



Humanisation of the Criminal Justice Systems of Kyrgyzstan and Tajikistan through establishing Criminal Legislative Codes in line with International Human Rights Standards

Mid-term Evaluation



Photo by Alessandro Scotti, produced under the EU-UNODC project, Support to Prison Reform in the Kyrgyz Republic (2009-2013)

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Contents

1. Introduction	2
1.1 Project background	2
1.2 Country background and context	3
2. Evaluation Purpose and Methodology	5
2.1 Evaluation design	5
2.2 Data collection	5
3. Theory of Change	6
4. Results of the Mid-term Evaluation	8
4.1 Results against project outcome	8
4.2 Results against project outputs	12
4.2.1 Alternatives to imprisonment	12
4.2.2 Justice for children	16
4.2.3 Prevention of torture	20
4.2.4 Capacity building of civil society	23
5. Project Design Considerations	26
5.1 Current project design	26
5.2 Future project design	26
6. Conclusion	28
7. Lessons Learnt and Recommendations	30
7.1 Priorities and activities for second year of the DFID Conflict Pool project	30
7.2 Future project design	31
7. References	32

1. Introduction

1.1 Project background

In November 2013, Penal Reform International's (PRI) Central Asia Office launched a 17 month regional project, entitled: 'Humanisation of the criminal justice systems of Kyrgyzstan and Tajikistan through establishing criminal legislative codes in line with international human rights standards'. The project is funded through the UK Department for International Development (DFID) Conflict Pool. The projects geographical scope covers two countries: Kyrgyzstan and Tajikistan. This mid-term evaluation will cover both countries.

The projected wider impact of the project is: improved compliance with and application of international human rights standards in the security and justice sectors aimed at reducing the number, coverage and seriousness of conflicts and security problems affecting the governments and citizens of Central Asian states.

The project outcome is: criminal justice systems of Kyrgyzstan and Tajikistan are strengthened and more humane through establishing criminal legislative codes that comply with international human rights standards.

To achieve the stated project outcome, the project has four outputs:

- 1) Variety of non-custodial sanctioning measures (i.e. alternatives to imprisonment) including opportunity for the establishment of a probation system established in legislation.
- 2) Proper protection of children deprived of liberty (specifically: separation from adults in all facilities; prohibition of solitary confinement/isolation) in legislation.
- 3) Torture defined (in line with UN Convention Against Torture) and appropriate sanctions for perpetrators in legislation.
- 4) Capacity building of local civil society to better advocate for Government compliance with international human rights standards in the justice sector.

PRI's Central Asia Office has overall responsibility for managing and coordinating the project activities. The project activities are being implemented in country through non-governmental partners. In Kyrgyzstan the activities are being implemented through Voice of Freedom and in Tajikistan through the Human Rights Centre.

The project is primarily focused on penal legislation reform in Kyrgyzstan and Tajikistan. Both countries have the following penal codes:

- Criminal Code – this code is focused on sentencing, detailing crimes and corresponding sanctions. The Criminal Code is the head code and sits above the Criminal Executive and Criminal Procedural Codes.
- Criminal Executive Code – this code is focused on the implementation of punishment, including conditions of detention.
- Criminal Procedural Code is focused on court procedures, including pre-trial detention and access to legal aid.

In Kyrgyzstan, three working groups have been set up to draft and reform all three codes concurrently. In Tajikistan, a working group has been set up to draft and reform the Criminal Code. Once the Criminal Code is finalised, working groups will be set up to review the Criminal Executive and Criminal Procedural Codes to ensure they align to the new Criminal Code. Through this project, PRI is focused primarily on providing technical support to the Criminal Executive Code Working Group in Kyrgyzstan and the Criminal Code Working Group in Tajikistan.

1.2 Country background and context

Kyrgyzstan

Kyrgyzstan (or the Kyrgyz Republic) became independent from the former USSR in 1991. Since then the country has been facing significant governance challenges including entrenched corruption, political instability, conflict and economic problems. The first elected President, Akayev, was ousted from office following a public uprising in 2005. President Bakiyev then came to power promising to fight corruption and improve social and economic conditions in the country. But many of the reforms adopted during his term were seen as attempts to institutionalise his private ambitions to expand his family's grip on Government resources, and were used to further the political and economic interests of a narrow group of individuals. Corruption, cronyism and clientelistic practices contributed to the popular dissatisfaction that led to the overthrow of Bakiyev in 2010 (Shukubalieva; 2012).

Former Prime Minister Atambayev won the 2011 Presidential elections. But the newly elected government is constrained by very limited resources and governance challenges due to extensive corruption, infiltration of criminal groups, and political instability in the south of the country. Violence between ethnic groups has escalated throughout Kyrgyzstan and the government has found it difficult to control areas that have deep ethnic divisions.

Rate of imprisonment

The overall prison population in Kyrgyzstan has dropped considerably in recent years from 16,934 in 2004 to 10,060 as of 2013 (International Centre for Prison Studies, ICPS; 2014) in part as a consequence of amnesties in 2011 and 2012, as well as recent reforms of the criminal justice and penal systems. Kyrgyzstan does not currently have a prison overcrowding problem: the official capacity of its prison system is 14,000. Kyrgyzstan is currently 91st in the world rankings for rates of imprisonment (ICPS; 2014).

Prison system

The prison system in Kyrgyzstan falls under the jurisdiction of the State Service for the Execution of Punishments (in effect the prison department and known by the acronym GSIN) which is under the oversight of the Government. It has responsibility for 11 correctional prisons, six pre-trial detention facilities and 15 settlement prisons. There are 47 temporary detention facilities under the oversight of the Ministry of the Interior which also has control over one pre-trial detention centre. According to the UN Office on Drugs and Crime (UNODC), the main challenges confronting the prison service are lack of funding, poor facilities, buildings that have fallen into disrepair and lack of training for prison staff. Prison staff receive low pay and work in hazardous conditions resulting in high staff turn-over.

The UN Special Rapporteur on Torture visited Kyrgyzstan in December 2011 and found that "the use of torture and ill-treatment to extract confessions remains widespread" and that "general conditions in most places of detention visited amount to inhuman and degrading treatment" (Special Rapporteur on Torture; 2012). The UN Committee against Torture has also expressed deep concern about "the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty, in particular while in police custody to extract confessions" (UN Committee against Torture, 2013).

Criminal legislation reform

In 2013, by decree of the President, three working groups were set up to reform the Criminal Code, Criminal Executive Code and Criminal Procedure Code. All three codes are being revised at the same time and the heads of the Working Group meet on a regular basis to ensure consistency across the codes. The Working Groups are at an advanced stage of reform: the Working Group

heads will present the latest draft to the President in late 2014 and the codes should be adopted by Parliament in 2015. Each code has been changed by more than 50 per cent and will therefore be considered as new legislation.

Tajikistan

A former Soviet republic, Tajikistan gained its independence in 1991 after the collapse of the USSR. The confrontation between former Soviet officials, nationalists, liberals and radical religious groups coupled with regional rivalries over resources led to a civil war that lasted from 1992 to 1997. In 1997, a peace agreement was signed between the government of Rahmon and the United Tajik Opposition. Experts say that the trauma associated with the violent civil war left the population more apathetic and less inclined to challenge the government (International Crisis Group; 2009). Tajikistan is the poorest and most underdeveloped of the former Soviet states; almost half the population lives on less than USD 2 per day and hunger is widespread. About a million Tajiks have emigrated, mostly to Kazakhstan and Russia, and an increasing number of young workers leave the country (Transparency International; 2013).

Concerns raised by national and international observers include: lack of judicial independence, allegations of torture, lack of independence of the Ombudsman and lack of transparency in the drafting of legislation (PRI; 2013). Torture is considered to be widespread, particularly in order to extract confessions, which are still permitted as evidence in court. There are a high number of deaths in custody and prison conditions are considered poor. Access to doctors, lawyers and family is limited.

Rate of imprisonment

Tajikistan's total prison population is 9,307 (ICPS; December 2014) with an official prison capacity of 11,950. Tajikistan is currently 96th in the world rankings of rate of imprisonment for all prisoners (ICPS; 2014).

Prison system

The prison system in Tajikistan falls under the jurisdiction of the Central Prison Administration which is under the oversight of the Ministry of Justice. It has responsibility for ten correctional prisons and 12 pre-trial detention centres.

The UN Special Rapporteur on Torture visited Tajikistan in 2013 and found that "torture and other forms of ill-treatment by law enforcement officers are believed to be often practiced across Tajikistan and are often used to extract self-incriminating evidence, confession and money" (Special Rapporteur on Torture; 2013). In his mission report, the Special Rapporteur praised the Tajik government for introducing some encouraging changes in the normative framework including a new criminal provision defining torture and providing penalties for it. He noted that the broad awareness-raising campaign on prohibition of torture in international and domestic law initiated by authorities is a step in the right direction. However he also noted that significant gaps in legislation, policies and law enforcement practices remain (Special Rapporteur on Torture; 2013).

Criminal legislation reform

The first Tajik Criminal Code was adopted in 1998 and since then there have been 20 amendments to the code. By decree of the President, a Working Group was established in July 2009 to revise the Criminal Code. The Working Group has taken its time to amend the code and in December 2013 it submitted the first draft of the revised code to Government. The Open Society Foundations (OSF) have supported the Working Group since its inception in 2009 until the beginning of 2014. OSF has provided technical, coordination and administrative support to the Working Group by organising regular retreats and meetings for the Working Group members. Through this project, throughout 2014 and 2015, PRI has also provided technical support to the Working Group. A second draft of

the code was developed in September 2014 and the Working Group members anticipate that the revised Criminal Code will be finalised and adopted by Parliament in the autumn of 2015. When the code is adopted, working groups will be established to reform the Criminal Procedure Code and the Criminal Executive code to ensure there is consistency across the three codes.

2. Evaluation Purpose and Methodology

2.1 Evaluation design

A theory-based evaluation design (see Box 1) was used to test the programme's theory through the links in the causal chain. In terms of method, this tendency is close to 'process tracing' (George and McKeown, 1985; Collier, 2011), which is defined by Aminzade (1993) as 'theoretically explicit narratives that carefully trace and compare the sequence of events constituting the process'. These causal chains are typically represented graphically as a causal map.

Box 1: Theory-Based Evaluation

In order to explain we need theory to bridge the gap between data and interpretation of that data; and in the case of impact evaluation to bridge the gap between 'causes' and 'effect'.

Theory-based evaluation is process orientated. It regards the programme as a conjunction of causes that follow a sequence. It follows a change pathway of a programme from its initiation through various causal links in a chain of implementation, until intended outcomes are reached. The process is built upon a 'theory of change' - a set of assumptions about how an intervention achieves its goals and under what conditions (Stern et al, 2012).

The evaluation process was as follows:

1. Analysis of project documentation generated by PRI.
2. Work with the PRI Central Asia team to reconstruct a theory of change for the project.
3. Analysis of project activities (eg monitoring reports)
4. Interviews with a range of external stakeholders to identify and evidence (a) what targeted outcomes actually materialised; (b) the plausible causal explanations that underpinned the targeted outcomes; (c) PRI's contribution to the change.
5. Analysis of additional documentation (eg relevant reports produced by other agencies) and secondary data (eg Government statistics) to verify the qualitative data collected in step 4.
6. Drafting a final report documenting the research process and key findings.

2.2 Data collection

To gather the information necessary to carry out this evaluation, the evaluators used the following data collection methods.

1. Analysis of project information generated by PRI, which included:
 - project planning documents;
 - first quarter project narrative report sent to DFID to cover April to June 2014.

2. Semi-structured interviews with key informants from external project stakeholders who were in a position to offer specific validation of evidence regarding the targeted outcomes. Key informants included representatives from the following stakeholders:

Tajikistan

- Director of the Centre for Human Rights, local partner
- First deputy Director of the National Centre on legislation under the President of Tajikistan, member of the Working Group on Criminal Code of Tajikistan
- Head of the Criminal Law Department, Law Faculty of the Tajik National University, member of the Working Group on Criminal Code of Tajikistan
- Law Programme Coordinator of the Open Society Institute in Tajikistan
- Head of the department on supervision of implementing laws in law-enforcement bodies and controlling drugs of the Prosecutor General's Office of Tajikistan
- Deputy State Adviser of the President of Tajikistan on legal policy
- Criminal Justice Expert, International Bar Association
- Lawyer, Bar Association of Dushanbe
- Manager of Child Rights Centre in Tajikistan, local partner

Kyrgyzstan

- Director of a local human rights non-governmental organisation
- Head of the Criminal Code Working Group
- Head of the Criminal Executive Code Working Group
- Head of the Criminal Procedural Code Working Group
- National Centre of Prevention of Torture, Member of the Criminal Procedural Code Working Group
- Director of Penitentiary Department
- Legal Expert, United Nations Office on Drugs and Crime
- Lawyer, Voice of Freedom, local partner
- Criminal Justice Expert (government), Member of Criminal Executive Code Working Group

3. Theory of change

Figure 1 (see next page) outlines the theory of change for the project. This mid-term evaluation will assess progress against the project outcome and the project outputs.

It should be noted that in order for the desired impacts to be achieved, systems and processes will need to be set up in order to operationalise the changes set out in the revised penal codes. Systems development and implementation of the codes is beyond the scope of this project but will be a major future programming consideration for organisations such as PRI once the codes are finalised.

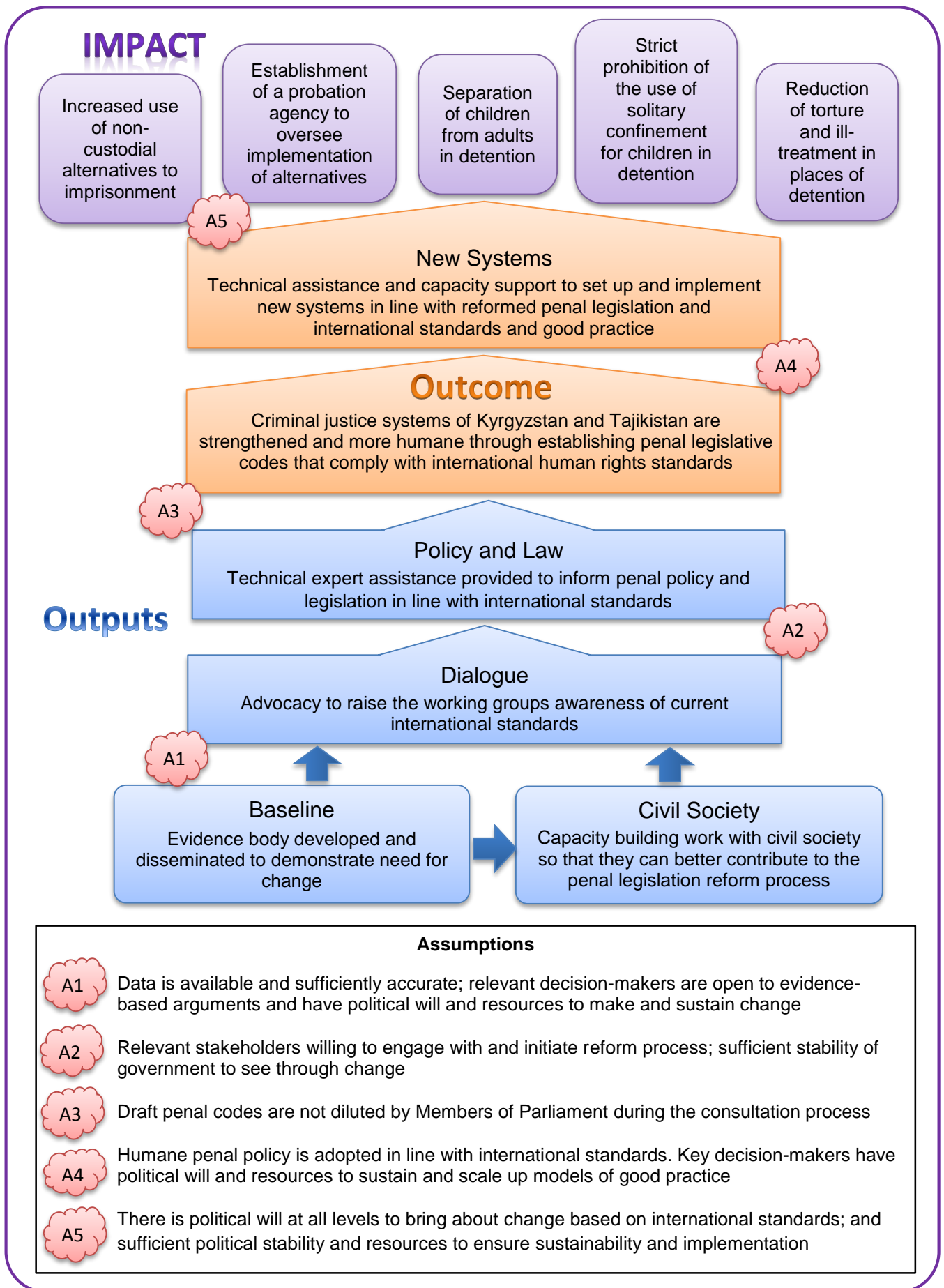


Figure 1: Theory of Change for Humanising the Penal Codes in Kyrgyzstan and Tajikistan

4. Results of the mid-term evaluation

4.1 Progress against project outcome

Outcome:	Criminal justice systems of Kyrgyzstan and Tajikistan are strengthened and more humane through establishing criminal legislative codes that comply with international human rights standards.
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Outcome indicator 1	Baseline (Nov 2013)	Target (March 2015)
Number of amendments in line with human rights standards in final criminal legislative codes adopted by Parliament with verifiable contribution from PRI.	0	20 (10 per country) by end of project
	Data source	
	Government records, working group minutes	

At the mid-term stage, it is too early to assess progress against outcome indicator 1. In both countries, the final draft of the codes has not been submitted to parliament for approval. However, Kyrgyzstan is ahead of Tajikistan in terms of the predicted timeframe for legislative approval. In Kyrgyzstan all three codes are in final draft form, and were presented to the President in the autumn of 2014 and are due to be submitted to Parliament in early 2015. The timeline below presents the predicted legislative approval process for each code.

September 2014	Heads of the Working Groups will present the Criminal Code, Criminal Executive Code and Criminal Procedural Code to the President.
October 2014	There will be public hearings for all three codes on 10-13 October. The Working Groups will revise the codes in line with the Presidents recommendations.
November / December 2014	The heads of the Working Groups will meet regularly to ensure consistency across the three codes. The code drafts will be reviewed and revised.
January 2015	All three codes will be submitted to Parliament. Parliament will have one month to review the codes. The Working Group members will consult with the Members of Parliament.
February / March 2015	The parliamentary approval process will continue. Members of Parliament will put forward their recommendations and the codes may be revised accordingly.

Table 1: Timeline of legislation approval process in Kyrgyzstan

The above timeline suggests that Kyrgyzstan is in the final stages of finalising the codes. If all goes as planned, the three codes should be adopted by Parliament by the end of the project (March 2015). In terms of outcome indicator 1, the project seems to be on track. However, there is a risk that the Members of Parliament (MPs) could take out some of the provisions included in the code:

It will be very hard to keep all the provisions in the Criminal Executive Code. The General Prosecutor Office and Members of Parliament will try to reduce the provisions. (Interview with Member of Criminal Procedural Code Working Group, 25 September 2014)

In Kyrgyzstan there is a tension between theory (international standards) and practice (needs of Kyrgyzstan). Many of the practitioners would be happy for the codes to be less ambitious. The heads of the three Working Groups are all academics and international organisations have had a strong influence on the process. As a result, the vast majority of the content is in line with

international standards. However, practitioners believe that the codes will not be implemented in practice:

We are practitioners, we know what will work. What you are writing in the codes will not be implemented. For example, build new colonies that meet international standards – we don't have the budget to do this. (Interview with Director of Kyrgyzstan Penitentiary Department, 26 September 2014)

The standards of international organisations are too high. Sometimes I am afraid that we are interrupting the political process. The government is thankful but they are also a little bit afraid because we represent the international community. (Interview with legal expert, UNODC, 26 September 2014)

Maybe the codes have become so ambitious because of the input from NGOs and international organisations. When you are drafting a law, you also have to think about implementation. I have some serious concerns about how the codes are going to be implemented. The budget for implementation is yet to be calculated. (Interview with member of Criminal Executive Code Working Group, 26 September 2014)

Implementation mechanisms are currently being put in place. The head of the Criminal Executive Code Working Group noted that 41 per cent of current code provisions (previous Criminal Code reform process) have not been implemented because of a lack of budget. During his presentation to the President, the head of the Working Group requested that every new article should have a budget to ensure proper implementation. Under the President of Administration, the following two Working Groups have recently been established: Working Group on Probation Service; Working Group on Economic Calculation. The Working Group will submit budget calculations for the implementation of the codes, which will be presented to the President on 7 October 2014 (Interview with legal expert, UNODC, 26 September 2014).

In Tajikistan the Criminal Code is also in the final stages of revision. The Working Group is currently tweaking some articles to ensure they produce a quality code. The code will be submitted to the lower house of Parliament for review in 2015 and most commentators predict that it will be approved by the upper house in the autumn of 2015. It should be noted that the Criminal Code Working Group was originally formed in 2007 and it has therefore been a seven year process to date. Indeed, a key informant who is closely involved in the working group process, noted: "the Working Group members are so tired of this document. We have pushed them to meet every week. This time next year the new criminal code will be adopted" (Interview with legal expert, International Bar Association, 23 September 2015).

As in Kyrgyzstan, several key informants in Tajikistan noted that they were concerned that some provisions would be taken out of the code during the parliamentary approval process. When the code is circulated to the members of parliament, there will be an in-depth discussion about the content of the code and many stakeholders will lobby for their own interests (Interview with Centre of Human Rights). For example, some Ministers are lobbying for certain fines to be increased because it will bring in more income for their ministry. Despite such agendas, an informant from the Office of Administration that supervises the Working Group noted that the Working Group is continuing to decrease the fines and the length of sentences (Interview, 22 September 2014). To mitigate the threat of different interests at play, a large number of different governmental stakeholders have been involved in the process. Representatives of all agencies are included in the Working Group, including: deputies of Members of Parliament; police; General Prosecutor's Office; Council of Judges; judges. The working group members all attend the same conferences and share the content of their work with their superiors. To date, there has been no opposition from the law

enforcement bodies. However, it is predicted that there may be some opposition from parliamentarians during the approval stage.

To summarise, the three codes in Kyrgyzstan are expected to be approved in early 2015, which suggests that the outcome target – codes approved by end of March 2015 – will be met. The Criminal Code in Tajikistan is slightly behind and is expected to be approved in the autumn of 2015. If this is the case, the outcome target will not be met. However, the Tajik Criminal Code reform is a long-term process and the Working Group is keen to draft a comprehensive and high-quality code that does not need to be revised after approval. Within this context, meeting the outcome target is perhaps a minor concern. At this stage it is more important to focus on ensuring the Working Group produces a high-quality code that is accepted by a wide range of stakeholders that have competing interests and priorities. Indeed, there is a risk in both Kyrgyzstan and Tajikistan that provisions will be taken out of the codes during the parliamentary process. The main challenge for PRI and other stakeholders is to ensure that adopted codes are in line with international standards and that there are implementation mechanisms put in place (eg budget for each article).

Outcome indicator 2	Baseline (Nov 2013)	Target (March 2015)
Number of amendments in line with human rights standards adopted into draft criminal legislative codes with verifiable contribution from PR	0	20 (10 per country) by end of project
	Data Source	
	Government records, working group minutes	

For outcome indicator 2, the target was to include ten new amendments in the draft codes in both Kyrgyzstan and Tajikistan. Both countries are on track to meet this target. In Kyrgyzstan, PRI focused on providing expert support to the drafting of the Criminal Executive Code. The Criminal Executive Code Working Group was initiated in 2013 by Presidential Decree. In Kyrgyzstan, according to the Legislation of Legal Acts, if a law is changed by more than 50per cent it will be classified as a new law. The head of the Criminal Executive Code Working Group explained that the latest draft of the Criminal Executive Code has 170 articles and more than half of the articles (at least 85 articles) have been changed. When approved, the Criminal Executive Code will be considered new legislation.

In 2014 PRI employed Professor Sleptsov, a legal expert from Kazakhstan, to provide a legal analysis and expert support on the Criminal Executive Code. On 17-24 June 2014, a public discussion on the criminal codes was organised in Bishkek. The aim of the hearings was to evaluate the progress made on the codes to date. PRI organised for Professor Sleptsov to meet with the Working Group and to participate in the pre-session meetings, 19-23 May 2014, prior to the hearings. During the meetings, the PRI experts provided a comprehensive analysis on the draft Criminal Executive Code, with a particular focus on the use of alternative sanctions and the articles relating to the establishment of a probation service in Kyrgyzstan. A member of Criminal Executive Code Working Group noted:

The recommendations from international experts were extremely helpful. Professor Sleptsov from Kazakhstan provided the most valuable information. We really like him; he is a practitioner working on the codes in Kazakhstan. We are grateful to PRI for organising his visit. (Interview with legal expert, UNODC, 26 September 2014)

After the meetings, Professor Sleptsov wrote a nine-page legal analysis of the code, which included a number of recommendations. The Working Group used Professor Sleptsov's legal analysis to

revise the draft of the Criminal Executive Code and his recommendations are included in the current draft of the code.

The Criminal Code drafting process in Tajikistan has been a long and drawn out process that started in 2007. In 2013, the Government gave the Working Group a deadline – December 2013 – to finalise the code. The deadline helped to speed up the process and the Working Group worked intensively on the code in 2013 and submitted the first draft of the code to Government for review in December 2013. Rather than rush the code, the Working Group decided to take its time to develop a quality second draft:

In 2010, the Tajikistan parliament adopted the Criminal Executive Code and after six months there were recommendations to revise the code. There were too many mistakes. We do not want this to happen to the Criminal Code. We want to develop a quality code that does not to be amended once adopted. (Interview with legal expert, International Bar Association, 23 September 2014)

The second draft was finalised in September 2014. To date, the Working Group has revised approximately 300 articles and issues remain with 110 articles. The Working Group are currently working on consistency across the code, ensuring that all the articles use the same terminology and look the same. Through this project, PRI has facilitated the input of a Russian legal expert – Professor Utkin. To date, Professor Utkin’s input has been done at a distance via phone and email. However, the Working Group is keen that Professor Utkin travel to Dushanbe to meet with the Working Group so that he can provide technical support face-to-face. PRI plans to organise this trip during the second-half of the project. After the second draft was developed, the Working Group emailed the draft to Professor Utkin and requested a legal analysis and recommendations. Professor Utkin developed a 17-page legal analysis with clear recommendations, which focused on the following elements of the Criminal Code:

- Alternative non-custodial sanctions
- Prospects of a probation service
- Juvenile justice
- Prohibition of torture

The above elements are in line with the planned outputs of this project. Professor Utkin’s legal analysis was submitted to the Working Group in early September 2014. The Working Group is currently reviewing Professor Utkin’s recommendations and PRI anticipates that the majority of his recommendations will be included in the next draft of the code.

To summarise, PRI has already met the planned target for this indicator – ten changes in draft code – in Kyrgyzstan and is on track to meet the target in Tajikistan. In both countries, PRI has made a significant contribution to the content of the draft codes. PRI has facilitated the input of international experts, who have provided a legal analysis and recommendations for the Working Groups. This technical assistance has been much appreciated by both the Criminal Executive Code Working Group in Kyrgyzstan and the Criminal Code Working Group in Tajikistan.

4.2 Progress against project outputs

4.2.1 Alternatives to imprisonment

Output 1:	Criminal justice systems of Kyrgyzstan and Tajikistan are strengthened and more humane through establishing criminal legislative codes that comply with international human rights standards.
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Output indicator 1	Baseline (Nov 2013)	Target (March 2015)
Issue of non-custodial sanctions and establishment of a probation system adopted in draft criminal code	No new draft codes	Kyrgyzstan: 3 non-custodial measures drafted in codes by December 2014
		Tajikistan: 3 non-custodial measures drafted in codes by December 2014
	Data Source	
Expert sheets provided by PRI Central Asia; minutes of working groups on Criminal Codes		

In Kyrgyzstan, the Criminal Code Working Group has taken the articles on non-custodial alternatives out of the Criminal Code and have included them in a separate Code of Misdemeanours. The administration articles have also been included in the Code of Misdemeanours. The new draft Code of Misdemeanours specifies nine different types of alternative measures that can be broadly categorised into four categories:

<i>Monetary sanctions</i>	(1) Fines (2) Confiscation of property (3) Treble damages (financial penalty) (4) Public apology and restitution
<i>Limitation of employment rights</i>	(5) Community service (6) Corrective labour
<i>Withdrawal of rights</i>	(7) Deprivation of rights to hold certain positions or perform certain activities (8) Deprivation of special, military rank or honorary title, class rank, diplomatic rank, qualification class and government decorations
<i>Limitation of personal freedom</i>	(9) Restriction of liberty

Table 2: Alternative measures in Kyrgyzstan's Code of Misdemeanours

The above table shows that nine non-custodial measures have been included in Kyrgyzstan's Code of Misdemeanours, which exceeds the project target of three. However in Kyrgyzstan through this project, PRI has focused on providing expert support to the Criminal Executive Working Group rather than the Criminal Code Working Group. Therefore in Kyrgyzstan, PRI's contribution to the achievement of this indicator has been limited.

It is evident from the above table that the criminal legislation of Kyrgyzstan provides a fairly wide range of punishments other than imprisonment. They target property rights, personal freedoms and employment rights. Fines will primarily be used for minor crimes. Two thirds of the fine will go to the victim (restorative justice) and one third will go to the state. The community service and corrective labour sanctions will be used for crimes that are classified as medium-gravity crimes such as theft. Imprisonment will only be used for serious crimes such as violence and murder (Interview with Head

of Criminal Code Working Group, 25 September 2014). However, there are some problems with how sentencing will be used in practice. For example, if an offender receives a fine for a minor infringement (eg driving offence) and does not pay the fine within two months, they will receive a prison sentence of up to six months. This is an unfair sentencing policy because it is biased against poor people who are unable to pay their fines. The Head of the Criminal Code Working Group said that the Working Group had no plans to change this provision and when challenged on the punitive nature of the provision, she noted: “if they go to prison, they won’t do it again” (Interview, 25 September 2014). The Director of the Penitentiary Department also challenged this provision:

People that can’t pay a fine will receive a prison sentence. This is not a good idea. We suggested a community-based sentence instead of a prison sentence. We raised this issue with the Criminal Code Working Group. Those sanctions should be revised. We will give our recommendations to the Working Group again. We will lobby for it. (Interview, 26 September 2014)

The draft Tajik Criminal Code also contains the same provision: people who cannot pay a fine, will receive a custodial sentence. With regards to this provision, both Kyrgyzstan and Tajikistan are not following international standards. Rule 14.3 of the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) points out that “the failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure”. In his legal analysis of the alternatives section of the Tajik Criminal Code, Utkin recommends that those offenders that are unable to pay the fine (as opposed to wilful evasion), should either receive (a) deferment of the payment; or (b) the option of an installation payment plan; or (c) replacement of the fine with a different non-custodial measure, eg correctional or compulsory community service (page 5). Kyrgyzstan and Tajikistan are both relatively poor countries and crime is often economically motivated. Utkin’s recommendations are more pro-poor and humane than the current provision. During the second half of this project, PRI should use Utkin’s recommendations to advocate for changes to the fines provision in both the Kyrgyzstan and Tajikistan draft Criminal Codes.

In Tajikistan, non-custodial alternatives have been included in the Criminal Code. The current draft of the Criminal Code provides a fairly wide range of non-custodial alternatives:

<i>Monetary sanctions</i>	(1) Fines (2) Confiscation of property
<i>Limitation of employment rights</i>	(3) Compulsory labour (4) Corrective labour (5) Restrictions on military service
<i>Withdrawal of rights</i>	(6) Deprivation of rights to hold certain positions or perform certain activities (7) Deprivation of military, diplomatic, special ranks, government decorations and honorary titles
<i>Limitation of personal freedom</i>	(8) Restriction of liberty

Table 1: Alternative measures in Tajikistan’s Criminal Code

Compared to the current Criminal Code, the Working Group has decreased the size of fines and plan to further reduce the amount of fines in the next draft. However, the confiscation of property is a controversial measure in Tajikistan that has been abused in the past. A key informant from the Office of Administration which supervises the Working Group admitted that confiscation of property is a problem and that he would like it to be removed from the Code (Interview, 22 September 2014). However, other stakeholders will benefit from this sanction and will lobby to keep it in the Code.

Professor Utkin notes that the Criminal Code contains a broad scope of non-custodial measures (Article 47) which are generally compliant with international norms and standards (eg Rule 2.3 of the UN Tokyo Rules) and should provide greater flexibility of criminal legal policy and avoid the unnecessary use of imprisonment (Utkin, legal analysis, 2014: 2). Article 46 outlines a definition and aim of sentencing. Utkin is critical of Article 46 of the draft code because the wording is exactly the same as the original code and the focus of sentencing is still on punishment rather than rehabilitation. Utkin recommends that the Working Group change the definition and aims of sentencing in Article 46 so that is more focused on rehabilitation.

In both countries, informants were concerned about how the community-based sanctions would be used in practice. On the sentencing side, it was noted that Tajikistan lacked an independent judiciary and that many judges are corrupt:

Judges are not well paid in Tajikistan and therefore they will often take a bribe. You have to reduce the options and take incarceration off the table. Judges will use the most punitive sanction available so they will receive a bribe (Interview with lawyer, 23 September 2014)

Transparency International's 2012 Corruption Perception Index ranks Tajikistan as 157th out of the 176 countries assessed (176 = most corrupt) and notes that the "judiciary in Tajikistan is subject to widespread corruption and many activities such as settling a court case require illegal payments". Several informants in Kyrgyzstan also noted that judicial corruption was widespread and Transparency International ranks Kyrgyzstan as 154th out of 176 countries assessed. Corruption is one of the main reasons why the Kyrgyz Criminal Code Working Group has used a categorisation system for sentencing. Judges will be required to use a matrix framework which is more precise for sentencing and provides less room for judges to use their discretion, which in turn should reduce the scope for bribes.

Corruption and transparency issues also have implications for other non-custodial sanctions such as fines. For example, Utkin is concerned about Tajikistan's readiness to transparently implement the fines provisions. Utkin notes that the Republic of Tajikistan is "obviously not ready for such a system, given the insufficient level of transparency of the fiscal system and imperfection in the account of actual earnings" (Utkin, legal analysis, 2014: 5).

To ensure that alternative sanctions are used during sentencing, a strong and independent judiciary is essential. When the codes are adopted, it is currently unclear to what extent the alternative sanctions will be used by judges during sentencing. The new classification system in the Kyrgyz Criminal Code will hopefully increase the number of alternative sentences. In Tajikistan, it is clear much work needs to be done to ensure judges use alternatives during sentencing. In future, it is important that civil society and international organisations monitor the implementation of the code, which includes monitoring how judges use alternatives during sentencing.

Judges also need to be confident that the alternative sanctions will be effectively implemented and in both countries there is currently a weak implementation mechanism. In Kyrgyzstan and Tajikistan, alternatives are currently implemented by the Criminal Executive Inspections (CEI). CEI is a Soviet model and the staff are usually former police and military personnel. Rather than being focused on rehabilitation, the CEI is punitive and the staff have limited social or psychological skills and are therefore not equipped to implement the new codes.

To ensure that alternatives are effectively implemented and are focused on rehabilitation and re-socialisation, PRI has focused on ensuring that the codes in both countries contain an option for establishing an independent probation service. Among other functions, the probation service can undertake the duty of supervising the application of alternative penalties and criminal enforcement measures, including probation monitoring of offender behaviour. In Kyrgyzstan, the option for

establishing a probation service has been included in both the Criminal Code and the Criminal Executive Code. In his legal analysis of the Criminal Executive Code, PRI's expert - Professor Sleptsov – noted:

The draft CEC KR envisages creation of independent probation services (authorities) as part of the criminal-executive inspections. As recommended in the Council of Europe Probation Rules (2010), their functions shall include not only execution of alternatives to deprivation of liberty (probation supervision sanctions and sentences) but also penitentiary and post-penitentiary probation as well as mediation procedures between convicts and victims. (Sleptsov; 2014: 4)

In Kyrgyzstan they have set up a Probation Working Group and they are currently developing a separate Probation Law. They intend to set-up a separate independent probation agency that will be responsible for implementing all non-incarceration sentences. Several key informants noted that it will take about three years to establish the probation service.

In Tajikistan, the establishment of a probation service has been included in the draft Criminal Code. However, Professor Utkin notes that the relevant articles of the draft Criminal Code do not provide a specific name for authorities executing alternative sanctions but rather use a general description – “authorities responsible for enforcing sentences” (Part 5 of Article 49 and Part 1 of Article 53). Professor Utkin notes that “this is justifiable, as ultimately it should be specified in the criminal-executive legislation and normative acts” (legal analysis, page 12). He also notes that international standards do not require any formal renaming and given the lack sufficient funding and qualified personnel, such a reform should not be rushed. Professor Utkin recommends a gradual transition and that the initial implementation of probation should be carried out under the existing criminal-executive inspections (CEI). He recommends that the CEI should be reinforced with appropriately qualified personnel (eg social qualifications) and the CEI can then be renamed at a later stage.

With regards to setting up a probation system, informants in Kyrgyzstan were also concerned about the budget implications and their lack of knowledge and technical expertise:

Everyone is a little bit afraid of the probation system. People in Kyrgyzstan do not really understand it properly. (Interview with Head of Criminal Executive Code Working Group, Interview 25 September 2014)

When we initiate the probation law, we will say that the probation agency will be established in three years because we are not ready for it yet. With the help of PRI, we would like to involve Professor Sleptsov in the development of the new probation laws. (Interview with UNODC, 26 September 2014)

We do not have a budget for the establishment of a probation service. We have to plan how many probation officers will be required. The probation officers need to be accredited with social qualifications. If we don't do this, nothing will change; we will be simply renaming the Criminal Executive Inspections as the Probation Service. (Interview with Criminal Executive Code Working Group member, 26 September 2014)

Developing a probation service is a daunting prospect. At present there are three options for both Kyrgyzstan and Tajikistan:

1. Establishment of a probation service as a single, centralised and independent system of social institutions. Criminal inspections are transferred to the new structure of the probation service.
2. Establishment of a probation service on the basis of existing criminal inspections within given legal and operational framework of penal systems of Kyrgyzstan and Tajikistan.

3. Phased adoption of individual elements of probation (eg social inquiry reports, probationary supervision, and various forms of social assistance) at different stages of criminal procedure and law enforcement practice without the formation of an independent probation service.

In Tajikistan, Professor Utkin has advised that they follow option 2 – the establishment of a probation service on the basis of existing criminal inspections. Given the financial constraints, it is unlikely that Tajikistan will establish an independent centralised probation agency. Compared to Kyrgyzstan, there is more political will and resources to establish an independent probation agency in Tajikistan. The Kyrgyz Criminal Code is more ambitious than the Tajik Criminal Code and it is clear that stakeholders are not keen on a transitional model where the Criminal Executive Inspections agency is simply renamed the probation agency. However, people realise that it will take at least three years to establish a separate agency, which includes probation officers with social and psychological qualifications. There will be an awkward transitional period (2015-2017) where the codes have been adopted and the probation service is yet to be established. Indeed, at this stage nothing is set in stone and the ensuing budget discussion and the development of the probation law are critical with regards to which path Kyrgyzstan will take.

However, whichever path the countries decide to take, it is clear that PRI and other civil society and international organisations have an important role to play. PRI has a strong track record of working with and developing the capacity of probation agencies and community service implementing agencies. In Georgia, PRI has provided technical support to the Georgian Probation Agency, helping them to develop an effective system for monitoring community service cases. This involved training with probation officers and the design of community service monitoring forms. In Kenya, PRI has organised a series of training for Community Service Supervisors. Using international standards and good practices, the trainings helped the Supervisors to (a) better understand their role and mandate; (b) improve their interpersonal and problem solving skills; (c) better understand the needs of vulnerable offenders, including children and women; (d) share their experience with other Supervisors. Whether Kyrgyzstan and Tajikistan establish an independent probation agency or reform the existing Criminal Executive Inspections, PRI can use this experience to effectively develop the institutional capacity of both Kyrgyzstan and Tajikistan’s alternatives implementation mechanism. This will involve a combination of technical and capacity development support.

4.2.1 Justice for children

Output 2:	Proper protection of children deprived of liberty (specifically: separation from adults in all facilities; prohibition of solitary confinement / isolation) in legislation.
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Output indicator 1	Baseline (Nov 2013)	Target (December 2014)
Issue of adopted in draft criminal code	No new draft codes	Kyrgyzstan and Tajikistan: draft codes include provision on separation of children and prohibit use of solitary confinement in all cases by December 2014.
	Data Source	
	Government records; collected by PRI	

In Kyrgyzstan, children in conflict with the law may be detained in five pre-trial detention centres and in two detention centres – one for boys and another for girls who have been convicted. There is a Special School for children who are under the age of criminal responsibility or who have repeatedly

committed administrative offences and there is also a Rehabilitation Centre for Minors. Children are also detained in a range of state-run residential institutions including boarding schools, a psychiatric hospital and homeless shelters (Sheahan, 2014: 24).

Closed institutions for children in Tajikistan include: a Temporary Isolation Centre; Special School; Special Vocational School; and detention centres for boys and girls (attached to the Women's Prison in Nurek).

Separation of children from adults

In the Kyrgyzstan's current Criminal Executive Code, it specifies that juvenile suspects may be "in exceptional cases with the written consent of the prosecutor contained in the same cells with adults". PRI's violence against children factsheet¹ notes that this "is in direct violation of paragraph 134 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). PRI adds that "the legislation also fails to give detailed guidelines on what constitutes exceptional cases" (2014). PRI also notes that the current Criminal Executive Code does not contain any provisions to provide special care and protection of juveniles while in custody or pre-trial detention. A recent PRI survey (Sheahan, 2014) found that in practice children are placed with adults whilst in police detention. The survey found that 62 per cent of boys were held alongside adults in police station cells. PRI is concerned that a lack of separation from adults puts children at risk and could expose them to violence from adult offenders. Indeed, PRI's survey found that only a quarter of children said that they felt safe whilst at a police station. PRI concludes that current legislation is therefore insensitive to the special needs of juveniles and does not provide provisions to protect children from adult offenders whilst in custody (PRI Factsheet, 2014).

During PRI Violence against Children study (Sheahan, 2014), 20 per cent of the children surveyed in Tajikistan stated that they were detained alongside adults whilst in police detention. Furthermore, 15 per cent of children from Tajikistan who participated in the study said that they had been held alongside adults whilst in detention (not including police detention). For 73 per cent of these children, this contact with adults took place whilst they were in a temporary detention centre. This is permitted under the law regarding 'the order and conditions of detention in custody' in exceptional cases. On the issue of separation of children from adults in all forms of detention, it is clear from PRI's research that Tajikistan's penal law and practice does not comply with international standards and is a direct violation of paragraph 134 of the Beijing Rules.

Through this project, PRI has therefore included separation of children from adults as a key aim of this project. Separation of children from adults in Kyrgyzstan and Tajikistan is also a key advocacy objective of PRI's European Union funded project – Progressive abolition of violence against children in detention in Central Asia (VAC project). The VAC project activities were used to match fund and complement this DFID Conflict Pool project.

In Kyrgyzstan, PRI has lobbied the Criminal Executive Code Working Group to include a new provision in the Criminal Executive Code that ensures children are kept separate from adults in detention. In terms of progress against this indicator in Kyrgyzstan, it is currently unclear whether the latest draft of the Kyrgyzstan Criminal Executive Code contains a provision that explicitly states that children should be kept separate from adults in all forms of detention. Professor Sleptsov's legal analysis does not examine the separation of children from adults and it is therefore unclear whether the latest draft provides a provision. During the second half of this project, PRI should therefore continue to work with the Criminal Executive Code Working Group and advocate for a provision that specifies that children should be kept separate from adults in all forms of detention.

¹ Through this project PRI published a factsheet, entitled: "Analysis of legislation on prevention of violence against children in Central Asia".

In Tajikistan, the focus is very much on reforming the Criminal Code. Separation of children from adults is a provision that is more relevant to the Criminal Executive Code. However, Professor Utkin's legal analysis of the Criminal Code does comment on the prospects and implications of separating children from adults:

Juveniles, who earlier served imprisonment (in practice, their number is not high; also due to juveniles reaching full legal age), can be reasonably kept separately from other adult prisoners. This can be achieved by establishing separate juvenile correctional facilities or allocating specific sites in existing facilities. In practice, the difference in regimes of correctional facilities is not remarkably substantial. (Utkin, legal analysis, 2014: 14)

However, Utkin rightly notes that "ultimately, this issue [separation of children from adults] should be addressed in a comprehensive detail in the criminal-executive legislation of the Republic of Tajikistan" (Utkin, 2014: 14). Once the new Criminal Code is adopted, there are plans to reform the Criminal Executive Code to ensure that it is consistent and aligns with the provisions contained in the new Criminal Code. It is therefore important to ensure that the Criminal Code contains a separate section on juvenile justice that is aligned with international standards. Indeed, the latest draft of the Criminal Code contains a range of special provisions and an entire section (Section V) is dedicated to the criminal liability of children. There have been 13 amendments to the juvenile justice section of the Criminal Code and the Criminal Code Working Group would like to establish a separate juvenile justice system (Interview with member of Criminal Code Working Group, 22 September 2014). Indeed, one of the key informants noted that "the best parts of the new Criminal Code are the juvenile sections" (Interview with International Bar Association, 23 September 2014).

Separation of children from adults is a provision that is relevant to the Criminal Executive Code and PRI will have to wait until a working group is set up to analyse and reform the Criminal Executive Code. The Criminal Executive Code reform process is likely to begin after the completion of this project and therefore PRI cannot be expected to make significant progress in Tajikistan against this indicator. However, through the EU Violence against Children project, PRI and its Tajik partner – the Child Rights Centre – is currently lobbying the Government and Members of Parliament to make changes to the Criminal Executive Code in order to bring the articles related to child rights in closed institutions in line with international standards. PRI and the Child Rights Centre are therefore being proactive and are preparing the ground for future advocacy work during the forthcoming Criminal Executive Code reform process. Indeed, the activities undertaken through this project and the EU Violence against Children project has put PRI in a good position to be involved in the Criminal Executive Code reform process from the very beginning.

Solitary confinement of juveniles

Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) specifically states that the use of solitary confinement as a disciplinary procedure can "compromise the physical or mental health of the juvenile concerned" and therefore should be strictly prohibited. The Kyrgyzstan's current Criminal Executive Code is in direct violation of Rule 67 because it allows the use of solitary confinement for juvenile suspects and defendants. Research by PRI (Sheahan, 2014) found that children in Kyrgyzstan's detention centres are subject to disciplinary measures such as reprimand and placement in a 'disciplinary isolator' for up to seven days but with continued attendance in education classes. Records reviewed during the survey process at a pre-trial detention centre revealed that between September 2013 and July 2014, 80 children had been placed in a disciplinary isolator (Sheahan, 2014: 30).

With regards to the latest draft of the Kyrgyzstan Criminal Executive Code, Professor Sleptsov's legal analysis notes:

With respect to juveniles, the draft CEC KR provides for removal of a disciplinary isolator confinement for the period of up to seven days from the list of disciplinary measures. Juveniles shall only be placed in a temporary isolation facility and only for a period of up to 72 hours. Juveniles shall be allowed to leave the facility to attend classes.

The use of solitary confinement for children then has been reduced from seven days to 72 hours (three days). This clearly represents progress in that three days is better than seven days. However PRI is rightly advocating for the strict prohibition on the use of solitary confinement in the criminal codes. The Kyrgyz Criminal Executive Code Working Group could argue that the use of temporary isolation cannot be defined as solitary confinement because the children are allowed to leave to use facilities and attend classes. Indeed, in international law there is no clear definition of 'closed or solitary confinement' or a universally agreed upon definition of solitary confinement. However, the Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. The clause that "juveniles shall be allowed to leave the facility to attend classes" is vague and it is clear that under this provision children in detention could be placed in an isolation cell for up to 22-24 hours a day. The Istanbul Statement clearly prohibits the use of solitary confinement for children and the UN Special Rapporteur against Torture has also found that the use of solitary confinement for children amounts to cruel, inhuman or degrading punishment.

It should also be noted that in Kazakhstan, the Criminal Executive Code has been amended and includes the same provision: juveniles can be held in temporary isolation for up to 72 hours. However, through its EU Violence against Children project, PRI has found that in practice, a temporary isolator often means that children are kept in a room in the same wing and that all their other rights are not affected: the children continue to go to school and use the canteen facilities but they live separately from other children. Under these conditions, it is clear that children are not being kept isolated for 22-24 hours a day and therefore it cannot be defined as solitary confinement. However, it is unclear whether such practices are being used in Kyrgyzstan children detention centres and the fact remains that the wording of the provision in the Criminal Executive Code is vague and that if such incidents do occur (eg children are kept in a temporary isolator for 22 to 24 hours a day), they would not be violating the provision contained in the latest Criminal Executive Code. During the second year of this project, PRI should therefore continue to advocate for the strict prohibition of the use of solitary confinement and should ask the Working Groups to be more precise in the wording of the provision.

Article 144 of the current Tajik Criminal Executive Code (adopted August 2001) stipulates that minors serving a sentence in an educational colony can be placed in "disciplinary isolator for a period of up to seven days with release for period of study". Similar to Kyrgyz legislation, this is a clear breach of Rule 67 of the Havana Rules. During his mission to Tajikistan in January 2013, the Special Rapporteur on Torture noted in his mission report that "in the juvenile colony and in the basement of a special school for underage offenders run by the Mission of Education, children were reportedly kept in disciplinary isolations cells for up to 15 days as a disciplinary measure for breaking the establishment's rules" (Mendez / UN Human Rights Council, 2013: 14). In PRI's research, two employees of juvenile detention centres said that solitary confinement was used (Sheahan, 2014: 33). It is clear then that both legislation (Criminal Executive Code) and practice needs to be reformed with regards to the use of solitary confinement in juvenile detention centres in Tajikistan. However, as noted in the previous section, PRI will not be able to make significant progress against this indicator with regards to the use of solitary confinement until the Criminal Code is adopted and a working group is established to reform the Criminal Executive Code.

4.2.3 Prevention of torture

Output 3:	Torture defined (in line with CAT) and appropriate sanctions for perpetrators in legislation.
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Output indicator 3	Baseline (Nov 2013)	Target (December 2014)
Issue adopted in draft criminal code	No new draft codes	Prohibition of torture, definition of torture are in line with UNCAT and measures to sanction perpetrators in draft code by December 2014.
Data Source		
Government records; collected by PRI		

Kyrgyzstan and Tajikistan have both ratified the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture (UNCAT). They have also recognised the jurisdiction of the UN Human Rights Committee and the Committee against Torture. Both countries are therefore obligated to implement the binding provisions of the international treaties and the recommendations of the treaty bodies. Indeed, under these conventions the countries are required to take legislative, administrative and judicial measures to prevent and punish any acts of torture (PRI Central Asia Torture Prevention Factsheet, 2014).

Definition of torture

The most widely accepted definition of torture internationally is that set out by Article 1 of UNCAT:

“.....'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

From this definition, it can be said that torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities for a specific purpose. Despite ratification of key human rights treaties in the late 1990s, no separate offence on torture was introduced into the criminal legislation of Kyrgyzstan and Tajikistan. In both countries criminal legislation, torture was primarily defined as general criminal act of private persons. In response to pressure from UN treaty bodies, from 2003 Kyrgyzstan and Tajikistan began to criminalise torture comprehensively in their respective criminal legislation. The following table shows how torture is currently defined in the Criminal Codes of Kyrgyzstan and Tajikistan:

Criminal Code of Kyrgyzstan (Article 305-1)	Criminal Code of Tajikistan (Article 143-1)
Intentional infliction on a person of physical or mental suffering committed for the purpose of obtaining from him or another person information or a confession, punishing him for an act which he or another person has committed or is suspected of have committed,	Intentional infliction of physical and (or) mental suffering committed by a public official conducting an inquiry or preliminary investigation, or other official person or at their instigation, acquiescence or knowledge by another person, for the purposes of obtaining

or intimidating or coercing him or another person to commit certain acts, or for any other reason based on discrimination of any kind, when such an act is committed by or at the instigation of or with the consent of a public official.	from a victim or a third person information or a confession, or punishing him for an act which he has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for another reason based on discrimination.
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Table 3: Definition of torture in Criminal Codes of Kyrgyzstan and Tajikistan

The current definitions of torture (see table 3) are both broadly inline with the definition of torture provided in Article 1 of UNCAT. The definition in the Criminal Code of Kyrgyzstan provides the closest interpretation of the UNCAT definition. Both definitions provide for general and specified subjects – public officials, with various types of complicity such as instigation, consent or acquiescence. However, PRI notes that both countries’ definitions lack a reference to other persons ‘acting in an official capacity’, which is required by Article 1 of UNCAT (PRI factsheet, 2014). PRI explains that this is a concern because staff of child centres are not recognised as official person nor do they act at the instigation of or with the consent or acquiescence of public officials in the performance of their duties. Unlawful actions by such a person would therefore not be covered by the definition of torture in both Kyrgyzstan and Tajikistan. PRI concludes that this discrepancy creates a potential loophole and could lead to cases of impunity.

In the latest draft of the reformed Tajik Criminal Code, torture is defined in Article 139. The definition provided in Article 139 is exactly the same as Article 143 in the current code (see table 3). The definition of torture has not changed. Similarly in the latest draft of the Kyrgyz Criminal Code, the definition of torture has not been changed. However, as noted above, the definition of torture provided in the Kyrgyz and Tajik Criminal Codes are already broadly consistent with the definition provided in Article 1 of UNCAT.

The wording of the definition is not only factor that needs to be considered. In its Central Asia Torture Prevention factsheet, PRI notes that as torture violates the basic human right to dignity it would be better placed within the Criminal Code as a crime against constitutional rights and freedoms. This would reinforce the non-derogable nature of the absolute prohibition of torture (PRI, 2014). In his legal analysis of the latest draft of the Tajik Criminal Code, Professor Utkin notes that the torture article (Article 139) has been placed within the Chapter on “Crimes against Constitutional Rights of an Individual and Citizen”. Similarly in the Kyrgyz Criminal Code, the prohibition of torture articles have been moved from the chapter on crimes against the state to the chapter on crimes against constitutional rights and freedoms. As Utkin notes, this is a positive development because it shows that Tajik and Kyrgyz legislators are paying close attention to international standards on torture prevention and it establishes that torture is a crime against the Constitution of the Republic of Tajikistan. Moving the torture prevention articles also favourably distinguishes the Draft Criminal Codes of Tajikistan and Kyrgyzstan from, for example, Russian criminal legislation (often cited as the benchmark for the Central Asia region) where the definition of torture is placed in the Chapter on the Crimes against the Individual and the definition is not in full compliance with Article 1 of UNCAT. As Utkin notes, compared to the Russian Criminal Code, the Draft Criminal Code of Tajikistan “treats torture as an independent crime and its definition, provided in Article 139, more adequately and comprehensively meets the CAT requirements” (2014: 17).

In summary, the latest draft of both the Tajik and Kyrgyz Criminal Codes provide a definition of torture that is broadly in line with Article 1 of UNCAT and it is a positive development that the torture articles have been moved to the chapter on crimes against constitutional rights. As a result, PRI has met this target. PRI should continue to work with penal reform stakeholders in Tajikistan and

Kyrgyzstan to ensure that the definition of torture and torture prevention provisions are not diluted during the approval process and are included in the final draft that is approved by Parliament.

Sanctions for perpetrators of torture

Although international standards do not prescribe a specific level of sanction for the perpetrators of torture, the Committee against Torture noted the need to establish 'appropriate sanctions' given the special gravity of the crime of torture (General Comment 2, CAT/C/GC/2; 2008). In the current Criminal Codes of Kyrgyzstan and Tajikistan, perpetrators of torture can receive up to 15 years' imprisonment.

In terms of sanctions for perpetrators of torture, PRI Central Asia's Factsheet on Torture Prevention notes that Kyrgyzstan's Criminal Code has a better and more comprehensive approach compared to Tajikistan (and Kazakhstan). Kyrgyzstan's code provides for mandatory application of a primary penalty of imprisonment in combination with a deprivation of the right to hold certain positions or engage in certain activities. The sanction envisages imprisonment for 4-8 years (part 1), 7-10 years (part 2), and 10-15 years (part 3). PRI notes that the indication of both the minimum and maximum level of punishment prevents lenient sentencing for perpetrators of torture. In the Tajik Criminal Code there is no consistent indication of the minimum sanction for torture. The imprisonment terms specified in the Kyrgyz Code are also considerably higher than in the Tajik Code. Indeed, the low penalties for perpetrators of torture in the Tajik Code indicate that torture is considered a crime of medium gravity.

In terms of progress against this indicator, in the latest draft of the Kyrgyz Criminal Code, perpetrators of torture can receive sanctions of up to 15 years' imprisonment (PRI progress report, DFID conflict pool, April-June 2014). In other words, the sanctions for perpetrators of torture have not changed compared to the current code. However this is not a problem because as explained above, the current Kyrgyzstan Criminal Code provides adequate provisions. It is therefore a good result that the sanctions have been kept the same and that they have not been diluted. Moreover, in Kyrgyzstan PRI has primarily worked with and provided technical support to the Criminal Executive Code Working Group rather than the Criminal Code Working Group. Therefore with regards to torture prevention, rather than focusing on sentencing, PRI has focused more on establishing a legal basis for the National Preventive Mechanism (NPM).

In Tajikistan, PRI is very much focused on working with the Criminal Code Working Group and as mentioned above there is room for improvement with regards to sanctions for perpetrators of torture. In the latest draft of the Criminal Code, the sanctions for perpetrators of torture have not been changed. The maximum sentence is still 15 years and the minimum sentence is two years. However during the evaluation interviews a key informant from the General Prosecutor's Office did note that the Working Group is currently trying to increase the minimum term to five years' imprisonment. During the second year of the project (2015), PRI should continue to lobby the Criminal Code Working Group to increase the minimum sentence and to provide more precise minimum and maximum terms.

4.2.3 Capacity building of civil society

Output 4:	Capacity building of local civil society to better advocate for Government compliance with international human rights standards in the justice sector.
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Output indicator 4.1	Baseline (Nov 2013)	Target (March 2015)
Attendance at expert meetings / working groups	Expert meetings held as part of project	Increased civil society attendance at expert meetings
	Data Source	
	Attendance sheets; collected by PRI	

In Kyrgyzstan, public forums have been held to consult and involve civil society organisations on the development of the codes. The Head of the Criminal Executive Working Group noted that he has created a table that consolidates all civil society recommendations for the development of the Criminal Executive Code. The table shows that civil society has submitted 137 recommendations and that 60per cent of those recommendations have been included in the latest draft of the Criminal Executive Code (Interview, 25 September 2014). Out of 170 articles, 70 have been revised based on recommendations from non-governmental organisations (NGOs). Similarly, 75per cent of recommendations from NGOs have been included in the latest draft of the Criminal Procedural Code (interview with member of Criminal Procedural Working Group, 25 September 2014). A Criminal Procedural Working Group member noted that the recommendations from NGOs included guideline notes and an explanation of why they are needed. He also noted that Working Group members would often say “do not touch this recommendation because it was made by an NGO – this shows how far we have come” (Interview, 25 September 2014).

It is clear that in Kyrgyzstan, civil society has been consulted throughout the criminal legislation reform process. Perhaps more importantly, evidence suggests that the recommendations put forward by civil society are being seriously considered and included in the drafts of the codes. This demonstrates that civil society in Kyrgyzstan has a lot of influence over the criminal legislation process and that civil society is being listened to and their input being taken seriously. Through this project, PRI has focused on increasing civil societies input into the Criminal Executive Code. In May 2014, PRI organised training for civil society organisations and a juvenile justice workshop. In preparation for the public hearing in June 2014, the training and workshops provided an opportunity to (a) improve the participants’ advocacy skills; (b) familiarise them with the codes and the important issues; (c) agree a common strategy and recommendations. A total of 45 participants attended the training, workshop and public hearing: 20 from international organisations; 19 from NGOs and six lawyers. It is clear that this preparation work had a high pay-off. During the public hearing, NGOs were well prepared and they spoke with one voice and put forward recommendations with clear guidance and justification. The Working Group members and the Kyrgyz government should also receive credit for undertaking an open and participatory legislation reform process.

In contrast to Kyrgyzstan, the Criminal Code reform process in Tajikistan has been more closed and less participatory. When the Criminal Code Working Group was initially established in 2007, two NGOs were invited to participate as Working Group members. However, the two members from civil society did not have the knowledge to fully participate and quickly left the Working Group. In his former role with the Open Society Foundations, Khramon Sanginor (now working for the International Bar Association) provided coordination, administrative and technical support to the Working Group from its inception. During the evaluation interview he noted:

We invited civil society organisations to workshops but they were not coming. They didn't do anything, they added little value. Civil society organisations do not have the legislative knowledge to add value. They were slowing down the process of the Working Group. (Interview with International Bar Association, 23 September 2014)

This raises an interesting question on how best to involve civil society organisations in the penal reform legislation process. In the past PRI has advocated for the direct involvement of civil society in the working group process: PRI and other NGOs have participated as active members of the Working Group (for example in Kazakhstan and Georgia). However, learning from Kyrgyzstan and Tajikistan suggests that engagement with the Working Group in the following ways may be a more effective way of working:

- 1) Coordination and administration support – International organisations or civil society provide a coordination role. In Tajikistan, the Open Society Foundations have provided effective coordination and administrative support to the Criminal Code Working Group since its inception. This support involved organising workshops, trainings and retreats for the Working Group members. PRI played the same role in the penal reform process in Kazakhstan and is providing similar support to the Criminal Executive Working Group in Kyrgyzstan. Working with OSF, in the past 12 months, PRI has also provided coordination support to the Criminal Code Working Group in Tajikistan
- 2) External technical expert support – through this project PRI has organised for two external consultants to do a legal analysis of the draft Criminal Executive Code in Kyrgyzstan and the draft Criminal Code in Tajikistan. The legal analysis included recommendations for further revisions to the next draft of the code. During the evaluation interviews in both Kyrgyzstan and Tajikistan, several Working Group members noted how much they appreciated the legal analysis provided by the PRI experts and said that they would use the recommendations to improve the next version of the code.
- 3) Consultation through public hearings – in Kyrgyzstan PRI has focused on developing the capacity of civil society organisations so they are better prepared to participate in the penal reform process through the public hearings. Interviews with Working Group members suggest that this has been a very effective strategy and it is clear that a high percentage (60-75 per cent) of the recommendations put forward by civil society during the hearings have been included in the latest draft of the codes. In Tajikistan, public hearings are scheduled for late 2014 and PRI plans to use a similar combination of training and workshops to prepare NGOs for the public hearings.
- 4) Civil society expert support on thematic issues – in both Tajikistan and Kyrgyzstan, Working Group members have included specialist NGOs to provide input into a specific theme. For example in Tajikistan, the Criminal Code Working Group invited two staff members from child rights NGOs to advise them on the juvenile justice articles. The NGO members provided their expertise on juvenile justice which helped to strengthen the juvenile justice elements of the code.

During the project inception phase, PRI assumed that civil society organisations (including PRI and PRI partners) would be included as active members of the penal reform working groups. This assumption did not hold true in Tajikistan and PRI had to find alternative strategies to participate and involve civil society in the penal legislation reform process. PRI's use of the above strategies has been very effective for increasing civil society's influence and participation in the penal legislation reform process in both Kyrgyzstan and Tajikistan.

Output indicator 4.2	Baseline (Nov 2013)	Target (March 2015)
Civil society use of factsheets	Factsheets produced as per project activities	Self-reported use of resources for advocacy or other purposes
	Data Source	
	Civil society discussions; collected by PRI	

Through this project, PRI designed and published the following expert factsheets:

- Factsheet 1 - Alternatives to imprisonment in legislation of Kyrgyzstan and Tajikistan
- Factsheet 2 - Prevention of violence against children in Central Asia
- Factsheet 3 - Definition of 'torture' and the issue of appropriate sanctions in the legislation of Kyrgyzstan and Tajikistan

The factsheets provide background information, expert opinion and legal analysis on the penal codes in Kazakhstan, Kyrgyzstan and Tajikistan. Under each theme, the factsheets act as a baseline and identify the key issues in the penal codes that will be addressed through this project. They are well put together and very informative. The factsheets were useful for this evaluation and have been used extensively as background reading. The factsheets have also been useful for civil society organisations and Working Group members. A member of the Criminal Procedural Working Group in Kyrgyzstan noted:

The work done by PRI and partners has been invaluable. We needed to change the mind-set of the stakeholders. The leaflets and brochures have been very important and have helped a lot. (Interview with member of Criminal Procedural Working Group, 25 September 2014)

During the evaluation interviews, PRI's partners in both Kyrgyzstan and Tajikistan noted that the factsheets were very helpful and were primarily used as an advocacy tool and information resource to help civil society organisations construct informed recommendations that were put forward during the public hearings. For the remainder of the project, the PRI Central Asia office should collect both quantitative (number of civil society organisations actively using the factsheets) and qualitative data (mini case studies on how the factsheets were used) for this indicator.

Output indicator 4.3	Baseline (Nov 2013)	Target (March 2015)
Self-reported civil society knowledge	Needs determined through pre-workshop questionnaire	Self-reported increase in knowledge of human rights, national legislation and advocacy skills
	Data Source	
	Pre and post workshop questionnaires collected by PRI	

Through this project PRI have organised several trainings and workshops in both Kyrgyzstan and Tajikistan to increase participants' knowledge and skills so that they can better participate and contribute to the penal legislation reform process. The trainings and workshops were targeted at civil organisations, international organisations and lawyers. At the time of evaluation, the PRI Central Asia Office was in the process of collecting the post-training evaluation feedback from the participants. In preparation for the final project report, it is important that the Central Asia Office fully analyses and report on the results of the training and workshops focusing on (a) increased knowledge and skills; (b) how the participants have used the knowledge and skills to better participate and contribute to the reform process.

5. Project design considerations

5.1 Current project design

Overall this is a well-designed project with a logical hierarchy of results, measurable indicators and achievable targets. The project is very focused with an effective combination of activities to bring about the desired changes. The only weak point of the project design is the fact that the output statements and indicators are actually outcomes. For example, the revision of a draft Criminal Code text is an outcome because it is being drafted by someone else, eg the Working Group members. As a result, PRI may not meet all of the output targets because some elements (e.g. the slow pace of the Criminal Code Working Group in Tajikistan) are beyond their control. However this is a minor point that does not have an impact on the effectiveness of the project; it is more important to have a logical hierarchy of results and measurable indicators.

PRI is working with two very well respected partners – Voice of Freedom and Human Rights Centre – that have the capacity, contacts and expertise to effectively organise and deliver the activities. Through its penal legislation reform work in Kazakhstan and other countries, PRI has accumulated a vast amount of knowledge and experience on penal legislation reform. Moreover, PRI has an extensive network of international experts it can draw upon to supplement its internal expertise. PRI's knowledge, experience and contacts in penal legislation reform issues has undoubtedly added value to the partners work on this project. For example, PRI has used its contacts in the Central Asia office and the Russian, Ukraine and Belarus office to identify and recruit the two international experts for this project. PRI also arranged for members of the Criminal Code Working Group in Tajikistan and members of Criminal Executive Code Working Group in Kyrgyzstan to attend a conference on penal legislation reform in Astana, Kazakhstan.

5.2 Future project design

PRI plans to build on this project and secure additional funding so it can continue to support the penal legislation reform process in Kyrgyzstan and Tajikistan. As the project theory of change shows (page 7), once the new codes are adopted, new systems and processes will need to be set up to operationalise and implement the new provisions that are set out in the codes. New laws (eg a probation law) and policies also need to be established to accompany the new codes. PRI has the knowledge, skills and experience to provide technical assistance and capacity support to set up and implement new systems in line with the reformed penal legislation and international standards and good practice.

As noted in outcome section of this evaluation, in Kyrgyzstan practitioners are concerned that the revised codes will be difficult to implement in practice. Several key informants noted that there was a gap between law and practice and that there would be insufficient budget and know-how required to implement the new Codes. For example, many are daunted by the task of establishing a new service, fearing that nothing will really change, and they will simply rename the Criminal Executive Inspections as the Probation Service. In Kyrgyzstan and Tajikistan, it is therefore important that PRI, civil society and international organisations monitor the implementation of the codes.

Once the new Criminal Code in Tajikistan is finalised and adopted, working groups will be set up to reform the Criminal Executive Code and the Criminal Procedural Code. It is anticipated that these working groups will be established in the autumn of 2015. The Open Society Foundations have changed their policy in Tajikistan and are unlikely to play such a large role in terms of coordination and technical support to the Criminal Executive and Criminal Procedural Working Groups. PRI can use the experience and knowledge it has gained through this project to fill this gap and to provide coordination, administrative and technical support to the Criminal Executive and Criminal Procedural

working groups. For the DFID Conflict Pool, PRI should therefore develop a follow-up application that uses the same theory of change (see page 7) as this project, but puts the emphasis on the higher level result: develop and implementation of new systems to operationalise the reformed penal legislation in both Kyrgyzstan and Tajikistan. A new project could involve a combination of the following strategies:

- Technical and coordination support to the criminal legislation reform process. For example, ensure that the Criminal Code in Tajikistan is finalised and when Working Groups are set up, provide support to the Criminal Executive and Criminal Procedural Codes in Tajikistan. In Kyrgyzstan, PRI can support the policy and legislation process that needs to be undertaken to support the new codes (eg law on probation).
- Advocacy and promotion of the new codes to ensure that all criminal justice stakeholders are aware of the revisions and new provisions included in the Codes.
- Training and workshops to increase criminal justice stakeholders' knowledge and skills so that they can effectively implement the new provisions. For example training on community service orders for judges and probation officers to ensure that alternatives to imprisonment are used during sentencing and are properly implemented.
- Monitor the implementation of the code. For example collect data and track: the number of alternative sanctions used during sentencing; the number of probation officers that are recruited; the sanctions used (eg length of prison sentence) for perpetrators of torture; the separation of children from adults; and the use of solitary confinement for children in detention.

To summarise, it is extremely important that PRI securing additional funding so it can continue to support the penal legislation reform process in both Kyrgyzstan and Tajikistan. Both countries are the beginning of their criminal justice reform journey and will need a lot of support and expertise to ensure that the codes are implemented. Through this project and other projects (eg legislation reform in Kazakhstan), PRI has gained the experience, knowledge and skills required to provide a future leading role in the coordination and support of criminal legislation reform in Kyrgyzstan and Tajikistan.

6. Conclusion

In terms of the overall project outcome, PRI has made good progress against both outcome indicator targets. Against outcome indicator 2 (number of amendments in-line with international standards in the draft codes) PRI has already met the planned target for this indicator – ten changes in draft code – in Kyrgyzstan and is on track to meet the target in Tajikistan. In both countries, PRI has made a significant contribution to the content of the draft codes. PRI has facilitated the input of international experts, who have provided a legal analysis and recommendations for the Working Group. This technical assistance has been much appreciated by both the Criminal Executive Working Group in Kyrgyzstan and the Criminal Code Working Group in Tajikistan.

At the mid-term stage, it is too early to assess progress against outcome indicator 1 (number of amendments in the final approved code). The three codes in Kyrgyzstan are expected to be approved in early 2015, which suggest that the outcome target – codes approved by end of March 2015 – is on track to be met. The Criminal Code in Tajikistan is slightly behind and is expected to be approved in the autumn of 2015. If this is the case, the outcome target will not be met. However, the Tajik criminal code reform process is a long-term process and the Working Group is keen to draft a comprehensive and high-quality code that does not need to be revised after approval. Within this context, meeting the outcome target is perhaps a minor concern. At this stage it is more important to focus on ensuring the Working Group produce a quality code that is accepted by a wide range of stakeholders that have competing interests and priorities. Indeed, there is a risk in both Kyrgyzstan and Tajikistan that provisions will be taken out of the codes during the parliamentary process. The main challenge for PRI and other stakeholders is to ensure that the adopted codes are in line with international standards and that there are implementation mechanisms put in place (eg budget for each article).

PRI has also made good progress against the output targets. For output 1 (alternatives to imprisonment), eight non-custodial measures have been included in both Kyrgyzstan's Code of Misdemeanours and Tajikistan's Criminal Code, which exceeds the project target of three. To ensure that alternatives are effectively implemented and are focused on rehabilitation and re-socialisation, PRI has focused on ensuring that the codes in both countries contain an option for establishing an independent probation service. In both the latest drafts of the Kyrgyzstan and Tajik Criminal Codes, provisions have been included for the establishment of a probation service. However, for both Governments, developing a probation service is a daunting prospect. It is clear that PRI and other civil society and international organisations have an important role to play. PRI has a strong track record of working with and developing the capacity of probation agencies and community service implementing agencies.

In Kyrgyzstan, PRI has lobbied the Criminal Executive Code Working Group to include a new provision in the Criminal Executive Code that ensures children are kept separate from adults in detention. In terms of progress against this indicator in Kyrgyzstan, it is currently unclear whether the latest draft of the Kyrgyz Criminal Executive Code contains a provision that explicitly states that children should be kept separate from adults in all forms of detention. In the Kyrgyz Criminal Code the use of solitary confinement for children then has been reduced from seven days to 72 hours (three days). This clearly represents progress in that three days is better than seven days. During the second year of this project, PRI should therefore continue to work with the Criminal Executive Code Working group and advocate for a provision that specifies that children should be kept separate from adults in all forms of detention and for the strict prohibition on the use of solitary confinement for children in detention. In Tajikistan, the focus is very much on reforming the Criminal Code. Separation of children from adults and the use of solitary confinement are more relevant to the Criminal Executive Code.

In terms of output 3 - torture prevention – the definition of torture provided in the latest drafts of both the Kyrgyzstan and Tajik Criminal Codes are in line with Article 1 of UNCAT. The Kyrgyz Criminal Code also provides adequate sanctions (up to 15 years' imprisonment) for perpetrators of torture. In the latest draft of Tajik Criminal Code, the sanctions for perpetrators of torture have not been changed. The maximum sentence is still 15 years and the minimum sentence is two years. During the second year of the project PRI should advocate for the minimum sentence to be increased.

For output 4, PRI has used a combination of strategies – including training, workshops and factsheets – to increase civil society's knowledge and prepare them to better contribute to the criminal legislation public hearings. In Kyrgyzstan this strategy has been very effective: 60-75 per cent of the recommendations put forward by civil society during the hearings have been included in the latest draft of the codes. In Tajikistan public hearings are scheduled for late 2014 and PRI plans to use a similar combination of training and workshops to prepare NGOs to participate.

7. Lessons learnt and recommendations

7.1 Priorities and activities for second year of the DFID Conflict Pool project

- **Recommendation 1** – the Criminal Code Working Group members in Tajikistan have requested that PRI organise for their legal expert – Professor Utkin – to visit Tajikistan. During the second year of this project, PRI should contract Professor Utkin and arrange for him to attend Working Group retreat or meeting in Tajikistan so that he can provide face-to-face technical support to the Working Group members.
- **Recommendation 2** – Rule 14.3 of the Tokyo Rules points out that “the failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure”. Contrary to this international standard, in the latest draft of both the Kyrgyz and Tajik Criminal Codes, people who cannot pay a fine will automatically receive a custodial sentence. Professor Utkin’s legal analysis recommends that those offenders that are unable to pay the fine (as opposed to willful evasion), should either receive (a) deferment of the payment; or (b) the option of an instalment payment plan; or (c) replacement of the fine with a different non-custodial measure, eg correctional or compulsory community service. Kyrgyzstan and Tajikistan are both relatively poor countries and crime is often economically motivated. Utkin’s recommendations are more pro-poor and humane than the current provision. During the second half of this project, PRI should use Utkin’s recommendations to advocate for changes to the fines provision in both the Kyrgyz and Tajik draft Criminal Codes.
- **Recommendation 3** – the Kyrgyz and Tajik Criminal Codes both provide the option for the establishment of a probation service. In Tajikistan, Professor Utkin has advised the Working Group that they establish the Probation Service on the bases of existing Criminal Executive Inspections (CEI). Given the financial constraints, it is unlikely that Tajikistan will establish an independent centralised probation agency. Compared to Tajikistan, there is more political will and resources to establish an independent probation agency in Kyrgyzstan. The Kyrgyz Criminal Code is more ambitious than the Tajik Criminal Code and it is clear that stakeholders are not keen on a transitional model where the CEI is simply renamed the Probation Service. Whichever path the countries decide to take, PRI should seek additional project funding so it can use its experience to effectively develop the institutional capacity of both Kyrgyzstan and Tajikistan’s alternatives implementation mechanism. This should involve a combination of technical and capacity development support.
- **Recommendation 4** – in Kyrgyzstan, PRI has lobbied the Criminal Executive Code Working Group to include a new provision in the Criminal Executive Code that ensures children are kept separate from adults in detention. It is currently unclear whether the latest draft of the Kyrgyz Criminal Executive Code contains a provision that explicitly states that children should be kept separate from adults in all forms of detention. PRI should therefore continue to work with the Criminal Executive Code Working Group and advocate for a provision that specifies that children should be kept separate from adults in all forms of detention.
- **Recommendation 5** – in the current draft of the Kyrgyz Criminal Executive Code, the use of solitary confinement for children has been reduced from seven days to 72 hours (three days). This clearly represents progress in that three days is better than seven days. However PRI is rightly advocating for the strict prohibition on the use of solitary confinement in the criminal codes. During the second year of this project, PRI should therefore continue to advocate for the strict prohibition of the use of solitary confinement and should ask the Working Group to be more precise in the wording of the provision.

- **Recommendation 6** – In terms of sanctions for perpetrators of torture, the Kyrgyzstan’s Criminal Code has a better and more compressive approach compared to Tajikistan (and Kazakhstan). The Kyrgyz Code specifies both the minimum and maximum level of punishment which prevents lenient sentencing for perpetrators of torture. In the latest draft of the Tajik Criminal Code there is no consistent indication of the minimum level of sanction for torture. The imprisonment terms specified in the KyrgyzCode are also considerably higher than Tajikistan. Indeed, the low penalties for perpetrators of torture in the Tajik Code indicate that torture is considered a crime of medium gravity. During the second year of the project, PRI should therefore continue to lobby the Tajik Criminal Code Working Group to increase the minimum sentence and to provide more precise minimum and maximum terms.
- **Recommendation 7** - During the evaluation interviews, PRI’s partners in both Kyrgyzstan and Tajikistan noted that the factsheets were very helpful and were primarily used as an advocacy tool and information resource to help civil society organisations construct informed recommendations that were put forward during the public hearings. For the second year of this project, the PRI Central Asia office should collect both quantitative (number of civil society organisations actively using the factsheets) and qualitative data (mini case studies on how the factsheets were used) to evidence how the factsheets have been used.
- **Recommendation 8** - through this project PRI have organised several trainings and workshops in both Kyrgyzstan and Tajikistan to increase participants’ knowledge and skills so that they can better participate and contribute to the penal legislation reform process. During the second year of this project, it is important that the Central Asia Office does a post-training follow-up survey to assess (a) increased knowledge and skills; (b) how the participants have used the knowledge and skills to better participate and contribute to the reform process.

7.2 Future project design

Recommendation 9 - PRI plans to build on this project and secure additional funding so it can continue to support the penal legislation reform process in Kyrgyzstan and Tajikistan. Through the DFID Conflict Pool funding stream, PRI should therefore develop a follow-up application that uses the same theory of change (see page 7) as this project, but puts the emphasis on the higher level result: development and implementation of new systems to operationalise the reformed penal legislation in both Kyrgyzstan and Tajikistan. A new project should involve a combination of the following strategies: (a) technical and coordination support to the criminal legislation reform process; (b) advocacy and promotion of the new codes; (c) training and workshops to increase criminal justice stakeholders’ knowledge and skills so that they can effectively implement the new provisions; (d) monitor the implementation of the new Codes.

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