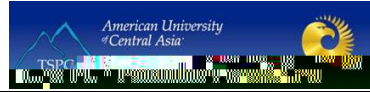




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The department should not exist within the same reporting and oversight structure as the Prosecutor.

*Good Practice*

Some states have created a special department within the Office of the Prosecutor tasked only with investigating these types of special cases. In some instances, they work inside a multi-layered approach, like the one described above, to cooperate on investigat

These guidelines should be developed by a panel of national and international experts and based on international standards and on the recommendations of international and national expertise.<sup>10</sup>

Once developed, the guidelines must be implementable, and thus the body tasked with investigation should be provided with all necessary resources to meet its obligations.

#### *Best-Practice - Complaints / Reporting*

Current Kyrgyz law does specify that a suspect has the right to file complaints about actions of preliminary investigator, actions and decisions of the investigator, prosecutor.<sup>11</sup> These complaints can be filed by a complainant, defense council, legal guardian or designated representative. A decision by a judge as to the lawfulness of the actions must be made within 5 days.<sup>12</sup> However, there are few details about how this right can be not only ensured, but made meaningful. It is further unclear how this right is operationalized as it relates to complaints against arresting authorities while a suspect is in custody.

Kyrgyzstan should create and distribute confidential forms for reporting abuse.<sup>13</sup>

These forms should be given to each detainee upon registration in any type of detention center.

There should be confidential and easily accessible repositories for these forms around all detentions facilities.

The head of each facility and his or her deputy alone should have access to these repositories.

They should be responsible for checking the boxes and reporting to the authority in charge of investigation of Torture and Abuse a daily number of complaints.

Any complaints should be transmitted – confidentially – the day they are submitted.

The head of the facility should also be required to inform the relevant staff within the National Preventive Mechanism (NPM) upon the existence of complaints.

The NPM shall have the authority to follow up on any complaints or require justification for why action was not taken on complaints.

#### *Good Practice*

(This practice is not mutually exclusive of the Best Practice and could be simultaneously implemented)

Kyrgyzstan should institute a system of mandatory reporting among police regarding any observed injury or abuse in detention.<sup>14</sup>

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<sup>10</sup> Georgia did this for the Office of the Prosecutor General. These guidelines Internal Guidelines regarding Preliminary Investigation into allegations of torture, inhuman and degrading treatment. The guidelines adopted recommendations of international experts and organizations as well as declared the fight against human rights violations as one of the main priorities of the Office of Prosecutor General of Georgia. However, they are not available publicly, so civil society has doubts about their effectiveness, UNSRT 2007 226; Jamaica's INDECOM created an action plan which suggests that by the end of a period of years they should be meeting certain timelines for investigation, completion, reporting etc (keeping complainant apprised)

<sup>11</sup> Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings Defending their rights and interests or the rights and interests of people they represent. Article 40(12) Rights and Responsibilities of the Suspect (2008); Kyrgyz Criminal Procedural Code Chapter 6. Participants of Criminal Proceedings defending their rights and interests or the rights and interests of people they represent. Article 56(10) Rights and Responsibilities of a Civil Defendant (2008);

<sup>12</sup> Kyrgyz Criminal Procedural Code, Part V. Motions and Petitions, Section 15 Appeal from Actions and Decisions of State Bodies and Officials

Police should have access to a confidential hot line in order to report such abuse.

*Best Practice - Relationship to Prosecuting Authority*

After thorough and independent investigations have occurred, they will only be useful if evidence of abuse is in fact brought before a judicial authority. As described above, currently, detainees may file claims, but there is no clear mechanism for anyone other than a Prosecutor to supplement evidence of claims of abuse before a tribunal after an investigation. As many of these claims are likely to be raised in the context of abuse in order to illegally obtain evidence for a different proceeding, there is an inherent conflict of interest in this system (as described above).

If Kyrgyzstan creates an independent mechanism for investigations, that body should also be able to request judicial permission to act as a Complimentary Prosecutor on cases where there have been allegations of Torture and Cruel, Inhuman or Degrading Treatment.

Kyrgyzstan should develop procedural rules to facilitate this participation, but at a minimum the CP must be allowed to present evidence of the alleged abuse before the tribunal.<sup>15</sup>



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