to increase the accountability of the State to its citizens. As Kyrgyzstan continues to develop forensic medical expertise, qualified experts must be allowed to provide their services to people alleging torture and ill treatment.

Independence

The government monopoly on “qualified” forensic evaluators presents legitimate concerns about the impartiality of investigations, as government actors lack the independence required by the Istanbul Protocol to produce credible forensic reports. Currently, investigations are conducted by members of the accused agency.²⁵ Government physicians are often fearful of reprisals if thorough examinations are

²³ Physicians for Human Rights, *Ending Impunity 2* (2012).

²⁴ Physicians for Human Rights, *Ending Impunity 2* (2012).

²⁵ Criminal Procedure Code, art. 163 (Kyrg.).

done, thereby resulting in cursory and meaningless evaluations, at best.²⁶ One whose salary is paid by the government would be understandably loathe to condemn that government for its ill treatment of a detainee.

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 an accidental 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 whom exerted pressure on the government physician.²⁷ Askarov reported that when he was asked what caused his injuries, the prosecutor answered the question, telling the evaluator that Askarov's injuries were caused by his cell mates.²⁸ Askarov's request for an independent medical evaluation was withdrawn after police officers threatened his life.²⁹ The medical evaluation by the government physician represented the only forensic medical evaluation undergone by any of the ten cases investigated by PHR.

Further eroding the independence of investigations are provisions in the CPC and the Forensic Law and that allow third parties to be present during forensic examinations (see Annex II). This facilitates the routine practice of government agents such as investigators, prosecutors, law enforcement officers, or prison officials directly observing forensic exams and exerting undue influence over detainees alleging abuse or the evaluating physician. The Istanbul Protocol prohibits this in the interests of preserving the independence and integrity of the resultant forensic reports.

The nascent National Preventive Mechanism by which detention facilities are to be monitored and detainee complaints registered is an encouraging step towards greater compliance with the ICCPR. However, the initiative is still in its early stages and must be bolstered by a continued commitment to its mission. Barring proper oversight and independent investigations into allegations of abuse, the permissive environment that allows perpetrators of torture to act with impunity will remain unchanged.

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. Even when a detainee is taken to a physician, the government doctor is often unwilling to implicate the government in abuse, presumably out of fear. This lack of independence ensures that detainees are vulnerable to abuse while in State custody:

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

²⁶ Physicians for Human Rights, Ending Impunity 2 (2012).

²⁷ Physicians for Human Rights, Ending Impunity 17-18 (2012).

²⁸ Physicians for Human Rights, Ending Impunity 18 (2012).

²⁹ Physicians for Human Rights, Ending Impunity 18 (2012).

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.³⁰

Article 14: Use of Torture to Compel Confessions of Guilt

Article 14 enshrines the concept of due process, including the right of an individual “not to be compelled to testify against himself or to confess guilt.”³¹ In its list of issues, the HRC asks the Kyrgyz government to respond to allegations that torture is “routinely used to extract confessions,” highlighting the prominence of the practice within Kyrgyzstan.³² 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,” obtained through torture because of the low level of investigative capacity of law enforcement.³³ Into that void steps the perceived need for such “confessions” and undue measures to obtain them such as torture.

The following narratives are excerpted from medical-legal affidavits prepared by PHR experts 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 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.³⁴

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.³⁵

Eliminating the legal utility of such forced confessions would remove a commonly-cited incentive and justification for torture in Kyrgyzstan, serving to promote greater compliance with the ICCPR.

Conclusion

Despite commendable advances in legislative and administrative compliance with obligations under the ICCPR, the Kyrgyz government must take deliberate and comprehensive steps to implement

³⁰ Physicians for Human Rights, Ending Impunity 43-44 (2012).

³¹ International Covenant on Civil and Political Rights, art. 14.

³² Human Rights Committee, List of issues in relation to the second periodic report of Kyrgyzstan 4, Aug. 22, 2013, CCRP/C/KGZ/Q/2.

³³ Physicians for Human Rights, Ending Impunity 3 (2012).

³⁴ Physicians for Human Rights, Ending Impunity 44-45 (2012).

³⁵ Physicians for Human Rights, Ending Impunity 46-47 (2012).

Istanbul Protocol standards to ensure the effective investigation and documentation of torture and ill treatment. We urge the Committee to support official recognition and implementation of the Istanbul Protocol as described in the Istanbul Protocol National Plan of Action (see Annex I) and reform of existing laws and administrative regulations in accordance with Istanbul Protocol standards. PHR hopes this report will assist the Committee in drafting further recommendations to Kyrgyzstan in order to ensure prevention, accountability and redress for torture and ill treatment.).

Physicians for Human Rights urges the authorities of Kyrgyzstan to:

- Recognize and institutionalize Istanbul Protocol standards through legislative and administrative actions.
- Given fundamental inconsistencies between the goals of the Forensic Law and its provisions, we urge immediate suspension of its application in the Kyrgyz Republic until such time that it can be revised to ensure the application of international forensic standards, independent, non-governmental forensic evaluations, and protections against torture and ill treatment. Note, PHR's specific recommendations on the Forensic Law in Annex II.
- Revise legislation and administrative regulations to:
 - Explicitly prohibit the use of statements and confessions obtained under torture or allegations of torture or ill treatment;
 - Ensure the right of individual suspects, defendants, and witnesses to a prompt evaluation (less than 24 hours) by qualified, non-governmental forensic or other specialized experts in accordance with Istanbul Protocol Standards. The right to such evaluations should not require any petition or approval by state officials, including investigators, prosecutors, pretrial investigative agencies or the court;
 - Require an initial medical examination for all detainees at the time of detention; upon the detainee's request; before transfers to other places of detention; and/or for judicial remand;
 - Ensure that all forensic evaluations, including compulsory medical assessments in pre-trial detention and the penitentiary system are under the authority of the Ministry of Health or an independent authority such as a Forensic Institute;
 - Ensure that all forensic and specialized experts have unrestricted access to places of detention, relevant evidence, including crime scenes, material evidence, witnesses, and relevant legal documents, including interrogation logs and medical records, and that they follow chain of custody procedures for material forensic evidence;
 - Ensure that forensic evaluators are allowed (with the detainee's permission) to use audio, video and photographic equipment in their interviews with detainees in all detention facilities;
 - Ensure that forensic medical evaluations of living persons are conducted independently and confidentially by strictly prohibiting the presence of law enforcement agents investigation authorities, prosecutors, prison officials, or any other official;
 - Ensure that the credibility of forensic experts and admissibility of their testimony is based on professional qualifications, not on a particular professional license or certificate or government affiliation;
 - Ensure that detainees alleging torture and ill treatment are not returned to the place of alleged abuse and/or remain in the custody of the alleged perpetrators;
 - Ensure that detainees alleging torture and ill treatment receive appropriate medical care;
 - Prohibit copies of medical reports from going to law enforcement officials unless detainee expressly allows it;

- Require all government (and nongovernmental) forensic evaluators to use the IP standards evaluation forms which include assessments of physical and psychological evidence;
- Require the use of standardized IP medical evaluation short forms (including physical and psychological evidence) by all medical personnel who examine or treat detainees to assess possible torture and ill treatment;
- Ensure that medical experts follow chain of custody procedures for material medical evidence;
- Create “whistleblower” protections to medical personnel who report the findings of their medical evaluations of alleged torture and ill treatment.
- Provide health professionals who conduct forensic medical evaluations and investigations with comprehensive training and other resources necessary to fulfill their duties.
- Ensure that state and private forensic agencies, including their training programs, are required to be certified by an international body such as the ISO (International Organization for Standardization);
- Finalize and support the National Preventive Mechanism, empowered to conduct independent visits of detention facilities to identify and prevent the practice of torture.

ANNEX I

Draft action plan for the implementation of Istanbul Protocol standards for effective medical investigation and documentation of torture and ill treatment in Kyrgyzstan

Objective	Activities
Recognition & implementation of Istanbul Protocol Standards	Institutionalize IP standards among relevant departments/personnel: forensic and health services, prosecutors, defense attorneys, judges, law enforcement, prison and military personnel, including health and mental health professionals and those responsible for detainee and mental health care. Ensure that everyone receives copies of the IP.
	Formal statement issuance by various relevant administrative agencies, judiciary, law enforcement, and medical agencies recognizing IP as the only viable standard to document torture and ill treatment
	Issue directives stating that acts of torture and other ill-treatment by law enforcement officials will not be tolerated, that reports of torture and ill-treatment will be promptly and thoroughly investigated, and that those found responsible will be held accountable
	Include forensic medical examination and statistical registration of all alleged torture incidents into the work plan for the Ministry of Health
	Fully analyze the by-laws of the entire health care system to ensure full and successful implementation of IP
Legal, administrative and judicial reforms for effective: <ul style="list-style-type: none"> • Criminalization of torture & ill treatment • Safeguards for PDLs • Complaints procedures • Investigation and prosecution • Adjudication • Redress • Forensic medical evaluations 	Amend Criminal Code to ensure that torture definition complies with CAT, that perpetrators of torture are appropriately punished, and that torture crimes cannot be prosecuted under lesser crimes such as "abuse of power"
	Amend the Criminal Procedure Code (CPC) to ensure that self-incriminating statements and forced "confessions" obtained through infliction of torture and ill treatment are prohibited from being used as evidence against the victim. Also disregard all self-incriminating statements made outside of court. Closed cases that relied on such evidence should be re-opened.
	More detailed chain of custody procedures must be detailed in the CPC or other relevant legal codes. Chain of custody is not demonstrated by the sole fact that the evidence was held by law enforcement agents. The chain of custody is demonstrated by the circumstances of how the evidence was obtained (place, date, time, how it was obtained or found, photographic or video record of the first time evidence came into custody), how the evidence was handled and preserved and who maintained the custody of the

	evidence at all times.
	Prohibit incommunicado and indefinite detention. Family of detained person should be notified within 6 hours of the place of detention. Ensure that detainees' visits with family are not pre-conditioned on promises to testify. Investigators must not be allowed to influence who/when detainee may have visitors.
	Implement reliable registration procedures for all detainees, including use of tamperproof, time-stamped video and/or photographic equipment
	Ensure that medical evaluations of detainees by governmental forensic experts are conducted in response to official written requests by prosecutors and judges, not law enforcement or security officials or interrogation personnel
	Ensure that medical evaluations are conducted within 24 hours of the allegation of torture and/or ill treatment, and detainees must have the right to have independent, non-governmental medical experts of their choosing
	Require an initial medical examination for all detainees at the time of detention; upon the detainee's request; before transfers to other places of detention; and/or for judicial remand
	Ensure that detainees alleging torture are not returned to place of detention and receive appropriate medical care
	Make medical evaluations by governmental forensic experts free of charge
	Create independent, effective and confidential complaint mechanisms including hot line access, particularly to legal counsel and non-governmental medical evaluators, and confidential, secure complaint boxes in all places of detention
	Ensure prompt, effective, independent and impartial investigations of all allegations of torture by assigning reporting obligations to judges, prosecutors, and others in contact with detainees
	Revise CPC to ensure that courts must give the same weight to medical evaluations conducted by non-governmental experts as they do to evaluations conducted by governmental experts.
	Reopen proceedings in cases in which the authorities have relied on evidence obtained through torture
	Ensure that victims of torture can pursue redress even in the absence of a torture conviction for the perpetrator
	Calculate/determine redress sums based on the appropriate physical and psychological care needs of the victim
	Prohibit arrest and conviction quotas as they increase the risk of torture and ill treatment in pre-trial detention
Institute compulsory IP training & continuing education for target groups	Implement training for all relevant personnel (including forensic and medical personnel, legal experts and judges, as well as law enforcement, prison, mental health and military personnel) on IP standards
	Analyze existing training programs on torture and ill treatment at undergraduate and post graduate levels and amend as necessary
	Require clinicians who conduct medical evaluations of detainees to have training in the effective medical documentation of torture and ill treatment in accordance with IP standards
	Provide specialized training for prosecutors, lawyers, and judges on: IP standards; forensic procedures and techniques, including standards and forms of medical evidence and reliability physical and psychological evidence; disability determinations; international, regional and national laws prohibiting torture and ill treatment; legal ethics and

	professionalism (including the effect of corruption); credibility assessments; and secondary trauma
	Make licensing boards for all clinicians link initial and periodic licensing and credentialing to successful training in IP standards
Ensure the independence of all forensic services	Ensure that all forensic evaluations, including compulsory medical assessments in pre-trial detention and the penitentiary system are under the authority of the Ministry of Health or an independent authority such as a Forensic Institute
	Vest this institution with authority and funds to train and oversee provision of forensic medical evaluations
	Medical experts must have adequate financial and human resources, including professional interpreters, to conduct effective medical evaluations of alleged torture and ill treatment including: qualified personnel/consultants, medical equipment, photographic equipment, access to diagnostic imaging and laboratory tests, and adequate time to conduct their evaluations.
Establish and enforce forensic rules and regulations*	Require that forensic medical evaluations in response to allegation of torture occur within 24 hours
	Ensure that law enforcement is barred from the exam room unless necessary for security purposes
	Ensure that medical experts have unrestricted access to relevant evidence including crime scenes, material evidence, witnesses, relevant legal documents, including interrogation logs and medical records, and they must follow chain of custody procedures for material medical evidence
	Ensure that forensic evaluators are allowed to use audio, video and photographic equipment in their interviews with detainees in all detention facilities
	Ensure that medical experts follow chain of custody procedures for material medical evidence
	Prohibit copies of medical reports from going to law enforcement officials
	Create “whistleblower” protections to medical personnel who report the findings of their medical evaluations of alleged torture and ill treatment
Develop & require use of standardized IP medical evaluation forms	Require all government (and nongovernmental) forensic evaluators to use the IP standards evaluation forms which include assessments of physical and psychological evidence
	Require the use of standardized IP medical evaluation short forms (including physical and psychological evidence) by all medical personnel who examine or treat detainees to assess possible torture and ill treatment
IP implementation monitoring & accountability	Ensure that the independent Monitoring Committee is composed of governmental members of national human rights institutions, and non-governmental members and advisors
	Oversee the overall process of all investigation and documentation of alleged torture and ill treatment
	Publish periodic public reports of all monitoring activities and recommendations
	Assess the quality and accuracy of all medical evaluations of torture and ill treatment
	Review legal proceedings and judicial outcome in torture and ill treatment cases

	Review all registration procedures and data
	Establish medical and legal advisory committees to ensure the quality and accuracy of medical evaluations and all legal proceedings and judicial outcomes relating to torture and ill treatment, and to make recommendations for remedial education and administrative action
	Establish and enforce a strict policy of zero tolerance for corruption within law enforcement
	Install cameras in police stations, detention centers, and courtrooms with controls and broadcast to a central place where it can be monitored, to reduce risk of torture

*Addendum of Forensic Rules and Regulations:

- Medical experts should conduct medical evaluations within their field of expertise when requested by appropriate authorities.
- Evaluations of alleged torture and ill treatment may include an assessment of sexual assault and/or death investigations involving the identification and evaluation of a cadaver of human remains.
- Medical experts shall attend any request or consultation ordered by the appropriate authorities, and shall assist the courts in any investigation or proceeding, including their physical presence to testify/explain a report.
- Whenever the individual to be evaluated is receiving medical care or has recently received medical or surgical care, the medical experts shall gather all the information about the hospital admission, including the medical record, that are necessary to determine the nature of the injuries or the illnesses.
- Informed consent should be obtained from the alleged victim and include: the purpose of the evaluation, explanation of the process, how the information will be used, the right to refuse the evaluation, the option to request an evaluation by a medical expert of choice and any limits on the confidentiality of the information provided in the evaluation.
 - If the individual to be evaluated is a minor or unable to consent (mentally impaired), the medical expert must obtain consent from whoever has the legal guardianship or an appropriate tribunal. The legal guardian must be present during the evaluation.
- Detainees and medical experts should have access to professional interpreters upon request.
- If the medical expert finds evidence suggesting torture and/or ill treatment, he/she must report the evidence to the prosecutor and/or judge immediately to offer protection to the alleged victim and take action with a view to holding the perpetrators accountable.
- Individuals with medical evidence suggesting torture and/or ill treatment must be referred for appropriate medical and/or psychological care.
- All physical lesions must be documented photographically including areas of alleged injury, even if no lesions are visible, and ideally each lesions and area of alleged injury should be photographed using a clear measuring scale.
 - Governmental and non-governmental forensic experts must be allowed to use audio, video and photographic equipment in their interviews with detainees in all detention facilities.
- Respect for Medical Ethics:
 - Medical personnel, including consulting mental health experts, must be prohibited from participating in interrogation practices regardless of whether they are engaged in clinical and/or non-clinical activities.
 - Medical personnel, including consulting mental health experts, must report to proper authorities if they become aware of other medical/health professionals' involvement in unlawful interrogation practices.
 - Ethical duties of medical personnel, including military medical personnel, to individuals alleging torture and ill treatment must conform to international standards.

There are no duties to third parties that supersede the duty to “do no harm,” including duties to employers and State officials and any interrogation methods, or medical procedures that may amount to torture, that serve to break the will of an individual.

ANNEX II

Physicians for Human Rights Opinion on the Law of the Kyrgyz Republic on Forensic Examination

February 8, 2014

Vincent Iacopino, MD, PhD, Rusudan Beriashvili, MD, PhD,
and Alejandro Moreno, MD, MPH, JD.³⁶

We were asked by the Open Society Justice Initiative (OSJI) to review the Law of the Kyrgyz Republic on Forensic Examination (hereinafter “Forensic Law”) and to assess its consistency with international forensic standards and the United Nations’ Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or Istanbul Protocol (available at: www.ohchr.org/Documents/Publications/training8Rev1en.pdf).

Physicians for Human Rights (PHR) has more than 25 years of experience in the medical documentation of torture and ill treatment and led the development of the first international guidelines for medico-legal documentation of torture and ill treatment that are contained in the Istanbul Protocol. PHR has investigated and documented medical evidence of torture and ill treatment in dozens of countries including Kyrgyzstan, Tajikistan and Kazakhstan. In addition, PHR has extensive experience in the implementation of Istanbul Protocol standards for effective medical and legal investigation and documentation of torture and ill treatment.

During the past 3 years, PHR’s efforts to implement Istanbul Protocol standards in Kyrgyzstan have consisted of three primary activities: 1) an assessment of torture and ill treatment practices, 2) capacity building training for medical and legal experts on the effective investigation and documentation of torture and ill treatment, and 3) policy reform activities. PHR’s forensic medical experts have conducted approximately 12 forensic medical evaluations of alleged torture and ill treatment in Kyrgyzstan using Istanbul Protocol standards. PHR has conducted 3 Istanbul Protocol trainings for medical and legal experts on the effective medical documentation of torture and ill treatment and provided individual mentoring of several independent, non-governmental medical experts. Currently, these non-governmental medical experts are the most qualified clinicians in Kyrgyzstan to evaluate physical and psychological evidence of torture and ill treatment in accordance with international Istanbul Protocol standards. To date, state forensic experts have not been trained on Istanbul Protocol standards for effective forensic medical evaluations of alleged torture and ill treatment. PHR is currently working with the Kyrgyz Ministry of Health Care to develop policies, procedures, and model trainings for forensic experts to become qualified to conduct forensic medical evaluations of alleged torture and ill treatment. PHR is also in the process of providing recommendations to the Expert Working Group on the Criminal

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Procedure Code to ensure the implementation of Istanbul Protocol standards for the effective investigation and documentation of torture and ill treatment standards in the Kyrgyz Republic.

PHR has developed detailed policy recommendations in an Istanbul Protocol National Plan of Action for Kyrgyzstan which was presented and discussed at a roundtable entitled “The Implementation of the Istanbul Protocol in the Kyrgyz Republic: Challenges and Lessons Learnt” in Bishkek on February 22, 2012. The roundtable was co-sponsored by the Organization for Security and Cooperation in Europe (OSCE) Center in Bishkek, the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for Central Asia (ROCA), and the European Union (see: <http://www.osce.org/bishkek/88305>). Approximately 200 governmental and non-governmental representatives attended the meeting. The roundtable focused specifically on the implementation of the Istanbul Protocol in Kyrgyzstan. Critical outcomes included: 1) Recognition of the need to officially implement a plan of action for the effective investigation and documentation of torture and ill treatment: 2) Recognition of the need to conduct Istanbul Protocol training for all official forensic medical experts in Kyrgyzstan, and 2) Recognition of the need for independent, non-governmental forensic medical examinations of alleged torture and ill treatment in accordance with Istanbul Protocol standards.

At the Roundtable, Drs. Iacopino and Moreno expressed the view that medical evaluations of torture and ill treatment by both governmental and non-governmental forensic experts should be based on adequate qualifications, alone, not on a particular professional license or certificate. This would enable non-governmental health professionals to serve as medical experts in legal proceedings, from which they have historically been excluded, and require all forensic and medical experts to receive training on Istanbul Protocol standards of medical documentation of torture and ill treatment.

Analysis of the Forensic Law

In reviewing the Forensic Law, we are deeply concerned that the Forensic Law: 1) fails to ensure the application of internationally accepted forensic standards, 2) fails to ensure the independence of private forensic experts, 3) arbitrarily excludes qualified private forensic experts from conducting forensic examinations, and 4) fails to ensure the protection against torture and ill treatment. In its current state, the Forensic Law contradicts its stated goal of independent, impartial and competent forensic examinations by failing to establish international standards of forensic practice and by implementing state control over certification and recertification of both state and private forensic experts, including the power to terminate certifications and implement sanctions against state and private forensic experts. Such policies are inconsistent with international norms of forensic practice and will undermine the capacity of both state and private forensic agencies and experts to serve the rights of Kyrgyz citizens and execute their duties in accordance with Kyrgyz law.

In our opinion, the Forensic Law should be revised based on the following analysis and recommendations.

1. Failure to ensure the application of internationally accepted forensic standards

In most countries, the accreditation of forensic facilities, laboratory tests and methods, forensic procedures, and forensic training programs is obtained through accreditation by international organizations such as the ISO (International Organization for Standardization), which is the world’s largest developer of voluntary International Standards. Unfortunately, the Forensic Law establishes state control over all forensic certifications and practices and does not include any provisions for international

accreditation or the recognition of international forensic standards. It is not reasonable for state institutions to have control over certification and recertification of forensic agencies and experts, as the Forensic Law stipulates, without any requirement to comply with internationally recognized forensic standards. Disregarding international forensic standards will only serve to perpetuate and conceal sub-standard forensic practices in the Kyrgyz Republic. Moreover, if certification and recertification of forensic agencies and forensic experts in the Kyrgyz Republic remains under state control, there is no assurance that forensic practices will develop in accordance with international standards for best practices.

The forensic law establishes unprecedented control over the certification and recertification of forensic agencies and experts and attempts to automatically equate such certification with forensic competence. While forensic certificates of training may be significant evidence of a forensic expert's qualification to conduct a specific forensic examination, certification should never be automatically equated with forensic competence as stated in the Forensic Law. An expert who is qualified to conduct autopsies may not be qualified to conduct ballistics or handwriting analysis. We understand that the assumption of forensic competence among state forensic experts is often the norm in Napoleonic legal systems, but such norms often perpetuate sub-standard and arbitrary forensic practices and exclude examinations by qualified, independent, private forensic experts.

In addition, Article 14(4) of the Forensic Law does not allow attorneys and judges to question the forensic expert's qualifications. This Article and the presumption of competence of "certified" forensic experts deny attorneys and judges the opportunity of validating forensic qualifications.

In the case of forensic and medical examinations of alleged torture and ill treatment, forensic and medical experts require specific training on international Istanbul Protocol investigation and documentation standards. Currently, Kyrgyz state and private forensic and other medical and mental health experts are currently in a process of developing essential knowledge and skills. It will likely take several years for these state and private experts to develop a consistent level of quality and accuracy in their examinations that is commensurate with Istanbul Protocol standards. The current lack of competence to effectively document forensic evidence of crimes committed by state officials such as torture and ill treatment further demonstrates why state officials should not have control over private forensic agencies and experts.

In most countries, certification of forensic expertise is conducted by non-governmental, professional organizations, not state agencies, and certification reflects training, not a presumption of competence. Being qualified to conduct forensic examinations, provide forensic reports, and/or forensic testimony in legal proceedings is a judicial determination based on the expertise, knowledge and experience of the expert and applies to state and private forensic experts, specialized experts, and medical experts alike.

2. Failure to ensure the independence of private forensic experts

The Forensic Law not only fails to ensure the application of internationally accepted forensic standards; it contradicts its stated goal of enabling "independent" and "impartial" forensic examinations.

Independent forensic examinations by both state and private forensic and other experts are necessary to ensure the right of due process and protection against crimes perpetrated by state officials such as torture and ill treatment. It is not reasonable to allow state control over state and private forensic

agencies and experts because it undermines the capacity for independent forensic examinations, especially in cases of crimes committed by government officials such as torture and ill treatment.

There is virtually no precedent or justification for the state to have the power to certify, recertify and sanction state and private forensic experts. State certification and recertification requirements and sanctioning powers will enable the exclusion of private forensic experts and undermine the individual's right to independent forensic examinations.

All forensic experts, including specialized experts without formal training or certificates in forensic science or medicine should be qualified on the basis of their specific expertise, knowledge and experience that is duly weighed and accepted in judicial proceedings. The Forensic Law should include clear provisions for specialized experts, including medical experts, to conduct forensic examinations and provide legal reports and court testimony based on their expertise, knowledge and experience, especially in cases of alleged torture and ill treatment. Psychiatrists, clinical psychologists, and other mental health experts are essential to the effective assessment and documentation of torture and ill treatment and must be allowed to conduct forensic assessments in accordance with their qualifications.

3. Arbitrarily Excludes Qualified Private Forensic Experts From Conducting Forensic Examinations:

The Forensic Law also includes provision that would arbitrarily exclude qualified, private forensic experts from conducting forensic examinations based on their expertise, knowledge and experience:

- a. Article 13 requires that forensic agencies employ experts "for whom the agency is the main workplace, and whose qualifications are confirmed by an initial competence certificate issued according to an established procedure."
- b. Article 14 requires that a private forensic expert be an employee of a forensic agency and "one who performs forensic examinations as part of their job description."
- c. Furthermore, Article 13 excludes private forensic agencies from conducting many types of forensic examinations. It is not clear whether forensic evaluations of torture and ill treatment would be performed exclusively by state forensic agencies.
- d. Article 15 states that, "A forensic expert may or may not be a citizen of the Kyrgyz Republic, who has specialized expertise." Citizenship has nothing to do with forensic competence or expertise.

Given the shortage of medical staff in places of detention, medical experts are routinely called upon to evaluate detainees to assess potential evidence of torture and ill treatment. The Forensic Law must contain provisions to enable medical experts to conduct physical and psychological evaluations, and provide expert opinions on relevant evidence in legal proceedings.

4. Failure to ensure protection against torture and ill treatment

The Forensic Law presumes conditions that undermine protection against torture and ill treatment:

- a. Article 24 provides that forensic medical examinations are made on the basis of a Forensic Examination Authorization/Order. Paragraph 1 suggests that an "interested party" may apply to state officials to authorize a forensic examination, but even if this includes the detainee or his/her legal counsel, it does not acknowledge a detainee's independent right to a prompt

evaluation by a qualified, non-governmental forensic medical expert in accordance with Istanbul Protocol Standards.

- b. Article 24 also indicates that the body/individual authorizing the forensic examination will have control over the questions asked of the forensic examiner and control over access to relevant evidence, despite provisions to petition the authorizing body/individual for reconsideration.
- c. Article 28 stipulates that, "Forensic examination may be attended by participants in the legal process who are entitled to attend the examination according to the procedural laws of the Kyrgyz Republic and who have a written permission of the body/individual authorizing the forensic examination." According to the Istanbul Protocol, the presence of third parties during forensic examinations is virtually never justified. We know from our extensive experience that the presence of police, investigators, and prosecutors during forensic evaluations prevents detainees from making any allegations of abuse for fear of reprisals and/or harsh sentencing.

These provisions fail to ensure protection against torture and ill treatment through state control of a detainee's access to non-governmental forensic experts and relevant evidence; it would also permit coercive influences to suppress allegations of torture and ill treatment.

Recommendations

In the Kyrgyz Republic, state and private forensic agencies, including their training programs, should be certified through an international body such as ISO.

1. Given fundamental inconsistencies between the goals of the Forensic Law and its provisions, we urge immediate suspension of its application in the Kyrgyz Republic until such time that it can be revised to ensure the application of international forensic standards, independent, non-governmental forensic evaluations, and protections against torture and ill treatment.
2. Quality assurance of forensic practice and training programs in the Kyrgyz Republic should be based on accreditation of forensic agencies by international bodies such as ISO.
3. All provisions for state control over certification and/or recertification of state and private forensic agencies and forensic experts as well as sanctioning of forensic experts by Expert Qualification Boards should be deleted from the Forensic Law.
4. Competence of forensic and specialized experts should not be presumed on the basis of being recognized as a "forensic expert."
5. The Forensic Law must include specific provisions to recognize the competence of specialized experts, including medical experts, to conduct forensic examinations in accordance with their expertise, knowledge and experience.
6. All forensic experts, including specialized experts without formal forensic training or certificates in forensic science or medicine, should have an opportunity to conduct examinations, write reports and testify in legal proceedings based on their specific expertise, knowledge and experience that is duly weighed and accepted in judicial proceedings.
7. Judges and legal experts should gain the necessary knowledge and skill to qualify forensic and other specialized experts in legal proceedings on the basis of their expertise, knowledge and experience, rather than a particular professional license or certificate. In each legal case, state and private forensic experts and other specialized experts, should be required to demonstrate their qualifications to conduct a forensic examination and subject to judicial approval.
8. Attorneys and judges should have the opportunity to question state and private forensic experts and other specialized experts on their qualifications to conduct forensic examinations.

9. All provisions in the Forensic Law that would arbitrarily exclude qualified, private forensic experts from conducting forensic examinations based on their expertise, knowledge and experience should be deleted.
10. Any provision in the Forensic Law that stipulates that forensic examinations are to be performed exclusively by state forensic agencies should be thoroughly explained and justified or deleted.
11. Given the current lack of capacity for the effective forensic medical investigation and documentation of torture and ill treatment in Kyrgyzstan among state and non-state forensic experts, the Forensic Law should allow qualified international experts to conduct forensic evaluations based on the international expert's qualifications as determined by judges in light of the alleged victim's rights and needs and current national forensic capacities.
12. The Forensic Law should also include provisions for all forensic experts to have unrestricted access to relevant evidence, including crime scenes, material evidence, witnesses, and relevant legal documents, including interrogation logs and medical records, and they must follow chain of custody procedures for material medical evidence.
13. The Forensic Law should be revised to exclude all third parties such as police, investigators, and prosecutors from forensic evaluations as this practice is known to conceal torture practices and maintain impunity for torture.
14. The Forensic Law must recognize that detainees have an independent right to have a prompt evaluation by a qualified, non-governmental forensic medical expert in accordance with Istanbul Protocol Standards.
15. The process of revising the Law of the Kyrgyz Republic on Forensic Examination should include relevant stakeholders including individual, non-governmental forensic experts and international forensic experts. The process should be collaborative, participatory and transparent.

Please note that we have edited the Forensic Law in accordance with these recommendations (see attachment) to facilitate your consideration.