

**Shadow report of NGOs on compliance of obligations in respect of children under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Kyrgyz Republic, 2013**

Bishkek, 2013

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## 1. Information on preparation of the report

The report was prepared as an alternative to the second and third consolidated national report on the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the national report, little attention is paid to aspects of the protection of children from torture and ill-treatment. Therefore, this report focuses only on this issue.

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## 2. General information

In Kyrgyzstan, prevalence of torture and ill-treatment of persons under 18 still remains wide. Thus, according to the data for 2010 of the Coalition against Torture<sup>1</sup>, prevalence of torture in juvenile detention centers represents 5% of the number of identified cases of torture during the monitoring.

Results of joint monitoring of NGOs and the Ombudsman for 2012<sup>2</sup> in the institutions of the juvenile justice system also confirm the high level of torture and ill-treatment of children in conflict with the law (24 cases of torture against young boys and in case of 5 children torture was used repeatedly). In 21 cases, minors faced physical assaults, verbal threats and abusive language, in 7 cases - "touch torture" (standing in the sun, pouring cold water on inmate when he is lying on the snow, and sleep deprivation), in 6 cases - interrogations at night for a long time, 6 minors tortured by posture or restriction of movement, 4 - "dry suffocation" (putting a bag over the head), 4 cases - electric shocks, 2 cases – deprivation of contact with the family for a long time (up to 1.5 years).

The main reason for torture towards children in detention centers is to get them to confess guilt in commitment of crimes.

### Example 1<sup>3</sup>.

Female, 17 years old. She was arrested on suspicion of murder by officers of Tokmok District Police Department. She was tortured in order to get her to sign confession on murder. The following information was given by the victim during her interview with psychologist: "On December 10, 2010 at around 1 p.m., police officers and investigator arrived to my house and took me to the police department. I was sitting in one of the police offices, there were many male officers and all of them told me that I am a murderer; they insulted me using abusive language. I stayed in this office until 11 p.m.; they did not let my mom in. Closer to 12 a.m. they took me to

<sup>1</sup> Azimov U., Sayakova D., Ezenamanova E. Prevention of torture in detention centers of interior affairs of the Kyrgyz Republic. Bishkek, 2011.

<sup>2</sup> Utesheva U., Korzhova O. Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

<sup>3</sup> The case was provided by PF "Kylym Shamy".

a room where were iron bed, a safe and a table. They insulted me in many ways; humiliated, beat on my face ... I do not remember how many people there were exactly but I remember that there was a lot. I fell in consciousness after they repeatedly put plastic bag over my head... then one got the baton, put a condom on it and threatened to rape me with it ... then began to threaten that they will put my mother into the jail, I was very afraid of this and signed a confession."

Children may also be exposed to torture and ill-treatment in order to put pressure on their parents.

Example 4.<sup>4</sup>

2 female children (sisters), 15 and 2 years old.

These girls were detained along with her mother by law enforcement officers. Law enforcement officers wanted to know location of their stepfather. The older girl was pulled by hair, beaten and threatened to rape, put a gun to her head, threatened, insulted and tried to take her clothes off. Their mom was beaten, one of the officers hit her over the head very hard that her two year old daughter, which she held in her arms, fell and lost consciousness. Then their mother was forced to stand up and sit down again during the long time. Woman was tired and sat down, one of the officers struck her kick to the neck and her two year old daughter fell back again to the ground. After that, woman and her daughters were released, but they were harassed and threatened continuously that if they will address a complaint to the prosecutor's office, they will be subjected to violence again.

Unlike adults, children, in the Kyrgyz Republic, can be imprisoned by use of a variety of legal and illegal ways which is different from the criminal justice system. Monitoring of NGOs<sup>1</sup> in closed or semi-closed institutions of the residential care for children shows widespread cruel and inhumane forms of discipline used by personnel, as well as common forms of extreme neglect of children which, in the complex, can be referred into cruel and inhuman treatment.

Juveniles in various types of closed institutions are subjected to torture and ill-treatment in order to punish for the "wrong" behavior or for labor exploitation for profit.

Example 2<sup>5</sup>.

In Pokrovsky rehabilitation boarding school for children with disabilities, administration used injection of chlorpromazine or relanium as a disciplinary punishment if child escaped from the institution. Following is from observation record of medical service of the institution for 26.08.2011, "He left willfully the boarding school area before dinner and was found in city center in the company with his peers, and his voluntary leave was several times. Aminazin 2.5 % - 2.0 i\m was injected at 10.10 p.m. of 26.08.2011 for his voluntary leave and disobedience."

Example 3<sup>6</sup>.

<sup>4</sup> The case was provided by specialists of rehabilitation program of PF "Voice of Freedom".

<sup>5</sup> The case was provided by PA "Youth Human Rights Group"

<sup>6</sup> *Utesheva U., Korzhova O.* Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

Inmate of Belovodsky Special boarding school, 16 years old.

From the interview with the student: "When I refused to work at personal farm of the director, first he threaten me that he will not let me visit my parents and home but I refused his offer to work at his farm. For the fact that I refused to work at his farm, I have not seen my family and was not at home for 1.5 years ... I miss my family ... I feel so bad, because of refusal to visit my family and I have no one to complain, even had thoughts to commit suicide, why should I live like that ... "

### **3. The ineffectiveness of the protection of juveniles from torture and ill-treatment during the administration of justice.**

As noted, one of the main purposes of torture against juveniles, as in the case of adults, is to get them to confess guilt in commitment of crimes. The prevalence of the practice of torture for this purpose shows that the existing procedural safeguards in administration of juvenile justice does not provide the necessary prevention of torture.

*Informing about the causes of juvenile detention and of their rights in custody.* Article 95 of the Code of Criminal Procedure guarantees to person under 18, as an adult detainee, is informed during design of protocol, which should be made no later than 3 hours from the time of actual detainee, i.e. not since the restriction of freedom of movement of detainee. As results of a joint study of NGOs and the Ombudsman<sup>7</sup> shows, 12 children out of 13 surveyed inmates of educational colony for boys were not informed of cause for detention. In all 13 cases, minors were not informed of their rights not by police officers nor legal representatives.

*Instant notification of parents and legal representatives of minor about his/her detention. If such notification is not possible then it should be done as soon as possible.* The legislation of the Kyrgyz Republic guarantees the right to instant notification of family or legal representative in accordance with paragraph 4 of Article 393 of Code of Criminal Procedure. However, in practice, most of the minors are not granted this right. According to the Coalition against Torture in Kyrgyzstan<sup>8</sup>, only 3 respondents out of 17 juveniles were able to contact their family or legal representative immediately after his/her arrest.

*Providing access to lawyer.* The legislation of the Kyrgyz Republic guarantees right to a lawyer which is written in Article 24 of the Constitution of the Kyrgyz Republic and free legal aid is guaranteed by article 7 of the Law "On state guaranteed legal aid". Criminal Procedural Code of the Kyrgyz Republic indicates that presence of lawyer is mandatory in cases of juveniles (paragraph 4 of article 46). In practice, access to a lawyer is not immediately available for detained minors after his/her detention and quality of provided free legal aid is low. An analysis of judicial cases of 1141 juveniles<sup>9</sup> for 2009-2010 showed that in 159 cases there was no information on participation of a lawyer.

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<sup>7</sup> Ibid

<sup>8</sup> Information was provided by organizations of NGOs Coalition against Torture in KR.

<sup>9</sup> Analysis of cases of judicial practice of minors in the Kyrgyz Republic for 2009-2010 – NGO "Center for Law", 2011.

***Example 4. Data from the joint study of NGOs and the Ombudsman<sup>10</sup>:***

3 teenagers reported that lawyer in charge was not present at all interrogations: "Sometimes he comes, sometimes not".

One teenager, who was caught red-handed, said that he saw lawyer only at the trial (when there was judicial restraint) after which he was sent to temporary detention center.

In another case, the lawyer in charge did not answer to questions of a juvenile, was not interested in juvenile's opinion and did not tell rights he has.

One of the teens said to his lawyer about use of torture against him: he was beaten during his arrest and during interrogation for four days, was forced to sign a confession on 4 crimes which he did not commit. ***The lawyer advised him not to report about torture in the trial.*** He stayed in pre-trial detention center for 6 months as the trial was postponed several times. In the trial the juvenile refused service of lawyer and he reported about the torture but judge still found him guilty on the 4 crimes.

Low quality work of lawyers in charge is related to ineffective criteria of lawyers' work, inefficient mechanism and low wages of lawyers. In addition, existing roster of lawyers<sup>11</sup>, formed by the Ministry of Justice of the Kyrgyz Republic, largely covers Bishkek (the capital city) and Chui oblast. Remote areas are actually not covered by a free lawyer services that adversely affects access to justice.

*During the investigation and trial, in addition to the lawyer, legal representative, parents, teacher, psychologist or public defender should be involved.* These rights are guaranteed by the several articles of Criminal Procedural Code of the Kyrgyz Republic, namely Article 43 (participation of legal representatives), Article 391 (mandatory participation of an employee of the authorized body for protection of children), Article 396 (participation of the teacher and psychologist during the interrogation), and Article 397 (participation of the legal representative and an employee of the authorized state body for protection of children in the investigation and trial).

In most cases, parents or relatives (85.3%) perform role of a legal representative of children in conflict with law. In 7.6% of cases, employees of Inspection on Juvenile Affairs, Department for Family and Children Support and teachers were in a role of legal representatives which contradicts to the legislation of the Kyrgyz Republic. In 7.09% of cases involvement of a legal representative is not reflected in court case records<sup>12</sup>.

In 99% of cases, officer of authorized body for protection of children (Department for Family and Children Support, hereinafter- DFCS) did not participate neither during investigation nor at trial. According to the Article 34-1 of Code of Criminal Procedure of the Kyrgyz Republic, representative of DFCS is obligated to collect materials for benefit of a juvenile suspect

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<sup>10</sup> Utesheva U., Korzhova O. Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

<sup>11</sup> [http://minjust.gov.kg/?page\\_id=1038](http://minjust.gov.kg/?page_id=1038)

<sup>12</sup> Analysis of cases of judicial practice of minors in the Kyrgyz Republic for 2009-2010 – NGO "Center for Law", 2011.

(accused), to develop a plan of rehabilitation, to get familiar with the case, apply an appeal and participate in trials. In none of 1141 court cases for 2009-2010 was information on measures of rehabilitation or social work which was carried out after the 1528 verdicts against minors.<sup>13</sup> Thus, absence of a representative of DFCS deprives a minor from substantial part of activities on protection of his/her rights and does not guarantee special treatment by law enforcement representatives and courts because of his/her age and psychological characteristics.

*Participation of educator and psychologist during interrogations.* Only in 19.1% of cases of juvenile educator or psychologists were involved. In most cases, form-master of an accused is involved as an educator.<sup>14</sup>

*Immediate consideration of minors' case by court.* In paragraph 3 of Article 393 of the Code of Criminal Procedure, there is an indication that detained juveniles should be placed in special wards of detention centers under the Ministry of Interior Affairs for the period no longer than 24 hours. In practice, juvenile may be held in detention centers longer than indicated period - up to 1 month.<sup>15</sup>

*Detention should be considered as a last resort during the determination of the restraint in court.* This right is provided by Code of Criminal Procedure (Article 114, paragraph 3 of Article 393), Code on Children of the Kyrgyz Republic (paragraph 3 of Article 87): detention must be used in cases of serious and very serious crimes. In practice, courts, in determining the restraint, are not always guided by the special rule for juvenile defendants. As the data of cases for 2009-2010 shows 206 out 306 detained juveniles were accused of not serious crimes.<sup>16</sup>

#### **4. Inefficiency of protection of minors from inappropriate forms of treatment in places of deprivation or restriction of liberty.**

##### **4.1. The illegal detention of juveniles**

In the Kyrgyz Republic, the age of criminal responsibility for juveniles of both sexes is 16 years old (Article 18 of the Criminal Code) and in case of the commission of serious and particularly serious and intentional crimes it can be decreased to 14 years old. In order to pre-trial detention of minors above 14 years old, they are sent to temporary detention centers where they should to be placed into special wards.

Also in Bishkek and Osh, there are Centers for adaptation and rehabilitation of juveniles (CARJ) under the Ministry of Internal Affairs of the Kyrgyz Republic, in fact, CARJ can be considered as a pre-trial detention center as according to the current Regulation of the institution any child under age of 18, in the street without an adult, can be placed in CARJ without a court order for up to 30 days.<sup>17</sup> This contradicts to the constitutional guarantees (Article 24 of the Constitution): "Everyone has the right to liberty and security. No one shall be arrested, detained, or be deprived of liberty except court order and based on grounds and procedures prescribed by law. No one shall be subjected to detention for more than 48 hours without a court order."

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Report on result monitoring №3\_24.05.2012, PA "Youth Human Rights Group".

<sup>16</sup> Analysis of judicial practice on juvenile cases of 2009-2010, PF "Center for Rights", 2011.

<sup>17</sup> Order of the Ministry of Internal Affairs number 65 of 18 February 2002 approving Regulation for center for adaptation and rehabilitation of juveniles under the Ministry of Internal Affairs.

The most of children placed in CARJ are homeless and neglected children who should be on the focus of attention of social security not law enforcement agencies. Only 3% of the total number of children in CARJ is arrested for committing offense or crime.<sup>18</sup> According to the Regulation of the institute, during the arrest of children, law enforcement officials do not inform them about causes of arrest and do not register report on arrest. During the interview of children in CARJ, parents or legal representatives of child are not invited and lawyer is not given, even if the reason for sending a child to CARJ is suspect on committing an offense or crime.

For the purposes of penalty, male adolescents aged 14 to 18 years, deprived of liberty by a court decision, are sent to an educational colony No. 14, female adolescents of the same age are sent to a juvenile department of the colony for women No. 2. Both institutions are under the jurisdiction of the State Penitentiary Service (hereinafter - SPS).

There is a special boarding school (under the Ministry of Education and Science) for boys in conflict with the law aged between 11 and 14 years, where they should be sent by the court decision for a commission of offense.<sup>19</sup> State agencies recognize that the institution has all criteria of detention center despite the fact that this institution is in the education system.

According to Article 33 of the Law "On Education" placing of children aged between 11 and 14 years in the special boarding school is only possible on the basis of a court decision and only if child committed a socially dangerous act. In violation of the law, children were sent to the special boarding school from 2003 to 2013 on the basis of permit of the Ministry of Education and Science and decision of district administration's orders without any court decision.

The prosecutor's office of the Moscovsky region, on 18 February 2013, recognizing gross violation of law and rights of 44 children living in the special school by officials of the Commission on Children Affairs and the Ministry of Education, refused to file a criminal case because of the "lack of a criminal act". In April 2013, Moscovsky district court considered the case on the refusal to file a criminal case on the fact of illegal deprivation of liberty of juveniles by placing them in Belovodsky special school. The District Court also recognized a gross violation of Article 33 of the Law "On Education", which establishes a judicial procedure for placing children to the institution, but did not see actions of the Ministry of Education and the district administration as an offense and dismissed the appeal and upheld decision of the prosecutor. Thus, the prosecutor and the court admitting violation of legal procedures for placing children in Belovodsky special school on the basis of the court and at the same time they refused to provide appropriate remedies and protect right to personal integrity. Children, in respect of whom violation of the law was recognized, continue to live in the special boarding school. Analysis of the personal files of juveniles, who are in the institution, in May 2012, showed that 50% of juveniles were sent to the special school for begging, vagrancy, truancy of school and escaping from home.<sup>20</sup> These acts do not apply to criminal offenses according to the legislation of the Kyrgyz Republic.

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<sup>18</sup>According to the research of UNICEF "Torture in context of juvenile justice" in 2012, 15 children out of 507 children placed in CARJ in 2012 were the subject of suspicion of committing crime.

<sup>19</sup>Article 33 of the Law "On Education" April 30, 2003, №92; Code of the Kyrgyz Republic "On Children" July 10, 2012, №100

<sup>20</sup>Report on result monitoring №6 of May 16-17, 2012, PA "Youth Human Rights Group".



According to the new edition of the Code on Children of the Kyrgyz Republic, children are sent to the special boarding school by the court decision from September of 2012. An analysis of court decisions shows that children can also be placed into special boarding school for difficult life situation (begging, escaping from home, vagrancy and etc.).

#### **4.2. *Indefinite period of imprisonment***

When placing teenagers in special boarding schools, government officials responsible for making decision (Commission for Children Affairs till 2012, courts for 2012-2013) did not indicate duration of child's placement in the facility. According to the current practice, child stays in the institution until they reach age of 16 and graduates from 9 year of education school. In judicial decisions on cases of juveniles, who were placed into the institution in 2013, there is also no timeframe for stay of child in the institution. And regardless of child's behavior and awareness of his offense, administration of the institution and representatives of the state authorities on protection of children make decision to extend the stay of child in the institution with a restriction of freedom. The legislation does not provide mandatory review of validity of procedure of placement of child in the institution.

#### **4.3. *Placement of child suspect with adult***

In violation of international standards in the Law of the Kyrgyz Republic "On the procedure and conditions of detention of persons detained for suspected and accused of committing a crime" from October 31, 2002 No. 150 (Article 31) stipulates that in exceptional cases with the written consent of supervising prosecutor, juveniles are allowed to be placed with an adult who is positively characterized and arraigned on a criminal charge which is not related to serious or high crime.

Practice of placing minors together with adults is common for temporary detention centers, pre-trial detention center and CARJ. According to the report of the Supervisory Social Council of the SPS for 2012, in pre-trial detention centers minors are sometimes placed together with adults in one ward. The same situation is observed in temporary detention centers where juveniles are placed in one ward together with adults because of lack of places. In the educational colony for juveniles, it is allowed to place juveniles together with adults under the age of 21.

The practice of placement of juveniles together with adults in a temporary detention centers and pre-trial detention center contributes to the organized criminalization of detention centers for minors.

#### **4.4. *Solitary confinement as a punishment***

The use of solitary confinement in a juvenile penitentiary system is enshrined in the legislation of the Kyrgyz Republic. According to the articles 87 and 107 of Criminal Executive Code of the Kyrgyz Republic juvenile can be placed in isolation ward (solitary confinement) or punishment ward (disciplinary confinement). During the imprisonment in solitary confinement minor will face additional restrictions, such as the deprivation of family visits, telephone conversations, buying food and other essentials, receiving parcels, watching TV shows and movies, group games and smoking.<sup>21</sup>

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<sup>21</sup> Article 108 of the Criminal Executive Code of the Kyrgyz Republic.

Conditions of detention in solitary confinement can be considered as an ill-treatment – place square is equal to 3 m, size of ward window is 0.5 m (width) x 0.9 m (height), ward doors depth is 6 cm and it is covered with iron sheet and with a hole for food transfer and inspection hole, wiring system is completely unavailable; light switches on the part of corridor, there are a button to call inspector, sanitary unit, folding bed which is locked during the daytime, dresser and desk, which are tightly attached to the floor.<sup>22</sup>

In practice, juveniles may be placed in solitary confinement for time exceeding 7 days<sup>23</sup> and even up to a month.<sup>24</sup>

#### **4.5. Corporal punishment**

Corporal punishment as a systematical practice was met in the special boarding school.<sup>25</sup> Children were beaten with plastic bottles filled with water, sticks (including a half driven-in nails), fists, feet (army boot) (one of the children showed a bruise on his leg from a stroke). Children were forced to beat each other; they were put in a circle and forced kicking a child, who was sitting in the center of circle, under the threat of beatings by adults. In order to cause pain to children, some representatives of administration used wide elastic bands; elastic band was pulled back and aimed at the part of child's body then released. The criminal law of the Kyrgyz Republic does not provide liability for use of corporal punishment as in the society use of corporal punishment is perceived as a valid method of educating children.

#### **4.6. Deprivation / restriction of contact with a family**

According to the Criminal Executive Code of the Kyrgyz Republic, juveniles placed in the educational colony No. 14 have a limited number of visits, phone calls. In addition to the restrictions imposed by the legislation, restriction of number of communications with a family is often used as a method of discipline by administration of the institution. All surveyed juveniles in the institution reported that they might be denied to contact with a family as a punishment. In the special boarding school, threat to deprive child from communication with family used regularly and have become part of pressure on children.<sup>26</sup>

#### **4.7. Maintenance of order with the help of juveniles**

This method is used in the special boarding school and in the educational colony No. 14 as a form of abuse.<sup>27</sup> Administration selects commanders among juveniles who are responsible for discipline of detachment or in bedroom. Several surveyed children told that these commanders are called "smotryashyi"<sup>28</sup> which refers to a criminal world.

In the educational colony No. 14, another manifestation of existence of the criminal subculture is a group of children called "the outcasts". This group includes the teenagers if they were suspected of collaboration with the police, raped, lost in gambling and could not pay the debt,

<sup>22</sup> Internal regulations of correctional facilities of criminal executive system of the Kyrgyz Republic, paragraph 2.

<sup>23</sup> According to the notebook for registration of disciplinary methods used on juvenile of Educational colony, disciplinary measures began on 18.01.2012 and ended on 9.01.2012 // Utesheva U., Korzhova O. Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

<sup>24</sup> According to the interview with a juvenile // Utesheva U., Korzhova O. Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

<sup>25</sup> Report №6 of 16.05.2012, PA "Youth Human Right Group".

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Note of translator: The term "smotryashyi" is used in criminal world and refers to a person who manages that prisoners keep prison's law.

and serve as informers at the present time. There are no differences in living conditions and food between the squads, but the group "outcasts" always sits at a separate table. Additionally, such work as washing the floors or weeding the lawns is performed only by children belonging to the group of "outcasts", this work apparently is considered to be non-prestigious and of low status. Differences in living conditions and nutrition among a group of "outcasts" and two other units do not. However, a group of "outcasts" is always sits at a separate table. Also, only the guys in this group perform such work as cleaning floors, weeding the lawn, which is apparently considered a low-status and prestige.

After conducting the interviews with the staff of the institution (head of the colony, a senior educator and a teacher of high school), we can conclude that the existence of the category of "outcasts" is considered to be a norm by them. Moreover, the existence of this category of students creates means for manipulation on the part of the staff, because, according to the inmates of the institution, if someone does not obey the instructions of the prison officials, they threaten them with placement into this group of children.<sup>29</sup>

#### **4.8. *Absence of educational, rehabilitative, medical and restoration services for juveniles***

In institutions for juveniles, there is, as a rule, complete absence of attention to rehabilitation and recovery needs of juveniles.

In the special boarding school, there is no social service: there are no social workers and social educators whose duties include working with family and social reintegration of juveniles. There are no specialized trainings, educational and rehabilitative programs focused on children in conflict with the law. Moreover, existing educational standards in the institution are not implemented due to a lack of teachers of specific subjects and actual unavailability of libraries, textbooks and supplies which are needed for development of full curriculum.

According to the law,<sup>30</sup> if conditions in the detention center for juvenile meets special criteria, juvenile defendants should be provided with television, equipped facilities for sport activities, as well as outdoor playgrounds and conditions for continuation of general secondary education. Juveniles should carry out cultural and educational work. Unfortunately, experience shows that these requirements and conditions in detention centers are not established.

Psychological services of SPS and Ministry of Education and Science are presented by unqualified personnel. There are no organizational, material and technical conditions (no private rooms, opportunities to conduct individual and group lessons, equipment classrooms and etc.) for work of a psychologist.<sup>31</sup>

### **5. Torture and ill-treatment in child protection system**

#### **5.1. *Violence in institutions of care for children***

Monitoring of NGOs in closed or semi-closed institutions of residential care for children shows widespread cruel and inhumane forms of discipline methods used by personnel of institutions.

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<sup>29</sup> Ibid

<sup>30</sup> Law "On the Procedure and conditions of detention of persons detained for suspected and accused of committing a crime" from October 31, 2002 number 150, article 29.

<sup>31</sup> Utesheva U., Korzhova O. Protecting children from torture and cruel treatment in the context of juvenile justice. Research report, 2012. Bishkek, 2013.

During the monitoring of NGO<sup>32</sup>, facts of use of physical violence against children were revealed in 30 institutions out of 35 surveyed institutions of residential care. So prevalent forms of punishments in institutions are followings: painful posture (3 institutions), cleaning of indoor and outdoor toilets that are in extremely unsanitary conditions (11 institutions), beating (10 institutions – strokes with foot and fist, sometimes they were shod in heavy shoes and 2 institutions – use of stick and broom), leaving without food (6 institutions), confinement in a dark room (2 institutions), placement together with older children at night (1 institution), placement of a group of children for misbehavior of 1 child to the room unfit for habitation and with bare electrical wiring and no lighting (1 institution), group punishment "through formation" when children are forced to beat each other with feet or hitting hands of one child with a ruler by entire classmates (2 institutions), standing in the sun and looking to the sun for long period of time (1 institution) and placement into a psychiatric hospital (2 institutions - Chui boarding school and Krasnorechensky boarding school for mentally retarded children).

In institutions of care for children, there are often extreme forms of neglect of children and it can be considered in the complex as a cruel and inhuman treatment:<sup>33</sup>

- 1) *Placing children with normal intelligence in specialized institutions* (boarding school for mentally retarded children) based on unreasonable directions of PMPC (psychological, medical and pedagogical commission), which works in violation of procedures for examination of children (based on evaluation of one doctor instead of a commission members' evaluation). This practice has been found in at least four boarding school for mentally retarded children.
- 2) *The lack of qualified care, educational and upbringing services for children.* Facts of neglect of child's health, based on lack of health care specialists, resources, information and regular professional training of medical specialists, were revealed in 22 out of 35 surveyed institutions of residential care.

In most cases, psychological, social and educational service agencies are represented by unqualified personnel in institutions of residential care for children. They work non-systematically; there are no specialized programs for education, upbringing and rehabilitation of children in difficult situations and with special needs.

- 3) The worst forms of child labor in institutions of care are most common in farms under institutions and also children are used to take care of inmates with mental disorders.<sup>34</sup>

## **5.2. Violence in schools and families**

A number of studies show that abuse and violence against children and among children is widespread both in families and in educational institutions. The prevalence of violence in schools is equal to 83.4%. The most common forms of violence are a racketeering (21.7%), verbal abuse\humiliation (22.5%), exploitation of younger children by older ones (17.5%) and

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<sup>32</sup> Summarized information on monitoring results of PA "Youth Human Rights Group" and Ombudsman of Kyrgyz Republic for 2009, 2010, 2011, 2012 and 2013.

<sup>33</sup> Ibid

<sup>34</sup> According to the legislation of the Kyrgyz Republic this is a forbidden form of child labor // Hygienic conditions and criteria for acceptable types of work for vocational training and employment of children approved by the Resolution of Chief Medical Officer of the Kyrgyz Republic on 20 February 2004 number 9.

the psychological pressure\bullying (11.6%).<sup>35</sup> Prevalence of violence in school system is not registered by the state.

In 2009, 72.7%<sup>36</sup> of surveyed 2132 children said that they have to deal with violence at home and \ or neglect from parents. 51% of children experienced verbal abuse from other family members, 38.7% experienced psychological violence (825 children), 36.6% experienced physical violence (780 children) and 1.6% experienced sexual abuse (34 children).

At the same time, National Statistical Committee<sup>37</sup> for 2009 indicates that 51 cases were considered in courts on family violence against juveniles, according to the Ministry of Internal Affairs 19 juvenile victims of violence were registered and 707 people have been in crisis centers for violence victims. The survey of various experts (health, education, social protection and police), who are faced violence against children, shows that only half of them sent or to reported cases of violence to the police.<sup>38</sup>

### **5.3. *The causes of violence in child protection system***

The causes of the high level of violence against children can be explained by legal, institutional and social factors.

Legal factors. New edition of the Code on Children of 31 May 2012 gives a broad definition of child abuse and meets international standards. However, prohibition of corporal punishment is reflected only in the order of Ministry of Education № 264/1 for April 14, 2009 and contains a reference to rules of law providing responsibility for use of corporal punishment. At the same time, legislation of the Kyrgyz Republic does not provide explicit prohibition of corporal punishment and do not provide criminal or administrative liability

None of model provisions of different types of institutions<sup>39</sup> includes a prohibition of use of violent methods of education and its list. There are no criteria of non-violent upbringing methods which must be followed by staff of institutions. There are no procedures for application of disciplinary sanctions. The rules do not reflect obligation for administration on informing students about the rules established in institution. None of 35 surveyed institutions in 2009, 2010, 2011, 2012, and 2013 has practice of informing child about established rules of behavior in institution. All interviewed children reported that they learn about rules and punishments in during a conflict situation.

Law "On social and legal protection from domestic violence" number 62 for January 31, 2003 still has no effective mechanisms for its implementation. There is no inter-agency coordination of efforts of public authorities to protect children from violence in family and institutions. There are no clearly defined responsibilities of officials to report cases of child abuse to law enforcement offices. Responsibilities and authority to protect children from violence are not divided among experts and specialists. There are no algorithms for coordinated action for health professionals, educators, social protection representatives and law enforcement officers.

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<sup>35</sup> The report on study of prevalence and dynamics of violence in schools of Kyrgyzstan. Kyrgyz Republic, 2010.

<sup>36</sup> Child abuse and neglect of their needs in family in the Kyrgyz Republic. Bishkek, 2010. p. 142.

<sup>37</sup> Crime and law order in the Kyrgyz Republic. Statistical compendium. Bishkek, 2011.

<sup>38</sup> Child abuse and neglect of their needs in family in the Kyrgyz Republic. Bishkek, 2010. p. 107.

<sup>39</sup> Typical provisions for state boarding educational institutions for orphans and children deprived of parental care from December 21, 1995 number 556, Standard regulations on special education institutions for children and adolescents with disabilities in mental or physical development of December 21, 1995 number 555, Model Regulations for the child house from June 1, 2004 number 259.

*Institutional factors.* Educational, upbringing and boarding schools are large institutions, where one teacher should take care of 20-30 children. Often maintenance of discipline methods based on the parent-child attachment behavior, which are used in family, is impossible. Typically, residential care staff is not properly trained in order to work with children in crisis. There is very little opportunity to avoid placing into large residential care institutions for children temporarily or permanently deprived of family environment. Alternative ways of placement of children (foster families, family type homes and etc.) are still small and new ones do not appear.<sup>40</sup>

*Social factors.* There is a low awareness about dangers of violent methods of education and upbringing for the mental development of child among society. The state does not provide permanent public awareness about forms and consequences of violence against children and progressive and non-violent parenting practices. Some types of violence perceived as a norm of education by the population and, indeed, often are not valued as a violent act.

## **6. Obstacles for immediate and effective investigation of torture and ill-treatment**

### **6.1. *Absence and/or inefficiency of mechanisms of complaint application***

According to the established law norms, in all institutions of juvenile justice, there are no complaints procedures for children and which takes into account specificity of juveniles. Procedures on informing juvenile about his/her rights, on complaints and its examination, adopted by the Criminal Executive Code and the Law of the Kyrgyz Republic "On procedures and conditions of detention"<sup>41</sup>, are not sufficient for juveniles to ensure use of these procedures efficiently and get immediate protection from torture.

For instance, informing a child about rules of behavior and institution is not responsibility of staff (special boarding school, CARJ in Bishkek and Osh), information on rules is not always set in a simple and accessible way for children, there is no immediate registration of complaints, complaints against actions of members of personnel are examined by administration of the institution which may not be interested in detailed investigation of the complaint.

Analysis of materials of 1141 case against 1528 children in conflict with the law for 2009 - 2010 revealed that no written complaint has been filed on maltreatment. Only in 6 cases, juveniles testified about pressure on them by police officers during interrogation and court hearings. Complaints of juveniles have not been refused or confirmed in court materials.<sup>42</sup>

According to the official data for the period from 2010 to August 2013, following number of complaints of torture and ill-treatment was recorded. General Prosecutor's Office has received two complaints but criminal prosecutions of torture against minors (article 305-1 of the Criminal Code) were not initiated<sup>43</sup> and prosecution for the fact of abuse of power (article 304 of the Criminal Code) was initiated only in one case.<sup>44</sup> At the same time, during this period, prosecutors have filed 22 criminal cases (in 2010 - 4, 2011 - 7 and 2012 - 11) concerning the protection of rights of children from abuse.<sup>45</sup> Ministry of Internal Affairs had not received

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<sup>40</sup> Information of ALE "Association of NGOs for promotion and protection of interests and rights of children in Kyrgyzstan".

<sup>41</sup> Law "On the Procedure and conditions of detention of persons detained for suspected and accused of committing a crime" from October 31, 2002 number 150, article 16, 20 and 36.

<sup>42</sup> Analysis of cases of judicial practice of minors in the Kyrgyz Republic for 2009-2010 – NGO "Center for Law", 2011.

<sup>43</sup> The response the General Prosecutor's Office № 17-9 for May 10, 2012.

<sup>44</sup> Based on results of investigation into Belovodsky special boarding school in May 2012.

<sup>45</sup> The response of the General Prosecutor's Office № 17-9 for May 10, 2012.

complaints on torture or ill-treatment against minors for this period.<sup>46</sup> According to the response of SPS to request of the Ombudsman of the Kyrgyz Republic, they did not received complaints on torture and ill-treatment or abuse of power against minors.<sup>47</sup> Ombudsman of the Kyrgyz Republic received three complaints on torture and ill-treatment. The structure analysis of citizen's complaints on violation of human rights received by the Ombudsman for 2011 shows that there is no category of "children".<sup>48</sup> According to the reply of the Ministry of Education and Science of the Kyrgyz to the request of the Ombudsman for May 25, 2012, there had been registered no complaints on torture or ill-treatment.<sup>49</sup> According to the Judicial Department of the Kyrgyz Republic, criminal cases involving abuses of minors were not considered by courts were not considered.<sup>50</sup>

The same situation of procedures and practices of complaints can be found in all other institutions of residential care for children. Accessible and effective complaint mechanisms for children in institutions of residential care are not available. None of institutions has free access to minors on information about where they can complain about ill-treatment, how to file a complaint, how to keep it confidential and who will consider their complaints. During monitoring of NGO<sup>51</sup> in closed institutions, none of surveyed children in institutions of residential care could say about process of sending complaint; where to go in case of unjust or cruel punishment. As a rule, the children answered that filing and sending complaint to representatives of administration is "useless" and that after the complaint "it would get even worse". According to the study, measures to protect minors by the staff in closed institutions often are not undertaken even when children tell about the violence used against them.

## ***6.2. Lack of control of institutions of residential care for children***

Unfortunately, systematic and independent monitoring of closed institutions of various types in the Kyrgyz Republic is not conducted. At the same time, it is necessary to have independent control of institutions of residential care to identify cases of torture and ill-treatment in respect of children. Children do not have opportunity to use existing legal procedures and submit complaint on torture because of their immaturity, lack of knowledge of rights, being dependant on guardians (in most cases administration of institutions are legal guardian), level of activity and the effectiveness of guardians and parents. The situation also deepened by the low level of trust of adults to minors, who claim that torture or abuse was used against them.

Departments for Family and Children Support are specific monitoring mechanisms of control of custodial institutions for children. This is a specialized body for protection of child rights and legal interests. The authority of DFCS is to monitor activities of institutions for children as well as prevention of crime and offences among children and prevention of child abuse in family and institutions for children. However, evaluation criteria list that should guide representatives of DFCS staff during monitoring visits does not exist. There is no clear guidance on forms on

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<sup>46</sup> The response of the Ministry of Internal Affairs number 1/2504 for 2 May 2012.

<sup>47</sup> The response of SPS KR №100/02-1376 for April 23, 2012.

<sup>48</sup> The annual report of the Ombudsman of KR, 2011.

<sup>49</sup> It should be noted that this response was received after commencement of trial in the Special boarding school, where a mass children's statements about abuse and exploitation by the administration were registered.

<sup>50</sup> Response of Supreme Court of the Kyrgyz Republic № 01-11/861 for September 27, 2012.

<sup>51</sup> Summarized information on monitoring results of PA "Youth Human Rights Group" and Ombudsman of Kyrgyz Republic for 2009, 2010, 2011, 2012 and 2013.

violations which must be filled and registered. In addition, legislation does not provide guidance on further action of DFCS in case of identifying violations of child rights and legal interests of children. All this leads to inefficient control of institutions of care for children by DFCS.

The lack of appropriate monitoring of activities of institutions is a common problem in all types of institutions where children are placed. But even in case of torture and ill-treatment of children revealed by NGOs and Ombudsman, as a rule, public authorities limit their activities by admonition of administration of the institution or dismissal of the head of institution that promotes a more motivated administration to hide facts of abuse and does not lead to a real improvement of the situation.

Thus, in May 2013, prosecutor's office has monitored cases of torture and ill-treatment of inmates in Pokrovsky rehabilitation boarding school for children with special needs. Facts of corporal punishment against inmates and injection of psychotropic drugs as a form of punishment for escaping were confirmed by the prosecutor's office. However, representatives of prosecutor's office limited their activities by an admonition of administration of the institution.

This is due to the fact that definition of torture in article 305-1 of the Criminal Code of the Kyrgyz Republic of 10 August 2012 does not fully meet criteria of the UN Convention against Torture. The definition does not provide explanation of those who acting as an official. Thus, Article 305-1 narrows list of people criminally responsible for torture only to officials.<sup>52</sup>

Also the Criminal Code of the Kyrgyz Republic has articles that can create favorable conditions for a person guilty for torture avoid from liability under Article 305-1 of the Criminal Code. For example, the article 325 "Coercion to testify", which provides a more lenient punishment for the same scope of crimes as in the article 305-1.

## **7. Lack of access to judicial protection for child victims of torture or ill-treatment**

In case of use of torture against juveniles in closed institutions (prisons for juveniles or in any institutions of residential care for children deprived of family environment or with special needs in upbringing) procedures that provide access to judicial protection are inaccessible to children.

This is due to inefficient procedures and formal approaches of conducting investigation, absence of any measures to protect minors from repression within the institution, including dismissal of legal representatives (guardian, parent or administration of institute), and lack of access to legal aid for child victims. Also during the preliminary investigation, testimony of the child are not considered seriously only because of his age even if the degree of maturity of child allows him/her to give a clear and detailed evidence.

### **7.1. *Absence of measures to protect child victims and witnesses of crime***

The Kyrgyz Republic provides identical procedures aimed at ensuring safety of witnesses and victims for both adults and children. These procedures established in the Criminal Procedure Code and Law "On protection of witnesses".

According to the Criminal Procedure Code (Article 118), prosecutor, investigator with the consent of prosecutor or judge may suspend accused from his/her duties, if there are reasonable

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<sup>52</sup> Note: under the Article 304 of the Criminal Code, officials - persons permanently or temporarily on special authority performing the functions of a government official or performing organization - distribution, administrative - economic, control - audit functions in government, local government, state and municipal authorities, and the Armed Forces of the Kyrgyz Republic and other military formations.



grounds to believe that it will interfere to objective conduction of investigation and proceedings in a court, reparation or continue engagement in criminal activities, associated with being in this position. Temporary dismissal of accused from his/her duties can be canceled by order of court, investigator or prosecutor when application of this measure is no longer necessary.

However, this procedure is available only if criminal case is opened and official is accused. The decision on whether or not to open criminal proceedings is taken by prosecutor's office in from 3 to 10 days. In a case of filing a complaint on torture, during the 10 days prior to the initiation of criminal proceedings, a person who used a torture, may be in facility and have opportunity to pressure and intimidation of victims and witnesses of a crime.

**Example 5.**

On May 16-17, 2012, during the monitoring, children placed in Belovodsky special boarding school complained about use of torture and ill-treatment against them and inhumane living conditions. Children reported director of the institution and 4 members of staff as perpetrators. The complaints were directed by NGOs to the Office of the Ombudsman, Ministry of Education and Science and compliant on offense to General Prosecutor's Office of the Kyrgyz Republic was submitted. Only on June 4, 2012, a criminal case against the director was opened and he was suspended from his position. Children were constantly harassed, used physical abuse for complained of mistreatment of administration during 19 days (from May 17 to June 4).

Existing law "On protection of witnesses" provides rules on protection of witnesses who are in prison. However, these standards provide measures only in cases where aggressor is another person deprived of liberty. The provisions of the law do not provide measures that can be applied in case if aggressor is a member of staff of the institution.

**7.2. *Lack of access to legal aid for child victims***

According to the Law "On state-guaranteed legal aid", free legal aid is available to minors only if they have committed socially dangerous acts under the criminal legislation of the Kyrgyz Republic. Legal aid is not available for minors who are victims of torture or ill-treatment.

**7.3. *Absence of procedures of dismissal of legal representative*<sup>53</sup>**

Procedures for dismissal of legal representative are currently provided exclusively in criminal cases involving juveniles who committed socially dangerous acts. Such procedures are not available under national legislation in cases where victim is a child. When a legal representative involved in crime against minor, is not interested in protecting minor or is unable to accomplish protection of minor physically, minors face with insurmountable obstacles in access to justice. The minor victim is not able to choose his/her defense to which s/he trusts or defend herself/himself.

In fact, if child has no legal representative, who has an active role in protecting child or having a minimum legal knowledge, child is left without opportunities to file criminal proceedings against perpetrators of torture. Children deprived of parental care and guardianship under state care

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<sup>53</sup> Note by translator: in Kyrgyzstan, the term "legal representative" usually refers to a guardian or parent.

placed in institutions of care, street children and children of migrant workers and refugees are most vulnerable.

## **8. Absence of other measures against torture and ill-treatment of minors**

The state does not conduct systematic work for training of judges, prosecutors, medical professionals, and law enforcement officials involved in protection of minors against torture and ill-treatment. All educational activities are temporary and initiative of civil society and/or international organizations. Thus, during the period from 2000 to 2013, police officers did not participate in qualified educational training on child rights and prohibition of torture and ill-treatment.<sup>54</sup> 7 educational activities for judges were conducted with the support of international organizations (EU, USAID, OSCE, OCHRC and Danish Institute for Human Rights) and local NGOs (in total 145 judges were trained). However, training on UN Standard Minimum Rules for the administration of juvenile justice for representatives of judicial system was not conducted.<sup>55</sup>

Human rights movement "Bir Duino - Kyrgyzstan", in conjunction with Foundation "Pokolenie Insan", held 3 trainings on juvenile justice for employees of the State Penitentiary Service: representatives of executive inspections, departments of educational, legal and social work.<sup>56</sup> Training for health care workers and prosecutors on standards of the Istanbul Protocol was conducted with the support of Soros Foundation-Kyrgyzstan and Open Society Justice Initiative. OSCE and OHCHR organized several trainings for employees of prosecutor's office (72 people) on international standards of human rights, fight against torture and illegal detention.<sup>57</sup>

Overall, the country has no specific programs aimed at improving knowledge of representatives of institutions involved in child rights protection. Also, the state does not provide compensation and rehabilitation program for child victims of torture and ill-treatment either in law or in practice.

## **9. Recommendations**

- 1) To make amendments in Article 305-1 of the Criminal code, to guarantee that the persons acting as officials, but not being officials, guilty for implementation of tortures or ill-treatment against children, will take responsibility.
- 2) To strengthen guarantee for protection from torture and ill -treatment of juveniles in justice system:
  - a) Ensure that the detention on suspicion of juvenile crime is accompanied by a required informing of the child, in a very understandable for the child form, of the reasons for the detention, of their rights and the procedures for lodging complaints against the police. Also contact with family and legal representatives.
  - b) Provide immediate access to high-qualified legal aid
  - c) To ensure involvement of legal representative (parents, guardians), educator, psychologist, an employee of authorized state body for the protection of children during all investigative actions and litigations.

<sup>54</sup> The response of MIA KR №11/1361 for 01.08.2013.

<sup>55</sup> The response of Judicial Training Centre of Supreme Court of KR №01-15/522 for 18.07.2013.

<sup>56</sup> The response of Public Supervisory Board under the SPS KR №100/01-V-2 for 17.07.2013

<sup>57</sup> <http://www.osce.org/ru/bishkek/91592>; <http://www.kabar.kg/society/full/35869>

- d) To provide soonest execution of the legal proceedings and not allow juveniles to stay at temporary detention centers for more than 24 hours. Detention of juveniles in pre-trial detention center, in practice, should be considered as an exceptional measure. In cases where such restraint is applied, courts and investigative bodies shall give priority to the most expeditious processing of case of juvenile.
- 3) To provide a mechanism for providing legal consultations for juveniles in closed institutions of any type in addition to the guarantee of right to legal aid. Such consultation shall include provision of legal assistance to a juvenile, who is a victim of abuse of power, torture or ill-treatment.
- 4) No juvenile should be received in any detention facility without a court order. In reaching a decision regarding the placement of a juvenile in a correctional facility the term of the placement in the facility must be set. Any questions relating to the extension of this period shall be considered by the courts.
- 5) Revise placement of children living in Belovodsky special boarding school who were previously placed illegally in the institution without a court decision and continue to stay there. To prosecute relevant officials who caused illegal placement of children in Belovodsky special school from 2003 to 2012. Provide affected children with restoration of their rights and compensation for moral damage.
- 6) Exclude norm of law, allowing placement of children with adults in the detention centers. Amend the Law "On the Procedure and conditions of detention of persons detained for suspected and accused of committing a crime."
- 7) To transfer CARJ from jurisdiction of the Ministry of Internal Affairs to system of social protection of the population and to provide the necessary staff schedule for effective implementation of functions of social protection of the juvenile which have appeared in a difficult life experience. It is necessary to consider CARJ as a place of temporary placement of juvenile. To consider possibility of rendering of services in rehabilitation for children- victims of tortures and domestic violence on the basis of the Centers of adaptation and rehabilitation of juvenile.
- 8) The application of such disciplinary measures as placing a minor in isolation ward (solitary confinement) or punishment ward (disciplinary confinement) should be excluded from the list of acceptable forms of disciplinary action. Reduction of nutrition or denial of contact with family members for whatsoever purposes must be prohibited.
- 9) It is necessary to reconsider an educational system in the closed establishments for children in the conflict to the law, taking modern scientific approaches into account, and to exclude retaliatory approaches to education. The personnel of such establishments should pass the corresponding training and have possibility to increase the qualification systematically.
- 10) Review norms of law limiting right of juveniles in prisons and places of detention to the contacts in form of visits, telephone calls and correspondence with a family members and ensure conditions for a date that respect need of juvenile for privacy, contact and unrestricted communication with family and lawyer in practice. Provide a juvenile with an opportunity of telephone conversations with family members without limiting duration and preservation of confidentiality of communication.
- 11) To provide possibility to continue school education in a pre-trial detention center to juvenile.

12) To develop and implement in all closed establishments (including detention places to court and correctional and special educational institutions) independent of administration of this institutions, the mechanism effective and available to juvenile allowing them to make the complaint and to provide child protection from repressions in case of complaint submitting.

13) In any residential care facilities an explanation of internal rules of institutions, disciplinary requirements and procedures, methods of seeking information and filing complaints and all other necessary matters to enable children to fully understand their rights and responsibilities during stay in the institution should be provided by management and staff in accessible form of understanding. Free and permanent access to such information should be provided to every child at any time and under any circumstances.

14) Ensure effective investigation of each complaint on use of torture and ill-treatment in institutions of any type. Bring to justice all responsible persons.

15) For the ombudsman of KR, DFCS and bodies of prosecutor's office responsible for monitoring of the closed institutions for children to practice:

- a) individual conversations with children on the terms of confidentiality preservation;
- b) regular visit to the closed institutions for children and investigation of any cases of prospective violation of the rights of children in these parts according to their complaint or on own initiative;
- c) to give publicity to results of trials and investigations concerning the facts of tortures and ill treatment concerning children for the purpose of formation of intolerance to such phenomenon in society.

16) In the case of torture or ill-treatment in a closed institution the investigation and justice process must take into account the specifics of work with child victims of torture and child witnesses. To avoid creating additional difficulties for the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner. Age should not hinder a child's right to fully participate in the justice process. Treatment of any child should be conducted as with a capable person, who can be questioned and whose testimony should not be invalid or unreliable simply because of his age, if the age and maturity of the child allow him to give clear and detailed evidence.

17) It is necessary at the level of the law to provide for the right of a minor when victim of torture or ill-treatment to choose a public defender who could attend in the interests of the minor all stages of criminal proceedings, when the legal representatives of the child are also the offenders, are not interested in protecting his rights, or do not have the actual ability to provide its real-time protection, and to develop procedures that establish the legal status of the public defender.

18) On the basis of the UN Guidelines on justice in matters involving child victims and witnesses of crime to develop a national strategy for the protection of child victims and witnesses of crime, especially given the protection of children in closed institutions.

19) Included into strategy of development of system of social protection, measures for accompanying, support and rehabilitation of child victims of domestic violence and torture.