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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan

Summary

The present report, submitted pursuant to Human Rights Council resolution 14/14 of 18 June 2010, identifies the main areas of assistance that will aid Kyrgyzstan in fulfilling its human rights obligations. In the report, the United Nations High Commissioner for Human Rights describes activities undertaken by her Office on technical cooperation through the Regional Office for Central Asia and its mission to Osh.

The present report covers the period from June 2010 to February 2011. It focuses on developments in legislative and electoral processes, and in particular in the human rights sphere. In this context, a number of critical human rights issues are identified and, on this basis, areas of assistance with a view to supporting Kyrgyzstan in fulfilling its human rights obligations are discussed.

The present report outlines a set of conclusions and recommendations for the Government of Kyrgyzstan aimed at improving the human rights situation in the country through the implementation of the provisions of international human rights norms.

The High Commissioner acknowledges the spirit of cooperation between the Government and her Office.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 14/14 of 18 June 2010, whereby the United Nations High Commissioner for Human Rights was requested to continue to provide technical assistance through her office in Bishkek, to work with the Government of Kyrgyzstan and other actors, as needed, to identify additional areas of assistance that would aid Kyrgyzstan in its ability to fulfil its human rights obligations, and to submit a report thereon to the Council for consideration at the seventeenth session of the Council.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) established its Regional Office for Central Asia (ROCA) in 2008. Based in Bishkek, the regional office covers Kyrgyzstan, Kazakhstan, Tajikistan and Turkmenistan. Its main functions include strengthening the capacity of national Governments, national human rights institutions and civil society organizations to increase the compliance of the concerned States with international human rights standards and to improve protection against human rights violations. The regional office also provides support to United Nations country teams in integrating a human rights-based approach to the planning and implementation of programmes.

II. Developments relevant to the human rights situation between June 2010 and February 2011

3. In response to the outbreak of the June 2010 inter-ethnic violence in the south of the country and its impact on the human rights situation, OHCHR sent a mission to Osh in July 2010. The mission monitors and reports on the ongoing human rights challenges in order to identify the main areas of assistance to Kyrgyzstan.

4. The Government has indicated its commitment to undertake certain steps to improve the national human rights protection system. With a view to reforming and strengthening institutions in the legislative sector, the Government has committed to the elaboration of a concept for legal development, which will map future legal reforms and promote further compliance of national laws with international human rights standards.

5. Despite the efforts of the Government to address human rights issues, a number of serious concerns persist, such as the increase in reports of discriminatory practices by government bodies towards minorities, and the ongoing use and practice by law enforcement bodies of ill-treatment and torture while detainees are in custody.

6. Deficiencies in the administration of justice pose a major impediment to the re-establishment of the rule of law. The judicial system must maintain its impartiality irrespective of the ethnicity of victims, lawyers and defendants. Judges, as the guarantors of the rule of law, should be guided exclusively by the new Constitution and applicable international human rights standards. The situation of adequate housing remains of concern due to insufficient State funding and investments, the overall difficulties of economic development and the low standard of living, the challenges of rapid urban development and internal migration, corruption and the recent political instability. All of these aspects are further compounded by the lack of information and access to information, and the need to improve inclusive consultations between authorities and civil society. In this respect, a good initiative is the platform for monthly meetings between civil society organizations and the President of Kyrgyzstan and members of her Government.

7. On 3 May 2010, Kyrgyzstan was reviewed by the Human Rights Council, in the context of the universal periodic review. During the adoption of the outcome document on 21 September 2010, Kyrgyzstan accepted 152 recommendations, including that the provisional Government ensure full respect for the rule of law and human rights and in this regard, abide by all of its international obligations and commitments. Kyrgyzstan rejected 3 recommendations, 6 were commented on with no clear position and 12 remain pending.¹

A. Legal reforms

8. The unrest of 7 April 2010 resulted in the ousting of President Kurmanbek Bakiyev. The Interim Government that came to power introduced a new Constitution, adopted by referendum on 27 June 2010. On 12 July 2010, a governmental working group chaired by the interim Minister of Justice was established to bring national legislation into line with the new Constitution.

9. The working group identified a list of 30 laws to be urgently reviewed and amended. The interim Ministry of Justice demonstrated openness and a readiness to include civil society experts as full-fledged members of the working group.

10. A total of 15 of the 30 laws have been reviewed, adjusted and submitted to the Government with assistance from the European Union-United Nations Development Programme (UNDP) project on support to constitutional reform. Within the parameters of the legislative review, the human rights and gender agenda were significantly strengthened with the support of international and national experts engaged by UNDP, OHCHR, the European Union, the United Nations Office on Drugs and Crime, and the Soros Foundation.

11. Efforts were further undertaken to elaborate new draft laws on freedom of assembly and freedom of religion, as well as a set of draft amendments to the Law on Access to Information and to the Criminal Procedure Code. All directly relate to human rights safeguards required by international law and were presented to the working group under the interim Ministry of Justice. Following the formation of the Government and the reshuffle of the Cabinet of Ministers in late 2010, these draft laws were agreed upon by the new heads of the ministries and agencies and submitted to the Office of the Cabinet for its consideration. According to the Government, the draft laws and sets of draft amendments will be submitted to the Parliament shortly.

12. In February 2011, the Presidential Administration initiated a concept for legal development with the support of the Government, the Parliament and civil society. The concept for legal development is an important tool for the mapping of future legal reforms, for advancing the Constitutional reform process, and for promoting further compliance of national laws with international human rights standards. ROCA, with various international organizations, is currently reviewing the modalities to support this process in order to ensure its inclusiveness, transparency and accountability.

B. Elections

13. The constitutional referendum held on 27 June 2010 reduced presidential powers and boosted those of the parliament and the prime minister. The proposed amendments to the Constitution were accepted by 90 per cent of those who voted. The referendum, held

¹ The three recommendations rejected related to the creation of a specific institution to ensure the proper implementation of measures on gender equality and violence.

with no major disturbances, aimed at guarding against the authoritarian system of the past and at the establishment of the first parliamentary government in Central Asia.

14. The international community praised Kyrgyzstan for the organization of parliamentary elections on 10 October 2010, in which about 1 million of the near 2.8 million registered voters participated, and which was marked by an unprecedented degree of transparency and openness. On 1 November 2010, the Central Election Commission announced that the five major parties had obtained the required threshold. On 17 December 2010, after much inter-party consultation, Omurbek Babanov, leader of the Respublika Party, announced a coalition between Respublika, the Social Democratic Party of Kyrgyzstan and the Ata-Jurt party. The *Jogorku Kenesh* (Parliament) approved the structure and composition of the new Government, comprising 18 ministries and three State committees.

15. Presidential elections will take place in the fourth quarter of 2011. According to the decree whereby the current President, Roza Otunbaeva, was appointed, she is not allowed to run for office when her term expires in December 2011.

III. Human rights activities and technical assistance by the Office of the United Nations High Commissioner for Human Rights

A. Technical assistance and capacity-building to national counterparts

1. The Office of the High Commissioner for Human Rights Regional Office for Central Asia

16. Since its establishment in 2008, ROCA has regularly provided the Kyrgyz authorities, at both the national and local level, with technical advice and recommendations on how to address specific human rights concerns.

17. After assisting the Government in the preparation of the universal periodic review, which took place in May 2010, ROCA contributed to the dissemination of the outcome document and facilitated follow-up activities, including consultations with Government officials, non-governmental organizations (NGOs) and international organizations. On 6 September 2010, ROCA held a working meeting with the State authorities and NGOs on the preparation of a national action plan on the implementation of the recommendations of the universal periodic review related to development, security, rule of law and human rights. Follow-up meetings will be organized throughout 2011.

18. In addition to providing support and expert comments during the drafting of the new Constitution in May 2010, ROCA supported a local partner in elaborating alternative draft laws on freedom of assembly and freedom of religion as well as draft amendments to the criminal code and the criminal procedure code, and supported the implementation of the concluding observations of United Nations treaty bodies.

19. Between July and December 2010, ROCA supported four training sessions for civil society representatives and defence lawyers, on a wide array of human rights themes focused on increasing the knowledge of participants in the following areas: communications strategies, personal safety and security, and human rights monitoring and reporting, including trial monitoring. These training sessions were organized in cooperation with national, regional and international organizations, including the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, and local and international civil society partners.

20. In October 2010, in cooperation with a number of international organizations and civil society, ROCA supported a civil forum on the rule of law as a security guarantee in Bishkek. The event brought together high-level Government officials, political parties, NGOs, independent experts and international organizations to discuss a number of key developments in the country. These included delays in announcing the election results, and attacks in the south against defence lawyers representing the interests of ethnic Uzbek defendants in cases relating to the June 2010 violence. ROCA facilitated the participation of defence lawyers from the south in the forum. The event resulted in an open and public debate, through which the national authorities were presented with detailed accounts of fair trial concerns caused by the lack of security during trials relating to the June 2010 inter-ethnic violence.

21. In November-December 2010, with the OSCE High Commissioner on National Minorities and civil society partners, ROCA supported a series of round tables to discuss with various stakeholders the draft national concept for ethnic development and society integration being developed by the Department for Ethnic and Religious Policy and Interaction with Civil Society under the Presidential Administration.² ROCA specifically contributed to the discussions with expert advice and distributed materials on United Nations standards concerning the rights of national minorities. The regional office also funded a national expert who participated in the discussions and working group meetings where the draft concept was further elaborated. ROCA continues to support the development of the concept and, once it is adopted by Parliament, will assist with the implementation of the concept to ensure the promotion and protection of the rights of minorities.

22. On 13 December 2010, to mark Human Rights Day, ROCA held a round table where State officials, civil society and independent experts discussed human rights developments in 2010 and expressed their recommendations on key priorities for 2011.

23. On 15 December 2010, ROCA held a round table on the investigation of torture, which was attended by State officials, including police, judges and prosecutors, civil society groups working on the prevention of torture, lawyers, and independent experts. The round table focused on the need for a change in legislation and practices, which will be further discussed in future consultations in 2011.

24. ROCA played a key role in advocacy and raising awareness of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its implementation, and provided expert advice on the draft law on the national mechanism for the prevention of torture, through the engagement of a national legal consultant. The regional office continues to monitor ongoing legal reforms and other relevant Government programmes in order to ensure the provision of targeted human rights advice, including through its NGO partners.

25. In addition, ROCA is rendering technical assistance to the Ombudsman Institution within the framework of a joint United Nations technical assistance programme, which runs until December 2011. ROCA maintains regular contacts with the Ombudsman Institution with the aim of highlighting and discussing key human rights developments in the country.

2. Mission of the Office of the High Commissioner to Osh

26. The OHCHR mission to Osh was deployed as of July 2010, to monitor, document and report on the human rights situation, provide added protection through its presence and

² See paras. 70 and 71 below for further details.

legal assistance, and participate in the integrated humanitarian emergency response activated in the aftermath of the June 2010 violence.

27. OHCHR has 22 staff on mission in Osh and Jalal-Abad, where meetings are regularly held with local authorities to highlight and discuss possible interventions in terms of human rights protection.

28. OHCHR staff in Osh and Jalal-Abad have actively engaged in protection and human rights work. An OHCHR helpline number was set up in July 2010, and it is estimated that, as of February 2011, more than 1,500 calls had been received. With regard to reports of ongoing or imminent human rights violations or threats thereof, OHCHR and its national NGO partners immediately respond through the deployment of teams which, depending on the situation, take appropriate action, including at times by raising concerns with local law-enforcement and judicial bodies. In other cases, victims, individuals at risk and others who seek consultations directly approach human rights officers.

29. OHCHR has partnered with local legal NGOs in Osh and Jalal-Abad, which have provided free legal assistance for those who have reported human rights violations that occurred either during or following the June 2010 violence. To date, more than 7,000 consultations have taken place.

30. In the past years, prior to the crisis of 2010, ROCA had developed a network of reliable local partners in the human rights sector in Kyrgyzstan. Many civil society organizations have served as effective response mechanisms to human rights concerns. Significant work has notably been achieved by OHCHR local partners in the areas of legal assistance, conflict prevention, reconciliation and minority rights.

B. Cooperation with international counterparts

31. ROCA maintains regular cooperation and information exchange with United Nations agencies, programmes and funds and offices in Kyrgyzstan, in particular with UNDP, the Office of the United Nations High Commissioner for Refugees, the United Nations Office on Drugs and Crime, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Children's Fund (UNICEF), the World Health Organization, the International Labour Organization and the World Food Programme. Regular exchange of information is ensured with the international community through weekly coordination meetings organized by the OSCE Centre in Bishkek.

32. In addition to supporting the United Nations Country Team in Kyrgyzstan and ensuring human rights mainstreaming in United Nations activities, ROCA played a key role within the humanitarian country team in response to the crisis that was caused by the outbreak of violence in June 2010. Timing was of critical importance in the aftermath of the June 2010 events; its capacity to take action allowed the Office to play a preventive role and to undertake protection activities which are essential to integrating human rights into the broader humanitarian response.

33. ROCA has also regularly briefed the Special Representative of the Secretary-General, Head of the United Nations Regional Centre for Preventive Diplomacy for Central Asia, on the human rights situation. The Regional Office, on behalf of the United Nations system in Kyrgyzstan and with the European Union and OSCE, co-chairs the established donor coordination working group on reconciliation and conflict prevention that is aimed at guiding and analysing efforts being undertaken in this sphere. OHCHR will continue its cooperation with regional organizations.

34. As a response to the July 2010 inter-ethnic violence, the cluster system was activated to coordinate emergency activities. OHCHR chairs the human rights sub-cluster,

ensures that international and national human rights actors coordinate their activities and shares information on the human rights situation. Human rights sub-cluster members include human rights NGOs as well as relevant United Nations partners. OHCHR also promoted the mainstreaming of human rights into the work of the United Nations Country Team by participating in the various cluster-related activities, including contingency planning and inter-cluster coordination meetings.

C. Human rights issues

1. Civil and political rights

(a) Administration of justice

35. During the second and third quarters of 2010, a European Union-UNDP project provided the interim Ministry of Justice with technical assistance for the preparation of 15 draft laws to be submitted either through the Government or members of the Parliament. This set of legislative acts, if adopted, would regulate various matters relating to the judicial system, including a draft set of amendments to the Law on the Status of Judges, the Law on the Supreme Court and Local Courts, a draft law on the council for the selection of judges and on the Constitutional chamber of the Supreme Court. Following the approval of these amendments, it is envisaged that the new system for the appointment of judges will increase public confidence in the judiciary, following the dismissal, through Decrees of the interim Government, of dozens of judges who were appointed under former president Bakiyev.

36. Further to the June 2010 violence, the authorities took steps to investigate and bring to justice those suspected of involvement in the events. The Office of the Prosecutor in Osh and Jalal-Abad reportedly initiated investigations into more than 5,000 cases. In cases which have come to trial, most defendants have been ethnic Uzbek. Scores of individuals wanted for involvement in the June 2010 violence reportedly remain at large.

37. Trials of defendants accused of involvement in the June 2010 violence have failed to uphold basic standards for fair trial, in courts both of first and second instance. Alleged violations of fair trial standards include torture and ill-treatment; inadequate access to lawyers and family members; inadequate access to medical care; failure of the authorities to prevent physical attacks, intimidation and harassment in and around the court; failure to uphold equality of arms and impartiality, and failure to declare as inadmissible confessions extracted under duress. Guilty verdicts in some cases appeared to rely heavily on confessions allegedly extracted under torture.

38. Defence lawyers representing ethnic Uzbek defendants charged in connection with the June 2010 violence face particular risks in carrying out their work. In some cases, attacks against such lawyers reportedly occurred in front of law enforcement officers, who failed to intervene. Lawyers were also threatened and harassed inside the courtroom. Following national and international advocacy to protect lawyers, the authorities took a number of measures, such as providing security for court trials and for participants in the proceedings, including changes of trial locations. Despite this, verbal insults and harassment inside the courtroom continued, as did occasional attempts by civilians to attack defendants and lawyers. None of the individuals alleged to have attacked lawyers have faced legal action.

39. In February 2011, the Chair of the Parliamentary Committee on Human Rights, Equal Opportunities and Public Associations initiated draft amendments to the Law on the Ombudsman of the Kyrgyz Republic in follow-up to previous meetings of the Committee. The proposed amendments fall short of the international principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)

and, if adopted as drafted, will not seriously address the issue of the lack of independence and effectiveness of this institution.

(b) *Penitentiary system*

40. As described in the monitoring report published in February 2011 by the Public Oversight Council, which has functioned under the State Penitentiary Service since 2007, a number of serious problems persist in the penitentiary sphere. These include poor prison conditions, insufficient budgetary allocations to the penitentiary system, lack of trained medical staff and psychologists, and weak social security for staff members of the penitentiary system. The legislative framework regulating the penitentiary system and the execution of punishments requires serious improvements.

41. Serious concerns relating to life-sentenced prisoners deserve attention, in particular the application of this type of punishment by the judiciary in relation to defendants in criminal cases relating to the June 2010 violence in the south. As of February 2011, there were 242 persons sentenced to life imprisonment. The most pressing issues relating to life imprisonment are: a need to replace life imprisonment with 25 years of deprivation of liberty as a fixed punishment; a need to review legal norms that discriminate against life prisoners vis-à-vis other types of prisoners, including in their right to be considered for parole; and the need to build additional facilities for life prisoners. The Government is currently elaborating a national programme (“Umyt II”) for 2011-2015 to replace the previous programme that expired in 2010, which will set out a conceptual framework for developing the penitentiary system.

(c) *Truth and accountability*

42. The Government has taken some steps to investigate the causes of the June 2010 inter-ethnic violence.

43. On 11 January 2011, the National Commission of Inquiry established by President Otunbaeva in July 2010 presented its report. According to the Commission, the violence was instigated by ethnic Uzbek community leaders and supporters of former president Bakiyev. The Commission states that members of the provincial government and the security forces failed to respond promptly and prevent the violence. The Commission also found that members of law enforcement tortured detainees, most of whom were ethnic Uzbeks.

44. On 13 January 2011, the Ombudsman of Kyrgyzstan presented his report on his investigation into the June events, stating that his office supports the conclusions of the National Commission of Inquiry, in particular that the conflict was initiated by ethnic Uzbek provocateurs. According to the conclusion of the Ombudsman’s investigation, the conflict was due to the socio-economic situation in the southern region that originated in the Soviet time, when ethnic Uzbeks enjoyed better living standards than ethnic Kyrgyz.

45. There have been concerns about the lack of independence and impartiality of both investigations. At least three members of civil society, who were among members of the National Commission of Inquiry, expressed concerns about the modalities, composition and the terms of reference of the National Commission. Both reports largely reflected views held among some ethnic Kyrgyz politicians and the majority of the public. Debates in Parliament on the findings of the National Commission were characterized by numerous provocative nationalistic statements and biased remarks regarding the role of ethnic Uzbeks in the violence. In January 2011, Parliament established a commission to look into the June 2010 inter-ethnic violence. No date is yet set for the publication of its report.

46. The Government also mandated an independent international commission of inquiry (Kyrgyzstan Inquiry Commission) to investigate the circumstances of the June violence,

qualify the crimes and violations under international law, determine responsibilities and make recommendations, in particular on accountability measures to ensure non-repetition and to contribute towards peace, stability and reconciliation. The Commission completed on-site investigations on 31 January 2011, and was due to submit its report to the Government for comments by the end of February 2011. Publication of the report is expected in March 2011.

(d) *Arbitrary detention and torture*

47. In the aftermath of the June 2010 violence, OHCHR received numerous reports of arbitrary detention in Osh and Jalal-Abad. In the majority of the cases documented by the Office, the victims were ethnic Uzbek. In some cases, members of security forces failed to show warrants, explain the reasons for the detention or clarify where the detainees were being taken. There were numerous reports of extortion by police in such cases of detention. Reports continue that police officers demanded the payment of money from detainees or their relatives to secure their release or to avoid having investigations initiated against them. In the vast majority of such cases, victims refused to file complaints as they feared repercussions.

48. During the period under review, OHCHR documented cases of torture or ill-treatment. The frequency and gravity of allegations raised serious concern. While most cases involved various forms of beatings, the Office also documented cases of torture in which victims described being subjected to electro-shock, including to the genitals; suffocation; sustained beatings; and death threats. Torture was reportedly often accompanied by ethnicity-based harassment and humiliation.

49. Concerns about frequent allegations of torture and ill-treatment were compounded by the failure of the authorities to take steps to investigate such allegations, bring to justice perpetrators and provide victims with redress. During the period under review, the Office of the Prosecutor in Osh did not pursue investigations into allegations of torture, despite the numerous cases in which significant evidence was available and in which complaints had been filed.

50. International human rights standards oblige the Kyrgyz authorities to ensure that all allegations of torture and ill-treatment are fully investigated and that measures are taken against anyone found to have been involved in such practices. Victims should be provided with adequate compensation. Judges and prosecutors are bound by the relevant provisions of the Kyrgyz Criminal Code and Criminal Procedure Code and therefore should open criminal investigations on alleged torture and ill-treatment either during court hearings or in the course of their inspection of detention facilities. To date, the police, prosecutors and members of the judiciary have not acted upon allegations of torture in the aftermath of the June 2010 violence.

2. Economic, social and cultural rights

(a) *The right to adequate housing*

51. Kyrgyzstan has undertaken an obligation to adopt appropriate legislative, administrative, judicial and other measures, to the maximum of its available resources, with a view to achieving progressively the full realization of the right to adequate housing. To this end, articles 12 and 46 of the Constitution have set the ground to review and bring national legislation into compliance with the new Constitution and international standards on the right to adequate housing. Some immediate obligations are not subject to resources or progressive realization, including those relating to forced eviction and non-discrimination.

52. The Housing Code, which was adopted in 1983, requires urgent review as it fails to meet international standards and safeguards.

53. The situation on adequate housing remains of concern due to the lack of State funding and investments, the overall difficulties of economic development and the low standard of living, the challenges of rapid urban development and internal migration, corruption and the recent political instability. The June 2010 inter-ethnic violence in Osh and Jalal-Abad exacerbated the situation as it resulted in large-scale destruction of properties and businesses.

54. Many victims of the June 2010 violence face obstacles with regard to the technical acceptance and registration of transitional shelters, which were built with the support of international donors. The construction of these houses was undertaken upon the agreement of the central Government without prior obtainment of the construction permits required under non-emergency situations and with the understanding that the registration of the new houses would be undertaken simultaneously with or upon completion of the construction. This was done to allow the immediate construction of the transitional shelters and ensure completion before winter.

55. The local authorities, particularly in Osh, do not support this agreement and have indicated that the victims of the violence should not be allowed to reconstruct their traditional housing. They believe that those whose properties were destroyed should be relocated to new apartment buildings under the Master Plan, which envisages the re-development of areas primarily inhabited by Uzbek minorities.³ This raises concerns with land and property rights not being respected, particularly if evictions that do not meet internationally recognized standards are undertaken by the authorities.

(b) *Education*

56. The June 2010 violence had a direct impact on children, including with regard to their access to education. In the aftermath of the violence, 94 per cent of children surveyed in focus groups (368 persons) were suffering from various academic problems. Reasons cited included lack of textbooks, fear of going to school, lack of teachers, loss of interest in studying and/or inability to concentrate on studies, tiredness, humiliation at school and inadequate conditions for completing homework.⁴ Focus groups with parents revealed that many children feared threats, shots, loud sounds and fireworks and were anxious about the possibility of renewed violence.

57. Winter 2010 was marked by a series of strikes by school teachers demanding a salary increase. In February 2011, the Government adopted a decision for a twofold increase in the salary of teachers. This decision is expected to be implemented in May 2011.

(c) *Employment*

58. The June 2010 violence affected trade and agriculture. The destruction of trade facilities, damage to equipment and premises particularly hit small enterprises in Osh and Jalal-Abad.⁵ Companies in Osh, Jalal-Abad and Kara Suu reported a decrease in the number

³ The Master Plan, which was adopted by the Government in 1999, contains a long-term development plan for the city and envisages its reconstruction.

⁴ UNICEF and Save the Children, "In-depth assessment of needs and current situation of children and women in post-conflict area in the south of Kyrgyzstan", p. 25.

⁵ ILO, "Impact of June 2010 events on the enterprise sector in Osh and Jalal-Abad" (July, 2010).

of workers due to their departure, dismissals or inability to continue working due to injuries that they had sustained.

59. More than half of those employed in Kyrgyzstan work in the agricultural sector, which represents one third of the gross domestic product.⁶ In rural areas, income earned through agricultural productivity is essential secondary income. In the aftermath of the June 2010 inter-ethnic violence, people had difficulties in selling their agricultural activity due to the destruction of harvest collection points. This has had a negative impact on the livelihoods of many households.

60. The June 2010 violence disrupted to some degree regular trading and business cycles, with many entrepreneurs reporting a significant fall in earnings.⁷ There were also reports of a decrease in small trade activities and an increase in the number of unemployed. Women reported facing difficulties in continuing with their income-generating activities such as working on farms and in markets due to the poor security situation, which placed limitations on movement.⁸ Overall, the insecurity felt by farmers decreased their ability to cultivate their land, collect harvest and herd cattle.

61. During the reporting period, the OHCHR mission to Osh received a series of reports about arbitrary dismissals on ethnic grounds. These dismissals are alleged to have taken place in a variety of public sector organizations, including broadcasting companies, the police, higher education establishments, local administrations and health-care institutions. Many of those dismissed belong to the Uzbek community. Dismissals have taken the form of “voluntary resignations” and employees are reportedly pressured by the management and/or local authorities to submit a letter of resignation. There are also reports that those dismissed are also discouraged from seeking legal aid and/or complaining to the bodies dealing with labour disputes. Businesses run by persons belonging to national minorities have also come under pressure.

3. Gender

62. Kyrgyzstan is the first country in the Commonwealth of Independent States to elect a female President. The new Constitution stipulates that no one in Kyrgyzstan may be subject to discrimination on the basis of sex and other characteristics and explicitly mentions that men and women shall have equal rights and freedoms and equal opportunities for their realization. Kyrgyzstan has adopted a number of relevant national laws to promote and protect equal rights and opportunities for women and men, and on social and legal protection from domestic violence. In this context, a provision on temporary special measures in the Electoral Code was kept during the Constitutional reform to ensure that at least 23 per cent of the total number of Parliament members are women.

63. The absence of a strong national institutional mechanism with a proper mandate and financial resources has impeded the development of consistent and comprehensive national policy and practice on the promotion of gender equality. There remains a gap between international and national commitments on gender equality and practice. The National Action Plan on gender equality has not been provided with adequate financial resources from the State budget necessary for its full implementation.

⁶ World Bank, “Kyrgyz Republic: poverty assessment - volume 2: labour market dimensions of poverty” (September 2007), p. 27. Available from http://siteresources.worldbank.org/ECAEXT/Resources/publications/454763-1191958320976/Poverty_assessment_Vol2.pdf.

⁷ ILO, “Impact of June 2010 events on the enterprise sector in Osh and Jalal Abad” (July, 2010).

⁸ UN-Women, “Post-conflict women’s needs assessment in the Southern Kyrgyzstan”, draft report (2010), pp. 25 and 42.

64. Various forms of gender-based violence and discriminatory practices against women remain key human rights challenges. Gender-based violence, including domestic violence, is widespread. There are no fully funded State shelters and crisis centres for women and girls. Existing shelters operate on an ad-hoc basis depending on the availability of grants from international organizations and donors.

65. The June 2010 violence resulted in many allegations and reports of sexual and physical violence against women, men and minors. While a number of cases have been documented and reported to OHCHR, comprehensive data is limited due to the sensitive nature of this issue.

66. The gender-based violence, including sexual violence, that took place in June 2010 highlights the need for the Government to address this issue structurally. In particular, there is a need to increase the number of specialists, especially in rural areas, with the adequate knowledge and skills to provide victims with medical and psychological assistance; to train State employees so they can respond effectively to cases of gender-based violence; to allocate financial support for the operation of existing crisis centres and shelters and the opening of new ones, especially in remote areas; to provide quality free legal aid for the population; and to ensure equal access to such services for all groups and communities.

4. Minorities

67. Since the April 2010 unrest and particularly following the June 2010 inter-ethnic violence, there has been growing concern at the rise in discriminatory practices faced by members of minorities at the institutional level. This is increasingly reflected in attitudes within the public at large. In particular, ethnic Uzbeks have faced ongoing discrimination in the aftermath of the June 2010 inter-ethnic violence.

68. In recent months, concern has increased at the growing inter-ethnic tensions in the country, which are contributing indirectly to the rise in internal migration and emigration. Statements by a few officials in various regions of the country have often fuelled the nationalistic discourse and contributed to feelings of vulnerability within the minority communities.

69. Reports of cases where ethnic minorities are subjected to the illegal seizure of their land, unlawful takeover of their businesses, or physical or verbal threats, are becoming more commonplace. Due to a pervasive fear among victims of such ethnically motivated acts, there is a general reluctance to file complaints with the law enforcement bodies. To date, no criminal case has been brought by the law enforcement authorities under article 299 of the Criminal Code, which proscribes “incitement to inter-ethnic hatred”.

70. In December 2010, the Department for Ethnic and Religious Policy and Interaction with Civil Society, under the Presidential Administration, initiated the drafting of a concept for ethnic development and society integration. The underlying principles of the proposed draft concept are: rule of law, respect for human rights and cultural diversity, preservation of the identity of ethnic groups and non-discrimination, ensuring equal opportunities for political participation and transition from ethnic identity to civil identity.

71. The proposed draft concept should ensure the implementation of measures aimed at the sustainable development of society based on common values and the co-participation of all nationalities in society and in socio-economic and cultural processes. Various stakeholders are being widely consulted on this. The proposed draft concept is expected to be sent to Parliament in late March and considered for adoption in June 2011.

IV. Conclusions and recommendations

72. The United Nations High Commissioner for Human Rights welcomes the continuous cooperation between the Government of Kyrgyzstan and OHCHR, and supports the commitment of the Government to undertake certain steps to improve the national human rights protection system. The efforts it has made to bring its national laws into line with international human rights standards illustrates the Government's will to comply with its obligations, and its intention to implement recommendations set by the universal periodic review mechanism, treaty bodies and special procedures.

73. A major challenge in the national agenda is the organization of free, fair and peaceful Presidential elections in the fourth quarter of 2011, whereby all citizens of Kyrgyzstan should be able to exercise their right to choose their President. In this regard, of concern is the nationalistic rhetoric that has been used by some politicians. This could hamper the credibility of the elections, and the impact is already tangible as many representatives of various ethnic communities have left or plan to leave Kyrgyzstan. The Government should redouble its efforts in these critical areas and ensure the protection of all those who reside in the country.

74. The human rights concerns described throughout the report, including the lack of an independent and effective administration of justice as well as gender-based violence and discriminatory practices towards women, may undermine the Government's efforts towards reconciliation. Legal and policy frameworks require prompt and further review. The reform of existing laws and policies that promote and protect human rights should be more inclusive and participatory.

75. The High Commissioner supports the universal periodic review recommendations on Kyrgyzstan and extends cooperation to the Government in their implementation, in close cooperation with the United Nations Country Team, regional organizations and the donor community, as relevant.

76. Kyrgyzstan has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and its Optional Protocol or the International Convention for the Protection of All Persons from Enforced Disappearance. Reports are overdue before the Committee on the Elimination of Racial Discrimination since 2010, the Committee on Economic, Social and Cultural Rights since 2005, the Human Rights Committee since 2004, the Committee against Torture (CAT) since 2002, and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families since 2005.

77. In order to consolidate the progress made in improving the human rights situation in Kyrgyzstan, the High Commissioner has formulated the following recommendations.

78. On administration of justice:

(a) The Government should take immediate steps to address deficiencies in the protection of fair trial rights for detainees. In this respect, the Supreme Court, in accordance with its powers, should ensure that in those cases where inadmissible evidence might have been used, the verdicts rendered by lower courts are reversed and the criminal cases are dismissed or sent for retrial. The Supreme Court should further ensure full assessment of torture allegations and of the admissibility of evidence that might have been obtained under duress;

(b) Judges, as the rule of law guarantors, should be guided exclusively by the new Constitution of Kyrgyzstan and applicable international human rights standards. In case of retrials related to the June 2010 events, the hearings should not take place in courts in the south of the country in order to ensure impartiality of judges. Judges should maintain their impartiality irrespective of the ethnicity of victims, lawyers and defendants. To ensure such impartiality, provincial rotation mechanisms of judges and other participants in judicial processes should be adopted.

(c) As per universal periodic review recommendations 76.52 and 76.57, supported by Kyrgyzstan, the Government should ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that they should not be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics;

(d) The Government should guarantee fair trial to all those being tried in relation to the events of 7 April 2010 and in cases relating to the June 2010 inter-ethnic violence and its aftermath in the south;

(e) The Government should address the rights of all victims without discrimination and intensify its efforts to reach consensus on policies that are consistent with international standards, place victims at the centre of its agenda and ensure that all victims effectively enjoy the rights to truth, justice and reparations.

79. **On torture and detention:**

(a) Law enforcement authorities should take urgent measures to prevent further illegal and arbitrary detentions and undertake a process of registering all detainees and ensuring that they are regularly brought before a competent court to determine the legality of their continued detention;

(b) The Government, prior to the establishment and commencement of functions of the national preventive mechanism under the Optional Protocol to the Convention against Torture, should guarantee unrestricted access by civil society monitoring groups to all places of deprivation of liberty, including pretrial detention centres of the National Security Service, as a confidence-building measure that will ensure the trust of civil society and wider public in the work of the National Security Service;

(c) The Government should ensure timely and effective investigations into torture allegations;

(d) The Government should finalize legislative changes that further bring national laws into line with the human rights standards pertaining to the prohibition of torture.

80. **On the right to adequate housing:**

(a) The Government should review and streamline its legislation and policies on housing in order to ensure their consistency with relevant international human rights norms and standards;

(b) The Government should develop a comprehensive national housing strategy to ensure the inclusion of more diversified forms of housing to be provided for vulnerable groups, such as low-income households, large families, single mothers with young children, minorities, persons with disabilities, the elderly, internal migrant workers, refugees and asylum-seekers;

(c) The Government should take all appropriate measures to ensure that individuals and households who could be potentially affected by the Master Plans of Osh and Jalal-Abad be given access to information on the proposed plans well in advance, as well as due time to become acquainted with the information, and that they be able to seek and receive legal and other advice and to undertake measures to renegotiate or challenge the proposed plans;

(d) The Government should ensure that evictions occur only in exceptional circumstances and require full justification. Evictions must be authorized by law, be carried out in accordance with international human rights law, be undertaken solely for the purpose of promoting the general welfare, be reasonable and proportional, and be regulated so as to ensure full and fair compensation and rehabilitation.

81. On gender-based issues:

(a) The authorities in Kyrgyzstan should take all measures to bring to justice perpetrators of gender-based violence, including in the context of the violence that took place in the south in June 2010, in trials that meet international standards for fair trial;

(b) As per various universal periodic review recommendations, in particular 76.91, supported by Kyrgyzstan, and as a matter of urgency, the Government should take steps to ensure greater inclusion, participation and representation of civil society, especially women's organizations, in the peacebuilding and reconciliation efforts;

(c) The authorities in Kyrgyzstan should provide sufficient resources to ensure that victims of gender-based violence have access to adequate medical and psychological care.

82. On minority rights:

(a) Utmost attention should be paid to building trust and confidence among communities throughout the country and to ensure the prevention of hate speech, which could fuel further tensions. The Government, at the highest levels, should emphasize that promotion and protection of minority rights are an integral part of and a main priority for peace and reconciliation and a central pillar of the country's political, economic and security strategies;

(b) As an immediate step, the Government should give priority to the proposed draft concept for ethnic development and society integration and ensure that it complies with international human rights norms;

(c) As per universal periodic review recommendations 76.20 and 76.121, supported by Kyrgyzstan, the Government should take further measures to effectively protect the rights of minorities and promote their inclusion in all sectors of the society. Particular emphasis should be placed on participation in decision-making at all levels and on advancing minority rights in such key fields as education and language policies.

83. On human rights mechanisms:

(a) The Government should ensure that the Ombudsman Institution is in full conformity with the Paris Principles;

(b) As per universal periodic review recommendation 76.44, supported by Kyrgyzstan, the Government should submit its outstanding reports due under the international human rights treaties as soon as possible as well as its response to communications from special procedures of the Human Rights Council;

(c) The Government should ratify or accede to instruments to which it is not yet a party, including those which provide for individual complaints procedures, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance;

(d) The Government should also ensure follow-up action to recommendations resulting from the international human rights system, including human rights treaty bodies and special procedures.
