



ГОЛОС СВОБОДЫ
ОБЩЕСТВЕННЫЙ ФОНД



TORTURE PREVENTION IN TEMPORARY DETENTION FACILITIES UNDER THE MINISTRY OF INTERNAL AFFAIRS OF THE KYRGYZ REPUBLIC

- MONITORING
- REACTION
- REHABILITATION



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MONITORING. REACTION. REHABILITATION

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This Report is a result of the “Addressing Torture in Kyrgyzstan Through Nationally Owned Human Rights Mechanisms” Project implemented with the support from OSCE.

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This Report is intended for government authorities, nongovernmental organizations, human rights defenders and other persons interested in the issues of respecting human rights and liberties and detention conditions at Temporary Detention Facilities of Internal Affairs Bodies.

The views expressed in this report are strictly those of the author and cannot be taken to reflect the official position of the OSCE.

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ABBREVIATIONS:

- Body of Principles – Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹
- City IAB – City Internal Affairs Body
- District IAB – District Internal Affairs Body
- IAD – Internal Affairs Department
- IADT – Internal Affairs Department in Transport
- ICCPR – International Covenant on Civil and Political Rights²
- Internal Regulations – Internal Regulations of Temporary Detention Facilities of Internal Affairs Bodies of the Kyrgyz Republic³
- KR – Kyrgyz Republic
- KR Code of Criminal Procedure – Code of Criminal Procedure of the Kyrgyz Republic⁴
- KR Criminal Code – Criminal Code of the Kyrgyz Republic⁵
- Law on the Procedure of the Detention – the Law of the Kyrgyz Republic on “Procedure and Conditions of the Detention of Persons Suspected or Accused of Committing Crimes” as of October 31, 2002, No. 150.⁶
- OSCE – Organization for Security and Co-operation in Europe
- PSB – Public Supervisory Board
- Standard Minimum Rules – Standard Minimum Rules for the Treatment of Prisoners⁷
- TDF – Temporary Detention Facility
- UN Basic Principles – UN Basic Principles on the Role of Lawyers⁸
- Universal Declaration – the Universal Declaration of Human Rights

¹ Adopted by the Resolution of the UN General Assembly of December 9, 1988. No. 43/173

² Adopted General Assembly resolution 2200A (XXI) of 16 December 1966

³ Approved by the Resolution of the KR Government as of February 2, 2006 No. 57

⁴ KR Code of Criminal Procedure as of June 30, 1999 No.62. Entry into force June 30, 1999 by law No. 63. As amended by laws as of 22 June 2001 No. 55, 28 June 2001 No. 62, 4 August No. 81, 20 March 2002 No. 41, 16 October 2002 No. 141, 13 March 2003 No. 61, 11 June 2003 No. 98, 5 August 2003 No. 192, 14 November 2003 No.221, 24 March 2004 No. 47, 28 March 2004, No.52, 24 May 2004, No. 68, 8 August 2004 No. 111, 22 July 2005 No.112, 6 February 2006 No.35, 19 July 2006, No.123, 8 August 2006, No.157, 24 November 2006 No. 188, 29 December 2006 No. 232, 9 February 2007 No. 13,13 June 2007 No. 87, 25 June 2007 No. 91, 25 June 2007 No. 93, 14 July 2008 No. 142, 14 July 2008 No.143, 18 June 2008 No. 144, 5 August 2008 No. 193 17 October No. 220, 17 July 2009 No.225, 17 July 2009 No.231, 17 July 2009 No.234, 24 July 2009 No.246, 12 October 2009 No.267, 12 October 2009 No.268, 26 October 2009 No.288, 26 October 2009 No.289, 10 February 2010 No.27, 25 February 2010 No.35, 11 July 2011 No.89, 26 July 2011 No.141, 9 August 2011 No.152, 27 October 2011 No.186, 16 November 2011 No.214).

⁵ KR Criminal Code as of October 1, 1997 No. 68. Entry into force October 1, 1997 by law No. 69. As amended by laws as of September 21,1998, No.124; December 9, 1999, No.141; July 23, 2001, No.77; November 19, 2001, No.92; March 12, 2002, No.36; June 22, 2002, No.109; July 8, 2002, No.115; October 16, 2002, No.141; February 17, 2003, No.36; June 11, 2003, No.98; June 11, 2003, No.99; June 11, 2003, No.100; August 5, 2003, No.192, August 9, 2003, No.193; August 24, 2003, No.199; November 14, 2003, No.221; November 15, 2003, No.223; February 15, 2004, No.13; March 7, 2004, No.17; March 23, 2004, No.46; July 26, 2004, No.99; July 27, 2004, No.101; December 15, 2004, No.191; August 5, 2005, No.12; January 5, 2006, No.1; February 6, 2006, No.35; February 13, 2006, No.56; February 13, 2006, No.57; August 8, 2006, No.156; August 8, 2006, No.158; August 8, 2006, No.159; November 22, 2006, No.182, November 22, 2006, No.183; December 28, 2006, No.211; December 28, 2006, No.216; December 29, 2006, No.230; February 12, 2007, No.16; June 25, 2007, No.91; July 31, 2007, No.129; August 6, 2007, No.131, August 10, 2007, No.150, August 15, 2007, No.152; June 23,2008, No.131; July 7, 2008, No.138; July 18, 2008, No.151; August 5, 2008, No.199; October 17, 2008, No.223; October 17, 2008, No.231; December 29, 2008, No.274; December 29, 2008, No.275; January 19, 2009, No.8; February 20, 2009, No.58; February 20, 2009, No.60; March 17, 2009, No.83; May 8, 2009, No.150; July 17, 2009, No.230; July 17, 2009, No.234; July 24, 2009, No.246; October 13, 2009, No.271; November 20, 2009, No.301; December 17, 2009, No.309; February 10, 2010, No.27; July 11, 2011, No.89; July 26, 2011, No.141; July 26, 2011, No.143; October 18, 2011, No.177; October 27, 2011, No.185; November 1, 2011, No.195, November 10, 2011, No.204).

⁶ As amended June 11, 2003 by law No. 100; August 13, 2004 by law No. 124; August 19, 2004 by law No. 158; June 25, 2007 by law No. 91; September 17, 2010 by the Decree of the KR Interim Government BII No. 128; July 14, 2011 by law No. 99; October 19, 2011 by law No. 180

⁷ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders of August 30, 1955

⁸ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

1. INTRODUCTION

Public access to KR detention facilities entirely hinges on the discretion of the facility's administration, which has the right to permit or deny this access in accordance with legislation. This is why many NGOs visit detention facilities only once or occasionally, and unfortunately systematic monitoring covers institutions only in some regions. To a certain extent, this accounts for why detention facilities have not been investigated enough presently in terms of respecting human rights and liberties, including the right to freedom from torture and ill-treatment.

Nonetheless, in view of violations detected and documented by nongovernmental organizations in the course of monitoring of some detention facilities, it may be concluded that the human rights situation at the country's closed institutions remains critical.

The need for large-scale research, including monitoring of temporary detention facilities (TDF) of internal affairs bodies (IAB) across the country, derives from the lack of summarised documented data on the human rights situation at each of these institutions given that the control over respect for human rights and liberties is ineffective today.

This Report represents a summary of the findings from the monitoring of KR IAB TDFs conducted between 1 July and 30 November 2011 as part of the Addressing Torture in Kyrgyzstan Through Nationally Owned Human Rights Mechanisms Project, with financial support from the OSCE Centre in Bishkek and OSCE field office in Osh, and with the proactive assistance from the Ombudsman of the Kyrgyz Republic with his Office.

The Report is intended for government authorities and nongovernmental organizations, human rights defenders and other persons interested in the issues of observing human rights and liberties, and conditions at the country's closed facilities in general, and IAB TDFs in particular. The Report formulates findings and recommendations on improving the procedure and conditions of the detention of persons suspected or accused of committing a crime and subjected to administrative arrest, as well as on performing the country's obligations under the international human rights treaties.

The first part of the Report lists recommendations for the Parliament, the Government and other relevant instruments. These recommendations were deduced from the summarised data obtained in the course of project implementation.

Description of the project methodology, including general information on project goals, objectives, key components, and main activities undertaken as part of the project, is provided in the second part of the Report.

The third part of the Report contains descriptions of findings from the monitoring of IAB TDFs including general statistics, both in the form of tables and diagrams, as well as the state of law enforcement's practice regarding individual rules for the treatment of prisoners. Additional clarification, references to in-country legislation, and brief conclusions related to the analysis of the statistics are provided above and/or below the tables and diagrams. This part of the Report is also supplemented with examples borrowed from the observers' reports.

Descriptions of the project team's activity on documenting cases of torture and ill-treatment detected in the course of monitoring, as well as descriptions of responses using national and international protection mechanisms is provided in the fourth part of this Report.

The final part of the Report contains general information on the rehabilitation of torture and ill-treatment victims undertaken under the project.

The Annexes to the Report contain additional documents related to the project.

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- OSCE Centre in Bishkek and OSCE field office in Osh, for their financial support and assistance in conducting the research and publishing this Report.
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- KR Ombudsman Tursunbek Akun and his office for their assistance in ensuring access for the monitoring teams to KR IAB TDFs and active involvement in conducting the research.
- Arman Danielyan, President of the Civil Society Institute (Yerevan, Armenia) and member of the Subcommittee on Prevention of Torture under the UN Committee Against Torture, for his expert support in training the observers and developing unified tools for monitoring of IAB TDFs.

The project team highly appreciates the assistance of the management and staff of IAB and the monitored IAB TDFs of the Kyrgyz Republic, as well as persons in custody interviewed, in conducting the research.

2. FINDINGS AND RECOMMENDATIONS

Recommendations developed based on the monitoring of IAB TDFs are aimed at assisting in improving the procedure and conditions of the detention of persons at KR IAB TDFs in line with the Standard Minimum Rules for the Treatment of Prisoners, and improving the human rights situation at these facilities.

All of these recommendations are derived from international standards which establish an absolute prohibition against torture, the requirement for effective investigation against every complaint about torture and inevitability of punishment for torture, specific recommendations of international human rights agencies, in particular the UN Committee Against Torture, as well as the latest recommendations on combating torture that Kyrgyzstan received in June 2010 as part of the Universal Periodic Review.

Jogorku Kenesh of the Kyrgyz Republic

Finding: The KR in-country legislation stipulating criminal prosecution for torture does not fully comply with the international standards in the area of effective criminalisation of torture.

Recommendations:

3. To amend Art. 305-1 (Torture) of the KR Criminal Code to ensure that torture is criminalised as specified by the UN Convention Against Torture and that the conventional concept of torture is implemented fully and correctly. To ensure that the list of optional characteristics of the mental element of torture is expanded as specified by the UN Convention Against Torture (intent and motive), and to make sanctions for torture more rigorous which will help classify torture as a serious and an especially serious offense.
4. To amend torture related Articles (Art. 304 “Abuse of Office”, Art. 305 “Exceeding Official Authority”, Art. 316 “Negligence”, Art. 325 “Compulsion of Evidence”, Art. 332 “Bribery or Compulsion of Evidence or Evasion or Mistranslation”) to avoid duplication of the Articles establishing liability for torture.
5. To amend Art. 4 of KR Law on “General Principles of Amnesty and Pardon” to state that prisoners convicted of a crime stipulated by Art. 305-1 of the KR Criminal Code cannot be included in amnesty. By doing this, Kyrgyzstan will implement a recommendation of the UN Committee Against Torture as of 18 November 1999 whereby the country has to ensure that amnesty laws do not apply to torture-related crimes.

Finding: Torture against persons suspected or accused of committing a crime is mainly used to procure confessionary statements. Amendments to the procedural law are needed to establish extra guarantees of the prevention of torture and ill-treatment.

Recommendations:

1. To amend the KR Code of Criminal Procedure to give priority to evidence produced during court hearings in order to prevent cases of “beating out” confessionary statements by law enforcement at the investigation stage. To introduce a provision in Art. 81 of the KR Code of Criminal Procedure (Evidence) that stipulates that any evidence given by a person suspected or accused of a felony at the pre-trial procedure stage but not confirmed by him/her in court shall be deemed inadequate evidence. Assurance of proper compliance with this provision will make it futile to torture people with the purpose of obtaining confessionary statements as they will no longer be conclusive indicators of guilt in court. To amend the KR Code of Criminal Procedure and the Law on “Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime” to include a provision establishing the right of suspects to one free telephone conversation with any family member, relative, or any other person the suspect chooses, to both inform them of the arrest and the detention facility’s location.
2. To amend Art. 17 of the KR Law on “Procedure of the Detention of Persons Suspected or Accused of a Crime in Custody” and remove the provision whereby “a defender is allowed to communicate with the accused only upon providing a confirmation in writing of the defender’s involvement in the criminal

case. Such a confirmation shall be issued by an investigator, a prosecutor, or a court carrying out the criminal proceedings,” as it violates the principle of equality of parties in the process and the right to defence.

3. To remove from Art. 325 of the KR Code of Criminal Procedure (Release from Custody) a provision whereby in case a defendant is acquitted or in case a judgement of conviction is delivered without sentencing or with pardon or with probation or with noncustodial sentencing or with termination of a criminal case at the stage of criminal proceedings, the defendant in custody shall be released only upon entry of judgement into effect.
4. To supplement the Law on “Procedure of the Detention of Persons Suspected or Accused of a Crime in Custody” to totally prohibit:
 - a) censorship of the suspects’ correspondence which is intended for a defender, KR Jogorku Kenesh members, the KR Ombudsman, or international human rights agencies;
 - b) the detention of minors with “positively characterised” adults in the same temporary detention cell.

Finding: As per the KR Code of Criminal Procedure, investigative work done by interrogation agencies and aimed at the suppression of crime and detection of perpetrators (solving a crime) is part of criminal proceedings, though stand-alone, and shall be regulated by the KR Code of Criminal Procedure as per Art. 1 of this Code. There is no provision in the KR Code of Criminal Procedure that would regulate the investigative work procedures, determine the status of persons involved in the proceedings, or, most importantly, provide for their rights and obligations. It is widely thought that these aspects are regulated by the Law “On Investigative Work”, but this is not the case. It is not uncommon that a detective officer would prevent an attorney from communicating with a person whose complicity to a crime is suspected by arguing that this person has not been arrested but rather invited to talk, and that the Law on “Investigative Work” does not provide for the participation of an attorney in interrogation. Since this Law lacks a clearly articulated provision, this provision should be stipulated in the KR Code of Criminal Procedure as required by Art. 1 of the Code.

Recommendations:

1. To amend the KR Code of Criminal Procedure to include additional provisions regulating the investigative work aimed at suppressing crime and detecting perpetrators, determining the status of persons involved in the proceedings as well as their rights and obligations.

Finding: There is lack of compliance with provisions of the KR Constitution whereby all international treaties to which the Kyrgyz Republic is a party, that have entered into effect in accordance with the procedure established by law, as well as generally accepted principles and provisions of international law, shall be part of the legal framework of the Kyrgyz Republic, and international human rights treaties shall have direct application, and shall prevail over provisions of other international treaties.

Recommendations:

1. To ensure ongoing parliamentary oversight of performance by the Kyrgyz Republic of its obligations under international human rights treaties and timely submission of periodic reports on the performance of these obligations.
2. To assist in the establishment and effective functioning of the National Preventive Mechanism – a new approach to the prevention of torture under the Optional Protocol to the UN Convention against torture.
3. To make a statement recognising the authority of the UN Committee Against Torture in considering messages from individuals respecting infringements of the right to freedom from torture in accordance with Art. 22 of the UN Convention Against Torture.
4. To assist in developing an effective mechanism for the Kyrgyz Republic to enforce decisions of international human rights agencies establishing facts of violation of human rights or liberties.

Based on the aforesaid findings, the observers developed recommendations for the Government, the General Prosecutor’s Office, the Supreme Court, the Interior Ministry, and the administrations of KR IAB TDFs.

Government of the Kyrgyz Republic

Recommendations:

1. To conduct regular monitoring of the respect for human and civil rights and liberties, including at detention facilities.
2. To ensure that quality, periodic reports are submitted in a timely manner to international human rights agencies concerning the KR's fulfilment of its obligations under international human rights treaties, and to ensure that follow-up steps are taken to enforce their recommendations.
3. To develop a strategy for the prevention of torture and ill-treatment at detention facilities and improvement of detention conditions, to ensure that its implementation is coordinated and tracked, and to be directly involved in its implementation.
4. To develop and undertake awareness-raising and educational activities aimed at eliminating the causes and conditions which contribute to torture and ill-treatment, raising public awareness of human rights laws, and human rights defence mechanisms.
5. To facilitate public intolerance of torture and ill-treatment, emphasising the importance of combating these crimes, and the development of international cooperation in the area of combating torture and ill-treatment.
6. To ensure people's awareness is broadly raised on their rights and liberties, to arrange regular trainings with experts for the employees of government agencies in the area of human and civil rights and liberties.
7. To develop and adopt a Regulation on IAB TDFs and other agencies that will clearly articulate the function of TDFs associated with ensuring decent, humane, and safe detention in full compliance with international standards and KR laws.
8. To assure adequate funding for ensuring decent detention conditions as a matter of urgency.
9. To make an inventory and revision of the whole regulatory framework of the Government, ministries, and agencies to lift "secrecy" labels from all documents related to rights and freedoms of TDF detainees, conditions of their detention, rules for conduct in TDFs, sanctions for disciplinary infractions, and the procedure for processing complaints.
10. To initiate introduction of an independent medical examination institution and, thus, to facilitate the de-monopolisation of state forensic medical examination.

General Prosecutor's Office of the Kyrgyz Republic

Recommendations:

1. To ensure that the Instruction of the KR General Prosecutor as of 12 April 2011, #40 "On Strengthening the Prosecutor's Supervision over the Assurance of a Constitutional Guarantee of Prohibition Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" is strictly complied with.
2. To introduce specialisation for prosecutors in carrying out investigations against complaints about officials' practicing torture.
3. To exclude any conflicts of interest when performing the main duties associated with criminal prosecution (investigation), oversight of lawfulness, and public prosecution in court.
4. To ensure an effective mechanism of receiving and processing complaints from detainees, providing full adherence to the principle of confidentiality.
5. To carry out thorough investigations of each case of ill-treatment or torture, and differentiate cases of this category from others.

Supreme Court of the Kyrgyz Republic

Recommendations:

1. To study and summarise court rulings on cases of torture and ill-treatment. To initiate a resolution by the Plenum of the Supreme Court to ensure that every communication about torture is subject to comprehensive, full, and impartial judicial scrutiny which is then followed by a lawful and substantiated judgement to ensure that punishment for torture, in any form and any manifestation, is unavoidable.

Ministry of Interior of the Kyrgyz Republic

Recommendations:

1. To ensure that IAB strictly comply with KR laws and other regulatory acts establishing guarantees for respecting the human rights and liberties of persons detained at KR IAB TDFs, that all cases of violation are thoroughly investigated, and punishment is inevitable regardless of one's position or merits.
2. To identify new criteria for the assessment of the performance of IABs as part of the reform of law enforcement agencies already under way; to remove the solving of crimes from the list of criteria for IAB's performance assessment.
3. To organise regular training with experts involved for IAB's staff in the area of human and civil rights and liberties.
4. To find funds for decent three daily meals for the detainees and to ensure they constantly have access to drinking water.
5. To find funds for the creation of investigation rooms, rooms for communication, rooms for heating food, rooms for storing bedding and personal belongings of the detainees, rooms for medical examination, rooms for TDF staff, and sanitary inspection rooms with disinfectors at temporary detention facilities.
6. To assure that IAB TDF members of staff can work in the environment encouraging effective performance of their duties, taking into account exceptionally hard working conditions; to timely address the issue of payment of relevant benefits.
7. To create adequate conditions for health workers (physician, medical assistant) in TDFs reporting to the KR Ministry of Health.
8. To ensure that the detainees have access to medical service any time of the day. To find funds to regularly replenish respective healthcare products and medicines.
9. To develop and enforce jointly with KR Ministry of Health a Unified Medical Examination Form to record the state of health and bodily injuries detainees have when placed in TDFs and when taken back after being taken out of a TDF for conducting investigations.
10. To equip each TDF with video surveillance to prevent torture and ill-treatment of detainees and to ensure safety of facilities' personnel.
11. To revamp and improve on an ongoing basis the system of IAB's legal education, particularly members of investigative services and investigation departments and units which are responsible for ensuring the conditions at TDFs. Special emphasis must be placed on their moral characteristics and professional qualifications.
12. To assure effective functioning of a Psychological Service of the Interior Ministry, including in its regional offices.

Administrations of temporary detention facilities of the Kyrgyz Republic

Recommendations:

1. When placing a person in a TDF, this person shall be notified in writing about his/her rights, the code of conduct at the TDF, the nature of actions representing disciplinary infractions, disciplinary sanctions, procedures for appealing those sanctions, and procedures for filing complaints about all other issues.
2. To place information stands (posters) on detainees' rights and detention rules in Kyrgyz and Russian (and other languages, whenever possible) in each cell.
3. To develop a system of measures to deal with the overcrowding of cells, and ensure compliance with the national standard stipulated by law which is 3.25 square meters per person.
4. To thoroughly fill in all TDF documentation, particularly registration books for complaints from detainees about the state of health and bodily injuries, and the medical examination of persons newly detained and those taken back to a TDF after being taken out for conducting investigations.
5. To take regular sanitary & epidemiological measures: implement disinfection, remove insects, and expel rats from TDF premises.
6. To replace closely spaced metal bars on cell windows with grates allowing daylight and fresh air to enter the cells.

7. To provide each detainee with bedding.
8. To provide the detainees with three daily, quality hot meals.
9. To ensure that the detainees have access to medical services.
10. To ensure that all detainees take at least a one-hour walk each day. To equip the walking yard with rain- and snow-proof covers, benches, and sports facilities.
11. To fully stock the library.
12. To provide each detainee with an opportunity to contact with the outside world and ensure adequate conditions for communications.
13. Until the practice of putting minors to TDFs is eliminated altogether, to ensure that minors are detained separately from adults.
14. To provide each detainee with items for personal hygiene.

3. PROJECT METHODOLOGY

The “Addressing Torture in Kyrgyzstan Through Nationally Owned Human Rights Mechanisms Project” was implemented between 1 July and 30 November 2011.

The main project goal was to assist in preventing torture at detention facilities including KR IAB TDFs using the existing human rights defence mechanisms.

Project objectives:

- The training of attorneys, NGO lawyers, and human rights defenders on the areas of international standards, methods of monitoring IAB TDFs, and reporting;
- The impartial monitoring of IAB TDFs by representatives of civil society and the KR Ombudsman’s Office, with detailed records of these bodies’ compliance with national legal provisions and international rules for the treatment of prisoners, and the effective documentation of cases of violation of human rights and liberties, if any;
- The collection of reliable information about compliance with international rules for the treatment of prisoners in practice by IAB TDFs;
- Responding to torture and ill-treatment cases revealed in the course of the monitoring;
- Rendering legal, medical, and psychological aid to survivors of torture and ill-treatment;
- The analysis and processing of monitoring findings to develop recommendations;
- The presentation of monitoring findings to all interested government authorities, and follow-up discussion of those to improve the detention system, including detention at KR IAB TDFs;
- Raising awareness of the general public, international human rights agencies, and organizations of the current situation of the right to freedom from torture and detention conditions;
- The identification of provisions in the effective material and KR procedural law that contribute to violations of the right to freedom from torture and ill-treatment, impede effective inspection and investigation of the violations and punishment of perpetrators; the development of respective recommendations;
- The facilitation of the implementation of recommendations developed based on the monitoring in practice.

In the course of the monitoring, high emphasis was placed on compliance with the following international rules for the treatment with prisoners:

- The rights to information;
- The right to make complaints;
- The right to contact with the outside world;
- The right to decent detention conditions and humane treatment;
- The right to medical services;
- The right to defence;
- The right to freedom from torture and ill-treatment.

The subject of research also included the issues of legality of detention and effectiveness of oversight and control over places of detention.

The monitoring had a separate focus on examination of working conditions for personnel of IAB TDFs. The examination results are contained in a separate chapter of this Report.

Monitoring Object

The monitoring covered KR IAB TDFs.

All 47 IAB TDFs in all seven Oblasts of the country were covered by the monitoring.

Observers

Thirty-six people, having professional experience in Jurisprudence, Law, Medicine, Psychology, and Human Rights, were selected as observers.

The monitoring team included representatives of the KR Ombudsman's Office and KR nongovernmental organizations.

All observers took a special training in the area of human rights standards and principles of monitoring closed institutions.

Memorandum of Cooperation

To facilitate effective project implementation, a Memorandum of Cooperation was signed by and between the KR Ombudsman, the OSCE Centre in Bishkek, and Kylym Shamy Public Foundation⁹ on 7 June 2011. The Memorandum will stay in effect till the end of 2011, with a possibility of extension for 2012.

This Memorandum is aimed at strengthening the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment by joint visits to places of detention all over the country without advance notice.

The Memorandum of Cooperation is open for signature. At the time this Report was being prepared, seven other nongovernmental organizations with vast experience in monitoring closed institutions joined the Memorandum:

- Golos Svobody Public Foundation (Bishkek),
- Spravedlivost Oblast human rights organization (Jalal-Abad),
- Luch Solomona Public Foundation (Osh),
- Independent Human Rights Group Public Foundation (Bishkek),
- Soyuz Edinenia Public Association (Talas),
- Ventus Public Association (Karakol),
- Voice of Freedom Public Foundation (Bishkek).

In accordance with the Memorandum, the Ombudsman's Office is to establish and maintain cooperation with nongovernmental organizations functioning in the Kyrgyz Republic in the area of human rights and liberties, and to actively participate in initiatives of local and regional human rights organizations aimed at strengthening the capacity of the Ombudsman's Office.

The Memorandum addresses the issues of visiting temporary detention facilities, temporary detention cells, IAB reception centres, disciplinary cells and disciplinary military units of KR Ministry of Defense, offices of Border Guard Services and military units under KR Interior Ministry, KR Ministry of Defense, KR State National Security Committee, KR Ministry of Emergency Situations, and any other facilities controlled by the law enforcement agencies, as well as psycho-neurological institutions and specialised hospitals for the requisite treatment of mentally handicapped people.

Project Components and Their Implementation

In pursuance of project goals and objectives, a methodology and work plan for the following three key areas were developed:

1. Monitoring of IAB TDFs,
2. Responding to statements about torture and cruel treatment,
3. The rehabilitation of the survivors of torture and ill-treatment.

The implementation plan for the **first project component** covered the following activities:

- a. Training of monitoring teams' members in the theory and practice of monitoring human rights at closed institutions, as well as the principles for conduct of a monitoring observer.

To facilitate adherence to the principles of nonpartisanship, impartiality, and confidentiality while carrying out the research, project experts have developed the Instruction Booklet for Observers to Monitor TDFs of Internal Affairs Bodies in the Kyrgyz Republic.

⁹ See annex to the report. Text of Memorandum.

b. Development of Uniform Information Collection Tools.

To systemise and conform the various methods and current tools for the monitoring of detention facilities by a number of national human rights organizations, it was decided to develop uniform tools to be possibly broadly used both by government authorities in their work and for public scrutiny.

Two working meetings with the monitoring observers to develop these tools took place. The first one was held on 8 and 9 July 2011 in which questionnaires were prepared for various categories of respondents, and monitoring sheets for TDFs' premises and territories. The second meeting held on 18 and 19 August 2011 resulted in the finalisation of tools taking into account the experience of pilot visits and the findings at the first stage of monitoring.

c. Collection, analysis and summarisation of the monitoring findings. Development of recommendations on improving the human rights situation at TDFs.

Semi-structured interviews with staff of IAB, TDF administration and personnel, detainees, and attorneys served as the major information collection method in the course of the monitoring. A random sampling technique was used along with strict adherence to the principle of a person's voluntary consent to research. In some cases, the researchers managed to interview all detainees held at TDFs at the time of the visits.

To obtain additional information, photographing was employed.

Unfortunately, it appeared to be impossible to ensure confidentiality during all interviews with the detainees. For instance, the observers asked law enforcement agencies to be granted an opportunity to hold private conversations. However, the law enforcement members would be rather close to the observers and the interviewees. This naturally affected the impartiality of the answers and the quality of interviews.

The monitoring also covered analysis of international documents and in-country legislation as well as regulations, instructions, and other internal regulatory acts of the institutions. The analysis results are set out in respective chapters of this Report.

It must be noted that the KR Ombudsman rendered considerable assistance in implementing this project component. He issued letters of authorisation to members of the monitoring teams that enabled them to visit detention facilities, pre-trial detention facilities, prisons, compulsory treatment hospitals, correctional education institutions, and mental hospitals at any time, as well as to hold conversations with the detainees/patients in private, get information about detention conditions, and check documents confirming that these persons were lawfully detained in the above mentioned facilities. This was of great help in terms of assuring access of the observers to the TDFs.

The following was accomplished as part of **the second project component** on responding to communications about torture and cruel treatment:

- Detection and effective documenting of cases of torture and ill-treatment;
- Rendering of legal aid and advice to victims of torture and ill-treatment, including providing an attorney and representations of interests in national courts;
- Addressing international agencies for protection of torture victims.

The **third project component** on rehabilitation of survivors of torture and ill-treatment included rendering medical and psychological aid to torture victims by Rehabilitation Center for Torture Victims specialists.

In the course of the project, great attention was paid to raising awareness of detainees and the general public in the area of protection against torture and ill-treatment. For these purposes, an Information Sheet was developed which contained contact information of the KR Ombudsman's Office and its regional representative offices as well as nongovernmental organizations that joined the Memorandum of Cooperation, where any person who has become a victim of torture or ill-treatment or anyone on behalf of that person who became aware of any case of physical force, torture, beatings, or any other form of pressure (threatening, intimidation, or insult) can receive assistance. The Information Sheets were disseminated among detainees.

Since a great volume of materials were studied in the course of the research, which covered all regions of the country, it can be declared that the findings of the research conducted is reliable and in full compliance with generally accepted international monitoring standards.

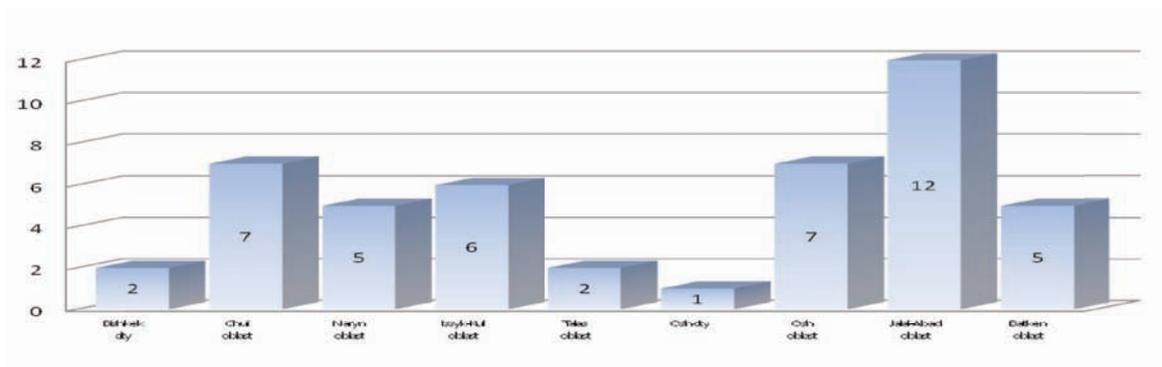
4. GENERAL INFORMATION AND MAIN STATISTICAL DATA

IAB TDFs are police units that are meant for detaining persons arrested on suspicion of committing crimes.

TDFs may also be used for the detention of persons accused of crimes, persons held in pre-trial detention facilities, or those moved to TDFs when necessary for: investigations; trial outside residential areas where pre-trial detention facilities are located from which it is not possible to bring these persons on a daily basis; and for the period needed for the aforesaid activities and a judicial process, but for no longer than ten days a month.

There are 47 IAB TDFs currently functioning in the Kyrgyz Republic.

Diagram 1.
Quantitative ratio of TDFs across KR regions.



The monitoring covered 47 TDFs all over the country.

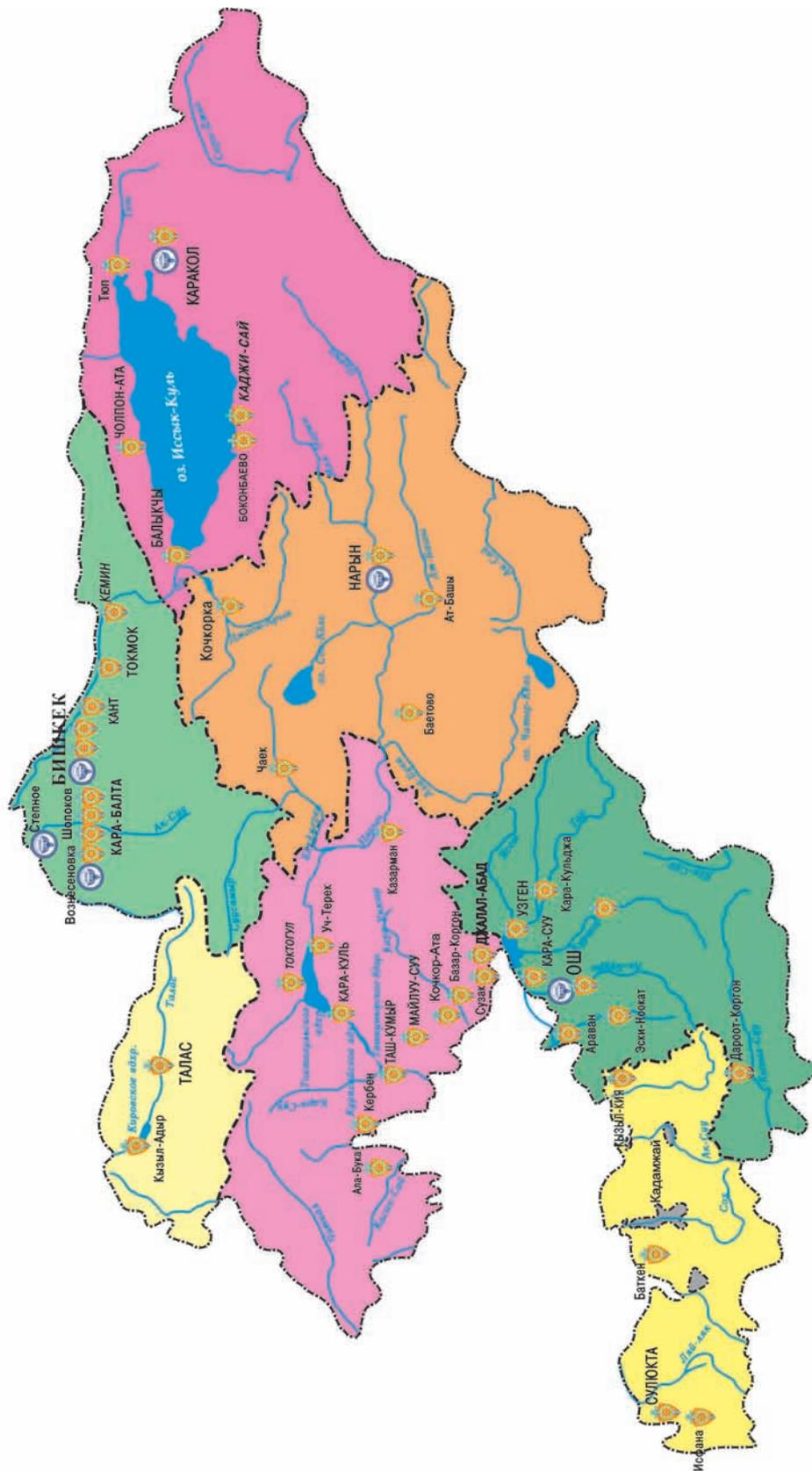


Table 1.**List of TDFs covered by the monitoring.****Bishkek city:**

1. Bishkek city IAD TDF
2. IADT TDF

Chui Oblast:

3. Tokmok IAB TDF
4. Sokuluk District IAB TDF
5. Djail District IAB TDF
6. Moscow District IAB TDF
7. Panfilov District IAB TDF
8. Issyk-Ata District IAB TDF
9. Kemin District IAB TDF

Issyk-Kul Oblast:

10. Balykchy IAB TDF
11. Karakol IAB TDF
12. Jetti-Oguz District IAB TDF
13. Tyup District IAB TDF
14. Issyk-Kul District IAB TDF
15. Ton District IAB TDF

Talas Oblast:

16. Talas Oblast IAD TDF
17. Karabuura District IAB TDF

Naryn Oblast:

18. Naryn IAB TDF
19. At-Bashy District IAB TDF
20. Kochkor District IAB TDF
21. Ak-Tal District IAB TDF
22. Jungal District IAB TDF

Jalal-Abad Oblast:

23. Jalal-Abad IAB TDF
24. Suzak District IAB TDF
25. Bazar-Korgon District IAB TDF
26. Ala-Buka District IAB TDF
27. Tash-Kumyr District IAB TDF
28. Mailuu-Suu IAB TDF
29. Kara-Kul IAB TDF
30. Nooken District IAB TDF
31. Toktogul District IAB TDF
32. Toguz-Toruz District IAB TDF
33. Aksy District IAB TDF
34. Chatkal District IAB TDF

Osh city:

35. Osh city IAB TDF

Osh Oblast:

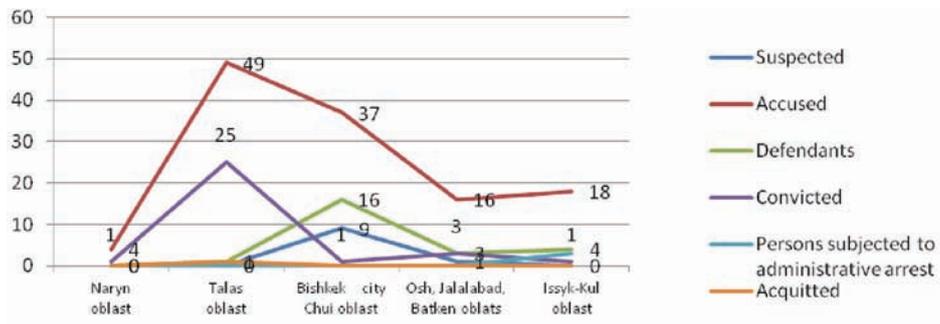
36. Kara-Kuldja District IAB TDF
37. Uzgen District IAB TDF
38. Alai District IAB TDF
39. Aravan District IAB TDF
40. Karasu District IAB TDF
41. Nookat District IAB TDF
42. Chon-Alai District IAB TDF

Batken Oblast:

43. Kyzyl-Kiya IAB TDF
44. Kadamzhai District IAB TDF
45. Batken District IAB TDF
46. Leilek District IAB TDF
47. Sulyukta IAB TDF

As part of the monitoring, 193 persons held in TDFs at the time of the visits were interviewed. A random sampling technique was used along with strict adherence to the principle of a person's voluntary consent to an interview. The respondents included suspected, accused, convicted and acquitted persons, defendants, and persons subjected to administrative arrest.

Diagram 2.
The ratio of respondents based on their procedural status (by regions)



The respondents included 19 women and 174 men.

Nine interviews were conducted with under-age suspected and accused persons.

Diagram 3.
The ratio of the number of respondents held in TDFs (by gender)

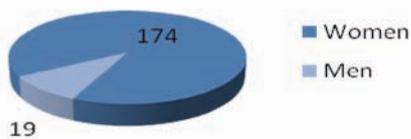
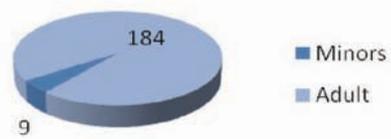


Diagram 4.
The ratio of the number of respondents held in TDFs (by age)



5. PROJECT OUTCOMES

5.1. FINDINGS FROM TDFs MONITORING REGARDING THE RESPECT FOR HUMAN RIGHTS

According to different international human rights agencies, treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. In particular, the UN Human Rights Committee has resolved that the exercise of the right to humane treatment, “as a minimum, cannot be dependent on the material resources available in the State party”¹⁰, and emphasized the importance of complying with provisions of so-called international “soft law” documents adopted by the UN that set out standards for humane treatment of prisoners such as:

- Standard Minimum Rules for the Treatment of Prisoners¹¹;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Regulations for Law Enforcement Officials;
- Principles of medical ethics related to the role of medical workers, doctors in particular, in protecting prisoners or detainees from torture and other cruel, inhuman or degrading treatment or punishment.

Any restrictions of detainees’ rights must be lawful and necessary, i.e., only those rights are allowed to be restricted that a detainee may use to escape, commit new crimes, or create obstacles for the ascertainment of the truth. In this context, it may be necessary to restrict the suspect’s freedom of movement and control his/her communications with the outside world or other detainees. No restriction may be imposed on the rest of the rights and liberties (except for grounds common for all citizens), and assuring of those rests with the state.

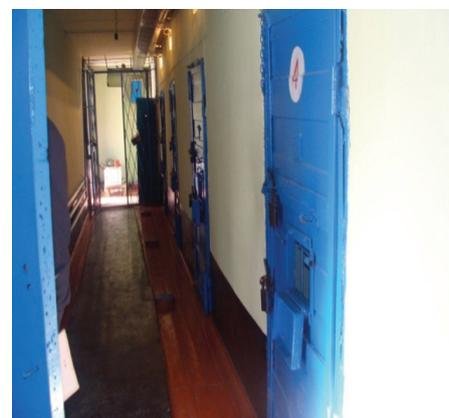
The monitoring findings provided herein demonstrate to what extent the standards for ensuring the rights of communicating with the outside world, the right to decent detention conditions and humane treatment, the right to freedom from torture, and the right to defense are adhered to. Analysis findings related to the issues of legality of detention and effectiveness of control and oversight by relevant bodies, and working environment for TDF personnel are provided in separate sections.

Access for Observers to TDFs

In the course of the monitoring, there were four cases in which the observers including members of the Public Supervisory Board under the KR Interior Ministry and members of the KR Ombudsman’s Office were denied access to TDFs for various reasons.

For instance, on July 29, 2011, Deputy Head of Balykchy IAB, citing the lack of coordination with the management of the Issyk-Kul Oblast IAD, denied access to the Balykchy IAB TDF, even though the observers had an official letter from the Authorized Representative of the Ombudsman for Issyk-Kul Oblast containing a request for assistance in conducting joint monitoring as per the Memorandum of Cooperation. Furthermore, access was denied in spite of the fact that the monitoring team had an Ombudsman’s Office representative as its member.

On August 10, 2011, two monitoring team members, a member of the Public Supervisory Board under the KR Interior Ministry and an attorney of a detainee N., intended to visit a Moscow District IAB TDF where during their first visit they had detected this detainee with signs of torture on his body. However, head of the TDF and the district IAB officer-on-duty denied access to the monitoring team members.



Corridor of TDF.

¹⁰ UN Human Rights Committee. General Comment No. 21.

¹¹ The Standard Minimum Rules for the Treatment of Prisoners are applicable to all categories of persons deprived of their liberty, including prisoners, persons under investigation, and persons arrested or imprisoned without charge. See Preliminary Observations and Part II (E) of the Rules.

In the course of the monitoring, the observers had trouble accessing the Kyzyl-Kiya IAB TDF, the administration of which denied access to the facility explaining that they had not received any instruction from the Batken Oblast IAD. Following the telephone conversation with the Head of the Batken Oblast IAD, a head of the monitoring team and a doctor were granted access unlike the rest of the monitoring team.

When visiting a Karakol IAB TDF on October 21, 2011, only one member of a three-member monitoring team was allowed into the facility just because he was a member of the PSB under the KR Interior Ministry.

Even after the KR Ombudsman issued letters of authority for the monitoring teams guaranteeing an unimpeded access to IAB TDFs and other closed institutions, several cases were registered in which access would be denied.

For instance, on November 11, 2011, the head of the Karakol IAB denied access to the Karakol IAB TDF for the monitoring team.

On November 14 and 18, 2011, the observers were denied access to the Jeti-Oguz District IAB TDF. The head of the institution explained that this was “an order from high authorities”.

It must be noted that personnel of some TDFs created every obstacle for the monitoring.

For instance, during interviews with TDF detainees as part of the monitoring of the Djail District IAB TDF, the observers asked the TDF personnel to leave the cell to ensure confidentiality. However, one of TDF employees stopped the conversation, gathered all the observers, and stated very emotionally that he was concerned about their behavior since this put their security in jeopardy. The observers were able to resume the monitoring only by way of talking to the detainees through the cell door and in the presence of the TDF personnel.

There was another case in which a head of one of district IABs was near the observers all the time listening to their conversation with the detainees, interrupting them from time to time and making inappropriate comments. When the observer gave a detainee an Information Sheet listing telephones of organizations where he may receive assistance in case he is tortured, the head of the district IAB said that the observer “tempts the accused to breach internal TDF detention regulations since no telephone conversations are allowed.”¹²

At the same time, it must be emphasized that there were cases in which IAB TDF personnel assisted the observers creating all necessary conditions for the research. We would like to express our special gratitude to the administration and members of staff of TDFs of Talas Oblast IAD, Kara-Buura District IAB, Panfilov District IAB, IADT and others.

The observers were concerned about the head of the Tokmok IAB TDF demonstrating absolute indifference to very poor detention conditions. He was also very rude to the observers.

In all fairness it has to be noted that this was just once in the course of the monitoring that the observers witnessed such indifference to TDF detainees’ needs and working environment of the personnel. According to the observers, most of heads of IABs and TDFs appeared to be concerned about the detention conditions and used their best efforts to improve the situation, for example by asking local councils (keneshs) and international organizations to help.

For example, head of Issyk-Ata District IAB has asked local authorities to allocate funds for repairing the TDF thrice. After the third request, 130,000 Soms were allocated from the local budget. This amount was spent on purchasing mattresses for the detainees and the repair of TDF premises that is now under way. At the initiative of the head of the Panfilov IAB TDF, the local akimiat allocated funds for cosmetic repairs that resulted in installing a shower room and a lavatory in the institution.

While encouraging such initiatives of the TFD administration, it must be stressed that seeking funds for improving detention conditions at TDFs from local authorities and international organizations must not become a common practice. It must be ensured that funds for maintaining decent detention conditions at TDFs are allocated from the state budget in pursuance of the country’s positive human rights obligations.

¹² Monitoring Report No. 6/5-7/H.

5.1.1. COMMUNICATIONS RIGHTS

A. RIGHT TO INFORMATION

International Standard

According to the Standard Minimum Rules, prisoners shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution. It also stipulated that if a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.¹³

According to the Body of Principles, any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.¹⁴ Every detainee is entitled to receive information on his rights and on how to avail himself of such rights in a language which he understands.¹⁵

As per UN Basic Principles on the Role of Lawyers, Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.¹⁶

In-country Legislation

The law on the Procedure of the Detention provides for the right of suspected and accused persons to make themselves aware of the content of the Internal Regulations as well as their rights and obligations, the regulations governing the treatment of prisoners, and the disciplinary requirements of the institution.¹⁷

The Internal Regulations oblige a TDF officer-on-duty to convey the TDF Internal Regulations to the detainee after bodily search, examination, medical certification and decontamination.¹⁸

Suspected and accused persons have the right to be informed of their rights and obligations, the regulations governing the treatment of prisoners, the disciplinary requirements, and the procedure of making suggestions, statements, and complaints.¹⁹

It is noteworthy that neither the Law on the Procedure of the Detention nor the Internal Regulations stipulates the obligation of TDF personnel to explain to the newly detained persons their rights and responsibilities in writing or orally, which is inconsistent with the international standards.

Compliance with this standard was studied from the perspective of exercising three components of the right to information:

- a. The right of a suspected and an accused person placed in a TDF to be informed of his rights and obligations in writing;
- b. The right of a suspected and an accused person placed in a TDF to ,make himself aware of the content of the Internal Regulations, the regulations governing the treatment of prisoners, and the disciplinary requirements of the institution;
- c. The right of a suspected and an accused person held in a TDF to be informed of the procedure to make suggestions, statements or complaints.

¹³ Standard minimum rules for the treatment of prisoners. Rule 35(1).

¹⁴ Body of principles, principle 13.

¹⁵ Body of principles, principle 14.

¹⁶ UN Basic Principles on the Role of Lawyers. Principle 5.

¹⁷ The Law of the Kyrgyz Republic on the Procedure of the Detention. Art. 16.

¹⁸ Internal regulations, par. 1.10.

¹⁹ Internal regulations, par. 3.1.

a. The right of a suspected and a accused person placed in a TDF to be informed in writing of their rights and obligations

The monitoring has revealed that none of the country's IAB TDFs inform detainees of their rights in writing in defiance of the international standards.

Posting of the list of the rights and obligations of suspected and accused persons in each cell of IAB TDFs could be one of the ways to comply with this standard. However, the monitoring revealed that none of IAB TDFs use this opportunity.

b. The right of a suspected or an accused person placed in an IAB TDF to make himself aware of the content of the Internal Regulations, including the regulations governing the treatment of prisoners and the disciplinary requirements of the institution

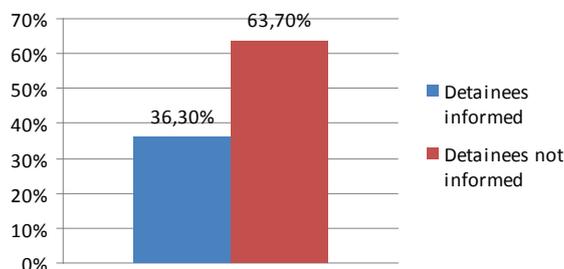
Only 70 (36.3%) respondents said they were familiar with the content of the Internal Regulations, including the regulations governing the treatment of prisoners and the disciplinary requirements of the institution. The rest 123 (63.7%) detainees interviewed said that no one from the TDF staff had ever informed them of that, and that most of them had learned about the Internal Regulations from their cellmates.

None of the respondents, when brought to a TDF, was informed by the personnel in which cases and what conduct would represent breach of the regulations governing the detention at the TDF, and what sanctions would be imposed in that case.

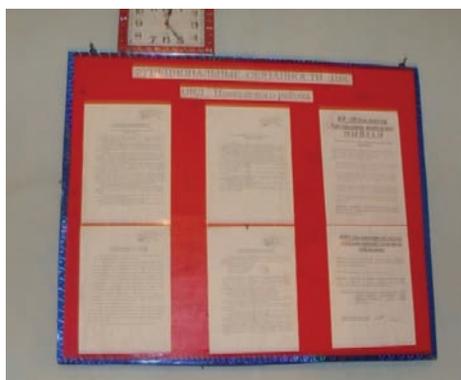
*Example: From the interview with a detainee: "I don't know anything about my rights. No one explains them here. As for the TDF Regulations, I have learned about them from my cellmates."*²⁰

Diagram 5.

The right of suspected and accused persons place in an IAB TDF to make themselves aware of the content of the Internal Regulations, including the regulations governing the detention, and the disciplinary requirements.



c. The right of a suspected and an accused person held in a TDF to be informed of the procedure to make suggestions, statements or complaints



Information stand.

None of the 193 respondents appeared to be informed by TDF personnel of their right to make suggestions, statements and complaints.

Lack of awareness of this right and lack of knowledge about the existing mechanisms and procedures of making a statement or complaint makes it practically impossible to appeal against any acts/omissions of the personnel of the institution, legality and reasonableness of sanctions imposed on the detainee, as well as any other issues pertaining to the detention conditions at the TDF.

²⁰ Monitoring Report No. 1/6-7/3/1.1.

As the administration and members of staff of some IAB TDFs explain, every suspected or accused person held in a TDF can, if he so desires, make himself familiar with his rights and obligations that are posted on the information stand.

Information stands were not in place in 17 (36.2%) and were in place in 30 (63.8%) IAB TDFs.

Yet, the monitoring demonstrated that not all such stands have information on prisoners' rights and obligations. For instance, at the Issyk-Kul District IAB TDF, departmental orders, instructions, a list of responsibilities of TDF personnel, magazines and booklets were found to be posted on a stand. Similar information was posted on the information stand at the Talas Oblast IAD TDF.

At the same time, the observers found a very informative stand at the Kemin District IAB TDF which, apart from orders and instructions, had prisoners' rights and obligations listed, as well as a detailed building layout and an emergency evacuation plan.

However, even when full information on the rights and obligations of IAB TDF detainees is available on the stand, the detainees have no real opportunity to read them since all these stands are installed either in a TDF corridor or an investigation room. That short period of time when prisoners go to the exercise yard and back passing the stand, all they can do is just to take a quick look on the stand. This observation is confirmed by the answers of the respondents who said they had never read anything on the stand.

B. RIGHT TO MAKE COMPLAINTS

International Standard

*According to the international standards, every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels. Every request or complaint shall be promptly dealt with and replied to without undue delay.*²¹

*Every detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment, subject to reasonable conditions to ensure security and good order in such places.*²²

*According to the Standard Minimum Rules, every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him. It shall be possible to make requests or complaints to the inspectors of prisons during their inspection without members of the staff being present. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.*²³

In-country Legislation

In accordance with the domestic law, every detainee shall have the right to make complaints regarding his prosecution (complaints about actions of agencies of inquiry, investigation, and a prosecutor)²⁴ as well as regarding detention conditions at a TDF or any other issue²⁵ to government authorities and officials.

KR Code of Criminal Procedure obliges the administration of detention facilities to promptly convey to the investigator, prosecutor, or court complaints of persons detained or imprisoned on suspicion of committing

²¹ Standard minimum rules. Rule 35 (3), (4).

²² Body of principles. Principle 29 (2).

²³ Standard minimum rules. Rule 36 (1, 2, 3).

²⁴ KR Code of criminal procedure. Art. 40 (part 1, par.12).

²⁵ Law on the procedure of the detention. Art. 20.

*a crime that are meant for them. The administration of the detention facility shall convey to the prosecutor supervising the case investigation or to the court any complaints of detained or imprisoned persons regarding the actions of an agency of inquiry or actions or decisions of the investigator of the detention institution. Complaints regarding the actions and decisions of the prosecutor shall be conveyed to a superior prosecutor. The administration of the detention institution shall convey any other complaints to a person or a body that administrates the case proceedings within 24 hours from the moment of their receipt.*²⁶

*The Law on the Procedure of the Detention provides for the right of suspected and accused persons to make themselves aware of the procedure to make suggestions, statements or complaints, as well as their right to convey their suggestions, statements and complaints to different authorities, including court, regarding legality and reasonableness of their detention, and violation of their legitimate rights and interests.*²⁷

The same law outlines the procedure of sending suggestions, statements and complaints of suspected or accused persons.

*According to the law, it is prohibited to persecute suspected or accused persons for making suggestions, statements or complaints due to violation of their rights and legitimate interests. Officials of places of detention guilty of such persecution shall be liable as stipulated by law.*²⁸

*Complaints sent by TDF detainees to the KR Ombudsman shall be sent to the Ombudsman in a sealed envelope promptly and with confidentiality and shall not be subject to opening or censorship.*²⁹

*Head of a TDF and his deputy must visit each and every cell on a daily basis and receive suggestions, statements and complaints from suspected or accused persons both in writing and orally. Suggestions, statements or complaints made orally shall be registered and communicated to a person responsible for dealing with such. Written suggestions, statements or complaints to the attention of the IAB management shall be registered and communicated to the IAB head.*³⁰

The monitoring revealed that the right of IAB TDF detainees to make complaints is not respected properly.

One of the reasons is lack of these persons' awareness of their rights including the right to make complaints and the procedure of appeal, which is discussed in detail in a respective section of this Report, as well as lack of confidence that the complaint will reach the recipient and result in a legal and fair decision.

Example: *From the interviews with detainees:*

*"I don't know how and to whom to send my complaint".*³¹

*"I have not made any complaints. I have no chance anyway".*³²

Another reason is lack of appropriate conditions for drafting complaints themselves.

In the course of the monitoring, 17.1% of the respondents, including those from Tash-Kumyr, Kara-Kul and Mailuu-Suu city IABs, and Djail, Toktogul, Aksy, and Ala-Buka District IABs, as well as Talas Oblast IAD, said they were not able to write a complaint since they had neither pen nor paper.

34.7% of the interviewed IAB TDF prisoners could not answer if they have a real opportunity to make complaints since they have never tried to do it.

²⁶ KR Code of Criminal Procedure. Art. 128.

²⁷ Law on the procedure of the detention. Art. 16.

²⁸ Law on the procedure of the detention, Art. 20.

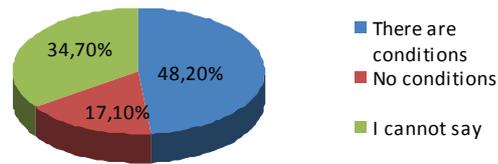
²⁹ Internal regulations. Par. 3.1.

³⁰ Internal regulations. Par. 4.1., 4.3.

³¹ Monitoring Report No. 5/2/3/1.

³² Monitoring Report No. 5/9/3/1.4.

Diagram 6.
Appropriate conditions for making complaints.



In some cases, IAB TDF prisoners do not avail of their right to make complaints because of strong counteraction on the part of members of staff of these institutions.

***Example:** From the interviews with detainees: “There is no opportunity to write a complaint. If they see a pen in the cell, they just take it away immediately and tear the complaint apart. This is why we do not even try to write anything. If someone happens to have a good attorney, he would write a complaint for his client”.³³*
“We are not given a chance to write any statements or complaints. Here it is uncommon to complain”.³⁴
“We have a pen that we hide in our cell”.³⁵
“I know I have this right, but it is useless to ask for a pen and paper – they will never give those anyway”.³⁶

Yet, the observers noted that prisoners’ complaints are dealt with properly in the Panfilov District and the Tokmok city IAB TDFs.

C. RIGHT TO CONTACT WITH THE OUTSIDE WORLD

Contact with the outside world is a fundamental guarantee of preventing violations of human rights, especially such violations as torture and cruel treatment. Detained or imprisoned persons shall be allowed to communicate with their family, attorneys, doctors, and judges without undue delay. If a prisoner is a foreign national, he shall be allowed to communicate with consular representatives of the State to which they belong. One of key guarantees of preventing torture and cruel and inhuman treatment is respect for rights of any person deprived of his liberty in any form to contact with the outside world. International law contains absolute prohibition against incommunicado detention of persons deprived of liberty in any form. Prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment.³⁷

This section sets out monitoring findings related to the observance of key rights enshrined by the international standard for assuring the contact with the outside world:

- Right to correspondence,
- Right to receive visits,
- Right to receive parcels and care packages,
- Right to watch television programs and films, hear wireless transmissions, and read periodicals.

It must be noted that the right to telephone conversations as one of the components of the right to contact with the outside world is provided for by the international standards, but has not been incorporated into the in-country legislation and has not been exercised in practice.

³³ Monitoring Report No. 1/6-7/3/1.2.

³⁴ Monitoring Report No. 1/6-7/3/1.1.

³⁵ Monitoring Report No. 1/6-7/3/1.1.

³⁶ Monitoring Report No. 8/6/3/1.1.

³⁷ UN Commission on Human Rights. Resolution No. 1997/38 (par. 20).

i. Right to correspondence

International Standard

As per the international standards, prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence.³⁸

A detained or imprisoned person shall have the right to correspond with members of his family.³⁹

In-country Legislation

The in-country legislation provides for the right of suspected and accused persons to correspondence. In particular, the law on the Procedure of the Detention⁴⁰ and the Internal Regulations⁴¹ enshrine the right of suspected and accused persons to correspond and use writing material.

Suspected and accused persons shall be allowed to correspond with their families and other persons without any limitations on the number of telegrams or letters, both received and sent.⁴²

The monitoring revealed that in 17.1% of cases, detainees were not able to correspond with their families or other persons since they had no pens or paper.

ii. Right to receive visits

International Standard

According to the international standards, prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.⁴³

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.⁴⁴

In-country Legislation

The domestic law provides for the right of suspected and accused persons to receive visits. In particular, the Law on the Procedure of the Detention enshrines the right of a prisoner to receive visits from his family and other persons.⁴⁵ The law allows no more than two visits per month each lasting 30 minutes to three hours. Any visit shall be allowed against a written permission from the person in charge of the case and be controlled by staff of detention institutions.⁴⁶

As per the Internal Regulations, suspected and accused persons shall have the right to receive visits from their attorneys, family and other persons.⁴⁷

A visit shall be allowed against a written permission from the person in charge of the case, which is valid for one visit only. A TDF detainee may only receive a visit from one person at a time not including children under 16.⁴⁸

³⁸ Standard minimum rules. Rule 37.

³⁹ Body of Principles. Principle 19.

⁴⁰ Law on the procedure of the detention. Art. 16.

⁴¹ Internal Regulations. Par. 3.1.

⁴² Law on the procedure of the detention. Art. 19.

⁴³ Standard minimum rules. Rule 37.

⁴⁴ Body of principles. Principle 19.

⁴⁵ Law on the procedure of the detention. Art. 16.

⁴⁶ Law on the procedure of the detention. Art. 17.

⁴⁷ Internal regulations. Par. 3.1.

⁴⁸ Internal regulations, par. 4.17., 4.18.

*A special room in a TDF shall be equipped for the visits. Suspected or accused persons shall be brought to the visiting room one at a time. These persons shall have tidy appearance. Before and after the visit they shall be searched and their belongings shall be inspected.*⁴⁹

13% of the respondents pointed out that they were deprived of any opportunity to receive visits from their families. Moreover, they are convinced that no visits are allowed at IAB TDFs.

40.4% out of them are not aware if IAB TDF detainees are allowed to receive visits from their families since they do not know if they have this right and have not tried to ask for a visit.

Diagram 7.
Allowing visits with families and other persons.

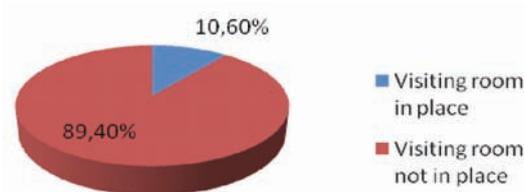


Example: *From the interviews with the detainees: “We are allowed neither to receive visits nor to make phone calls. We are only allowed to receive care packages.”⁵⁰
“My family members cannot get permission for a visit”, “My mother cannot get permission for a visit”, “They don’t allow us to be visited by our families”.⁵¹
“We have no visits since they are prohibited here.”⁵²*

According to IAB TDF members of staff, the prisoners’ right to receive visits from their families or other persons is not observed since there are no special visiting rooms in the institutions. Indeed, the monitoring showed that 42 (89.4%) out of the 47 TDFs have no visiting rooms.

Special visiting rooms are available in five IAB TDFs, namely in the Bishkek city IAD TDF, Talas Oblast IAD TDF, Balykchy city IAB TDF, and Toktogul and Djumgal District IAB TDFs.

Diagram 8.
Visiting rooms in TDFs.



However, even in those IAB TDFs that lack special visiting rooms, the personnel ensure that the detainees’ right to receive visits from their families is respected. All visits in these institutions take place in investigation rooms.

46.6% of the respondents reported no obstacles for receiving visits from their families.

One of the respondents shared that IAB TDF staff members request money for making visits happen.

⁴⁹ Internal regulations, par. 4.22., 4.25.

⁵⁰ Monitoring report No. 4/5/31.1.

⁵¹ Monitoring report No. 7/6/31.1., 1.3., 1.4.

⁵² Monitoring report No. 10/12-14/3/1.9.

Example: From the interview with a detainee: “My wife said that some staff members demand that she give money to them for a visit”.⁵³

iii. Right to receive parcels and care packages

International Standard

In accordance with the Standard Minimum Rules, prisoners may have their food procured at their own expense from the outside or through their family or friends.⁵⁴

In-country Legislation

The Law on the Procedure of the Detention enshrines the right of suspected and accused persons to receive parcels and care packages.⁵⁵ This rule is also stipulated by the Internal Regulations.⁵⁶ The law does not limit the number of parcels that shall weigh as specified by the postal rules. The quantities of care packages are not limited either, but their cumulative weight shall not exceed 100 kg per month. No restrictions on the weight of packages for juveniles, ill or pregnant women, or women having children living with them shall be allowed.⁵⁷ In accordance with the procedure of receiving packages and parcels, those shall be received based on an application made in two copies in line with the established form. All parcels shall be subject to search to be conducted by a commission consisting of at least two members of IAB staff. A corresponding record (act) of search shall be made to specify: names and a list of things and food products, their external features and quality, and what exactly was withdrawn or put in storage. The record shall be signed by all commission members, announced to a prisoner against his signature, and attached to his personal file.⁵⁸

According to the reply of the KR Interior Ministry (of July 19, 2011 No. 11/893), “persons placed in the country’s IAB TDFs ... are allowed to receive parcels without any restriction on their quantity. Care packages and food products from family are received seven days a week.”

It was reaffirmed in the course of the monitoring that the IAB TDF detainees are able to receive care packages seven days a week.

However, during interviews with detainees, the observers received complaints regarding receiving food products not in full. The detainees believe that TDF staff members take some part of packages away. Most of complaints of this kind were received from the Moscow District IAB TDF.

Example: From the interview with a detainee: “Care packages do not reach us. We receive notes from our families with a list of things and products they put into the packages. However, the personnel take all good-to-eat products away. We all have the same problem here”.

After visiting the Moscow District IAB TDF, the observers asked the head of the institution to tighten control over the procedure of delivering food products to the detainees.

Panfilov District IAB TDF can be used as a positive example. The head of the institution took an initiative to introduce a registration book for all care packages brought by prisoners’ families. A date of receipt of a package, as well as a list of all things and products brought are registered in the book. This is clearly worthy of respect. It is desirable for the rest of the IAB TDFs facing a poor situation of delivery of care packages to prisoners to adopt this practice.

⁵³ Monitoring Report No. 8/6/3/1.4.

⁵⁴ Standard minimum rules. Rule 87.

⁵⁵ Law on the procedure of the detention. Art. 16.

⁵⁶ Internal regulations. Par. 3.1.

⁵⁷ Internal regulations, par. 4.26.

⁵⁸ Internal Regulations, par. 4.29.

iv. Right to hear wireless transmissions, watch television and read periodicals

International Standard

According to the international standards, prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or other publications, and by hearing wireless transmissions.⁵⁹

The Body of Principles provides for the right of detained or imprisoned persons to have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.⁶⁰

In-country Legislation

The domestic law does not provide for an individual right of suspected or accused persons to be informed of news by reading newspaperz and magazines or by hearing wireless transmissions or by watching television programs.

The law on the Procedure of the Detention only stipulates the obligation to equip all TDF cells with wireless receivers and TV sets to the extent possible.⁶¹

The Internal Regulations have no provisions regulating the procedure of being kept informed on important news and world events.

As it follows from the monitoring findings, none of IAB TDF cells have been equipped by the state with special devices for getting news. There are neither wireless receivers nor TV sets in the cells. The detainees are not given any latest newspapers or periodicals to read.

***Example:** From the interview with a detainee: “We are sitting here not aware of what is going on. It would be great if we were given some newspapers to read in order to get new”.⁶²*

Yet, in some cases TDF personnel buy newspapers at their expense and bring those to the prisoners. For instance, the respondents from the Panfilov District IAB TDF told the observers that this is the head of the TDF who brings latest newspapers to them.⁶³

Thanks to the Jalal-Abad Oblast human rights organization, Spravedlivost, and with financial support from the international organizations, radio sets were procured for each cell of Mailuu-Suu, Tash-Kumyr, and Kara-Kul city IAB TDFs, as well as those of Bazar-Korgon, Toktogul, Aksy, Ala-Buka and Chatkal District IABs.

5.1.2. PROCEDURE OF THE DETENTION AND ACCOMMODATION

International Standard

According to the international standards, the different categories of prisoners shall be kept in separate institutions taking account of their sex, age, criminal record, the legal reason for their detention.

For instance, the ICCPR states that accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.⁶⁴

⁵⁹ Standard minimum rules. Rules 37, 39.

⁶⁰ Body of principles. Principle 28.

⁶¹ Law on the procedure of the detention. Art. 22.

⁶² Monitoring report No. 10/13-15/3/4.5.

⁶³ Monitoring report No. 8/6/3/1.3.

⁶⁴ ICCPR, Art. (2).

In accordance with the Standard Minimum Rules:

- a) Men and women shall so far as possible be detained in separate institutions;
- b) In an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- c) Untried prisoners shall be kept separate from convicted prisoners;
- d) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- e) Young prisoners shall be kept separate from adults.⁶⁵

*The same principles of segregation are reflected in the Body of Principles, which prescribes that persons in detention shall be subject to treatment appropriate to their unconvicted status.*⁶⁶

*According to the ICCPR, accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*⁶⁷

*According to the UN Rules for the Protection of Juveniles Deprived of Freedom, detention of juveniles before trial shall be avoided to the extent possible and limited to exceptional circumstances. All efforts shall be made to apply alternative measures.*⁶⁸ *The same provisions are reflected in the Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”).*⁶⁹

In-country Legislation

*The Law on the Procedure of the Detention requires that suspected persons are segregated from accused persons in mass or one-man cells, and sets out the criteria for the segregation.*⁷⁰

For instance, the law requires that the detention of suspected and accused persons in the cells is based on their personality and psychological compatibility. Smokers as far as possible shall be accommodated separately from non-smokers. When accommodating suspected and accused persons, as well as convicted persons, the following persons shall be segregated:

- *Suspected and accused persons under the same criminal case;*
- *Persons first brought to criminal justice and persons previously held in the institutions of confinement;*
- *Suspected and accused persons, as well as convicted persons, whose sentences have come into force.*

When accommodating suspected and accused persons, as well as convicted persons in the cells, the following persons shall be segregated from other suspected and accused persons:

- *Persons suspected and accused of committing crimes against the foundations of the constitutional system and public safety and crimes against peace and security of mankind;*
- *Persons suspected and accused of committing the following crimes as stipulated by the Criminal Code of the Kyrgyz Republic: Murder (Art.97), intended grave bodily harm (Part.4 Art.104); HIV infection (Art.117); rape (Art. 129); sexual assault (Art.130), robbery (Art.168); terrorism (Art.226); hostage taking (Art.227); organization of an illegal armed formation or participation therein (Art.229); banditry (Art.230);*
- *Suspected and accused persons in the event of dangerous and especially dangerous repetition of offences;*
- *Persons sentenced to life imprisonment;*
- *Suspected and accused persons, who are or were judges, prosecutors, investigators, lawyers, servicemen of Interior Ministry troops of the Kyrgyz Republic, staff of interior bodies, bodies of punishment execution, customs and tax authorities, financial police, national security of the Kyrgyz Republic, of the authorized government agency in the area of drug control;*
- *Foreign nationals and stateless persons, given the conditions for segregating from other suspected and accused persons;*

⁶⁵ Standard minimum rules. Rules 8, 85.

⁶⁶ Body of principles. Principle 8.

⁶⁷ ICCPR, Art. 10 (2(b)).

⁶⁸ UN Rules for the Protection of Juveniles Deprived of their Liberty. Rule 17.

⁶⁹ Standard minimum rules for the administration of juvenile justice (“the Beijing Rules”).

⁷⁰ Law on the procedure of the detention. Art. 30.

- Suspected and accused persons whose life and health are threatened by other suspected and accused persons – by the decision of the administration of a place of detention or based on a written statement of the person or body in charge of the criminal case;
- Patients with infectious diseases or those in need of special medical care and monitoring.⁷¹

*The Law sets special requirements for the detention of women and minors. For example, women shall be held separately from men in detention facilities. For pregnant women and women who have children leaving with them, living conditions shall be improved, specialized medical care shall be arranged, and higher nutritional requirements food and clothing standards shall be set as determined by the Government of the Kyrgyz Republic. It shall not be allowed to limit the duration of daily exercise for pregnant women.*⁷²

*The Law on the Procedure of the Detention requires that juveniles are segregated from adults. However, in violation of the international standards, the Law stipulates that “in exceptional cases, with the written consent of the prosecutor in charge of oversight, it shall be allowed to hold positively characterized adults held criminally liable for the first time for the offenses not related to serious or especially serious crimes in the same cells where juveniles are held”.*⁷³

The monitoring findings showed that some of the above provisions are not implemented in practice.

For instance, two cases were detected in which juveniles and adults were held in the same cell (the Issyk-Ata District IAB and the Tokmok city IAB TDFs).

During the interview, the deputy head of the IAB of one of the districts said that former law enforcement members were detained in a separate cell or in a cell with minors.⁷⁴

The legal requirement for segregation of suspected and accused persons, persons held criminally liable for the first time and persons previously held in places of confinement, persons suspected and those accused of committing serious crimes under Art. 97 of the KR Criminal Code (Murder) and Art.104 Part 4 (Intended infliction of grievous bodily harm) is violated almost everywhere. The facts of violations were documented during the interviews with the persons detained in the same cell.

Such a state of affairs is deemed as violation of Art. 10(2) of the ICCPR by the state (no segregation of accused persons from convicted persons, no separate treatment appropriate to their status as unconvicted persons). This is proved by the decision of the UN Human Rights Committee under the *case of Leonid Komarovski v. Turkmenistan*, in which the author of the individual communication assures that he had been placed in the same cell with convicted persons without having being explained what exceptional circumstances justify this form of detention.⁷⁵

The monitoring also revealed the violations of legislative regulations on segregation of infectious detainees. For instance, in the Ton District IAB TDF, a detainee, the active TB patient, was held in the cell with other persons, creating a real threat of contamination and danger to the health of others.

⁷¹ Law on the procedure of the detention. Art. 31.

⁷² Law on the procedure of the detention. Art. 28.

⁷³ Law on the procedure of the detention. Art. 31.

⁷⁴ Monitoring Report No. 20/16-18/H.

⁷⁵ The decision of the UN Human Rights Committee under the case of Leonid Komarovski v. Turkmenistan of 24 July 2008.CCPR/C/93/D/1450/2006.

5.1.3. DETENTION CONDITIONS

A. HOUSING & LIVING AND HYGIENE & SANITARY CONDITIONS

International Standard

ICCPR enshrines the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person⁷⁶ and imposes obligations on the State party to ensure this right. According to the Standard Minimum Rules, each prisoner shall occupy a cell by himself.⁷⁷

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.⁷⁸

In the premises where prisoners live and work:

- a) The windows should be large enough to enable the prisoners to read or work in daylight, and should be designed to provide access to fresh air, regardless of whether there is or there is no artificial ventilation;*
- b) Artificial lighting should be sufficient to enable the prisoners to read or work with no eyesight hazard.⁷⁹*

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.⁸⁰

Adequate bathing and shower installations shall be provided so that every prisoner may be enabled

and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.⁸¹

All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.⁸²

Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.⁸³

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.⁸⁴

All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. On the release of the prisoner all such articles and money shall be returned to him. The prisoner shall sign a receipt for the articles and money returned to him.⁸⁵

⁷⁶ ICCPR, Art. 10(1).

⁷⁷ Standard minimum rules, Rule 9(1), (2).

⁷⁸ Standard minimum rules, Rule 10.

⁷⁹ Standard minimum rules, Rule 11.

⁸⁰ Standard minimum rules, Rule 12.

⁸¹ Standard minimum rules, Rule 13.

⁸² Standard minimum rules, Rule 14.

⁸³ Standard minimum rules, Rule 15, 16.

⁸⁴ Standard minimum rules, Rule 17, 19.

⁸⁵ Standard minimum rules, Rule 43.

In-country Legislation

The in-country legislation provides for the right of suspected and accused persons to housing & living and health-care provision, including in the period of their participation in the investigation and court proceedings.⁸⁶

In accordance with the Law on the Procedure of the Detention, suspected and accused persons shall be provided with the living conditions that meet the requirements of hygiene, sanitation and fire safety, and with the individual sleeping accommodation, bedding, tableware and flatware.

All cells shall be equipped with wireless receives and, if possible, with TV sets, refrigerators, and ventilation equipment. According to the law, the standard health area in the cell shall be 3.25 square meters per person.⁸⁷

The Internal Regulations stipulate that suspected and accused persons shall be provided for free with the following articles for personal use for the period of stay in the detention center:

- *The sleeping accommodation,*
- *Bedding, linens,*
- *Tableware for the meal time.*

In accordance with the established standards and based on the number of detainees, suspected and accused persons shall be provided with the following for common use in the cell:

- *Soap (toilet and laundry)*
- *Washing powder,*
- *Paper for hygiene purposes,*
- *Articles for cleaning the cells.*

Sewing needles, scissors, and other things, piercing-cutting items for household use, are given out to suspected and accused persons under control of the TDF officer-on-duty, with the above items withdrawn upon their use.⁸⁸

The TDF cells are equipped with:

- *a table;*
- *lavatory;*
- *tap with running water;*
- *a hanger for clothing;*
- *a shelf for toiletries;*
- *a tank for drinking water;*
- *a litter-bin.*

Every day drinking water is given to the cells as and when needed.

At least once a week, each suspected and accused person is given an opportunity to have shower for at least 15 minutes. A shaving kit is given to suspected and accused persons at their request at the scheduled time at least twice a week.⁸⁹

Each TDF shall be equipped with:

- *a room with electric heating for food, a kettle, a cupboard, as well as the three-cell bathroom for washing dishes;*
- *a room for storing bedding and personal belongings that are not allowed to be stored in cells where suspected or accused persons live;*
- *a sanitary inspection room with the shower and disinfection heat formalin chamber, as well as other service and auxiliary facilities.⁹⁰*

⁸⁶ Law on the procedure of the detention. Art. 16.

⁸⁷ Law on the procedure of the detention. Art. 22. Internal Regulations, Par. 2.3.

⁸⁸ Internal Regulations. Par. 2.1.

⁸⁹ Internal Regulations, Par. 2.2.

⁹⁰ Internal Regulations, Par. 2.4.

The Internal Regulations provide for mandatory nature of primary decontamination of all persons when admitted to a TDF, and at least once in seven days after they are accommodated there. Sanitary inspection of the TDF in cities and regional centers, where the Interior Ministry medical services are deployed, is conducted by the latter, and in other areas – by the sanitary-epidemiological institutions of territorial public health authorities of the republic.

Wet cleaning of rooms and other facilities must be performed in TDFs daily with the use of disinfectants.

The staff of sanitary-epidemiological stations should enter the results of the survey of sanitary conditions of the TDF into a special register.⁹¹

The law requires that suspected and accused persons meet the requirements for hygiene and sanitation.⁹²

g) Condition of TDF Buildings

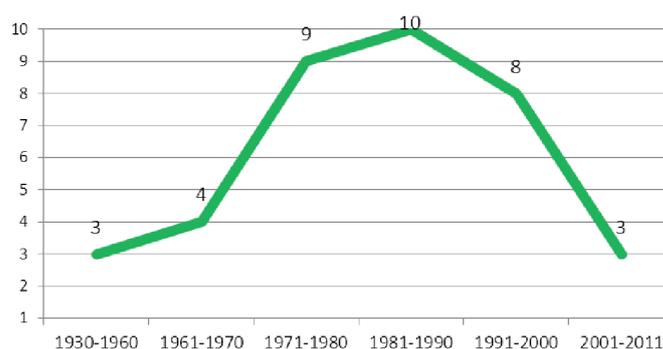
The monitoring revealed that most of the buildings, where the IAB TDFs covered by the research are now located, were built before the Kyrgyz Republic gained its independence, i.e. more than 20 years ago.

Table 1.

Years of Construction of TDF Buildings.

Years of Construction of TDFs	Number of TDFs
1950-1960	3
1961-1970	4
1971-1980	9
1981-1990	10
1991-2000	8
2001-2011	3
N/A	10
Total	47

Diagram 9.
Number of Constructed IAB TDFs.



It follows from the above diagram that the peak of construction of IAB TDFs or buildings where TDFs are based fell on 1980-1990s. After Kyrgyzstan gained independence, 11 new IAB TDFs were built between 1991 and 2011.

The oldest TDF buildings in the country include the Ak-Tal District IAB TDF (built in 1930s), the Sokuluk District IAB TDF (built in 1950s), TDFs of Djail and Kara-Suu District IABs, and the Tokmok city IAB TDF (built in 1960s).

⁹¹ Internal Regulations, Par.5.11 – 5.16.

⁹² Internal Regulations, par. 3.1.

The newest IAB TDF building of the country is that of the Ton District IAB TDF that was built in 2009. It is a single floor building on the territory of the IAB and the one that most fully meets the international standards for the detention conditions.

Diagram 10.
Capital Repairs of IAB TDFs with the Yearly Breakdown.

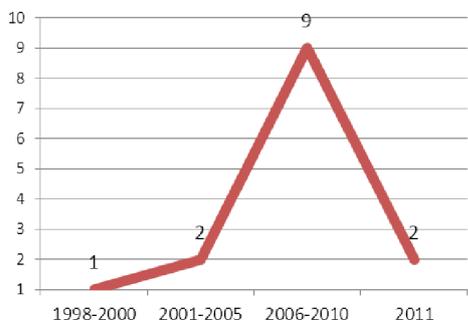
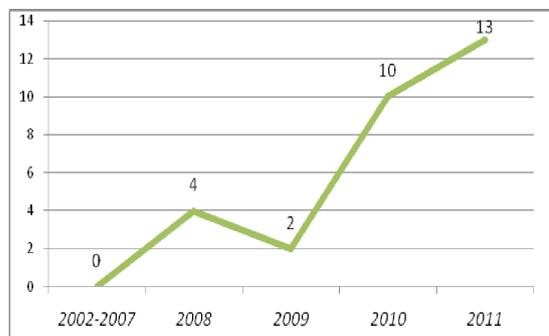


Diagram 11.
Cosmetic Repairs of IAB TDFs with the Yearly Breakdown.



The research revealed that most of capital and cosmetic repairs of IAB TDFs were made between 2006 and 2011. Within the past five years, 29 IAB TDFs were repaired with most of them repaired in 2011. Overhauls within the same period were performed in 11 IAB TDFs of the country.

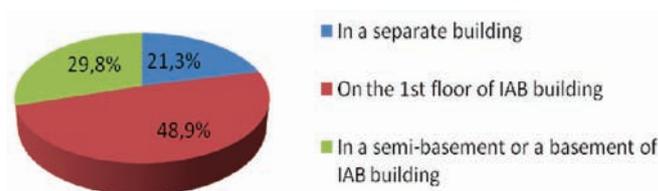
Starting from the year 2006, some IAB TDFs have been reconstructed and repaired with the support from the OSCE Centre in Bishkek, including the Sokuluk, Karabuura, Kochkor and At-Bashy District IAB TDFs, and Naryn city IAB TDF. A boiler room was built in the Talas Oblast IAD TDF.

It was revealed in the course of the monitoring that the location of IAB TDFs is one of the reasons why the international standards for detention conditions fail to be complied with. For instance, 14 (29.8%) out of the 47 TDFs are located in the basement or semi-basement premises of the IAB buildings.

For example, the Kara-Suu district IAB TDF is located in the basement of the city IAB building, three meters under ground, resulting in darkness and humidity in TDF premises. The same location in the basement is noted with regard to the Kyzyl-Kiya and Sulukta IAB TDFs, and the Ala-Buka, Toguz-Toruz, Suzak, Chatkal, Batken and Leilek District IAB TDFs.

The Sokuluk, Uzgen, and Kara-Kulja District IAB TDFs, as well as the IAB TDFs of the towns of Osh and Naryn are located in semi-basements, too.

Diagram 12.
Location of IAB TDF Buildings.



23 (48.%) of IAB TDFs are located on the first floor of IAB buildings, and only 10 (21.3%) of TDFs are located in separate buildings.

b) the area of cells and the number of detainees

All in all, the conditions in 183 cells were extensively examined in 47 TDFs covered by the monitoring. The monitoring findings showed that the legal requirements regarding the health area in the cell at a rate of 3.25 sq.m per person are not met in a number of TDFs.

For instance, the health area in the cells varied from 0.9-4.5 sq.m. Health area was calculated based on the limit of detainees that can be held in each of the cells covered by the monitoring. It must be stressed that these figures are applied to the cells the observers visited and studied as part of the monitoring visits. In some IAB TDFs, apart from small cells not meeting health area requirements, there are also large cells complying with those.

Table 2.

IAB TDF Cells Not Meeting Health Area Requirements.

№	IAB TDF	Area of the cell
1.	Panfilov District IAB TDF	0.9 sq.m
2.	Djail District IAB TDF	1.3 sq.m
3.	Talas Oblast IAD TDF	1.8 sq.m
4.	Moscow District IAB TDF	2.5 sq.m
5.	Bishkek City IAD TDF	2.8 sq.m
6.	Kochkor District IAB TDF	2.3 and 1.8 sq.m
7.	At-Bashy District IAB TDF	1.25 sq.m
8.	Suzak District IAB TDF	1.5 sq.m
9.	Nookat District IAB TDF	2.0 sq.m
10.	Kara-Kul District IAB TDF	2.3 sq.m.
11.	Kara-Kuldja IAB TDF	2.45 sq.m.
12.	Uzgen District IAB TDF	2.6 sq.m.
13.	Aravan District IAB TDF	2.25 sq.m.
14.	Balyckchy city IAB TDF	2.8 sq.m.
15.	Karakol city IAB TDF	2.5 and 3.5 sq.m.
16.	Issyk-Kul District IAB TDF	1.3 and 2.0 sq.m.

Excessive limitation of space is a key issue for analyzing detention conditions for compliance with the standards. Under the *case of Labzov v. Russian Federation*, the European Court of Human Rights recognized the violation of the right to freedom from cruel and inhuman treatment and pointed out that “the mere fact that the complainant had to live, sleep and use toilet in the same cell with many other cellmates is enough to humiliate or insult a person, cause fear, anxiety and inferiority that can lead to his humiliation and intimidation.”⁹³

The number of persons detained in the cell at the time of the monitoring exceeded the envisaged limit of detention in this cell in three cases. For example, in the Karabuura District IAB TDF, five persons were held in one cell whereas the limit is four persons per one cell. The total number of people detained in the TDF at the time of the monitoring exceeded the limit by 150%. The same situation was in the Ton District IAB TDF where five persons were held in one cell whereas the limit is four persons per one cell.

⁹³ The Decision of the European Court of Human Rights under the case of Labzov v. Russian Federation. Complaint No. 62208/00. Strasbourg, 16 June 2005.

The highest percentage of overcrowding in the was registered in the Issyk-Ata District IAB TDFs where there were 45 people while it is designed only for 28 detainees. According to the Director of the TDF, overcrowding of TDFs occurs often due to frequent postponements of court hearings.

The observers found that the Kadamdjay and Toktogul District IAB TDFs are the most problematic ones in the southern region in terms of overcrowding.

c) The general state of cells

The observers paid attention to the general state of cells during the monitoring, in particular, to the condition of walls, ceiling, floor, types and extent of lighting, availability of heating and ventilation systems, etc.

As a result of the research, it was concluded that the general condition of cells in most of the TDFs of the country does not meet the requirements of the in-country legislation or international minimum standards.

Floors in the cells of 33 (71%) TDFs are concrete, i.e., there is no coverage of linoleum, tiles or other insulated material. In 8 (17%) IAB TDFs, the floors in the cells are covered with a wooden covering, and with the tiles in the Ton District IAB TDF).

In most cases, the condition of the walls and ceilings in the cells was assessed by the observers as satisfactory (whitewashed, painted). The exceptions are 5 (11%) TDFs, including the Djail, Kara-Kuldja, Kara-Suu, Uzgen and Suzak District IAB TDFs having he dirty walls with cracks that need repair.



The observers found that in the TDFs of Djail, Tyup, Uzgen and Kadamzhai District IABs, the cells are in poor condition and need urgent repair. Humidity in these cells is very high, which is why mold fungus appeared on the walls.

In the Ala-Buka District IAB TDF, wooden floors in some cells went rotten due to poor ventilation resulting in dampness.



When monitoring the Aravan District IAB TDF, the observers pointed out all of the cells and premises had been repaired and were in a satisfactory condition.

d) Number of sleeping accommodations in cells

The monitoring revealed the violations of the law as to provision of each suspected or accused person with sleeping accommodation.

For instance, only in 25 (53.2%) IAB TDFs beds are installed as sleeping accommodations; and 21 of them are iron beds, and the rest four (17%) are wooden beds.

In 18 (38%) IAB TDFs, there is only one wooden couch per cell instead of beds that is intended for all prisoners held in the cell. In this case, given the small size of the cells, there is virtually no open space.



Such a situation was observed in the TDF of Balykchi IAB where the entire area of the cell was occupied by the couch, and in the TDF of Kyzyl-Kiya IAB, a 3x3 meter couch was put in the cells.

Cell in TDF.



Cell in TDF.

Five or more inmates are accommodated on one couch. For example, at the time of the research, eight persons were accommodated on one couch of the 3.67 m x 3 m size in a cell of the Talas Oblast IAD TDF.

There were five people in the cell of the Karabuura District IAB TDF designed for four people, and just one couch, 3x3 m., for all of them .

It must be noted that in the cells of the Uzgen, Chon-Alai, Ala-Buka and Bazar-Korgon District IAB TDFs there are neither beds nor couches. The floors in the cells of these TDFs were found to be covered with a wood deck along the whole perimeter, and the prisoners sit, eat and sleep right on the floor.

e) Availability of bedding and bed linen



According to the monitoring findings, legal requirements whereby each detainee shall be provided with bedding and linens for personal use during the stay in the TDF are not met, which is a common practice.

In each and every IAB TDF there was no bed linen (duvet covers, sheets, or pillow cases) at the time of the visit.

The observers noted that the bedding items (blankets, pillows, and mattresses) are only available in the cells of 25 (53%) IAB TDFs across the country. But even if available, they are not complete (for example, there is only one mattress) and their number does not match the number of those detained in the cell.

In most cases, bedding is brought by families of detainees.

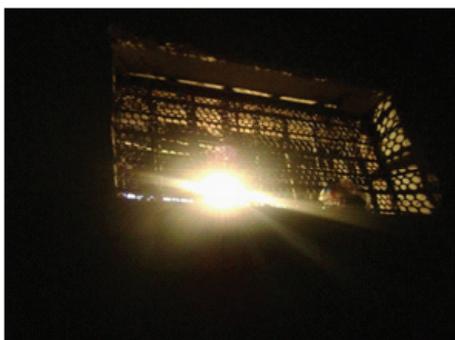
In 13 (52%) IAB TDFs, the observers found that the state of the bedding was extremely poor - dirty, torn (the Osh City IAD TDF, the IAB TDFs of cities of Balykchy, Tokmok, Tash-Kumyr, Kara-Kul and Miluu-Suu, as well the Kara-Suu, Nookat, Suzak, Toktogul, Aksy, Ala-Buka and Chatkal District IAB TDFs).



Bedding.

Example: *The mattresses were given to the Sokuluk District IAB with support from the International Committee of the Red Cross and “Doctors without Borders”. But there are no blankets or linens in the TDF.*

Example: *Two juveniles were sleeping on the same mattress in one cell of the TDFs of Tokmok City IAB.*



Window in TDF.

Good condition of bedding was observed in the IADT TDF that was found to have a complete set of mattresses, pillows and blankets. According to the Head of the TDF, the Railroad Department provides the TDFs with all of the necessary bedding.

f) Lighting

The monitoring revealed the violations of requirements of national and international standards for natural and artificial lighting.

In most TDFs, daylight is limited due to by small size of windows. The window sizes were found to vary from 10 cm x 45 cm up to 1.0 m x 1.20 m.

The table below shows the ratio of the area of cells, and the number and the size of windows in some of the IAB TDFs.

Table 3.

Number and Sizes of Windows in Some of the TDF Cells.

KR IAB TDF	Cell Area, square meters	Number of Cell Windows	Window Size, cm
Kara-Kul City IABTDF	5.4	1	25 x 25
Aksy District IAB TDF	7.5	1	20 x 35
Tokmok City IAB TDF	18.0	1	20 x30
	13.5	1	35 x 45
Balykchi City IAB TDF	20.7	1	10 x 45
Tyup District IAB TDF	18.35	1	30 x 39
	18.5	1	32 x 45

In 18 (38%) IAB TDFs, windows have double metal bars which makes penetration of daylight and air almost impossible. For example, the Karasu, Kemin, Jeti-Oguz, Tyup, Batken, Leilek, Alai, Bazarkorgon, and Kara Kuldzha District IAB TDFs, and the Kyzyl-Kiya, Karakol, Sulukta City IAB TDFs, etc.

In the cells of the Jalal Abad City IAB TDFs, a polyethylene film is stretched instead of glass in the window openings, thereby making access of the air impossible.

In the Karabuura District IAB TDF, metal shutters, which do not let the daylight in, are embedded instead of the glass in the window openings.

There is no natural daylight in the Balykchi IAB TDF cells, for the only available window in the cell is welded from the outside by a metal sheet, 2 mm thick, with only 3 holes with a diameter of 3.5 cm. The same was discovered in the Naryn City AIB TDF cells, the Issyk-Kul, Djail, and Uzgen District IAB TDF cells.

Deprivation of prisoners of natural daylight and fresh air which are basic elements of life and which every detainee has the right to use, even for the purpose of reducing the risk of escape, is deemed cruel treatment by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁹⁴ and the European Court of Human Rights under the case of *Labzov v. Russian Federation*.⁹⁵

Good natural lighting allowing prisoners to read and write in the daylight was noted by the observers in the At-Bashy and Ton District IAB TDFs, with the plastic windows installed in the Ton District IAB TDF.



Window in TDF.

⁹⁴ General Report of the European Committee for the Prevention of Torture and Cruel, Inhuman Treatment or Punishment, number 11. CPT / Inf (2001) 16. Par.30

⁹⁵ The case of *Labzov v. Russian Federation*. Complaint No 62208/00. Strasbourg, 16 June 2005.

The complete lack of windows in the Chon-Alai District IAB TDF, in the one-man cell of the Issyk-Kul Oblast IAB TDF, as well as in three cells of the Osh City IAD TDF and three cells of the Djail District IAB TDF. Kara-Suu District IAB TDF has windows, but one cannot see what is outdoors since the TDF is located in the basement of the IAB.

The observers discovered inadequate conditions for reading in some IAB TDFs cells given artificial lighting. For instance, in the Bazarkorgon and Issyk-Ata District IAB TDF cells, there are no artificial lighting lamps. They are located in the corridor, and the light enters the cell only through a small hole in the frame above the door.

Artificial lighting in the cells of the Tash-Kumyr and Kara-Kul city IAB TDFs, and Sokuluk, Toktogul, Aksy and Ala-Buka District IAB TDFs is very weak, because an artificial light bulb, which is located in the corridor, is covered by a lattice-grid. Although the bulb is on 24 hours a day, the light is dim in the cells and it is impossible to read or write. Artificial lighting does not enable one to see remote corners of the cell.

g) Ventilation

The observers noted that it was very stuffy in the cells of 10 (21.3%) TDFs, nor was it possible to air them.

When monitoring the Uzgen and Djail District IAB TDFs, it was revealed that in summer it was unbearably hot in the cells, there was no natural air ventilation, and artificial ventilation system was out of order.



Window in TDF.

The observers noted that it is dark, cold and damp in all the cells of the Tyup District IAB TDF, there is sharp odor there and mold fungus on the walls.

The devices for artificial ventilation are installed in the Kadamzhai District IAB TDF, but this makes little difference. In summer it is very hot in the cells, and in autumn and winter it is very wet, the mold is formed on the walls. The same situation can be seen in the Djail District IAB TDF.

There are installations for artificial air ventilation in the Karasu city IAB TDF, but they do not work because of frequent power cut-offs.

There is virtually no air in the Issyk-Ata District IAB TDF cells, the only window in the cell is closed by the grate and net that does not let air in. In 2010, according to the TDF administration, the ventilation motor was replaced, but it works poorly and generates a lot of noise. All of the detainees of the TDF complained to the observers that ventilation creates a lot of noise with no increase in the air flow.

h) Heating



Heating in TDF.

Since the monitoring was conducted in the summer-autumn period, it appeared impossible to assess the quality of the TDF heating system. The analysis of compliance with this standard was based on the information obtained during the interviews. Depending on the month of observation, the average temperature in the cells was 25-30 C in summer and 18-22 C - in autumn.

According to the staff, in 13 (27.7%) TDFs, the central heating system is used, and electric heating is used in 22 (46.8%) of them. In those TDFs where the electric heating system is functioning the TDF switches to furnace heating in the event of outage.

According to the TDF staff, in some TDFs it is very cold in winter due to low efficiency of the heating system (for example, in the Nookat, Batken, Leilek, and Sokuluk District IAB TDFs.).

At the time of the monitoring of the Talas City IAD TDF, it was very cold in the cells, because heating was not switched on yet. Almost all of the persons in the TDF were chilled.

i) Sanitary installations

The monitoring findings showed that respect for the prisoners' right to the possibility of meeting their needs of nature when necessary in a clean and decent manner fails to be ensured in the majority of cases.

The WCs in the cells are installed in only 10 (21.3%) TDFs including the Bishkek City IAD TDF, the Talas Oblast IAD TDF, the Osh, Karakol, and Sulukta City IAB TDFs, the Karabuura, Kochkor, and other District IAB TDFs. However, the availability of toilets in the cells does not always mean the possibility of using them.

Example: *The Moscow District IAB TDF toilet bowls are installed in each cell, but they are inoperative, as there is no water supply hose. Inmates collect water in buckets, but it is not always enough for flushing.*

Example: *The toilet bowls were installed in the cells of the Karakol City IAB TDF, but no water for washing is available. Prisoners use plastic water bottles for these purposes.*



Sanitary installations in TDF.

The serious problem for the IAB TDFs is that of no central sewage system. For example, the WC in the Sokuluk District IAB TDF is in good condition and consists of six separate cabins, renovated with the support from OSCE. However, due to lack of sanitation in the cells, prisoners are taken out to the toilet room twice a day, mornings and evenings, for their needs of nature.

The satisfactory conditions for the needs of nature are provided in the Osh and Mailuu-Suu City IAD TDFs, where the cells have operative toilet bowls and a tap with running water. The same conditions have been created in the Sulukta city District IAB TDF, where there is a toilet connected to the sewage system and a sink with running water.

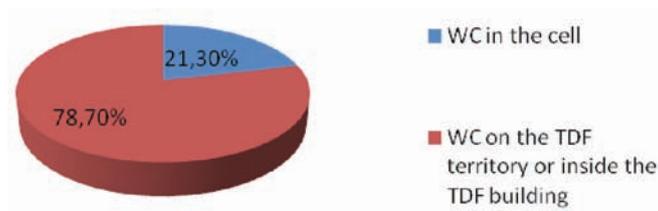
In some TDFs the toilet is located inside the TDF building (the Naryn City IAB TDF, for example).



Buckets for needs.

In 37 (78.7%) IAB TDFs, there is no WC. The prisoners are taken out to the toilet room, which is located in the recreational yard or in the building of the TDF, twice a day, morning and evening, and at other times they are forced to use buckets set in the cells for their needs of nature.

Diagram 13.
Location of WCs in TDFs.



Toilets located on the territory of TDFs are just dump wells or the floor toilets. Some of them do not have walls or doors and are located in the open-air space of the exercise yard that does not allow for privacy in their needs of nature.



For instance, the toilet in the exercise yard of the Issyk-Ata District IAB TDF consists of three holes in the ground with no walls, doors or partitions.

The At-Bashy District IAB TDF toilet is located in the corner of the exercise yard and is just the hole in the ground with the size of 1.0 m x 1.0 m, covered with boards, with the partition, but with no doors or roof.

The Tokmok IAB TDF toilet is 3 pit latrines in the exercise yard, without walls and doors.



The detainees of the Batken District IAB TDF are taken out to the toilet located in the exercise yard. It represents two floor toilets without walls or doors. There is a sink next to the toilet, but there is no water.

The observers found that toilets in some TDFs are in a very poor condition. These include the Balykchi and Chon-Alay District IAB TDFs.

Toilet in the exercise yard.

It must be noted that the time of the monitoring, no toilets had paper for hygiene purposes; nor were there any means for disinfection at.



Bucket for needs.

In some TDFs a walk for the prisoners is combined with satisfaction of their needs of nature, and the process of going to the toilet is registered as the walk. For example, in the Uzgen, Kara-Suu and Ton District IAB TDFs the detainees are taken for 10-15 minutes to the walking place with the pit latrines so that they can satisfy the needs of nature and are then brought back to the cells.

Because of no central sewage system, the administration has to seek funding on an on-going basis to clear the drain holes, because no funds are allocated from the budget for these purposes. This problem entails the violation of the rights of TDF detainees.

Example: from the interview with the Head of the Karabuura District IAB TDF: “We do not have money to clear the drain hole the capacity of which is 60 cubic meters. Therefore, we would periodically close water in the cells not to have frequent water drainage.”

Buckets or pots for needs of nature are installed in in the cells of 23 (48.9%) TDFs. That said, in those cells where there is a tank (bucket) with drinking water, it is located in the corner of the cell right on the floor next to the bucket for needs of nature.

For example, there are 10-liter plastic buckets for needs of nature in the cells of the Tyup District IAB TDF.

In the cells of Tash-Kumyr and Kara-Kul city IAB TDFs, as well as Toktogul, Aksy, Ala-Buka, and Chatkal District IAB TDFs, detainees use buckets (made of zinc or plastic and with the capacity of 6 to 10 litres) that have covers for their needs of nature. Detainees empty the buckets twice a day themselves. It must be noted that this is their responsibility as per par. 3.2 of the Internal Regulations.

The prisoners in the cells of the Djail District IAB TDF cover the buckets for needs of nature with plastic bags to prevent the spread of the foul-smelling odor.

There are even no buckets for needs of nature in the cells of the Kemin District IAB TDF, and at the time of the monitoring, there were plastic bottles filled with urine and a bowl for garbage on the floor in the corner of the cell.

Under the *case of Nikolay Starokadomsky v. Russian Federation*, the European Court of Human Rights recognized the fact of the violation of the right to freedom from cruel and inhuman treatment based on the report stating that the cells, in which the claimant had been held, had no partitions between a toilet and a living area.⁹⁶

Thus, the monitoring findings suggest that the majority of toilets located inside of TDF buildings and on the territory of the institutions do not meet any, even minimum, standards for conditions of detention, and satisfaction of needs of nature in such conditions (in front of everyone and given no opportunity to use water or hygiene) is inhuman and degrading treatment.

j) Shower cabins

The monitoring revealed that the detainees of IAB TDFs do not have any possibility to observe good personal hygiene due to lack or malfunction of shower cabins or because of no hot water available.

Example: *There is no shower room in the Moscow District IAB TDF, and there are no taps with running water in the cells. The detainees of this institution had no opportunity to wash themselves, even though the air temperature in the cells at the time of the monitoring reached 32 degrees.*

Example: *When asked how often prisoners could take showers, the head of one of the TDFs said: “Twice a day every day – in the morning and in the evening.” At the same time, the observers noted that the shower is located in the exercise yard and it is a summer version with the tank fixed on top of the shower cabin (the monitoring was conducted in November) and with no hot water. One could take the advantage of such a shower only in summer.⁹⁷*



Shower room inside
TDF building.

In most cases (41.9%), in the warm season, the TDF detainees take a cold water shower in the exercise yard.

⁹⁶ Decision of the European Court of Human Rights under the *case of Starokadomsky v. Russian Federation*. Complaint No. 42239/02. Strasbourg, 31 July 2008

⁹⁷ Monitoring Report No. 6/4-8-10-11/ИП/1.



Shower cabin in exercise yard.

Example: According to the Head of the Issyk-Ata District IAB TDF, in winter the detainees are sent to a pre-trial detention facility, so that they could take a shower there.

Example: The shower room built with the financial support from OSCE in 2008 in the Kemin District IAB TDF had not been operating for 3 months by the time of the monitoring due to malfunction of a pump.

Example: The detainees of the IAB TDF have the opportunity to take a shower both during warm and cold seasons. One shower room is located in the exercise yard (“summer shower”), and a contract was concluded with the second one next to the TDF building for winter.

Example: Located inside the TDF building, the shower room in the Naryn District IAB TDF is an isolated room separated from the other room where a water heater is installed with partitions. There is soap, a washcloth and a towel in the shower room.

Example: At the time of the monitoring, the shower room in the exercise yard of the Jeti-Oguz District IAB TDF was under construction. Sixty-litre water heater was installed in the room.

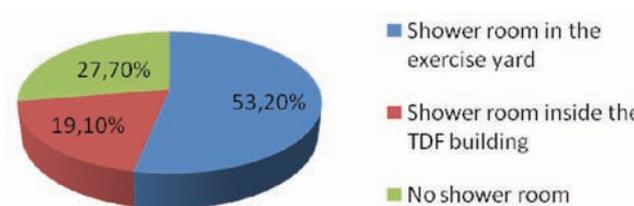
Example: The shower room in the Sokuluk District IAB TDF is in good condition, and represents two showers in one cabin renovated with the support from OSCE. There is hot water, and it is allowed to take a shower once a week.

Example: The Mailu-Suu IAB TDF has a separate room for taking a shower that has sewerage system, and hot and cold water supply.

There are no shower rooms in 13 (27.7%) TDFs including the Bishkek City IAD TDF, the Batken, Leilek, Alai, and Ala-Buka District IAB TDFs, and the Tash-Kumyr City IAB TDF, etc.

Separate shower rooms with hot water are located in the buildings of 9 (19.1%) TDFs.

Diagram 14.
Availability and location of shower rooms in IAB TDFs



k) Availability of personal hygiene products, detergents, and tableware

In the absolute majority of cases, legal requirements whereby IAB TDF detainees shall be provided with soap (toilet and laundry), washing powder, paper for hygiene purposes and items for cleaning cells fail to be met. The aforesaid articles are not given to the detainees since no funds for these needs are allocated from the budget.

Soap and other hygiene products are brought to the IAB TDFs mainly by prisoners' families. Those detainees whose families are not able to come and pass a parcel, do not have detergents or personal hygiene products.

Example: *Detained women in the Issyk-Ata District IAB TDF complained about having no opportunity to wash their clothes since there was no water, soap or any containers.*

Example: *Detained women in the Tokmok City IAD TDF complained about having no basic opportunity to observe personal hygiene due to lack of water in the cell. One of the detainees explained: "The head and the staff goof on us and do not allow having any plastic bottles in the cells." The observers asked the TDF staff about a reason for such a ban, and got a reply "it is prohibited by law." However, none of them could demonstrate a legal provision prescribing this ban.*

Example: *One of the detained women shared: "I had been asking to bring me hot water to wash myself for two days. Two days later, I got two plastic mayonnaise buckets".⁹⁸*

Only a broom and a shovel for cleaning the cells are given in the Tokmok City IAB TDF, the Issyk-Ata, Kemin, and Karabuura District IAB TDFs, and the Talas Oblast IAD TDF.

Example: *from the interview with a detainee: "Sometimes bleach is given. It would be good if they give us soap and toothpaste".⁹⁹*

Example: *from the interview with a detainee: "They do not give us any items for cleaning the cells. We ourselves do cloth from our old clothes and clean the cells".¹⁰⁰*

In the course of the monitoring, just one case was revealed in which the cells were cleaned by a cleaning lady – it was in the At-Bashy District IAB TDF.

It must be noted that, despite the same financial difficulties faced by all of the TDFs of the country, the staff of the Leilek District IAB TDF and the Sulyukta City IAB TDF try to keep the cells and other rooms clean.

Many TDFs face difficulties with tableware.

Example: *In one of the cells of the Karabuura District IAB TDF not all the prisoners had personal tableware at the time of the monitoring. Tableware in this TDF is stored in the shower room.*

Example: *There are single-use plastic cups and spoons in the Jeti-Oguz District IAB TDF cells, but their number is not enough for all of the detainees in the cells.*

Example: *In one of the cells of the Sokuluk District IAB TDF, where at the time of the visit eight people were detained, there were two tablespoons, three plastic mugs and four plastic cups. Prisoners eat each at a time.*

l) The possibility to store personal belongings

In almost all of the TDFs there are no desks, cabinets, or bed-side tables for storage of personal belongings in the cells.

In 38 (80.9%) TDFs, there is no special room, as established by law, to store bedding and personal belongings of suspected or accused persons that are banned for storage in the cells.

⁹⁸ Monitoring Report No. 5/5-7/O.

⁹⁹ Monitoring Report No. 10/13-15/3/4.5.

¹⁰⁰ Monitoring Report No. 10/13-15/3/3.2.

In some of the TDFs, detainees' personal belongings are stored in the room of the Head of the institution. Nine (19.1%) TDFs designated a special room for the above purposes. *m) Equipment of cells*



Of the TDF cell equipment listed in the Internal Regulations, the observers noted only a small tank for drinking water and litter-bins that are not available in all TDFs. No other equipment in the TDF cells was found.

The observers encountered two TDFs where there were tables in the cells, and there was a bench in one of the facilities (the Mailuu-Suu City IAB TDF).



The cells of only 17 (36.2%) TDFs had a small tank for drinking water at the time of the monitoring. As mentioned above, if any tank (bucket) with drinking water is available, it is usually located in the corner of the cell at the entrance next to the bucket for needs of nature.

The observers noted that only 20 (42.6%) IAB TDFs cells had a litter-bin, and in four (8.5%) of them there were plastic bags instead of bins.

Due to lack of equipment in cell detainees eat on the floor.

n) Sanitary Inspection (decontamination of detainees, sanitary condition of cells, disinfection, and disinsection)

No TDF performs compulsory primary decontamination of all persons when they are admitted to IAB TDFs, in violation of law.

Further, although the law requires that decontamination of prisoners takes place at least once every seven days, this is not done in practice.

IAB TDFs lack disinfectants. Therefore, most of the institution fail to comply with the legal provision whereby TDF cells and other premises shall undergo every-day wet cleaning with disinfectants used.

The observers noted a relatively favorable situation in the Panfilov District IAB TDF where all cells and a lavatory are decontaminated every week. In addition, the sanitary & epidemiological service disinfects the TDF once a month.

According to the Bishkek city IAD TDF, "sanitary & epidemiological decontamination with powder takes place once a year in summer."

According to records in the book of IADT IAB, cells are disinfectd once a week. The Head of the facility said that the sanitary & epidemiological treatment was done last winter.

According to the detainees, neither disinfection nor disinsection is performed in the TDFs.

Example: The detained women in the Issyk-Ata District IAB TDF complained about bugs and omissions of the administration in this sphere.

Example: As a detainee of the Tokmok city IAB TDF explained, "there were fleas in the cells".

Sanitary & epidemiological services, with few exceptions, do not perform sanitary oversight and do not conduct regular inspections to see if sanitary standards in terms of lighting, ventilation, temperature, humidity and air pollution, availability, quality and properties of water, etc. are complied with.

Example: Head of the Suzak District IAB TDF shared that no funds for sanitary & epidemiological work are allocated. “To the contrary, the city IAB allocates only an insignificant amount of money to the Sanitary and epidemiological service in accordance with the agreement.” On the day of the monitoring, sanitary & epidemiological work was underway in the TDF.

Example: The administration of the Ala-Buka District IAB TDF said there were no funds for sanitary & epidemiological work. Yet, an agreement was signed by and between the IAB and the Sanitary and Epidemiological Service whereby these works shall be performed in the TDF once a month.

It must be stressed that, despite the numerous breaches of the law and international standards revealed in the IAB TDFs of the country, six TDFs were noted by the observers as institutions that best of all have come close to the international standards of detention conditions by such criteria as the status and equipment of cells, lighting, heating, and the possibility of providing walks etc. These include:

- IADT TDF,
- Talas Oblast IAD TDF,
- Panfilov District IAB TDF,
- Ton District IAB TDF,
- Mailu-Suu city IAB TDF, and
- Kara-Kul IAB TDF.

In general, based on the results of the examination of the housing & living and sanitary & hygiene conditions of detainees, it can be concluded that the absolute majority of IAB TDFs of the country do not meet the requirements set out by the international standards pertaining to rights of prisoners to humane detention conditions, and the prisoners are held in the TDFs in degrading conditions.

B. NUTRITION

International Standard

According to the Standard Minimum Rules, Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

Drinking water shall be available to every prisoner whenever he needs it.¹⁰¹

In-country legislation

The Law on the Procedure of the Detention establishes that the temporary detention facilities of internal affairs bodies shall be financed through the republican budget based on the cost estimate of Internal Affairs Bodies of the Kyrgyz Republic. According to the law, additional funding and logistical support to temporary detention facilities may also come from the budgets of Oblast, district (city) administrations or local budgets.¹⁰²

The in-country legislation provides for the right of accused and suspected persons to receive free meals, including during the period of their participation in the investigations and court hearings.¹⁰³

Suspected and accused persons shall be provided with free food, sufficient to maintain proper state of health and strength, according to the standards as determined by the Government of the Kyrgyz Republic. Suspected and accused persons shall have the right to purchase, on a non-cash basis, food, necessities of life, as well as other manufactured goods.¹⁰⁴

¹⁰¹ Standard minimum rules.

¹⁰² Law on the procedure of the detention. Art. 9.

¹⁰³ Law on the procedure of the detention. Art.16.

¹⁰⁴ Law on the procedure of the detention. Art. 21.

The nutritional standards were approved by the Resolution of the KR Government as of February 8, 2008, No. 42 on “Approval of Daily Allowance Rates, Rates of Replacement, Rules for Application and Replacement of Daily Allowance Rates of Convicted Persons as well as Persons Held in Pre-trial Detention Facilities of the Penal Enforcement System of the Ministry of Justice of the Kyrgyz Republic”.

The Internal Regulations state that food for suspected and accused persons shall be delivered by the TDF officer-on-duty. TDF detainees shall have meals in their cells. Dish washing and disinfection are subject to mandatory use of detergents and disinfectants in the food heating room.¹⁰⁵

Drinking water shall be delivered to the cells daily and as needed.¹⁰⁶

Number of Meals and Quantity of Food

In response to the written request about nutrition of detainees of IAB TDFs, the KR Interior Ministry replied that “persons placed in IAB TDF of the republic ... are provided with three meals a day every day (breakfast - tea and bread, lunch - a hot meal, supper - tea and bread, boiled water is given all the time).”

The monitoring showed that in all IAB TDFs, except for the Panfilov and Jeti-Oguz District IAB TDFs, hot meals for the detainees are provided once a day. In most cases, food is cooked either in a cafe located nearby the IAB to which the TDF is assigned, or in a canteen at the IAB with which the IAB administration enters into a corresponding contract.



Can with hot food.

In the Panfilov and Jeti-Oguz District IAB TDFs, hot meals are provided to the detainees twice a day.

For instance, in the Panfilov District IAB TDF, the detainees are provided with tea with sugar and bread as breakfast, and hot meals for lunch and dinner. The detainees in the Jeti-Oguz District IAB TDF are fed three times a day with two hot meals.

Food is cooked in the canteen and bakery under the District IAB. There were no complaints received about the quality or the quantity of food given to prisoners in these two institutions, in contrast with most of the other TDFs.

In the rest of the TDFs, detainees are provided with hot meal once a day (one hot dish), and they are given tea and bread mornings and evenings.

In a number of TDFs, the detainees are provided a hot meal once a day. Twice a day, in the morning and in the evening, they are given boiled water instead of tea and without bread (for example, the Karabuura District IAB TDF) or boiled water and bread (the Bishkek city IAD, IADT. and Talas City IAD TDFs).

However, not in all of the TDFs it is envisaged to provide food as hot meals due to lack of the room for heating food (the Kochkor and Kemin District IAB TDFs, etc.).

Numerous complaints received from the detainees were about the quality and quantity of food provided.

Food Financing in IAB TDFs

The monitoring revealed the violation of the procedure of funding TDFs through the state budget as stipulated by law.

¹⁰⁵ Internal regulations. Par. 5.15.

¹⁰⁶ Internal regulations. Par. 2.2.

In practice, all TDFs (100%) are provided with food through the local budgets. It should be noted that this provision is not inconsistent with law providing for the possibility of additional funding for the TDFs from the budgets of oblast, district (city) administrations and local budgets. However, additional funding must not fully replace mainstream funding that should come from the state budget against the KR Interior Ministry's expenditures.

It follows from what members of staff of TDFs told during interviews that virtually all the TDFs face difficulties in providing food for prisoners.

Example: According to the head of one of the TDFs: "We are already in debts - no one wants to feed the detainees without money, on credit."¹⁰⁷

There is no fixed amount of money allocated to any TDF for food of one detainee per day. According to the administration, the funds allocated by local keneshs for TDFs' needs for one year are distributed to finance various needs, including nutrition, purchase of healthcare products and medicines, repairs, etc. Thus, the amount allocated for food for TDF prisoners depends on the choice of deputies of local councils, who approve daily nutritional requirements at their sessions.

Having analyzed sums of money allocated by local keneshs to local IAB's TDFs, the observers established that the lowest daily nutritional requirement per person is 38 Soms (at the Aksy District IAB TDF) and the highest one is 124 Soms (at the Chatkal District IAB TDF).

The table below gives details on funds allocated for one prisoner a day.¹⁰⁸

Table 4.

Amount Allocated for Food per One IAB TDF Detainee a Day.

No.	KR IAB TDF	Amount Allocated for Food per One IAB TDF Detainee a Day	Funds Allocated from the Local Budget for Nutrition, year/ quarter
1	Aksy District IAB TDF	38	-
2	Jayi District IAB TDF	44	-
3	Suzak District IAB TDF	45	493,000 soms a year
4	Tokmok City IB TDF	89-90	700,000 soms a year
5	IAB TDF	56	
6	Sokuluk District IAB TDF	63	900,000 soms a year
7	Bazarkorgon District IAB TDF	60-70 soms including the funds for medicaments	328,000 soms a year
8	Bishkek City IAB TDF	72	5,000-6,000 soms a quarter
9	Kemin District IAB TDF	75	250,000 soms a year
10	Karabura District IAB TDF	-	104,228 soms a year
11	Kochkor District IAB TDF	83	
12	Bashin District IAB TDF	87	
13	Jalal-Abad City IAB TDF	Earlier – 68, currently - 92	1,300,000 soms a year
14	Jeti-Oguz District IAB TDF	123,74	-
15	Tyup District IAB TDF	-	180,000 soms were allocated in 2010, in 2011 - 100,000 soms
16	Balykchi District IAB TDF	-	60,000 soms a year
17	Sulyukta District IAB TDF	-	40,000 soms a year
18	Batken District IAB TDF	-	70,000 soms a year
19	Leilek District IAB TDF	-	80,000 soms a year
20	Kara-Kuldja District IAB TDF	-	130,000 soms a year
21	Ala-Buka District IAB TDF	-	202,000 soms a year
22	Chatkal District IAB TDF	124	-

¹⁰⁷ Monitoring Report No. 19/16-18/H.

¹⁰⁸ These are the data on only those TDFs, whose administration shared this information with the observers. In other cases directors or their deputies would say they did not have these data.

Provision of meals during the period of participation of suspected and accused persons in investigations and court hearings

In the course of the monitoring, the issues of enforcement of the right of accused and suspected persons to free meals during the period of their participation in investigations and court hearings were separately studied.

In the course of the monitoring of the Sokuluk District IAB TDF, the observers revealed a fact that appears to have occurred in other TDFs of the country, too. Prisoners, who were convoyed under guard on the day of the monitoring, did not have time for lunch, because food was brought to the TDF at 3 P.M. Hence, they had had the last hot meal the day before and would have the next one only the following day.

Also, the monitoring revealed that if a person is brought to a TDF after lunch, he is left without hot meal and often is left hungry till the lunch time of the following day.

As it is obvious that the standards for timely provision of detainees with meals are not complied with, the management of IABs and administrations of TDFs should take necessary steps to eliminate violation of this prisoners' right.

Caloric Content of Food

Having analyzed the quantity and quality of food provided to the IAB TDFs for its compliance with the standards of daily calories, the following conclusions were made.

The caloric content of food for an adult male between 18 and 40 years of age, not engaged in physical labor or sports, should be 2,800-3,000 kcal/day, for women with the same criteria - 2,400-2,600 kcal/day. The caloric content of, for example, one serving of borscht is 49 kcal, pea soup - 54 kcal, cereal milk - 112 kcal.

Thus, getting the first course (for example, according to the prisoners, the day before the monitoring they were given pea soup for lunch and tea and bread for breakfast and dinner), the person receives from 50 to 200 kcal per day, which is **7.4 % of the established daily requirement**.¹⁰⁹

In the same TDFs, where, in addition to the hot meal for lunch the prisoners are given only boiled water for breakfast and dinner, without bread, the prisoners get even fewer calories.

The UN Human Rights Committee already has precedents when dreary and insufficient nutrition of prisoners was found a violation of Art. 10 of ICCPR where by all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The case of *Bachriniso Sharipova and others v. Tajikistan* can be provided as an example.¹¹⁰

Access to Drinking Water

The observers placed high emphasis to the issues of ensuring regular access to drinking water for IAB TDF detainees.

The monitoring revealed cells of 40 TDFs (85.1%) are not equipped with taps with running water. Taps are fixed in the cells of only 7 (14.9%) TDFs.

The law requires that the cells must have small tanks with drinking water.

According to the observations, 50% of the TDFs lacking taps with running water do not even have small tanks with drinking water.

¹⁰⁹ The calculation was made based on the average daily standard for caloric content of food – 2,700 kcal/day, and the maximum quantity of calories a detainee gets per day – 200 kcal/day.

¹¹⁰ The decision of the UN Human Rights Committee under the case of *Bachriniso Sharipova and others v. Tajikistan* of 1 April 2008. CCPR/C/92/D/1209, 1231/2003&1241/2004.

In some cells with tap water and no tank with drinking water, the observers noted water to be of a very poor quality and taste, which was unfit for drinking.

In most IAB TDFs, an officer-on-duty brings drinking water in plastic bottles at the request of detainees.

It must be stressed that ensuring free access to drinking water is recognized as the international obligation pertaining to suppression of ill-treatment of detainees.¹¹¹

The European Court of Human Rights has had a precedent, namely the case of *Starokadomsky v. the Russian Federation*, when the detainee had no regular free access to drinking water. He only could use water provided by the guard-on-duty. This was found unacceptable treatment and violation of Art. 3 of ECHR.¹¹²



Bucket with water near the basin for needs.

Thus, it can be concluded from the monitoring findings that the quantity and quality of food do not meet quality criteria and are not sufficient for “maintaining good health and strength” as specified by the Minimum Standards, and failure to provide regular access to drinking water is inhuman treatment of prisoners.

C. MEDICAL SERVICES

International Standard

Standard Minimum Rules outline in detail principles of activities of medical personnel in closed institutions and stipulate that each prisoner must undergo a medical examination upon his admission to a closed institution and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures, and the segregation of prisoners suspected of infectious or contagious conditions.

The medical officer shall regularly inspect and advise the director upon:

- a) The quantity, quality, preparation and service of food;*
- b) The hygiene and cleanliness of the institution and the prisoners;;*
- c) The sanitation, heating, lighting and ventilation of the institution;*
- d) The suitability and cleanliness of the prisoners’ clothing and bedding; and*
- e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.¹¹³*

According to the Body of Principles, a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.¹¹⁴

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded.¹¹⁵

In-country Legislation

The Constitution of Kyrgyzstan enshrines the right to safety for everyone and legally punishes government authority representatives who conceal facts and circumstances threatening human life and health.¹¹⁶

¹¹¹ Report of the UN Committee Against Torture. CPT/Inf/E (2002)1 – Rev.2009.

¹¹² Decision of the European Court of Human Rights in the case *Starokadomsky* against *the Russian Federation* No. 42239/02. Strasbourg, July 3, 2008

¹¹³ Standard minimum rules. Rules 24, 26.

¹¹⁴ Body of principles. Principle 24.

¹¹⁵ Body of principles. Principle 26.

¹¹⁶ Constitution of the Kyrgyz Republic, Art. 47, Paragraph 1,4. 27 June 2010.

The law on “Protection of the Kyrgyz People’s Health” establishes an inalienable right to protection of health for all citizens, regardless of gender, race, nationality, language, social origin, employment status, residence, religious beliefs, convictions, membership in civil societies, and other factors granting the right to receive health, medical and social care.¹¹⁷ The Government of the Kyrgyz Republic must ensure the constitutional rights of its citizens pertaining to health care.¹¹⁸

In accordance with the same law, persons whose liberty is restrained in an extrajudicial manner, who serve their sentences as per a court order out of places of detention, and who are placed into temporary detention facilities shall receive medical or sanitary aid from departmental medical and sanitary services or municipal health organizations based on signed agreements and in accordance with the procedure established by the Government of the Kyrgyz Republic.¹¹⁹

According to the KR Code of Criminal Procedure, every time a suspected person is placed in a temporary detention facility and also when this person, his counsel, or his family makes a complaint regarding physical abuse inflicted by agencies of inquiry or investigation, the suspected person shall undergo a compulsory and documented medical certification. The responsibility for overseeing the medical certification shall rest with the administration of the temporary detention facility.¹²⁰

Similar legal provisions apply to an accused person in every case of his placement in a temporary detention facility, as well as in case this person, his counsel or his family complains about physical abuse inflicted by agencies of inquiry.¹²¹

The Law of the Kyrgyz Republic on the procedure of detention guarantees the right of a suspected or accused person to receive health and sanitary care including during investigatory and trial periods.¹²²

The administration of places of detention must carry out medical, disease-preventive and sanitary-epidemiological work in accordance with the law on protection of health of Kyrgyz citizens.

If a suspected or accused person receives bodily injuries, a medical officer of the place of detention must promptly provide medical aid, and medical certification results must be documented in accordance with the established procedure and announced to the injured party. By a decision of a head of the detention facility, or a person or a body in charge of the case, or per request of a suspected or accused person, or his counsel, medical certification may be performed by staff of health care institutions.¹²³

The Internal Regulations state that the TDF’s management must conduct medical & preventive and sanitary-epidemiological work in accordance with the law on protection of health of Kyrgyz citizens.

The Ministry of Health and the Interior Ministry shall establish procedures for the provision of medical aid, including psychiatric care, to suspected and accused persons, as well as procedures pertaining to hospitalizations and recruitment of medical staff.¹²⁴

The staff of temporary detention facilities must inquire from persons delivered to these facilities about their health in order to establish whether a detainee may require medical care. In cases when a detainee complains about an ailment or possesses visible symptoms of poor health, a TDF officer-on-duty must immediately call the ambulance.

¹¹⁷ Law on Protection of the Kyrgyz People’s Health. January 9, 2005, No 6 (amended 28 December 2006 No. 224, 17 February 2009 No. 53, 17 April 2009 No. 129). Art. 61.

¹¹⁸ Law on Protection of the Kyrgyz People’s Health. Art. 8.

¹¹⁹ Law on Protection of the Kyrgyz People’s Health. Art. 33

¹²⁰ Code of Criminal Procedure of the Kyrgyz Republic. Art. 40(5).

¹²¹ KR Code of Criminal Procedure. Art. 42(7).

¹²² Law on the procedure of the detention. Art. 16.

¹²³ Law on the procedure of the detention. Art. 23

¹²⁴ Internal Regulations. Par. 5.1, 5.2.

Results of an inquiry into the health conditions of suspected or accused persons, health complaints made by them and requested medical assistance and its character must be recorded in a special book, which must always be kept with the TDF officer-on-duty.

Emergency medical aid for suspected or accused persons should be offered by local emergency health services. Persons exhibiting symptoms of acute mental disorder, infectious and other severe diseases requiring emergency care must not be placed into temporary detention facilities.

If a medical officer or the ambulance team concludes that a suspected or accused person needs to be hospitalized, then he shall be sent to an appropriate local health care facility.

*Temporary detention facility medical staff or ambulance team shall prescribe medicine to detained or imprisoned persons. Any prescribed medicine must be kept with the TDF officer-on-duty and taken by ill detainees only in the presence of such officer.*¹²⁵

*Internal Regulations also require each temporary detention facility to possess a medical kit, which should be replenished based on use by the detention facility's medical staff.*¹²⁶ *The regulations also list 18 medicines and healthcare products which must always be available in the medical kit.*

*According to the Code of Ethics for Health Care Workers of the Kyrgyz Republic, health care workers, while maintaining professional independence and providing medical aid to newborns and the elderly, military personnel and civilians, senior executives and persons in custody, have the right and duty to take full responsibility for their professional decisions. Health care workers must resist any pressure or influence of the administration of places of detention, patients or other persons. A medical officer must refuse to cooperate with any person who demands acts from this officer that breach the laws of the Kyrgyz Republic, ethical principles and professional duty.*¹²⁷

In response to an inquiry about provision of medical services in temporary detention facilities, the Interior Ministry replied that “medical & preventive and sanitary-epidemiological work in IDFs is administered in accordance with the laws on health of the Kyrgyz Republic the management of these facilities must comply with. Prior to being placed into detention cells, persons brought to TDFs shall be decontaminated and asked about their state of health to identify detainees in need of emergency medical assistance ... TDF medical staff or the ambulance team shall prescribe medicines to detained or imprisoned persons, which shall be kept by the TDF officer-on-duty and can be taken by detainees only in the presence of such officer”¹²⁸.

First of all, the exercise of the right to receive medical services requires existence of medical personnel. However, the monitoring has revealed that no such medical staff (physicians or medical assistants) exist in TDFs. At the time of the research, only four TDFs in the country had medical officers on staff – a Bishkek city IAD TDF, Bishkek IABT TDF, Osh IAB TDF, and Kara-Suu District IAB TDF.

Further, the Bishkek city IAB TDF has only one nurse on staff who, according to the head of the facility, makes rounds of all detainees in the facility every morning. The Bishkek IABT TDF has a medical assistant on staff.

The Osh and Kara-Suu District IAB TDFs are staffed with physicians who are paid through an OSCE project. Findings of observers of detention facilities in the south concluded that the OSCE project of staffing of detention facilities with physicians produced positive results. For instance, in detention centers with a physician on staff, law enforcement agencies could not inflict physical violence against detainees, and cases of physical violence have dramatically reduced. Thus, in some cases, the mere presence of a physician in a TDF can act as a deterrent against infliction of torture or cruel treatment.

¹²⁵ Internal Regulations. Par. 5.3-5.8

¹²⁶ Internal Regulations. Par 5.9

¹²⁷ The Code of Ethics for Health Care Workers of the Kyrgyz Republic. Approved by the Ministry of Health of the Kyrgyz Republic. Jan. 16, 2004. No 2-4, Art. 5.

¹²⁸ Reply of the KR Interior Ministry as of July 19, 2011 No. 11/893

Unfortunately, this is a temporary measure since in the absence of financial support from international organizations, activities of medical personnel cease in detention facilities. For example, a TDF of the Talas Oblast IAD has had a medical officer on staff for three years sponsored by the OSCE. After the funding ended, he left.

A fact to note is that TDF’s medical personnel should report to the Ministry of Health of the Kyrgyz Republic and not to be part of the KR Interior Ministry, which does not rule out a risk of unwanted influences.

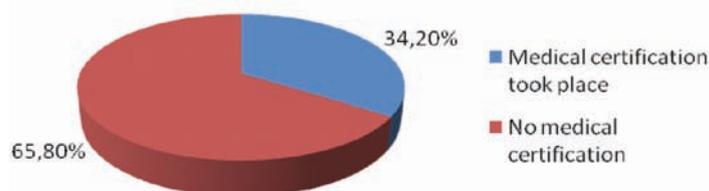
In a setting with limitations placed on freedom of movement and communication, guaranteed access to health care and medical examinations directly depends not only on the availability of health care workers in TDFs, but also on the existence of procedures for dealing with health complaints or reports of bodily injuries, or any other related complaints (see the section on “The Right to Make Complaints”).

The monitoring findings showed that medical certification does not happen in all cases of initial admission to a detention facility or upon a return to detention after being taken out for investigatory processes.

For instance, 66 (34%) of the respondents held in TDFs said they had not undergone any medical certification when initially admitted to a detention facility.

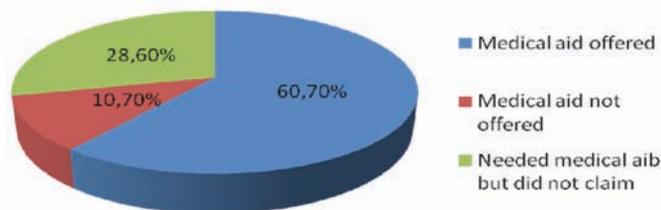
Example: An accused person: “A physician has not examined me upon my initial admission, only on my fourth day in detention, an examination was performed.”¹²⁹

Diagram 15.
Performance of medical certification during initial admission to a detention facility .



According to the respondents, at the time of admission to a detention facility, 28 (14.5%) required medical aid, while 17 (60.7%) of them received appropriate care, 3 (10.7%) did not receive appropriate care, and 8 (28.6%) patients suffered from ailments but did not report it.

Diagram 16.
Provision of medical aid to those in need at the time of admission to a detention facility.

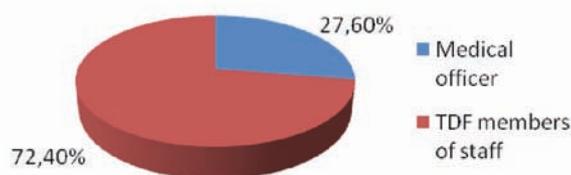


According to members of TDF staff, physicians on duty at local hospitals conduct medical examinations. However, when surveyed, 92 (72.4%) detainees reported having been examined by the TDF director and members of staff.

¹²⁹ Monitoring Report No. 1/6-7/3/1.3.

Diagram 17.

Personnel that conducted a medical certification upon admission to a temporary detention facility .



Usually, per request of an investigator, a standard medical certification form is filed out to establish a detainee’s state of intoxication and history of abusing psychoactive substances. However, the administration of such an examination has not been recorded in detainees’ files. Almost all the surveyed detainees indicated that physicians conducted medical examinations for formality’s sake and simply ask detainees whether they have any complaints. If a detainee answers “no,” then no actual physical examination would take place.

A case of detainee “N” can serve as an example of such “medical examinations.” A physician being on the monitoring team discovered injuries on the back of a detainee held in one of TDFs. It seemed like the injuries resulted from beating with a rubber baton, which has been reported by the physician in writing. When the physician requested the detainee’s medical reports from the TDF medical assistant, the latter began yelling at the detainee and reprimanding him for not contacting him directly. It was written in the medical report provided by the TDF medical assistant: “No complaints.” In the medical assistant’s opinion, this was a report of proper medical examination.¹³⁰

The monitoring has revealed a lack of a single standard and approved medical certification form for registering bodily injuries and detainee’s state of health upon admission to TDFs. As a rule, it is paramedical personnel that prepares reports on bodily injuries. These reports often do not contain full information, lack proof and information about causes of injuries and do not reflect detainees’ health conditions.

Example: “On July 11, 2010, detainee, S. underwent a physical examination. The detainee complained about pain in his chest, his hands, his head and a feeling of paralysis in his legs. Diagnosis: Chest bruising; open fracture of the left hand. Aid provided: analgene, diphenhydramine, procaine, consultation from a surgeon-on-duty. Signature of a paramedic: H.”¹³¹ Neither circumstances in which the injury was received nor information of surgical service due to the open fracture were specified in this record.

Example: “Detainee N. Diagnosis: traumatic injury of the eardrum.” Circumstances about how the injury was received were not specified.

Example: “On March 14, 2011, an ambulance for detainee D was called. The detainee was diagnosed with acute endodontitis. Advice given.”¹³²

Thus, it can be concluded that in practice, medical examinations are not consistent with the required procedure for the purposes of effective documentation of torture and cruel treatment.

The observers also noted that, in violation of the relevant legal provisions, some TDFs lack special logs for registering calls to ambulance and medical treatment logs. Ambulance calls are registered by TDF members of staff in a Register for Persons Brought to IAB.

That said, a the Tyup district IAB TDF has a register for examinations of persons with venereal diseases. The observers have discovered that all persons delivered to TDFs undergo a blood test for sexually transmitted diseases, meaning that the blood test is made without the detainees’ consent. No one from the detention facility staff could explain the need for such a test. It was discovered that only one of the 47 TDFs monitored maintained such a register.

¹³⁰ Monitoring Report No. 8/3,19/O.

¹³¹ Monitoring Report No. 16/3/O.

¹³² Monitoring Report No. 7/3/O.

The monitoring also revealed a violation of a legal requirement for a medical kit in each TDF, which should always be available and replenished as and when needed.

Assessment of the completeness of a medical kit was based on the list of eighteen approved medicines and healthcare products that a medical kit must contain as per the Internal Regulations.

In most TDFs, medical aid kits do not have all the required medicines and healthcare products, and some facilities lack such kits entirely. Thus, the observers registered 38 (80.9%) TDFs where medical aid kits were not complete.



Further, in two TDFs, medical aid kits had some medicines and healthcare products that had already expired.

It must be noted that most TDFs lack basic analgesics (paracetamol, analgene), wound dressings (bandages, adhesive tape, cotton, rope, and immobilization tires) which makes it impossible to provide emergency aid when needed.

In one TDF, the observers were told that the facility's director kept the medical kit in his office, but at the time of the monitoring he was on vacation, and no one had the keys to his office. That means that emergency aid was not and will not be available to detainees until the director returns from his vacation.¹³³



Medical kit.

The Moscow district IAB TDF did not have a medical kit at the time the monitoring was taking place. The observers also found an absolutely empty medical kit in the D jail district IAB TDF.

Seven TDFs in the country have fully stocked medical kits (TDFs of Panfilov, Ala-Buka, and Kara-Suu district IABs, a TDF of Osh IAB, TDFs of Kyzyl-Kiya and Naryn city IABs, and a TDF of Talas Oblast IAB).

Lack of funds budgeted for re-stocking medical aid kits explains the deficiencies in healthcare products and medicines. The administration of several TDFs allocates funds for procurement of healthcare products and medicines from the local budget. In some cases, TDF members of staff have to purchase medicines for detainees at their own expense.

In the seven TDFs mentioned above where the observers have noted the presence of fully equipped medical kits, healthcare products and medicines were purchased by nongovernmental or international organizations. For instance, during its previous visits to TDFs of Osh and Kyzyl-Kiya IABs, and the TDF of Kara-Suu district IAB, Luch Solomona Public Foundation replenished medical kits as part of the OSCE project. Also, in the TDF of Ala-Buka district IAB, the first aid kit was restocked with support from the National Red Cross Society.

In the course of the monitoring, the observers received several complaints from detainees regarding the failure of TDFs to provide medical services.

Example: from the interview with a detainee: "I have thrombophlebitis. The investigator promised to bring a surgeon, but no assistance has been provided yet."¹³⁴

Example: from the interview with a detainee: "I have a toothache, but no aid has been provided."¹³⁵

¹³³ Monitoring Report No. 15/16-17/II.

¹³⁴ Monitoring Report No. 3/6/3/1.

¹³⁵ Monitoring Report No. 10/13-15/3/4.0.

Example: from the interview with a detainee: “I was beaten hard and an ambulance was called. The ambulance team gave me some pills and said that I need to be inspected in a hospital, but I have not been taken anywhere.”¹³⁶

Example: In an ambulance calls register of the TDF of Tyup district IAB, as many as six ambulance calls were registered for the same detainee within a span of 25 days. Based on the records left in the register, the detainee was in the state of emergency. He complained about “shortness of breath, swelling of the lower extremities of his arms and legs, blood pressure 110/80, poor urination, lower back pain. Diagnosis: renal colic. Hospitalization required. Medicines received: aminophylline 24% - 10.0, furosemide - 4.0 V / m”. The register entry does not indicate the name of the health care worker who diagnosed the detainee and prescribed treatment to him. No data on hospitalization of the detainee exists.

In some TDFs, as is the case with the Sokuluk district IAB TDF, necessary medical aid to prisoners is offered in accordance with an agreement with a local hospital, where a special ward for detainees exists.

The monitoring also revealed violations of international standards pertaining to the duties of a medical officer to conduct regular inspections and notify the administration of the institution about the quantity, quality and service of food; the hygiene and cleanliness of the institution and the prisoners; the sanitation, heating, lighting and ventilation of the institution; the suitability and cleanliness of the prisoners’ clothing and bedding. These requirements were discovered not to be met in those TDFs where there was a medical officer.

D. DAILY EXERCISE

International Standard

*Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.*¹³⁷

In-country Legislation

*Every suspected or accused person shall have the right to have at least one-hour walk daily.*¹³⁸

*Minors, suspected and accused persons shall have at least two-hour walk daily.*¹³⁹

*The Internal Regulations duplicated the right of suspected and accused persons to daily walks. However, the document appeared not to enshrine any specific requirement for the length of walks for under-age suspected or accused persons.*¹⁴⁰

*For the purpose of walks, a special exercise yard (yards) shall be arranged on the TDF protected area. The number of such yards shall be determined based on the need to provide walks during daylight hours for all persons detained in the TDF.*¹⁴¹

It follows from the above descriptions that it is stuffy and dark in IAB TDFs’ cells which are small. Being held in a closed and darkened room, prisoners not only have the right to walks that is provided for by the international standards for the treatment of prisoners and is rather clearly articulated in the in-country legislation, but they also need daily walks outdoors.

The observers pointed out that detainees in 8 (17%) IAB TDFs are completely deprived of the right to daily walks.

¹³⁶ Monitoring Report No. 12/1/3/1.1.

¹³⁷ Standard minimum rules. Rule 21.

¹³⁸ Law on the procedure of the detention. Art. 16.

¹³⁹ Law on the procedure of the detention. Art. 29.

¹⁴⁰ Internal Regulations. Par. 4.33.

¹⁴¹ Internal Regulations. Par. 4.35.



Exercise yard.

Out of those, in 2 TDFs the detainees are not taken for a walk because there is no exercise yard. These institutions include Bishkek City IAB TDF and Balykchi City IAB TDF. In the remaining six, the unjustified deprivation of the detainees of their rights to daily walks can be interpreted as improper performance of their duties by the TDF staff. However, the monitoring findings demonstrated that even if an exercise/exercise yard exists, there are a great number of factors that can preclude them from availing of their right to walks.

The Uzgen, Kara-Suu and Ton District IAB TDFs have their own exercise yards, but daily walks for prisoners there are replaced with taking them from the cells to the toilet a day for 15-20 minutes.

Not all IAB TDFs comply with the standards and the domestic law as to the length of walks that should be at least one hour for adults and at least two hours for minors.

Only 54.5% of IAB TDFs practice one-hour walks, with the distribution of the number of walks within this framework determined by the TDF administration at their sole discretion on a case-by-case basis. That is, this could be a one-hour walk or two walks lasting 30 minutes each.

Example: Naryn IAB TDF – 1-hour walk once a day¹⁴²

Example: Osh IAD TDF. Detainees are taken to walk only on Saturday, twice a day, for 20-30 minutes when convoy is available. The rest days of the week, detainees do not walk outdoors.¹⁴³

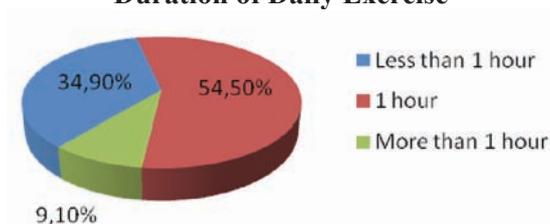
At 39.4% of IAB TDFs, walk last for less than an hour.

Example: Talas Oblast IAD TDF – prisoners walk for 5-15 minutes while their cells are inspected.¹⁴⁴

Example: IABT TDF – prisoners walk mornings and evenings for 10-15 minutes.

Yet, some detainees said that the administration sometimes meets their needs and allows longer walks for more than one hour.

Diagram 18.
Duration of Daily Exercise



There are no specific standards, but it is clear that the exercise yard area must be large enough for walking, have shelter from rain and sun, and be equipped with some sport installations, such as the crossbar, etc.

According to the observers, the largest exercise yard with the area of 90 sq.m. belongs to the Moscow District IAB TDF, whereas the smallest one was found in Chon-Alay District IAB TDF with its area making up 16 sq.m. The average area of exercise yards across the country is 27 sq.m.

Example: In the Tokmok City IAB TDF, the exercise yard has cages for dogs on its both sides that are larger than the walking site itself.

¹⁴² Monitoring Report No. 13/1/31.1.

¹⁴³ Monitoring Report No. 26/23-25.38/3/1.1.

¹⁴⁴ Monitoring Report No. 10/12-14/3/1.5; 10/12-14/3/1.8; 10/12-14/3/1.9.

Example: The Kemin District IAB TDF actually has not exercise yard. The way from the TDF to the toilet serves as the exercise yard.

Example: The Chatkal District IAB TDF has an exercise yard only nominally since this is just a site of 2 x 2 sq.m. are, and the place for toilet accounts for 0 of the area.



Exercise yard.

The monitoring showed that only 26.3% of the exercise yards have shelters from rain and sun, and in 73.7% of TDFs have none.

Example: from the observation card: “Due to lack of the shelter, it is hot and it smells awfully.”¹⁴⁵

Example: from the observation card: “It’s very hot, there is no shelter or shade.”¹⁴⁶

Departmental regulations do not establish an exhaustive list of grounds for cancellation or reduction of walks. For instance, in accordance with the Internal Regulations (par. 4.36), any walk may be canceled or reduced in accordance with the instruction of the Head of the TDF due to adverse weather conditions or disaster recovery.

There are concerns that the lack of clear legal certainty and lack of shelters from sun and rain can be used by the administration of the TDF as the ground for cancellation of daily walks when it rains or snows or shortening them when the weather starts to go bad.

None of IAB TDFs have sports installations, and prisoners are not able to do full-fledged exercise during their daily walks.

E. RELIGIOUS WORSHIP

International Standard

*The Universal Declaration proclaims that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to manifest his religion or belief in teaching, practice, worship and observance.*¹⁴⁷

*According to the ICCPR, the right to freedom of thought, conscience and religion may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*¹⁴⁸

*In accordance with the Standard Minimum Rules, so far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance. It is necessary to respect the religious beliefs.*¹⁴⁹

In-country Legislation

*The KR Constitution prohibits discrimination on the basis of religion and guarantees freedom of conscience and religion to everyone.*¹⁵⁰

¹⁴⁵ Monitoring Report No. 4/2/ΠΔ/1.0.

¹⁴⁶ Monitoring Report No. 3/2/ΠΔ/1.0.

¹⁴⁷ Universal Declaration on Human Rights. Par 18.

¹⁴⁸ ICCPR. Art. 18 (1), (3).

¹⁴⁹ Standard minimum rules. Rule 6, 42.

¹⁵⁰ KR Constitution. Art. 16 (part. 2), Art. 32 (part.2).

*In accordance with the Law on the Procedure of Detention, suspected and accused persons shall have the right to worship in places of detention of suspected or accused persons, to have classical religious literature, religious items, to invite a priest for the observance via the administration of a place of detention of suspected or accused persons.*¹⁵¹

*The right to worship is also stipulated by the Internal Regulations.*¹⁵²

The issue of respecting IAB TDF prisoners' right to worship is rather complicated. The reason is that many factors affect the correctness of the answer to this question, including person's identification with a particular religion, specificity of observance, the requirements imposed by the religious canons, and even personality and behavior of the person.

The observers recorded different views on this issue received from prisoners and administration representatives. In some cases, the opinions may be polar within the same TDF.

For example, the heads of the Ton, Issyk-Ata and Kemin District IAB TDFs explained that there were no conditions for observance by the detainees in their respective TDFs.¹⁵³ Yet, some detainees held in these TDFs believe that such conditions do exist.¹⁵⁴

In all other IAB TDFs, the detainees believe that it is impossible to avail of the right to observance due to lack of basic conditions.

A Muslim, before joining the prayer (*namaz*), shall meet certain requirements (take certain actions), and the prayer will be deemed invalid if these requirements fail to be met. The first such condition is to be in the state of ritual purity, as well as cleanliness of the body, clothes and the place for the prayer.¹⁵⁵

As described above, water is supplied only to seven TDFs, and detainees in the rest of the facilities receive water supplied by TDF officers-on-duty at a certain period of time. The volume of water for the detainees is determined at the TDF staff's sole discretion.

To confirm this, let us use the example from the monitoring findings described above. The detained woman wanted to wash herself and had been asking for boiled water for two days. Finally, members of TDF staff brought two small plastic mayonnaise tanks of water to her.¹⁵⁶

Since the prayer should be done five times a day – at dawn, at noon, in the afternoon, late afternoon and at night - detained Muslims regularly face difficulties with ritual washing as it is not always possible to have enough water for this purpose. Due to lack of water and no possibility to get it, an alternative option for purification may be used – washing with soil and sand. However, in view of the specificity of detention in TDFs, prisoners are not able to use this option.

Yet, some positive examples were discovered in the course of the monitoring. For instance, a woman defendant held the Nookan District IAB TDF told the observers that the TDF officers-on-duty supply the believers with water, and the latter pray in their cells.

As concerns private religious life, the Bible states that for the prayer it is better to choose the place where hustle and noise are heard least of all, where one can hide from the eyes and ears, and even close the door so that the praying person would not be disturbed or distracted at the moment of prayer. However, none of the IAB TDFs have facilities specifically designated for worship.

¹⁵¹ Law on the procedure of the detention. Art. 16.

¹⁵² Internal Regulations. Par. 3.1.

¹⁵³ Monitoring Report No. 17/16/H/1; 5/4-8-10-11/H/1.

¹⁵⁴ Monitoring Report No. 17/3/3/1.1; 17/3/3/1.2; 5/4-8-10-11/3/1.1; 6/5/3/1.3

¹⁵⁵ <http://www.islaming.ru>.

¹⁵⁶ Monitoring Report No. 5/5-7/O.

F. ORGANIZATION OF LEISURE AND PHYSICAL TRAINING

International Standard

*In accordance with the Body of Principles, a detained or imprisoned person shall have the right to obtain within the limits of available resources reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.*¹⁵⁷

*According to the Standard Minimum Rules, prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.*¹⁵⁸

*Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.*¹⁵⁹

*Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.*¹⁶⁰

In-country Legislation

*The Law on the Procedure of the Detention establishes the right of suspected and accused persons to use books and periodicals available in the library of the place of detention or procured through the administration of the place of detention from the retail network, as well as to use board games; to practice self-teaching and use special materials, including those owned by them. Suspected and accused persons shall have the right to do physical training (physical exercises, games, athletic gymnastics, etc.).*¹⁶¹

Being consistent with the Standard Minimum Rules¹⁶², the Law on the Procedure of the Detention outlines specific features of the procedure and conditions of detention of under-age suspected and accused persons. For instance, as per Art. 29, during their walks, suspected persons shall be allowed to do physical exercises, and those accused shall be allowed to physical exercises and games, to the extent possible. Whenever possible, arrangements shall be undertaken to allow juveniles to watch TV programs, do physical exercises in specially equipped rooms, and do exercises outdoors on a special sports area, as well as to continue pursuing or pursue secondary education. Cultural and education activities shall be arranged for juveniles. Juveniles are allowed to receive textbooks and school and writing material or purchase them at their own expense, and receive those through care packages or parcels in any quantity.

In accordance with Article 16 of the Law on the Procedure of the Detention, IAB TDF detainees are entitled to use books and periodicals available in the library or procured through the administration of the place of detention from a retail network, as well as board games, which must be provided by the administration.

Article 22 of this Law requires that all cells are provided with wireless receivers, and to the extent possible, TV sets, refrigerators and air movement equipment.

*The Internal Regulations also stipulate the right of suspected and accused persons to use books and periodicals and board games.*¹⁶³

The monitoring showed that none of the TDFs has a library; nor are there books or periodicals. Therefore, these are not given to detainees.

¹⁵⁷ Body of Principles, Principle 28.

¹⁵⁸ Standard minimum rules. Rule 39.

¹⁵⁹ Standard minimum rules. Rule 40.

¹⁶⁰ UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17 (c)

¹⁶¹ Law on the procedure of the detention, Art. 16

¹⁶² Standard minimum rules. Rule 21.

¹⁶³ Internal Regulations. II. 3.1.

The detainees of the Talas Oblast and Karabuura District IAB TDFs explained that once a month they are given the newspaper “Voice of Freedom”, a social and legal newspaper published by the foundation having the same name.¹⁶⁴ Two women from the Talas Oblast IAD TDF read the Criminal Code which they had found in their cell.¹⁶⁵

None of the IAB TDFs were found to have any board games, while the detainees of the Talas Oblast IAB TDF had the playing cards.¹⁶⁶

The monitoring teams did not encounter any IAB TDFs with cells equipped with TV sets or refrigerators.

With the support from *Justice*, the Oblast human rights organization, the Bazar-Korgon, Toktogul, Aksy, and Ala-Buka District IAB TDFs as well as the Kara-Kul, Mailuu-Suu, and Tash-Kumyr city IAB TDFs obtained wireless transmission devices.

Detainees have an opportunity to engage in physical training outdoors during daily exercise only. Detainees of IAB TDFs lacking exercise yards or practicing no exercises have no such an opportunity.

5.1.4. FREEDOM FROM TORTURE AND CRUEL TREATMENT

International Standards

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁶⁷ No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.¹⁶⁸

It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.¹⁶⁹

In the determination of any criminal charge against him, everyone shall be entitled, in full equality, not to be compelled to testify against himself or to confess guilt.¹⁷⁰

In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles. No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever.¹⁷¹

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.¹⁷²

In-country Legislation

Detention shall not be accompanied by torture or other actions aimed at causing physical or moral suffering to detained persons suspected or accused of crimes.¹⁷³

¹⁶⁴ Monitoring Report No. 10/12-14/3/2.0; 11/8/3/3.6.

¹⁶⁵ Monitoring Report No. 10/12-14/3/1.6.

¹⁶⁶ Monitoring Report No. 10/12-14/3/2.0.

¹⁶⁷ The Universal Declaration of Human Rights, Art. 5; ICCPR, Art. 7; Body of Principles, Principle 6.

¹⁶⁸ Body of Principles, Principle 6.

¹⁶⁹ Body of Principles, Principle 21.

¹⁷⁰ ICCPR, Art.14(3(g)).

¹⁷¹ UN Rules for the Protection of Juveniles Deprived of their Liberty. Rule 87 (a)

¹⁷² Internal regulations for Law Enforcement Officials.

¹⁷³ Law on the procedure of the detention, Art. 4

*No participant of criminal proceedings shall be subjected to violence or other cruel or degrading treatment.*¹⁷⁴

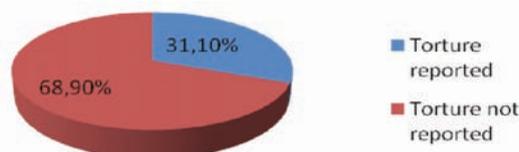
*All agencies and individuals participating in criminal proceedings must respect human rights, liberties and dignity. It shall be prohibited to inflict threatening, violence or take other undue measures in the course of investigative or judicial actions. Persons taken into custody and those detained on the suspicion of committing a crime shall be held in detention facilities in conditions eliminating the danger to their lives and health.*¹⁷⁵

In the course of interviewing TDF detainees, the observers registered complaints regarding physical force and intimidation inflicted by law enforcement agencies.

Almost all of the respondents reported torture and ill-treatment at the time of arrest. These actions were aimed to intimidate these persons, suppress their will and compel them to confess guilt and write an acknowledgment of guilt.

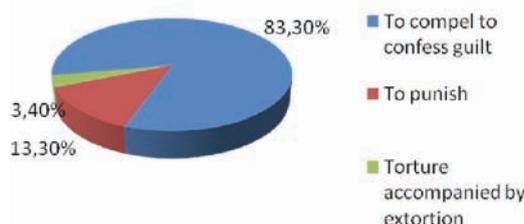
It was mentioned before that total 193 persons were covered by the monitoring of IAB TDFs. Out of them, 60 persons (or almost every third (31.1%)) reported torture and cruel treatment.

Diagram 19.
The ratio of reported cases of torture and ill-treatment.



In 50 (83.3%) cases torture was inflicted to compel detainees to confess guilt under the suspicion of committing a crime. In 8 (13.3%) cases torture and cruel treatment were inflicted to punish persons for particular offences as law enforcement agencies deemed them to be. At last, in two cases (3.4%) cruel treatment was accompanied by extortion.

Diagram 20.
Purposes of infliction of torture or cruel treatment.



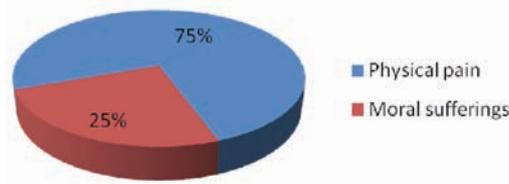
To professionally determine what a person subjected to torture or ill-treatment endures, expert knowledge is required. In each case it depends on features of character, behavior, and the state of mind of a torture victim. Physical pain always entails moral sufferings just like moral sufferings are often accompanied by elements of physical pain. Nevertheless, for illustration purposes, authors of the report made an attempt to identify main types of torture and cruel treatment.

In the absolute majority of cases – 44 (75%) – torture was associated with physical pain caused to victims, and in 15 (25%) cases – with moral sufferings.

¹⁷⁴ KR Code of Criminal Procedure, Art. 11.

¹⁷⁵ KR Code of Criminal Procedure, Art. 10.

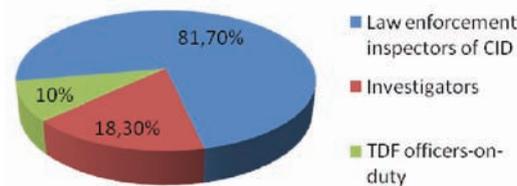
Diagram 21.
Types of torture.



Analysis of the prisoners' complaints has revealed that officials of particular IAB services inflicted torture and cruel treatment on persons involved in criminal proceedings or detained:

- law enforcement inspectors of Criminal Investigation Departments – 49
- investigators – 5
- TDF officers-on-duty – 6

Diagram 22.
Officials inflicting torture and cruel treatment.



Telling about torture, the detainees mainly complained about:

- Being beaten with fists and feet - 46
- Being beaten with rubber batons - 7



Victim of torture.

Example: On January 19, 2011, law enforcement took the suspect out of his home while he was barefoot and wearing a sweater. They put a bag onto his head, took him to the mountains and bet him with their feet and hands. They also forced him to walk on the snow-covered ground barefoot until he confessed guilt. Then they took him to the IAB office, wrapped him in a carpet, and bet him on his feet. They also carried him through TDF cells. Balykchy city Prosecutor's Office denied institution of criminal proceedings.



Consequences of torture.

Example: On September 14, 2011, staff members of the Issyk-Ata District IAB TDF and prisoners stoked up a war of words. As a consequence, the members of staff bet five persons held in the TDF with their feet and rubber batons. On September 17 Issyk-Ata district Prosecutor's Office denied institution of criminal proceedings.¹⁷⁶

At the same time, there were a number of complaints regarding more cruel ways of torturing.

¹⁷⁶ Monitoring Report No. 5/20/O/1.0.

Example: On July 29, 2011, law enforcement of the Criminal Investigations Department of Chui Oblast IAD bet a suspect to compel him to confess guilt. They were beating him with a rubber baton, fists, and feet on his back, head, heels, and ribs. Two other members of staff held his legs. After the beatings, the victim fainted several times and vomited twice. To recover him, they bet him on his cheeks. Then they put plastic bags onto his head several times and suffocated him until he fainted. They also bet him on his kidneys and scrota. One member would sit onto the victim’s stomach and beat him on his stomach with a rubber baton. After that they enchained him with the handcuffs to the chair and left him till morning. IAB staff members came to him from time to time and bet him with their fists on his ears and neck. The following morning the law enforcement members wrapped a rubber baton in plastic bag and threatened that they would rape him if he does not confess guilt. On August 12, 2011, Chui Oblast Prosecutor’s Office instituted criminal proceedings under Art. 305 (part 2, par. 3) of the KR Code of Criminal Procedure.¹⁷⁷

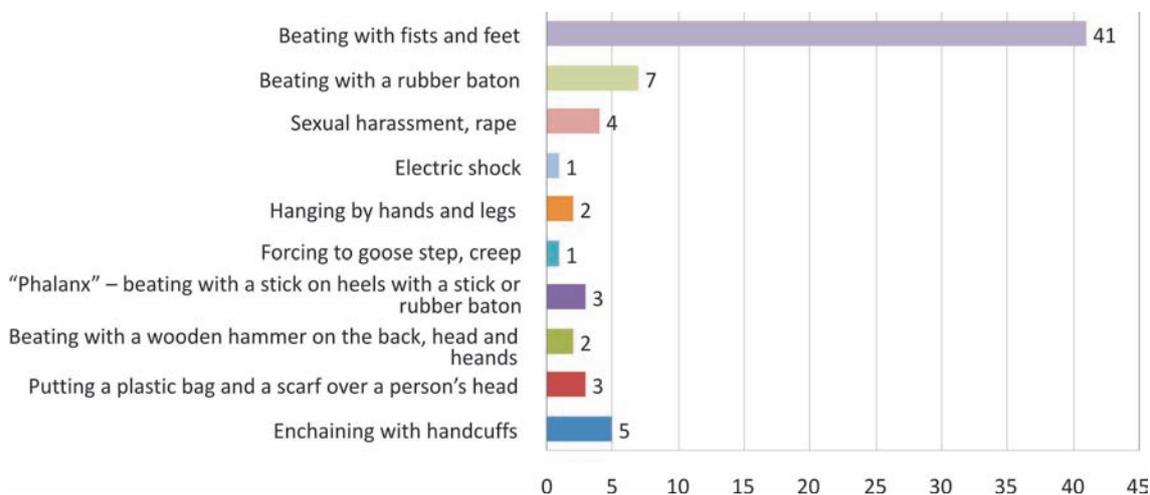


Consequences of torture.

Example: On June 25, 2011, a staff member of the Tokmok city IAB raped a minor girl in order to intimidate her and compel to confess guilt. On August 13, 2011, Tokmok city Prosecutor’s Office instituted criminal proceedings under Art. 129 of the KR Code of Criminal Procedure, which was later determined as attempted rape.¹⁷⁸

Example: An accused lady held in a TDF of Balykchy IAB was subjected to torture and threat of rape. In an attempt to commit suicide, she hung herself, but members of staff noticed that in time, released the loop and called the ambulance.

Diagram 23.
Ways of torturing.



It must be noted that not all victims attempted to appeal against perpetrators who inflicted torture and ill-treatment. Some of them explained that they could not appeal while being held in TDFs, and others said they did not know who to do that. One of TDF detainees said he “did not make a complaint since he had no chances.”

Detailed description of how other victims appealed against torture and ill-treatment is provided in the chapter on “Responding to Reports of Torture” hereof.

¹⁷⁷ Monitoring Report No. 1/6-7/O/1.0.

¹⁷⁸ Monitoring Report No. 4/3/O/1.0.

Most of the complaints were about torture or ill-treatment the victims suffered several weeks or months before the monitoring. So, of course, signs of torture and wounds had healed up by the time the monitoring started.

Yet, the observers including a forensic medical expert collected some medical data under the complaints received and conveyed them to lawyers involved as defence attorneys under the project.

Both the international law and the domestic law clearly stipulate that cruel treatment may not only imply physical pain but also moral sufferings that a person may have if he has no or restricted access to toilet, drinking water or no possibility to sleep, etc.

It was already mentioned in the Report that TDF detainees are allowed to be outside to breath fresh air just for 5-10 minutes a day and that detainees held in TDFs of Bishkek city internal affairs department and Balykchy IAB have no access to fresh air. Legally not all of these cases can be defined as torture, but each of them demonstrates inhuman treatment and violation of the rights of prisoners, which must entail brining of relevant officials to justice.

In August 2011, a woman defendant held in a TDF said she had diabetes, but a TDF officer-on-duty did not give her syringes in a timely manner and sometimes he refused to give her insulin syringes kept in a control room. Her health deteriorated in the TDF due to irregular receipt of insulin.¹⁷⁹

The monitoring team conveyed the defendant's complaints to the IAB head who promised to ensure that she is provided with syringes in a timely manner. However, during the following scheduled monitoring of this TDF the observers received the same complaints from the woman.

Also, in the course of the monitoring, the observers received complaints of persons with TB about not being treated and being subjected to beatings by TDF members of staff.

***Example:** A detainee told the observers: "On September 14, 2011, when I went to satisfy my needs of nature, guard named A. stripped the T-shirt off me, hit me with his hand on my chest, and tried to hit me with his foot, but I caught it and pushed it out of the way. He ran to the control room and called all the members of staff who were there. Two more persons came along and started beating me with a baton and their feet all over my body. This was taking place in the exercise yard in front of the first cell. Then officers of the criminal investigation department took me to their room on the 2nd floor where the continued beating me. They stopped beating me after I fainted. They brought me back to the TDF, but in a little while they took me out to the exercise yard again and bet me on my legs and feet. They stepped on my feet with their boots." It is written in this detainee's medical history that he had an active form of pulmonary tuberculosis, but he has not received any treatment.¹⁸⁰*

Also, it must be stressed that in the Bishkek city IAD TDF, several detainees participating in the methadone treatment program were not able to undergo methadone medication therapy, because of which they suffer physically. Non-giving of methadone to detainees participating in the methadone program is one of types of cruel treatment.

Based on the information received in the course of the monitoring it can be concluded that persons involved in criminal proceedings are at risk of being subjected to torture and ill-treatment when arrested and held in IABs, especially during investigative works.

This is explained by the aggregate of the following serious violations:

- **Violation of the procedure of arresting and detaining persons suspected of committing crimes**

As per Art. 95 of the KR Code of Criminal Procedure, a record of arrest of a person suspected of a crime shall be drawn up no later than three hours after the actual delivery of the detained. The investigator shall inform the

¹⁷⁹ Monitoring Report No. 5/4-8-10-11/3/1.1.

¹⁸⁰ Monitoring Report No. 8/3/O/1.0.

prosecutor of the detention in writing within twelve hours after the record of arrest is drawn up. In addition, Art. 98 of the KR Code of Criminal Procedure contains a provision whereby persons detained on suspicion of committing a crime shall be held in a temporary detention facility only.

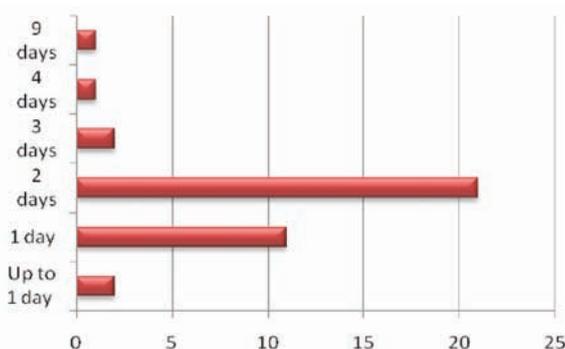
However, the monitoring has revealed numerous cases in which these requirements are not met, and detainees are held anywhere else than in a TDF. In these circumstances, agencies of inquiry are free to do to the suspects whatever just to solve crimes in committing of which they are suspected, and to compel them to confess guilt in committing other crimes that are “not solved yet” and with which they have nothing to do.

In accordance with the procedure of arresting a person suspected of a crime, a record of arrest shall be drawn up no later than three hours after the actual delivery of the detained. After that, he shall be placed in a TDF. The record of arrest shall specify time of detention (hour and minutes) which shall be the start time for the 48-hour period of detention.

The monitoring has revealed that in 38 cases suspected persons were placed into TDFs much later than the actual time of detention.

This time interval varies from several hours to several days:

Diagram 24.
Violation of the Procedure of Arrest.



Example: Detained on October 12, 2011, an accused person was subjected to threatening by personnel of Talas IAB who sought to compel him to confess guilt. It was not until October 14, 2011, that this person was placed into a TDF of Talas Oblast IAD. ¹⁸¹

Example: Detained on August 16, 2011, a defendant was subjected to torture by two law enforcement members of Kemin district IAB. They broke his ribs and placed him into a TDF on August 18, 2011. ¹⁸²

- **Violation of the right to defense**

Article 40 (part 1, par. 4) of the KR Code of Criminal Procedure stipulates that a suspected person shall have a counsel from the moment of his actual delivery to the agency of inquiry.

Example: Detained on October 20, 2011, an accused was subjected to threatening to confess guilt at Talas district IAB. He was placed into a TDF of Talas Oblast internal affairs department on October 31, 2011. An attorney joined the process when the accused was delivered to court for issuing a warrant. ¹⁸³

¹⁸¹ Monitoring Report No. 10/12-14/3/1.4.

¹⁸² Monitoring Report No. 6/6/31.1.

¹⁸³ Monitoring Report No. 10/12-14/3/1.7.

- **Violation of the Procedure of the Detention of Suspected Persons**

Under the common rule, only a person administering the criminal proceedings shall be entitled to communicate with suspected persons including, first and foremost, persons detained under that criminal case. Such communication shall in all cases have a specific form and purposes. These are investigative works associated with evidence collection with a detained person involved. If field investigators need to see detainees due to investigative work they carry out, a meeting is only possible upon authorization of a person administering the criminal proceedings. The nature of such a meeting will not be related to legal relationship. None of the parties have binding mutual rights or obligations as in the investigation when each step is regulated by procedural rules.¹⁸⁴

The monitoring has revealed cases in which detainees would be taken out of TDFs at night and brought to field investigators who would inflict physical force to compel them to confess guilt. In addition, there were cases documented in which field investigators were allowed to talk to the detainees right in TDFs.

*Example: an accused woman held in the Issyk-Ata IAB TDF told that she “was taken out of the cell at night and brought to field investigators” who applied physical force and threat to compel her to confess guilt.*¹⁸⁵

*Example: a convicted person held in the Talas Oblast IAD TDF shared: “A field investigator named K. took me out to the exercise yard and threatened of imprisoning my kids. He also hit me.”*¹⁸⁶

*Example: a detained woman told the monitoring team about the Tokmok city IAB TDF: “Field investigators have an unimpeded access to the cells and can talk to the detainees whenever they want. It is a common practice here.”*¹⁸⁷

- **Intentional non-informing of a detainee of ways and opportunities to defend his own rights**

Detailed monitoring findings along with the issues of exercising prisoners’ right to information are set out in respective chapters hereof.

5.1.5. LEGALITY OF DETENTION

International Standard

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*¹⁸⁸

*Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.*¹⁸⁹

*A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.*¹⁹⁰

¹⁸⁴ Commentary to the RF Code of Criminal Procedure (Art.-by-Art. analysis). Moscow, VITREM JSC, 2002, pp. 130-131.

¹⁸⁵ Monitoring Report No. 5/9/3/1.2.

¹⁸⁶ Monitoring Report No. 10/13-15/3/3.9.

¹⁸⁷ Monitoring Report No. 4/5-6-9/O/1.

¹⁸⁸ ICCPR, Art. 9.

¹⁸⁹ Body of principles. Principle 4.

¹⁹⁰ Body of principles. Principle 37.

In-country Legislation

No one can be put on trial as suspect or accused, arrested, imprisoned, committed, searched, brought to court, or imposed to any other measures of procedural compulsion, or be condemned, punished or in any way limited in his rights other than in the way and in accordance with the procedure established by law.¹⁹¹

An investigation agency shall not detain a person as a suspect for more than 48 hours. By the time this period expires, the investigation agency shall either release the suspect or charge him with a crime and decide on the measure of restraint. If it is necessary to apply detention or home arrest as a measure of restraint, the investigator, with the consent of the prosecutor, shall send a petition to court in accordance with the procedure established by Code of Criminal Procedure.¹⁹²

A court, prosecutor, or investigator shall immediately release a person illegally detained or deprived of his liberty or illegally placed into a medical institution, or being detained for a period exceeding the limited period provided for by law or by the court decision.¹⁹³

A record of arrest made in accordance with the procedure established by the KR Code of Criminal Procedure shall constitute the ground for detaining persons suspected of committing crimes.¹⁹⁴

The monitoring was accompanied by the review of IAB TDFs' documentation. It has been noted that the requirement of the criminal and procedural law for the record of arrest of a person suspected of committing a crime is complied with.¹⁹⁵

In certain cases, taking into account the claims of detainees about the fact that they were placed in TDFs much later than the time of their actual detention, the observers had doubts about correctness of place and time of detention mentioned in records of detention (with indication of hour and minutes). However, the observers' mandate did not include corresponding inspection needed to verify correctness of details of the records of detention.

Monitoring results analysis did not reveal any cases of violation of the KR Constitution requirements whereby any detained person shall be brought before court, in a prompt manner and in any case, before 48 hours from the moment of detention are over, to have a resolution made on the legality of his detention.¹⁹⁶

Holding defendants charged with committing a crime in the IAB TDFs had been timely authorized by court.

At the same time, the monitoring revealed a problem of exceeding the time period for detention specified by law.

In accordance with Article 9 of the Law on the Procedure of the Detention, the IAD TDFs are intended for holding persons in detention arrested on the suspicion of committing crimes.

The repealed Kirgiz Soviet Socialist Republic Code of Criminal Procedure clearly stipulated that pre-trial detention facilities shall be places for pre-trial detention of persons for whom detention was chosen as a measure of restraint.¹⁹⁷

In accordance with Art. 409 of the Kirgiz SSR Code of Criminal Procedure, detained persons could be placed in detention facilities for no longer than 3 days (72 hours). If it appeared to be impossible to bring detainees to a pre-trial detention facility due to its remote location or lack of appropriate passageways, the detainees could be held for a longer period of time but no more than 20 days.

¹⁹¹ KR Code of Criminal Procedure, Art. 6, part 2.

¹⁹² KR Code of Criminal Procedure, Art. 39, part 2.

¹⁹³ KR Code of Criminal Procedure, Art. 11, part 2.

¹⁹⁴ Law on the procedure of the detention, Art. 5.

¹⁹⁵ KR Code of Criminal Procedure, Art. 95.

¹⁹⁶ Constitution of the KR, Art. 24, part 4.

¹⁹⁷ Kirgiz SSR Code of Criminal Procedure, Art. 406, part 1.

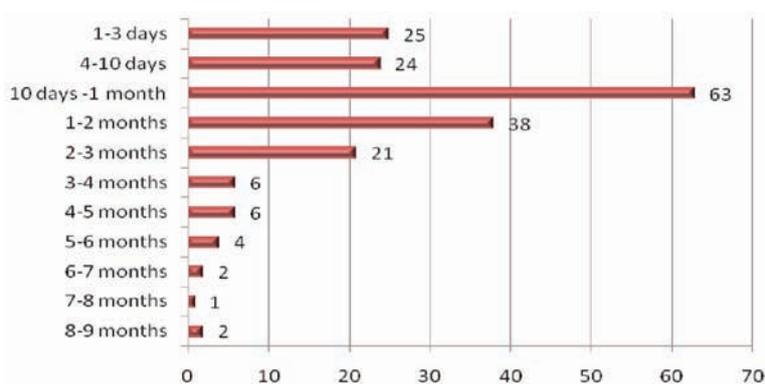
Neither the effective KR Code of Criminal Procedure nor any other regulations have clear provision specifying the period of time within which a suspected person, on whom charges were served and for whom detention was chosen as a measure of restraint, shall be transferred to the pre-trial detention facility.

According to the note to Art. 9 of the Law on the Procedure of the Detention, defendants may be transferred to TDFs when it is necessary for the purposes of investigation, trial outside residential areas where pre-trial detention facilities are located from which it is not possible to bring these persons on a daily basis, and for the period needed for the aforesaid activities and a judicial process, but for no longer than ten days a month.

However, in spite of this rule, detained persons are held in TDFs for a longer period of time as instructed by representatives of investigation agencies or court. The Head of a TDF as an official of the executive branch has no right to refuse to respond to their request for convoy and holding the arrested in a TDF. The objective of investigation agencies and court is to investigate a crime and hold a hearing within the time period specified by law. But because of no possibility for a systematic convoy (guarded escort) of untried prisoners and defendants from pre-trial detention facilities for the purposes of investigations or participation in court hearings due to remote location and lack of funds for the escort, they are held in TDFs according to the crime scene for the convenience of performing the above mentioned procedural activities.

Explanations by the detainees helped determine their total detention period including the time they were held in TDFs.

Diagram 25.
Duration of detention of interviewed persons in TDFs



The question that has to be answered is who should have more responsibility for holding arrested persons in TDFs – an investigator or a judge, who is limited by procedural time frames and who made a decision to hold the defendant in a TDF, or the head of the TDF who exceeded a ten-day detention period specified by Art. 9 of the Law on the Procedure of the Detention.

5.1.6. RIGHT TO DEFENSE

International Standard

The UN Human Rights Committee in its Concluding Observations pointed out that all persons who are arrested must immediately have access to counsel.¹⁹⁸

According to the UN Basic Principles on the Role of Lawyers, all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. All arrested persons are immediately informed by the competent authority of their right to be assisted by a lawyer. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them by a judicial or other body in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.¹⁹⁹

¹⁹⁸ Concluding Observations of the Human Rights Committee: Georgia. 01.05.1997. CCPR/C/79/Add.74. 9 April 1997, par. 28.

¹⁹⁹ UN Basic Principles, principle 17.

*The Basic Principles on the Role of Lawyers also establish that All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.*²⁰⁰

In-country Legislation

*KR Constitution enshrines the right of every person to qualified legal aid paid by the state to the extent permitted by applicable law.*²⁰¹

*KR Code of Criminal Procedure provides for the right of a suspected person to counsel from the moment of the first interrogation, and in case of detention – from the moment of actual arrival at the agency of inquiry. The Code also enshrines the right of accused, convicted (acquitted) and untried persons to have an unimpeded access to communication with their lawyers in private and without any limitation on the quantity or duration of such communication.*²⁰²

*In the event the defense lawyer chosen by a suspected or accused person is not able to appear within 24 hours from the moment of arrest or custodial placement, the investigator is entitled to offer to this suspected or accused person to invite another lawyer or shall arrange for designation of a defense lawyer from the bar association (association of professional lawyers). A state-funded lawyer rendering legal aid shall get remuneration in accordance with KR law.*²⁰³

*A person arrested on suspicion of committing a crime as a suspected person shall be interrogated in the presence of his defense lawyer. Prior to the interrogation, the arrested person shall be informed of his rights and the offense he is suspected of.*²⁰⁴

*In accordance with the Law on the Procedure of the Detention, members of staff of places of detention shall allow a suspected, accused or untried person to receive visits from his defense lawyer based on the document confirming participation of this lawyer in the criminal case who is to protect interests of the detained suspected, accused or untried person (warrant-instruction), and communicate with him in private, without any limitation on the quantity or duration of visits. Such consultations, to the extent possible, shall be within sight, but not within the hearing, of law enforcement officials.*²⁰⁵

*According to the Internal Regulations, the quantity and duration of visits shall not be limited. Suspected and accused persons shall be allowed to communicate with their lawyers at TDFs also on days off.*²⁰⁶

The monitoring demonstrated that the international standards and in-country legislation pertaining to allowing lawyers to communicate with their defendants in private and with full confidentiality are not complied with in practice.

Example: *On August 10, 2011, two monitoring team members, one of which was an attorney of a TDF detainee, intended to visit the Moscow District IAB TDF where during their previous visit they had detected this detainee with signs of torture on his body. However, head of the TDF and the district IAB officer-on-duty denied access to the monitoring team members. The attorney who showed his order was asked to wait for the investigator. The attorney was granted access to his defendant only two hours later upon arrival of the investigator and conversation with him. Yet, the attorney was not allowed to talk to the detainee in private.*

²⁰⁰ UN Basic Principles, principle 18.

²⁰¹ KR Constitution, Art. 40 (part 3).

²⁰² KR Code of Criminal Procedure, Art. 40, 42.

²⁰³ KR Code of Criminal Procedure, Art. 44, 45.

²⁰⁴ KR Code of Criminal Procedure, Art. 100.

²⁰⁵ Law on the procedure of the detention, Art.17.

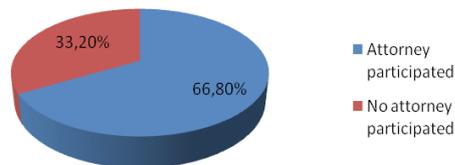
²⁰⁶ Internal Regulations. Par. 4.16, 4.17, 4.23.

64 (33.2%) of the detainees interviewed said that their lawyers had not participated in the investigation or that they had no lawyers. According to the most of the detainees, they had last seen their attorneys in court, when judges decided on a measure of restraint.

*Example: from the interview with a convicted person: “I was arrested at home. Then I spent three days at the feld investigators’ room. I did not see an attorney during the investigation, but I saw him only in court. When the court authorized to arrest me, no attorney was there.”*²⁰⁷

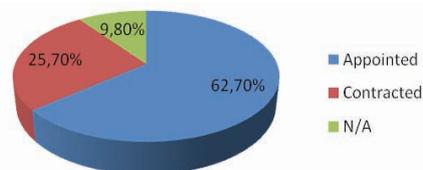
*Example: While being interviewed, a detainee could not recall the name of his attorney. It turned out that a TDF member knows the attorney’s name. It was discovered later on that this attorney was engaged in protecting interests of two other detainees in the same TDF.*²⁰⁸

Diagram 26.
Participation of attorney in investigation



In 121 (62.7%) cases, the attorney was appointed by the investigator; in 53 (27.5%) cases – invited by family; and in 19 (9.8%) cases the respondents said they did not know who had appointed a lawyer whom they had never seen.

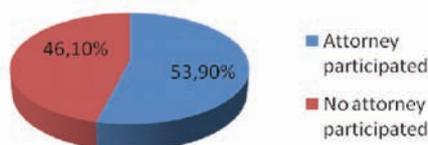
Diagram 27.
Basis for participation of attorney.



Interrogation in the absence of the attorney is one of the most serious violations of the right to defense. 89 (46.1%) of the respondents asserted they had been interrogated without an attorney participating.

*Example: from the interview with a detainee: “I was interrogated by members of the criminal investigation department at night, without the investigator or attorney being present.”*²⁰⁹

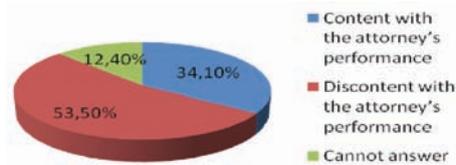
Diagram 28.
Participation of attorney in the stage of interrogation.



When asked about the quality of legal aid, 69 (53.5%) of the respondents said they were not satisfied with the attorney’s performance; 44 (34.1%) of the detainees were found to be content with their attorneys. The rest 16 (12.4%) could not answer the question.

²⁰⁷ Monitoring Report No.2/5-8-9/3/1.
²⁰⁸ Monitoring Report No.1/6-7/0/1.
²⁰⁹ Monitoring Report No.3/5/3/1.2.

Diagram 29.
Assessment of attorney's performance.



It must be noted that the assessment of the attorneys' performance was only based on the information received from the detainees in the course of the interviews. To arrive at reliable and impartial conclusions about the effectiveness of legal aid rendered by attorneys, a large-scale research is required, including studying case materials, interviewing attorneys of all the respondents held in TDFs etc.

The issues of the protection of torture victims

A separate component of the monitoring was to interview attorneys protecting interests of torture survivors. Fifteen lawyers dealing with this category of criminal cases were interviewed.

However, even this number of interviewed attorneys was enough to detect serious violation of TDF prisoners' right to defense and make the following conclusions.

Major problems in the area of protecting a torture victim include:

- a. Violation of the right of the attorney to an unimpeded access to his defendant detained;
- b. Violation of the right of the attorney to communicate with his defendant with confidentiality;
- c. Reluctance of prosecutor's bodies to institute criminal proceedings under cases of torture;
- d. Pressure exerted by accused persons and law enforcement officer on attorneys and their defendants.

a. The right of the attorney to an unimpeded access to his defendant detained in IAB TDF

When asked if an attorney can visit his defendant held a TDF in an unimpeded way, the following answers were received:

- always – 3
- no, there are obstacles – 12

Example: Attorney: "I was not allowed to visit my defendant under this criminal case. I had to raise voice at the IAB management".²¹⁰

Example: Attorney: "I always have an unimpeded access to my defendants in pre-trial detention facilities. However, in case of TDFs, I always have to pester them and push for my rights as an attorney".²¹¹

Example: Attorney: "When a defendant is a victim of torture, it is hard to be granted an opportunity to visit him".²¹²

Example: Attorney: "I always have an unimpeded access to my defendants in pre-trial detention facilities. If a defendant is held in an IAB TDF and if he was beaten, they either deny a visit or allow it with delay to make sure that signs of torture are no longer visible".²¹³

Example: Attorney: "If a defendant is beaten, it is extremely hard to get a chance to visit him".²¹⁴

²¹⁰ Monitoring Report No. A/24/6.

²¹¹ Monitoring Report No. A/23/4.

²¹² Monitoring Report No. A/25/7.

²¹³ Monitoring Report No. A/24/6.

²¹⁴ Monitoring Report No. A/23/5.

*Example: Attorney: “They allow visits with delay under various pretexts or ask to get permission from the management”.*²¹⁵

*Example: Attorney: “It is extremely hard to get an opportunity to visit a defendant in a TDF who was subjected to torture. One has to run back and forth, explain and demand”.*²¹⁶

Virtually all attorneys interviewed reported difficulties in getting permission for a visit.

The KR Law on the Procedure of the Detention as of 19 October 2011 No.180 was amended to state that for a defense lawyer to be allowed to visit his defendant, he shall have a warrant-instruction and a written confirmation issued by an investigator, a prosecutor or court of the fact that he participates in the criminal case.

Adoption of these amendments, which made attorneys dependent on investigators and prosecutors again, raises doubts in the effectiveness of fundamental principles of a criminal process: trial based on quality of parties, and ensuring the right of a suspected, accused and untried person to defense.

Representatives of investigation bodies assure that this new rule of the Law does not require an attorney to get permission from an investigator to visit his defendant as it was before. However, compliance with this formality takes an attorney much time becoming a real obstacle for visiting his defendant when urgently needed.

*Example: Attorney: “Sometimes it takes hours to get a signature of a head of a law enforcement agency and an investigator”.*²¹⁷

*Example: Attorney: “It takes a lot of time to get signatures of the head of the law enforcement management and the investigator”.*²¹⁸

b. The right of the attorney to communicate with his defendant with confidentiality

Most of the attorneys interviewed shared that they communicated with their defendants with confidentiality. Two of the respondents said that it is not always possible to communicate with their defendants in private, especially if they are torture victims.

*Example: Attorney: “If a defendant was beaten, confidentiality is not always ensured. Sometimes criminal investigation department members preclude from communicating with a defendant”.*²¹⁹

*Example: Attorney: “It is not always possible to communicate with a defendant in private. But after I rebuke, law enforcement members leave us”.*²²⁰

c. Denial of institution of criminal proceedings and ineffective investigation of criminal cases associated with torture

Attorneys are concerned about the reluctance of prosecutor’s offices to institute criminal proceedings under cases of torture. It often happens that, even if there are signs of torture on a victim’s body, prosecutor’s office members resolve to deny institution of criminal proceedings.

*Example: Attorney: “I submitted a complaint to the prosecutor’s office resulting in a formal inspection. However, institution of criminal proceedings was denied”.*²²¹

²¹⁵ Monitoring Report No. A/43/14.

²¹⁶ Monitoring Report No. A/25/15.

²¹⁷ Monitoring Report No. A/25/7.

²¹⁸ Monitoring Report No. A/25/3.

²¹⁹ Monitoring Report No. A/24/6.

²²⁰ Monitoring Report No. A/41/11.

²²¹ Monitoring Report No. A/23/4.

Example: Attorney: “Criminal proceedings under the case of torture inflicted on my defendant was instituted, but then terminated. The prosecutor’s offices connive at cases of torture”.²²²

Example: Attorney: “In August 2011, I submitted a complaint to the district prosecutor’s office, but received no reply yet. No measures are taken. The prosecutor’s office ignores cases of torture”.²²³

Example: Attorney: “In June, I submitted a complaint to the district prosecutor’s office. Institution of criminal proceedings was denied. The prosecutor’s office does not want to combat torture”.²²⁴

Example: Attorney: “I complained to the city prosecutor’s office. They prescribed examination that found insignificant bodily injuries resulting from torture. However, no criminal proceedings were instituted”.²²⁵

Example: Attorney: “I complained to the city prosecutor’s office. No measures have been taken. We have not even received any reply. Authorities do not want to take any measures to eradicate torture”.²²⁶

One of the interviewed attorneys drew the monitoring team’s attention to the case of direct pressure exerted on him by a prosecutor’s office member.

Example: Attorney: “I addressed my complaint to the Oblast Prosecutor. Later on a prosecutor of the Oblast Prosecutor’s Office Unit invited me and asked to write a note to explain how I got pictures of my defendant with signs of beatings”.²²⁷

Lack of analyses of the existing judicial practice pertaining to cases of torture and respective explanations from the Plenum of the KR Supreme Court, which are long overdue, is one of the reasons why courts are ineffective in terms of considering cases of torture. It also explains why there is not a single court decision on finding officials guilty of inflicting torture.

Example: Attorney: “A legal process took place in view of the case of torture. The district court did not prove guilt and acquitted the defendants who were law enforcement members. The court of appeal upheld the decision. A supervisory appeal has been sent to the Supreme Court”.²²⁸

Example: Attorney: “I submitted a complaint to the district prosecutor’s office that instituted criminal proceedings, but not under Art. named ‘Torture’, but under Art. 305 (part 2) of the KR Criminal Code. It sent the case to the district court. The latter acquitted four law enforcement officials who were accused of inflicting torture. Now the Supreme Court is considering the case”.²²⁹

d. Pressure exerted by accused persons and law enforcement officials on attorneys and their defendants

There were two cases in which lawyers said that torture victims’ families refused to make a complaint being afraid of revenge from the law enforcement agencies. In one case, a defendant was beaten and taken to the hospital’s emergency room. Diagnosis: Collapse. Brain concussion.

²²² Monitoring Report No. A/25/3.

²²³ Monitoring Report No. A/23/5.

²²⁴ Monitoring Report No. A/24/6.

²²⁵ Monitoring Report No. A/41/11.

²²⁶ Monitoring Report No. A/25/15.

²²⁷ Monitoring Report No. A/23/1.

²²⁸ Monitoring Report No. A/41/10.

²²⁹ Monitoring Report No. A/42/12.

Example: Attorney: “Victims themselves refuse their complaints being afraid of consequences. Most importantly, a torture victim has been in detention all the time, which means that law enforcement members can enter his cell any time and inflict torture since there are no witnesses...”²³⁰

The absolute majority of lawyers protecting interests of victims of torture and ill-treatment believe that “the entire state machinery supports perpetrators inflicting unlawful investigation techniques.”

5.1.7. DISCIPLINE AND PUNISHMENT

International Standard

*Standard Minimum Rules establish that discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe and well-ordered community life.*²³¹

According to rule 31 of Standard Minimum Rules, corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

*The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.*²³²

*No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defense, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.*²³³

In-country Legislation

Article 34 of the Law specifies main responsibilities of suspected and accused persons that include, among others, compliance with the rules of detention set forth by this Law and the Internal Regulations.

*Accused persons violating the established responsibilities may be subjected to sanctions in the form of reproofs or placement in a punishment cell or a one-man cell at a disciplinary cell for up to 15 days, and in case of juveniles – for up to five (5) days.*²³⁴

*Physical force in places of detention may be applied to a suspected or accused person in order to suppress offence that could be committed by him or to overcome his resistance to legitimate demands of detention facility staff in cases when nonviolent actions (approaches) fail to cease the offence or abiding to legitimate demands.*²³⁵

In the course of the monitoring, the observers have not registered any cases of imposing penalties on TDF detainees for non-performance of their obligations stipulated by the Internal Regulations.

At the same time, it must be noted that penalties such as placement in a punishment cell cannot be imposed and if it is imposed, then it cannot be accomplished because there no facilities specially equipped for such purposes in any IAD TDFs.

²³⁰ Monitoring Report No. A/43/14.

²³¹ Standard minimum rules, rule 27.

²³² Body of principles. Principle 30.

²³³ UN Rules for the Protection of Juveniles Deprived of Their Liberty, rule 70.

²³⁴ Law on the procedure of the detention, Art. 36.

²³⁵ Law on the procedure of the detention, Art. 41.

The law clearly specifies cases in which TDF personnel may apply physical force. However, the monitoring has revealed no such cases when it would be necessary to apply physical force or when such force had been applied.

There was a case described in prior part of the report in which Issyk-Ata TDF staff illegally inflicted physical force against prisoners after they had stoked up a war of words. As it was mentioned, the Issyk-Ata District Prosecutor's Office denied institution of criminal proceedings.

The observers registered one case when members of staff of the Moscow district IAB TDF together with field investigators had beat a detainee several times and then they hung him on the window bars and left him there for a night. By doing this, they wanted to punish him for telling the observers about torture he had been subjected to.²³⁶

5.1.8. CONTROL AND OVERSIGHT ON RESPECT FOR RIGHTS AND LIBERTIES AT TDFs.

International Standard

*Penal institutions and services shall be subjected to regular inspections by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with the existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.*²³⁷

*In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.*²³⁸

*Similar requirements are set out in the UN Rules for the Protection of Juveniles Deprived of their Liberty.*²³⁹

In-country Legislation

*The Law on the Procedure of the Detention provides for the right of the President of the Kyrgyz Republic, Toraga of the Kyrgyz Republic Jogorku Kenesh, Prime Minister of the Kyrgyz Republic, Deputies of the Kyrgyz Republic Jogorku Kenesh and the Ombudsman of the Kyrgyz Republic to visit, without any special permission, facilities where suspected or accused persons are detained.*²⁴⁰

*The Internal Regulations extend the list of officials by including General Prosecutor of the Kyrgyz Republic and Supervising Prosecutor.*²⁴¹

*Parliamentary control over observance of the constitutional human and civil rights and liberties within the Kyrgyz Republic and within its jurisdiction shall rest with by the Ombudsman of the Kyrgyz Republic on an on-going basis. The Ombudsman has the right to visit places of detention or imprisonment, pre-trial detention facilities, facilities for serving the sentence and compulsory medical treatment and correctional education facilities, and mental hospitals at any time, as well as to speak in private with people held there, receive information on conditions of their detention and inspect documentation confirming legality of holding these persons in the aforesaid facilities.*²⁴²

Instruction "On Guarding and Convoying Persons Held in TDFs on Suspicion of Committing Crimes" approved by the KR Interior Ministry's order No.263 as of March 29, 2010, clearly specifies frequency of inspecting the organization and guarding and convoying by heads of IABs and inspectorial personnel.

²³⁶ Monitoring report No. 1/6-7/3/1.3.

²³⁷ Standard minimum rules, rule 55.

²³⁸ Body of Principles, principle 29.

²³⁹ UN Rules for the Protection of Juveniles Deprived of Their Liberty, rules 72, 74, 77.

²⁴⁰ Law on the procedure of detention, Art. 17-1.

²⁴¹ Internal Regulations, par. 4.17.

²⁴² KR Law on Ombudsman, Art. 1,8 part 10.

Effective prosecutor's supervision, parliamentary and public control is one of the guarantees of ensuring respect for rights and liberties of persons held in TDFs.

In accordance with the Law on the Procedure of the Detention, the supervision of law enforcement in places of detention of suspected and accused persons shall rest with the KR General Prosecutor and his subordinate prosecutors as per the Law of the Kyrgyz Republic on "Prosecutor's Office of the Kyrgyz Republic". Administration of places of detention of suspected and accused persons shall execute resolutions, instructions, and recommendations of a prosecutor on the procedure of detention established by this law.²⁴³

The prosecutor, in accordance with the departmental order, shall visit IAB TDFs under his supervision every ten days. In view of the monitoring results described in detail in this report, it can be argued that prosecutor's supervision of respect for TDF prisoners' rights and liberties is not effective. In most cases, prosecutors only formally visit TDFs, talk to a guard-on-duty, and make notes in a special log verifying the fact of the visit.

98 detainees answered that the prosecutor visits the TDF. At the same time, 95 detainees said they had never seen the prosecutor. Even if we assume that 49 out of the surveyed prisoners had been detained for less than 10 days at the time of the interviews and could have missed the ten-day period when the prosecutor had his visit, 44 detainees (22.8%) claim that they did not have any opportunity to approach the prosecutor.

***Example:** defendant held in the Panfilov District IAB TDF told: "Maybe the prosecutor visits the institutions, but he is not introduced to us. We are just informed in advance that there will be an inspection so that we could arrange everything in order".²⁴⁴*

***Example:** an accused person held in the Tala Oblast IAD TDF explained during the interview conducted on November 22, 2011, that "he had never seen the prosecutor for the three months of his detention."²⁴⁵
Other respondents at that same TDF gave similar explanations.²⁴⁶*

***Example:** an accused person held in the Kara-Suu District IAB TDF explained during the conversation on November 19, 2011, that he had been here since August 25, 2011, and since then "the prosecutor has not visited the place".²⁴⁷*

At the same time, the observers have documented detainees' explanations verifying that prosecutors visited the institutions more often than is provided for by departmental standards for visiting IAB TDFs.

***Example:** An accused person from the At-Bashy district IAB TDF has explained that the prosecutor visited TDF every day.²⁴⁸*

***Example:** A woman defendant from the Nookan district IAB TDF has explained that the prosecutor had visited the facility once a week.²⁴⁹*

However, the fact remains that even in cases when prosecutors visited facilities every ten days, they did not reveal any serious violations with respect to any issues described in this report. Nor did they submit prosecutor's supervision acts. Since violations had taken place and were later revealed in the course of the monitoring by the observers who visited those same TDFs, it appears that the prosecutor's supervision is not effective enough.

The monitoring team still hopes the situation will change to the better in view of new requirements of the KR General Prosecutor specified in Instruction No. 40 as of April 12, 2011, on "Strengthening Prosecutor's Supervision for Ensuring a Constitutional Guarantee of Prohibition Against Torture and Other Inhumane, Cruel or Degrading Treatment and Punishment".

²⁴³ Law on the procedure of detention, Art. 47.

²⁴⁴ Questionnaire for a detained person No. 7/3/1.1.

²⁴⁵ Questionnaire for a detained person No. 10/13-15/3/4.5.

²⁴⁶ Questionnaire for a detained person No. 10/13-15/3/3.3; 10/13-15/3/3.4; 10/13-15/3/3.5; 10/13-15/3/4.4.

²⁴⁷ Monitoring Report No. 30/23-25,28/3/1.3.

²⁴⁸ Monitoring Report No. 14/1/3/1.1.

²⁴⁹ Monitoring Report No. 38/29-30/3/1.0.

As per this Instruction, all prosecutors shall systematically conduct unannounced inspections in IAB TDFs and visit offices of his subordinate authorities, speak with persons, review complaints registers, pay attention to bodily injuries, find out if any medical certification of suspected or accused persons had been done when bringing them to places of detention, immediately respond to each case of reporting torture, cruel treatment or punishment, and promptly file lawsuits taking them under special control once corpus delicti is defined.

All detainees confirmed that TDFs are inspected by their administration and IAB management on daily basis. It appears that a departmental inspection by TDF administration and IAB management is, too, limited to a formal questioning of detainees about their complaints and statements, and writing down of old familiar phrases into the Inspection Book or the Inspector's Book.

Violations detected by the observers have not been timely revealed by departmental inspectors and no measures had been taken. Hence, the departmental control over respect for prisoners' rights and liberties appears to be ineffective either.

The monitoring showed that a too broad sphere of the KR Ombudsman's activities and his authorized representatives in Oblasts makes it impossible to ensure effective control over respect for prisoners' rights and liberties. As it follows from the explanations of IAB TDF Heads and personnel, the Ombudsman and his Office manage to visit the same TDF twice or thrice a year. At the same time, some IAD TDFs remain outside of the Parliament's control area.

*Examples: Head of the Alay District IAD TDF: "The Ombudsman has never visited us." ²⁵⁰
Head of IADT (in transport): "The Ombudsman has never visited us." ²⁵¹*

Yet, in recent years the role and the importance of public control over respect for human rights and liberties at IAB TDFs have enhanced significantly through monitoring of these facilities by nongovernmental organizations as part of their charter activities and based on Memoranda with the management of regional divisions of the KR IABs.

All these organizations united under the Memorandum signed by and between OSCE, the Ombudsman and nongovernmental organizations, and their representatives became members of the monitoring teams.

In future such efficient collaboration may be possible within the framework of the National Preventive Mechanism (NPM) which should be established in the Kyrgyz Republic under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All these organizations took active part in discussing the model and the regulatory framework for the future of Kyrgyzstan's NPM. A draft law on creating a NPM is currently being reviewed by the Kyrgyz Republic Jogorku Kenesh.

5.1.9. WORKING ENVIRONMENT OF TDF PERSONNEL

International Standard

*The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. ... Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favorable in view of the exacting nature of the work.*²⁵²

The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to

²⁵⁰ Monitoring Report No. 23/23-24-25/H/1.0.

²⁵¹ Monitoring Report No. No. 9/1/H/1.0.

²⁵² Minimum Standard Rules, rule 46.

ensuring that staff directly in contact with juveniles are able to function in conditions favorable to the efficient fulfillment of their duties.²⁵³

The personnel shall possess an adequate standard of education and intelligence. Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests. After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.²⁵⁴

As far as possible, these personnel should include enough number of specialists such as psychiatrists, psychologists, social workers, teachers and trainers of technical disciplines.²⁵⁵

In-country Legislation

Internal Regulations in the Internal Affairs Bodies and Interior Ministry's educational institutions shall be established in accordance with the Kyrgyz Republic legislation, based on specificity of these authorities' activities, and in accordance with the procedure specified by the Minister. Standard rules of internal regulations of IABs, working schedule and timetable for individual categories of staff shall be subject to approval by the Minister.²⁵⁶

Working hours of members of staff shall comply with law of the Kyrgyz Republic. IAB members of staff may be asked to work overtime and also at night time, on week-ends and holidays, when and if necessary, and be granted additional days-off later in that month or be compensated in accordance with the procedure established by KR law. In the event of shift work, day, evening and night shifts shall have the same duration.

Working procedure and conditions for members of staff in the areas with harmful conditions, as well as for those working overtime and at night time, shall be regulated by Kyrgyz law.

Sanitary & technical and hygienic state of production premises, equipment of workplaces and organization of a work flow must not have any harmful impact on a person's health and shall comply with standards approved by the authorized state healthcare authority of the Kyrgyz Republic.²⁵⁷

In order to prevent emergence and spread of infectious and professional diseases, members of staff... involved in working in harmful conditions are obliged, before employment, to undergo preliminary and then regular preventive medical examinations in accordance with the procedure approved by the authorized state healthcare authority of the Kyrgyz Republic.²⁵⁸

It follows from the assessments of the monitoring teams that the work of IAB TDF personnel is very hard. First of all, this is due to difficult every-day conditions. Due to lack of space, there are no rooms for personnel in almost 50% of the TDFs. None of the TDFs have recreation or eating rooms for personnel. Since most TDFs do not have hot or cold water supply or sewerage, members of staff work in conditions that do not meet basic sanitary requirements. There is no ventilation in most TDFs, lighting is inadequate, and chairs and tables are extremely worn out.

Example: Excerpt from the observation card at the At-Bashy IAD TDF: "There is no separate room for personnel. A table is in the corridor, in the corner. The floor is concrete, air is conditioned through the corridor, and one can smell damp." ²⁵⁹

Example: Excerpt from the observation card at the Kadamzhay IAD TDF: "In winter it is cold, in summer it is stuffy. Ventilation system should be repaired, heating arranged, floors made warm, and TDF repaired after the earthquake." ²⁶⁰

²⁵³ UN Rules for the Protection of Juveniles Deprived of Their Liberty, rule 84.

²⁵⁴ Minimum Standard Rules, rule 47; UN Rules for the Protection of Juveniles Deprived of Their Liberty, rule 85.

²⁵⁵ Minimum Standard Rules, rule 49; UN Rules for the Protection of Juveniles Deprived of Their Liberty, rules 81, 82.

²⁵⁶ Regulation on the Order of Service by Regular and Command staff of the KR IA Bodies, par.74, 75.

²⁵⁷ KR Law on "Public Health", Art. 15.

²⁵⁸ KR Law on "Public Health", Art. 17.

²⁵⁹ Monitoring Report No. 14/2/KII/1.0.

²⁶⁰ Monitoring Report No. 22/20/II/1.0,



Working office of the TDF's Head.



Working place of TDF's personnel.

TDF personnel working conditions affect the way they perform their duties because occupational hazard of professional diseases and emotional burden and tiredness increase, time for recovery reduces and irritancy increases, etc.

Example: TDF staff member: "The work is very hard, sometimes there are infectious persons, there are no enough staff members to convoy prisoners to courts and medical treatment facilities".²⁶¹

Example: TDF staff member: "It is difficult to be in the TDF for 24 hours. We receive people with diseases, there is a risk of getting tuberculosis, etc."²⁶²

Workload for each IAB TDF staff member is rather high. Whereas in European countries for each staff member there is in average one detainee, in KR IAB TDF this number reaches in average 5.3.

The monitoring findings showed that the ratio of a limit and staff the highest workload is seen at:

Osh IAD TDF – 9.16;

Djalal-Abad IAB TDF (town police division "Kurmanbek") – 8.4;

Karakol IAB TDF – 7.5.

In Europe, hard work like this is well paid. Salary of IAB TDF personnel varies approximately from 8,000 to 13,000 Soms including all premiums (around \$177-288).

TDF personnel receive milk for harmful working conditions or they get milk cost reimbursed.

Example: from the interview with a Head of a TDF: "Our personnel get milk for harmful conditions, 1/2 a liter per shift, which totals about 7 liters a month."²⁶³

Example: from the interview with a TDF staff member: "We receive money for milk – 130 Soms per month."²⁶⁴

However, it follows from the explanations of the respondents that premiums for harmful working conditions and milk are not paid/given to all TDF personnel.

Example: from the interview with a TDF staff member: "There are no privileges or premiums for harmful conditions."²⁶⁵

²⁶¹ Monitoring Report No. 28/23-24-25-26/II/1.0.

²⁶² Monitoring Report No. 8/1-7-9/II/1.0.

²⁶³ Monitoring Report No. 9/1/H/1.0.

²⁶⁴ Monitoring Report No. 12/1/II/1.0.

²⁶⁵ Monitoring Report No. 1/3-9/II/1.0.

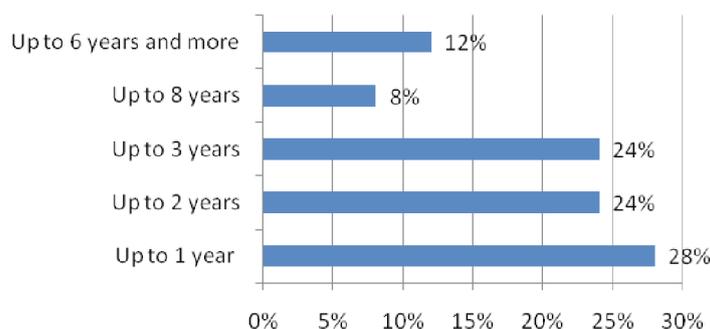
Because of low salaries and hard working conditions, qualified personnel do not come to work in IAD TDFs. Therefore, TDFs are left to recruit newcomers. In one of the IADs, a driver who used to work in that IAD was appointed a Head of the TDF.²⁶⁶

During an interview one of the Heads of IAD told the following about the recruitment process: “We do prepare staff for working at TDFs and district IABs. However, because we report to the internal affairs department..., all staff members are appointed from there. These people have no experience, practical skills or knowledge. It takes a lot of time for them to get used to our work. As a consequence, the work of the whole district IAB is affected. Officially we are not entitled to object to any candidates appointed.”²⁶⁷

High personnel turnover is inherent to all IAD TDFs. For instance, 52.9% of heads of IAB TDFs have worked in their positions for less than one year; each fourth of them has up to two years of working experience in this position, and 23.5% – 3 years and more.

Similar situation is with TDF personnel.

Diagram 30.
Working Experience of TDF Staff Members.



TDF personnel rarely take skills improvement courses.

Medical examination of members of staff varies from TDF to TDF. Members of some TDFs undergo medical examination twice a year, i.e., every six months, and others do it only once a year.²⁶⁸

Since TDF personnel have to work with a very difficult cohort of people and they are permanently under stress, it appears crucial to create a wide network of psychological service represented in each territorial department of the Interior Ministry. Specialists will train TDF personnel to use self-management techniques and will help manage stressful situations.

The monitoring team would like to emphasize the importance of improving legal consciousness of officials and regular personnel of IAD TDFs in the area of preventing torture and ill-treatment.

One of the reasons for this concern and the resulting recommendation is statements of some IAB officials.

Example: *Head of a TDF said that it is impossible to succeed in investigation without torture.*²⁶⁹

Example: *Head of a TDF said to the monitoring team when seeing them off: “It is not a big deal that law enforcement members beat especially dangerous criminals.”*²⁷⁰

²⁶⁶ Monitoring Report No. 20/16-18/H/1.0.

²⁶⁷ Monitoring Report No. 5/11/O/1.0.

²⁶⁸ Monitoring Report No. 8/5/II/1.0; 6/5-6-9/II/1.0.; 1/3-9/II/1.0.

²⁶⁹ Monitoring Report No. 6/5-6-9/O/1.0.

²⁷⁰ Monitoring Report No. 8/3-7/H/1.0.

5.2. RESPONDING TO REPORTS OF TORTURE

5.2.1. DOCUMENTING CASES OF TORTURE IN TDFS. PROVIDING LEGAL AID TO SURVIVORS OF TORTURE.

The monitoring confirmed human rights organizations' allegations that people detained for having allegedly committed crimes often receive beatings or threats of blackmail in efforts to elicit confessions.

The monitoring findings uncovered cases in which compelling to confess guilt takes place both after admission to IAB TDFs and during the period of detention in the institutions.

Yet, the results of previous surveys together with the present monitoring have confirmed the allegation that survivors of torture and ill-treatment are often precluded from effectively protecting their violated rights. The lack of opportunity to make a complaint stating the facts of the torture or ill-treatment and the absence of qualified juridical support from an honest attorney remain serious obstacles.

Detainees surveyed during the monitoring were often unable to produce even their attorneys' names. The majority of survivors of torture and ill-treatment, as well as their families, lack the funds to hire a lawyer themselves. In these cases, investigation agencies find a lawyer to provide legal aid to detainees. In practice, however, these are "puppet" or "stock" lawyers who fail to fulfill their responsibilities properly, do not participate in the investigatory activities that pertain to their clients, sign criminal case materials without familiarizing themselves with their content, and sometimes act as negotiators rather than defenders, trying to persuade their clients to admit to having committed a crime.

For these reasons, the project's most important objectives were:

- Documenting the cases of torture and ill-treatment;
- Providing efficient legal support to:
 - Survivors of torture or other cruel and inhuman treatment or punishment;
 - Victims of other illegal actions of law enforcement officers;
 - Detainees, who do not have effective juridical (legal) protection in a court;
 - Minor detainees, who do not have effective juridical (legal) protection;
 - Women, who do not have effective juridical (legal) protection.

What was specific about this monitoring was that any person detained in an IAB TDF could report to the members of the monitoring team about torture and ill-treatment. The experience and expertise of the members of the monitoring teams, which included famous human rights defenders, representatives of the KR Ombudsman's Office, and members of the PSB of the KR Interior Ministry, made it possible to properly document each statement about torture and ill-treatment.

The task to monitor further circulation of detainee complaints about torture and cruel treatment and to provide detainees with qualified legal support was put to the Kylym Shamy Public Foundation.

In order to ensure effective legal support, Kylym Shamy sought out lawyers with experience in protecting the interests of survivors of torture and ill-treatment.

Within the scope of the project, juridical (legal) support was provided to 28 persons in total: 12 in Issyk-Kul Oblast, 9 in Chui Oblast, 2 in Naryn Oblast, 1 in Osh Oblast, and 2 in Jalal-Abad Oblast.

More detailed data is presented in the table below.

№	Name of IAB TDF	Status of the person to whom juridical support was provided	The article of the Criminal Code of the KR, under which person is suspected of having committed a crime	Data on attracted attorney	Category of individuals, whom free juridical support was provided to				
					Victim of torture and ill-treatment	Victim of illegal actions of officials	Individuals lacking effective juridical support in a court	Minors lacking effective juridical support in a court	Women lacking effective juridical support in a court
ISSYK-KUL OBLAST									
1	Balykchy IAB TDF	defendant	129	Bekturov A.	✓				
2	Karakol IAB TDF	accused	246 part1	Abdyldaeva S.	✓				
3	Karakol IAB TDF	defendant	164 part2	Kasmalieva N.	✓			✓	
4	Karakol IAB TDF	convict	246 part3	Zharkymbaev O.	✓		✓		
5	Karakol IAB TDF	convict	234 part1	Yrlybekov T.	✓		✓		
6	Karakol IAB TDF	convict	167 part4 p.1,	Zharkymbaev O.	✓		✓	✓	
7	Karakol IAB TDF	defendant	164	Kasmalieva N.	✓				
8	Karakol IAB TDF	accused	129	Dagaziev R.	✓		✓		
9	Jeti-Oguz District IAB TDF	accused	241 part1	Abdyldaeva S.	✓				
10	Jeti-Oguz District IAB TDF	defendant	97 part2	Касмалиева Н	✓				
11	Tyup District IAB TDF	suspected	Died after being tortured	Dagaziev R.	✓				
12	Tyup District IAB TDF	accused	234 part1	Dagaziev R.	✓				
CHUI OBLAST									
13	Djail Ditric IAB TDF	Accused (criminal prosecution was ceased)	-	Medetova D.	✓				
14	Djail Ditric IAB TDF	Accused (criminal prosecution was ceased)	-	Medetova D.	✓				
15	Tokmok IAB TDF	Accused	247 part2	Saburkanova A.	✓				
16	Tokmok IAB TDF	Defendant (released from criminal charge)	234 part2	Tagaeva A.	✓			✓	
17	Issyk-Ata District IAB TDF	defendant	164	Medetova D.	✓				
18	Issyk-Ata District IAB TDF	defendant	168	Medetova D.	✓				
19	Issyk-Ata District IAB TDF	defendant	167	Medetova D.	✓				
20	Issyk-Ata District IAB TDF	defendant	247	Medetova D.	✓				
21	Sokuluk District IAB TDF	defendant (acquitted)	101	Medetova D.	✓			✓	
NARYN OBLAST									
22	Jungal District IAB TDF	defendant	166 part1	Supataev M.	✓				
23	Jungal District IAB TDF	defendant	166 part1	Supataev M.	✓				
OSH OBLAST									
24	Kara-Suu District IAB TDF	suspected	299	Yusupalieva B.	✓				
OSH (TOWN)									
25	Osh IAD TDF	defendant	97(died because of lack of professionalism of doctors)	Mamasabirova T.	✓			✓	
26	Osh IAD TDF	defendant	125	Zhoroev K.	✓			✓	
JALAL-ABAD OBLAST									
27	Tash-Kumyr IAB TDF	accused	97 part 2	Nurgazieva G.	✓			✓	
28	Bazar-Korgon IAB TDF	suspected	(died because of being tortured)	Medetova D.	✓				
	TOTAL				26	19	7	0	4

5.2.2. USE OF NATIONAL MECHANISMS OF HUMAN RIGHTS PROTECTION

The Constitution of the Kyrgyz Republic guarantees the right of every individual to the judicial protection of his rights and liberties set forth in the Constitution, laws, international treaties to which the Kyrgyz Republic is a party, and universal principles and rules of international law. The state shall ensure the development of extrajudicial and pre-trial methods, forms, and means of protecting human and civil rights and liberties. Each and every person has the right to protect his rights and liberties in all ways not prohibited by law.²⁷¹

According to the KR Code of Criminal Procedure, every person is guaranteed access to judicial protection of his/her rights and freedoms on any stage of the legal process. By law, victims are guaranteed access to justice and compensation for any harm caused to them in the events and in accordance with the procedure established by law.²⁷²

Within the limits of its competence, the Public Prosecutor's Office is responsible for ensuring that search and investigation agencies comply fully and uniformly with these legal provisions.²⁷³

The court, judge, prosecutor, and investigator are obliged to ensure the protection of the rights and freedoms of citizen participants in the criminal justice system, to create and maintain optimal conditions for the realization of these rights and freedoms, to take timely measures to satisfy the legal demands of citizen participants.²⁷⁴

The rights and obligations of attorneys carrying out professional activities and providing legal aid are clearly provided in the Law of the Kyrgyz Republic on "Counseling."

According to Art.12 of this law, attorneys in the professional context shall have the right to represent and protect the rights and legitimate interests of citizens assigned to them by any agency, company, institution, or organization, regardless of the form of incorporation, whose competence includes resolution of corresponding issues, making petitions and complaints, and, in correspondence with law, making complaints about the actions of investigatory officers, law enforcement officers, prosecutors, judges, and courts, and participation in assessing these complaints, and also using any other methods and means of protection provisioned by the law.

Guided by the above mentioned provisions of KR law, attorneys within the scope of the project utilized all available legally-provisioned means and methods to protect aid-seeking individuals.

Based on the results of project-sponsored lawyers' juridical support, three criminal proceedings were instituted:

1. Concerning an alleged violation of Chapter 1 of Article 129 of the KR Criminal Code, a criminal case is being brought against an unidentified IAB staff member who, on June 25, 2011 in a TF room, raped a female minor (born 1996) with the purpose of intimidation and compulsion. The criminal case is under production in the prosecutor's office.
2. Concerning an alleged violation of Chapter 4 of Article 104, Chapter 2 of Article 305 pp.3-5, Chapter 1 of Article 305, and Chapter 1 of Article 313 of the KR Criminal Code, a criminal case is being brought against Bazar-Korgon District IAB members who applied physical force to extort a substantial amount of money from Kholmiraev U., who succumbed to the bodily injury caused by torture. The criminal case is under review by the Sokuluk district court.
3. Concerning an alleged violation of Article 305, Chapter 2, page 3 of the KR Criminal Code, a criminal case is being brought against an officer of the Search and Investigation Department of the Chui oblast IAD, who physically assaulted a suspect in order to compel to confess guilt. The proceedings are at the stage of investigation.

²⁷¹ KR Constitution, Art. 40.

²⁷² KR Code of Criminal Procedure, Art. 9.

²⁷³ KR Code of Criminal Procedure, Art. 8.

²⁷⁴ KR Code of Criminal Procedure, Art. 12.

In all the three cases, the victimized individuals declared that they had been tortured or ill-treated and submitted petitions to obtain legal representation, but refused to make further appeals to law enforcement agencies. This might be explained by the fact that they were satisfied by the court decisions that terminated criminal cases against them or by the fact that non-custodial penalty was determined.

Six applications to institute criminal proceedings were denied by prosecutors' offices. These decisions were appealed in court. At present, these cases remain under court review at various levels.

Progress on the other reports of torture and ill-treatment is being tracked by project-sponsored lawyers.

5.2.3. USE OF INTERNATIONAL MECHANISMS OF HUMAN RIGHTS PROTECTION

The Constitution of the Kyrgyz Republic provides that, in accordance with international treaties, every individual has the right to appeal to international bodies on human rights to protect his violated rights. In cases where such bodies confirm the violation, the Kyrgyz Republic shall take measures to restore the violated right and/or monetarily compensate the victim.²⁷⁵

During the implementation of the project, four communications regarding the facts of torture and ill-treatment were sent to the UN Special Rapporteur on Torture.

5.3. REHABILITATION OF TORTURE VICTIMS

Torture not only leaves lasting physical traces in people's lives, but also has severe psychological consequences.

In contrast to physical traces, which can be impossible to trace years after the fact, the negative consequences of torture on a victim's psyche can manifest long after the traumatic event—after months and even years.

Evidence and the diagnostics of torture's psychological consequences play an important role in documenting methods of torture that do not leave physical traces.

For this reason, one of the most crucial objectives of the project was to provide rehabilitation services for victims of torture and ill-treatment. Implementation of the third component on rehabilitation, which included activities on providing medical, psychological, and social services to victims of torture, was assigned to the Rehabilitation Centre for Protection of Victims of Torture, which was established under the PF "Golos Svobody" in 2007 (hereinafter referred to as "**the rehabilitation centre**").²⁷⁶

International standards for rehabilitation programs recommend the participation of experts, such as physicians, psychiatrists, psychologists, and medical specialists, in gathering information and developing medical diagnostics on alleged torture.

Eight staff members, including a social worker, a psychologist, two psychotherapists, three physicians, and a case-manager, were involved in the activities of the Rehabilitation Centre with regard to this project.

When working with victims of torture staff of the Centre followed such universal principles as:

- Rigorously adherence to the principle of confidentiality;
- Professional impartiality and self-sufficiency;
- Obtaining informed consent.

²⁷⁵ KR Constitution, art.41, part.2

²⁷⁶ The Rehabilitation Centre was established with support from UN voluntary fund to support victims of torture and International Rehabilitation Centre for Victims of Torture.

Individual plans for rehabilitation activities, complete with recommendations for appropriate methods and types of services to be provided in each case, were developed for each victim.

Victims of torture may experience traumatic consequences, including the onset of a variety of psychiatric dysfunctions, breached interpersonal relationships, and reduced social adaptability. For these reasons, it is clear that torture affects not only direct victims, but also their family members and associates. In consideration of this, the project also involved developing a rehabilitation program for relatives of people who had suffered torture.

In order to identify torture survivors, the following activities were implemented:

1. Diagnostics:

- a. Medical diagnostics, including primary examination, clinical examination by a team of specialists, and the determination of the psychiatric and neurological condition of patient;
- b. A psychological examination utilizing various questionnaires to evaluate symptoms of posttraumatic stress disorders, as well as scales of depression and anxiety; tests on to determine personality; and projective tests;
- c. Collection of full medical anamnesis for the periods a) before the torture, b) related to the torture itself, and c) following the torture;
- d. A history of the torture itself, containing detailed information about who, where, when, and which methods of torture were used with regard to each victim;
- e. Laboratory and instrumental surveys;
- f. Determining diagnosis and making appropriate treatment recommendations by correlating medical and psychological conclusions;

2. Treatment and rehabilitation.

The project's directives involved taking an individual approach to each case and mandating the obtainment of each participant's consent before conducting appropriate activities.

Rehabilitation work included the following activities:

- a. The provision of medical services, including various medical manipulations and treatments;
- b. Psychological and/or psychiatric rehabilitation and treatment;
- c. Social rehabilitation;
- d. Legal aid (including the preparation of medical conclusions for transfer to prosecutors' offices, courts, torture survivors' attorneys).

Under the auspices of the Organization for Security and Cooperation in Europe (OSCE) during the period from July to November 2011, the Rehabilitation Centre did following work:

In total, for the period from July to November 2011, nine persons took courses of rehabilitation.

The majority of the individuals seeking aid were survivors of torture by law enforcement officers during the investigation of the consequences of the events that took place in the south of the country in June 2010.

Some of victims seeking help were found to be untransportable due to the gravity of their health conditions, and required medical assistance in their places of residence. For this reason, the staff of the Rehabilitation Centre visited Osh and Jalal-Abad. Rehabilitation Centre staff met with representatives of local medical institutions and to discuss the issue of the hospital treatment of torture victims in Osh. Survivors of torture received financial aid to undertake a course of medical diagnosis, treatment, and surgery.

The following is a description of some of the cases taken on by the Rehabilitation Centre:

1. *After the tragic events in the south of Kyrgyzstan in June 2010, Citizen X was detained and brought to one of the departments of the Service of Financial Police with the purpose of “documenting property” that was burnt during the June events. However, instead of conducting this documentation procedure, the police officers charged X with burning his neighbor’s house. During the interrogation, with the intent of eliciting a confession, the police officers started to beat him with their fists and to kick his head, chest, and kidneys. They also verbally berated and humiliated him. The victim was near the window, and while beating him one of police officers pushed him out the third-floor window of the Financial Police’s administrative building. At the time of examination, the staff of the Rehabilitation Centre determined X’s health condition to be grave. X could not move independently. According to doctors’ conclusions, despite undergoing surgery immediately following this trauma, X needs one more surgery for which his relatives have no money.*

The staff of the Rehabilitation Centre met with the chief doctor at the city clinic hospital. At the meeting, they agreed to perform the surgery in November 2011 in Osh, as X’s untransportable condition excluded the possibility of carrying out his surgery and rehabilitation course in Bishkek. As a project participant, he will be helped to obtain the necessary medicine and surgery.

2. *One of the victims who completed the rehabilitation program was K, who was tortured by GAI (traffic police) officers who stopped his car at a block-post when he was travelling to Osh with his family and demanded to see his documents. Despite the fact that his documents were in order, the GAI officers demanded money. They started to beat K’s chest, offending and humiliating him on grounds of his ethnicity, and threatened to throw him into a canal. They also demanded that he leave the country, as he is a representative of an ethnic minority. During his examination, it was determined that K suffered severe psychological stress as a result of this incident. K completed his course of rehabilitation in Bishkek, receiving medical treatment in the general health department of the hospital administered by the Executive Office of the President of the KR. In addition to the full course of diagnostics and treatment in the hospital, he received psychotherapeutic and psychological care in order to eliminate his posttraumatic disorder. His condition will be monitored for one year.*

3. *During the visit to Osh, Rehabilitation Centre staff examined M., who was tortured by law enforcement officers while in pre-trial detention for four days, despite the fact that she is disabled person of the first group and suffers from a severe form of insular diabetes. While detained, she was given no water, insulin, or food. M claims that absence of insulin resulted in the suppuration of her heel bone. Later doctors had to amputate her leg. At present M. Is hospitalized and receives inpatient treatment in the Centre for rehabilitation of persons with disabilities under the Ministry of Social Protection of the KR. She is working closely with a psychologist in order to address her deep depression and posttraumatic stress disorder.*

Six victims of torture refused rehabilitation for various reasons.

Four of them refused rehabilitation due to officials’ threats and pressure, which became an additional challenge for this component of the project.

One other substantial problem turned out to be the absence of some victims’ identification documents, which were lost either during the June 2010 events or intentionally destroyed by law enforcement officers during interrogations and torture sessions.

Three survivors of torture and ill-treatment applied to delay their participation in the December 2011 rehabilitation course, citing the necessity of finishing their work in the fields (the only source of income for their families).



MEMORANDUM OF UNDERSTANDING

The Akyikatchy (Ombudsman) of the Kyrgyz Republic

(120, Tynystanov str., Bishkek, 720040, Kyrgyz Republic

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The OSCE Centre in Bishkek

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(Hereinafter: “the signatory Parties”)

- *Being based on the Memorandum of Understanding between the Organization for Security and Co-operation in Europe and the Government of the Kyrgyz Republic on the establishment of the OSCE Centre in Bishkek as of 3 December 1998;*
- *Determined to support the implementation by the Kyrgyz Republic of existing international human rights obligations, including the applicable OSCE human dimension commitments;*
- *Inspired by the provisions of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Kyrgyz Republic on 29 December 2008 (Law no. 52 of 5 April 2008);*
- *Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on unannounced regular visits to places of detention;*
- *Welcoming the willingness of the Ombudsman of the Kyrgyz Republic and of nongovernmental organizations to cooperate with a view to improve the human rights situation in the Kyrgyz Republic including in the area of torture prevention, with assistance by the OSCE Centre in Bishkek;*

Within the boundaries of their respective mandates, the Parties decide to set out the framework for their future cooperation in the following Memorandum:

Article 1

In line with its mandate¹, the Institution of the Ombudsman of the Kyrgyz Republic undertakes to:

1. Establish and maintain cooperation with nongovernmental organizations active in the Kyrgyz Republic on issues related to the protection of human rights and fundamental freedoms.
2. Actively participate in initiatives aimed at building the capacity of the Institution of the Ombudsman of the Kyrgyz Republic (including its regional offices) organized inter alia by local or regional human rights organizations, the OSCE or other international organizations.
3. With a view to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, actively engage in monitoring places of detention or restriction of liberty jointly with partner civil society organizations, including but not limited to: pre-trial detention centres (SIZO), various types of temporary detention facilities, including temporary detention isolators (IVS), police cells, detention-redistribution centers of the Ministry of Interior, disciplinary military detention facilities of the Ministry of Defense (“Gauptvahty”), administrative detention facilities of the border control authorities, temporary reception and lodging facilities for IDPs and asylum-seekers, centers for adaptation and rehabilitation of minors, military facilities under the Ministry of Interior, the Ministry of Defense, the State Committee on National Security, Ministry for Emergency Situations and any other facility controlled by law enforcement authorities, as well as mental health institutions, medical facilities for compulsory treatment of persons addicted to alcohol or drugs, state-run and other types of medical-social care institutions for elderly (including nursing homes), minors (including orphanages), persons with disabilities, and specialized institutions for minors that require special care and education (*hereinafter: “places of detention”*);
4. As necessary ensure access to places of detention for partner civil society and international organizations.
5. Exchange information with and involve in regular monitoring activities - as well as in the preparation of reports and recommendations stemming from regular monitoring, where relevant- partner civil society organizations and relevant international organizations.
6. Cooperate with partner civil society organizations and with relevant international organizations in developing and implementing effective mechanisms to prevent and combat torture in the Kyrgyz Republic, in line with Kyrgyzstan’s international human rights obligations.
7. Coordinate and cooperate with partner civil society organizations and when necessary with relevant international and nongovernmental organizations in promoting human rights and fundamental freedoms, as well as early warning, conflict prevention, conflict resolution and peace building.

Article 2

The NGO “Kylym Shamy” undertakes to:

1. Actively cooperate with the Institution of the Ombudsman of the Kyrgyz Republic on issues related to the protection of human rights and fundamental freedoms.
2. In cooperation with partner civil society organizations, participate in joint visits to places of detention with the Institution of the Ombudsman of the Kyrgyz Republic with a view to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment by way of regular and unannounced monitoring.
3. Engage where relevant in joint activities with the Institution of the Ombudsman of the Kyrgyz Republic other

¹ Law no. 136 of 31 July 2002.

than monitoring places of detention, as well as promptly inform the Institution of the Ombudsman of the Kyrgyz Republic about reports of alleged violations of human rights and fundamental freedoms with a view to trigger -where relevant- the participation or direct intervention by the Institution of the Ombudsman of the Kyrgyz Republic.

4. Engage as relevant the employees of the Institution of the Ombudsman of the Kyrgyz Republic in joint training sessions and other capacity building activities.
5. Support the Institution of the Ombudsman of the Kyrgyz Republic in the development of a rapid response mechanism to requests and individual complaints concerning alleged violations of human rights and fundamental freedoms.

Article 3

In line with its mandate² and available resources, the OSCE Centre in Bishkek undertakes to:

1. Establish and maintain regular contacts with representatives of civil society and the Institution of the Ombudsman of the Kyrgyz Republic with a view to promote the implementation of OSCE principles and commitments in the Kyrgyz Republic.
2. Support and encourage cooperation between the Institution of the Ombudsman of the Kyrgyz Republic, representatives of civil society, human rights and international organizations.
3. Cooperate with the Institution of the Ombudsman of the Kyrgyz Republic and partner civil society organizations in developing project activities aimed at promoting the implementation of OSCE principles and commitments in Kyrgyzstan.
4. Facilitate exchanges of best practices concerning the implementation of OSCE principles and human dimension commitments for the benefit of governmental and nongovernmental actors within the Kyrgyz Republic.
5. Assist in organizing meetings between representatives of the Institution of the Ombudsman of the Kyrgyz Republic, civil society organizations, government agencies and international organizations to discuss the implementation of OSCE principles and commitments in Kyrgyzstan.

Article 4

1. This Memorandum shall enter into force on the date of its signature. This Memorandum shall remain in force until 31 December 2011. The Parties agree to annually review this Memorandum.
2. The annual review will include considering:
 - a. whether any revision to the Memorandum is needed;
 - b. whether any changes are needed to the working arrangements, so that this Memorandum is put into practice effectively;
 - c. priorities for working together in the upcoming year;
3. This Memorandum may be amended at any time by agreement among the Parties.
4. Any disagreement regarding the interpretation and/or application of this Memorandum will be settled amicably through consultations between the Parties.
5. This Memorandum shall be open to accession by interested nongovernmental human rights organizations actively working in the Kyrgyz Republic, subject to approval by the signatory Parties. The nongovernmental human rights organizations wishing to accede to this Memorandum shall submit a written request to this effect to the NGO "Kylym Shamy". The latter shall transmit without delay such a request to the other signatory Parties for approval. In case no objection is raised by any of the signatory Parties within a period of 10 working days, the requesting nongovernmental human rights organization shall become an acceding Party to this Memorandum.
6. Nothing in or relating to this Memorandum shall be deemed a waiver of any of the privileges and immunities enjoyed by the OSCE and/or its staff.

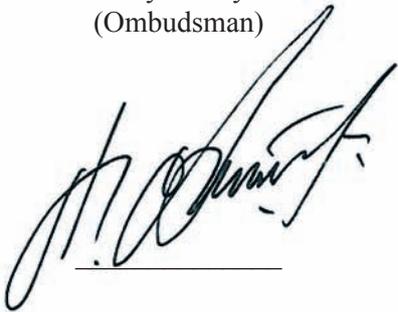
Article 5

1. The Parties assign their Special Representatives, who shall be authorized to represent the Parties on issues related to the implementation of this Memorandum.
2. The special representatives of the Institution of the Ombudsman of the Kyrgyz Republic are **Mr. Kamaldin Japarov**, Head of Unit for the Protection of Rights of Persons in Detention, and **Mr Melor Moidunov**, Head of Service for the Protection of Rights for Patients of Mental Health Institutions of the Institution of the Ombudsman of the Kyrgyz Republic.
3. The special representative of the OSCE Centre is **Mr. Fabio Piana**, Senior Human Dimension Officer, OSCE Centre in Bishkek.
4. The special representative of the NGO "Kylym Shamy" is **Mrs. Aziza Abdirasulova**, Chairman of the NGO "Kylym Shamy".
5. Upon accession of an interested nongovernmental human rights organization in accordance with Art. 4.5, the acceding Party shall notify, through the NGO "Kylym Shamy", the other Parties its Special Representative for the purposes of the Memorandum.

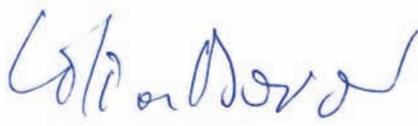
² Cf. OSCE Permanent Council Decision No. 245 of 23 July 1998.

*Done in Bishkek on June 7, 2011 in six identical copies, three in the English language and three in the Russian language, two copies for each Party.
In case of discrepancy the English version of the Memorandum shall be authoritative.*

Tursunbek Akun
Akyikatchy
(Ombudsman)



Lilian Darii
Deputy Head
OSCE Centre in Bishkek



Aziza Abdirasulova
Acting Director
NGO "Kylym Shamy"