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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 Human Rights Council, in its resolution 17/20 of 17 June 2011, requested the United Nations High Commissioner for Human Rights to continue providing technical assistance, through her Regional Office in Bishkek, and to work with the Government of Kyrgyzstan and other actors, as needed, to identify additional areas of assistance that will aid Kyrgyzstan in fulfilling its human rights obligations, to brief the Council on progress and to submit a report thereon to the Council for consideration at its twentieth session.

The present report covers the period from June 2011 to February 2012. It identifies and reviews the main human rights developments, and describes the technical assistance provided by OHCHR to the Government of Kyrgyzstan.

The report describes, inter alia, the legislative changes as well as the ongoing selection of judges, which should be done in a transparent manner in line with international human rights standards. The report also notes that serious institutional deficiencies have hampered the delivery of justice and undermined the rule of law, and points out that the lack of progress in addressing these matters impacts on reconciliation and peacebuilding efforts between the ethnic communities, as well as between civil society and authorities, with serious risks for the long-term stability of the country. The report further describes the ongoing practice of arbitrary detention and torture and continued discriminatory patterns based on ethnic grounds. In this context, it highlights institutional shortcomings, lack of capacity and, in some instances, lack of political will to take necessary measures.

The High Commissioner acknowledges the spirit of cooperation between the Government and her Office and proposes recommendations to further the promotion and protection of human rights in Kyrgyzstan.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 17/20 of 14 July 2011, whereby the United Nations High Commissioner for Human Rights was requested to continue to provide technical assistance through the Regional Office for Central Asia (ROCA) 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 twentieth session of the Council.

2. The report reviews the main human rights developments during the period under review and describes the technical assistance provided by ROCA on specific human rights issues.

3. ROCA was established in Bishkek in 2008 and covers Kyrgyzstan, Kazakhstan, Tajikistan and Turkmenistan. It works to strengthen the capacity of governments, parliaments, national human rights institutions and civil society organizations to address human rights issues.

4. In July 2010, in response to the June 2010 violence in southern Kyrgyzstan, and within the context of the humanitarian emergency phase, the Office of the High Commissioner for Human Rights (OHCHR) set up the OHCHR Mission to Osh (OMO). From 30 June 2011, the Mission focused on rule of law issues, with the aim to encourage peacebuilding, stability and reconciliation. It also provided technical assistance to the authorities for the implementation of recommendations of the United Nations Human Rights mechanisms, the High Commissioner and the Commissions of Inquiry into the June 2010 violence.¹

5. ROCA/OMO has continued to identify key human rights challenges that persist throughout Kyrgyzstan, advising and providing technical assistance to the Government, Parliament, Ombudsman Institution, civil society organizations and the donor community, to address gaps, build on progress and ensure compliance by Kyrgyzstan with international human rights standards, as highlighted in recommendations of the treaty bodies, United Nations Human Rights Council (HRC) Special Procedures, and the Universal Periodic Review (UPR).

6. On 30 October 2011, the first presidential election was held since the April 2010 ousting of President Bakiev. Interim Prime Minister, Mr. Almazbek Atambaev, of the Social Democratic Party, won in the first round, with 63.2 per cent of the votes. He defeated a field of 16 candidates. The Organization for Security and Co-operation in Europe (OSCE) found that “the 30 October presidential election was conducted in a peaceful manner, but shortcomings underscored that the integrity of the electoral process should be improved to consolidate the democratic process in line with international commitments”.² On 1 December 2011, Mr. Atambaev was inaugurated as President and a new Government was formed at the end of 2011.

7. ROCA appreciates the significant support provided by the European Union Instrument for Stability and the United Nations Peacebuilding Fund.

¹ National Commission of Inquiry report (January 2011); Ombudsman Institution report (January 2011); Parliamentary Commission report (6 June 2011); Kyrgyzstan Inquiry Commission (3 May 2011).

² Statement of Preliminary Findings and Conclusions, OSCE/ODIHR International Election Observation, 30 October 2011.

II. Human rights developments and technical assistance

A. Legislation and policies

8. During the reporting period, several legislative reforms were initiated concerning human rights issues. Most of them are still at the drafting stage. ROCA has provided technical assistance and advice in all cases. However, some concerns remain regarding the formal adoption of the proposals.

Draft Concept Note on Legal Policy for 2012-2016

9. In February 2011, the Ministry of Justice initiated the drafting of a Concept Note on Legal Policy of the Kyrgyz Republic for 2012-2016 with the aim of strengthening the rule of law and human rights protection based on the 2012 Constitution, and taking into account best practices from around the world and academic views. The concept outlines the key directions for reform in various branches of law in order to improve practice, legal education and public awareness on national legislation. In November 2011, the Draft Concept Note was informally launched by the Ministry of Justice. However, it was not followed by a broader consultation with participation of stakeholders, such as civil society.

10. ROCA has consistently advised on bringing national legislation in line with international human rights norms and standards. Following the presidential elections and government restructuring, it is unclear for ROCA whether the draft Concept Note will be finalized and submitted for the Government's approval and adoption by Parliament.

Draft Concept Notes on Ethnic Policy

11. Two draft concept notes on ethnic policy are currently under discussion by the Government. Drafting for both was initiated in the summer of 2011 but was delayed by the Presidential elections and the formation of a new Government.

- The draft Concept on Ethnic Policy and Society Consolidation was drafted by the Department on Inter-ethnic and Religious Issues of the Presidential Administration in May 2011 and supported by the People's Assembly of Kyrgyzstan on 18 June, 2011. It is a comprehensive document intended to outline key principles and policies directed at fostering inter-ethnic cooperation, societal consolidation and respect for minority rights. It includes a number of recommendations suggested by ROCA and other international organizations. It covers participation in political, economic and public life, media and culture, multicultural and multilingual education, language and inter-ethnic relations at the local level.
- The draft State Concept of National Policy of the Kyrgyz Republic was developed by the Ata-Jurt political party parliamentary faction. The document was adopted by Parliament at the first reading on 30 June 2011. ROCA provided comments noting inconsistencies with international norms and standards on minority protections.

12. On 1 February 2012, President Atambaev signed a decree to strengthen public security in Kyrgyzstan. Inter alia, the decree tasks the President's Office with completing the development of an ethnic policy concept in cooperation with civil society and Parliament, and reconciling the draft Concept on Ethnic Policy and Society Consolidation and the draft State Concept of National Policy of the Kyrgyz Republic into one comprehensive document on ethnic policy for consideration by the Defence Council at the end of March 2012.

13. ROCA has been supporting the authorities in their efforts to reconcile the two drafts through the provision of technical expertise.

Draft National Action Plan on Gender and National Strategy on Gender Equality

14. Following the restructuring of the Government in December 2011, the newly formed Ministry of Youth, Labour and Employment took over the portfolio of gender-related issues from the reformed Ministry of Labour, Employment and Migration. The newly formed Ministry has limited capacity in terms of available staff and technical expertise to develop, coordinate and implement gender equality. For many years, the women's movement in Kyrgyzstan has called on the Government to create a separate body in the executive power that would be responsible for gender equality issues and would have the mandate and sufficient resources to formulate comprehensive State policy on gender equality, and to coordinate among various government entities. However, these appeals have remained unanswered.

15. The National Action Plan on Gender Equality in Kyrgyzstan expired in 2010. In April 2011 the Parliamentary Committee on Human Rights recommended that the Government consider developing a new Action Plan and a long-term strategy. In July 2011, the Government established an Inter-ministerial Working Group to draft a National Strategy on Gender Equality up to 2020 with a corresponding National Action Plan for 2012-2014. The Strategy covers four areas: (1) increasing economic opportunities for women; (2) improvement of awareness in issues of parenthood, reproductive health and life in diverse society; (3) elimination of discrimination and increasing access to justice; (4) achievement of gender parity in decision-making and development of women's political participation. ROCA considers that long-term planning of the National Strategy, for nine years, is an innovative approach compared to short-term planning for three years, which had proved to be inefficient in the case of previous national gender policies. Another innovation is the methodology: The Ministries have conducted consultations in each province of Kyrgyzstan to reflect local priorities and needs in the policy documents. Moreover, the National Action Plan for 2012-2014 provides for a detailed budget.

16. Originally expected to be completed by October 2011, both drafts should be submitted for further discussion with major national and international stakeholders in the spring of 2012. Once approved by a Government decree, the drafts will go before Parliament.

17. On 24 and 25 October 2011, ROCA, in cooperation with international partners, supported a training-of-trainers on gender issues, carried out by the Ministry of Labour, Employment and Migration. Participants are expected to undertake regional discussions to raise awareness and obtain contributions for the National Strategy on Gender Equality and the National Action Plan on Gender.

Draft Law on a National Preventive Mechanism (OPCAT)

18. On 25 October 2011, the draft law "On the National Centre of the Kyrgyz Republic on Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment," with associated amendments to other legislative acts, was presented for its first plenary reading in Parliament. This draft law provides for the establishment of a national preventive mechanism (NPM) in line with the Optional Protocol to the Convention Against Torture (OPCAT). Citing the Government's conclusion that no funds would be available for the creation of the National Centre and referring to a possible duplication with the role of the Ombudsman Institution, the draft law was returned by parliamentarians to the initiators for additional review. Additional consultations were then undertaken with the Government, which changed its initial position and agreed to allocate 6 million Kyrgyz soms (around US\$130,000), to be taken from the budget of the Ombudsman Institution.

19. On 2 March 2011, the draft law was adopted by Parliament at its first reading – two more readings are required before full adoption. The issue of the financial allocation is yet to be discussed by Parliament.

20. ROCA provided technical assistance on the elaboration of this draft law through the provision of legal expertise. ROCA also undertook advocacy with relevant government and parliament officials, organized public discussions and supported an awareness-raising campaign. ROCA is concerned that the reallocation of funds from the Ombudsman Institution to the national preventive mechanism may have an impact on the level of human rights activities undertaken by the Ombudsman Office.

Draft Law on Peaceful Assembly

21. On 2 March 2012, Parliament approved the Draft Law on Peaceful Assembly at a second reading. The draft law has generally been commended by the European Commission for Democracy through Law of the Council of Europe and the Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR/OSCE). However, several shortcomings that are inconsistent with the Constitution and international standards remain, including imprecise wording of counter assembly, inadequate treatment of spontaneous assemblies, and blanket restrictions on assembly in certain locations.

22. ROCA has consistently advised on the development of the draft law on Peaceful Assembly through various public discussions, parliamentary public hearings and within the Parliamentary Committee on Human Rights, Equal Opportunities and Public Associations.

Draft Law on Freedom of Religion and Religions Organizations

23. The Law on Freedom of Religion and Religious Organizations (amended in 2008), contains terminology and stipulates procedures that contradict the new Constitution and international standards. In particular, religious associations are banned from operating without registration and requests for registration are only valid if submitted by at least 200 citizens. The State justifies the restrictions on grounds of national security and similarly restrictive laws in neighbouring States. In general, its approach is to favour the perceived traditional religions of Islam and Christianity, while viewing the activity of others, perceived as non-traditional, with caution.

24. ROCA, with the United Nations Development Programme (UNDP), has provided technical assistance with the drafting process and developed provisions in line with international human rights standards. The proposed draft law is currently with the Ministry of Justice.

Draft amendments to the Criminal Code and the Criminal Procedure Code

25. On 13 October 2011, Parliament created a working group, comprising Parliamentarians and Government representatives, to finalize and merge into a single draft law more than a dozen draft laws with proposed amendments and additions to the Criminal Code and Code of Criminal Procedure. The main objective of the draft amendments is to ensure compliance of the Codes with the new Constitution and international standards.

26. ROCA provided technical assistance by hiring international and national legal experts to assist in the development of the draft amendments. It supported discussions on the proposed draft to ensure compliance with the provisions of the International Covenant on Civil and Political Rights and the Convention against Torture, and ROCA hopes that written comments provided by the experts will be taken into account by the drafters.

Draft Housing Code

27. On 6 June 2011, ROCA supported working consultations with parliamentarians to familiarize primary decision-makers with international standards and best practices on the right to adequate housing. These were followed by parliamentary hearings on the draft Housing Code, during which comments and recommendations from Mr. Miloon Kothari, the former United Nations Special Rapporteur on the right to adequate housing, were taken into consideration. The draft specifies concrete public needs which can be used as justification for the demolition of housing and obliges the State to provide proper compensation or equivalent housing. The draft also outlines the creation of a specialized housing stock as an option to implement the right to adequate housing for vulnerable groups of the population such as the homeless, orphans, persons with disabilities, and elderly persons. The draft Housing Code is currently with the Parliamentary Committee on Economic and Fiscal Policy, which is to review it in the spring of 2012.

B. Selection of judges

28. The Constitution identifies the Council for the Selection of Judges (CSJ) as the main body tasked with the selection of judges.

29. On 14 June 2011, the then President Rosa Otunbaeva signed the Constitutional Law on the Constitutional Chamber of the Supreme Court, according to which judges of the Constitutional Chamber were to be elected by Parliament. Nominees were proposed by Otunbaeva on the basis of the selection carried out by CSJ.

30. On 27 July 2011, CSJ began the selection process, which faced both internal and external criticism. Several CSJ members, civil society and Supreme Court judges publicly expressed their disapproval over the grading of candidates by CSJ, stating that it was not made public. Under pressure from civil society, the then President asked CSJ to release the grading results showing how each candidate had been graded. Upon their publication, civil society raised a number of concerns, including that the candidates who had received the highest grades were not the ones recommended by CSJ to the then President.

31. On 13 and 14 August 2011, the then President Otunbaeva interviewed the candidates proposed by CSJ for the Constitutional Chamber positions. Against a backdrop of public protests staged against CSJ, Parliament ultimately approved two of the three candidates recommended by Rosa Otunbaeva out of the 11 proposed by CSJ. These moves, both from Parliament and the then President, were criticized by some civil society representatives as an excess of authority of the legislative and executive powers over the judiciary.

32. President Otunbaeva established a Commission tasked with preparing amendments to the laws on the judiciary, which were approved in October 2011. On 15 November 2011, she vetoed the draft amendments, stating that complete reappointment of CSJ was necessary. This put on hold the appointment process of judges. In November 2011, Parliament overturned three Decrees of the President issued in 2010 regarding the dismissal of 10 Supreme Court judges from their functions, thereby restoring eight of them. In its Resolution, Parliament stated that the President's Decrees had been adopted in violation of the Constitution and existing Laws regulating the judiciary that grant only to Parliament the right to dismiss Supreme Court judges from their functions following a conclusion of the National Justice Council (which was replaced under the Constitution by the Council of Judges). The President's Decrees had been previously criticized by some non-governmental organizations (NGOs) as illegitimate and violating the principles of the independence of the judiciary.

33. In February 2012, the pending amendments to the laws on the judiciary were again vetoed by President Atambaev, who stated that the CSJ should not be dismissed and that

Judges of the Constitutional Chamber should first be appointed for seven years and could only be reaffirmed for life upon completion of the initial term.

34. On 1 March 2012, a Parliamentary conciliatory commission reviewed the vetoes to be submitted to Parliament. The following day, Parliament voted in favour of the amendments to the law on CSJ. The most controversial amendment is section 5 of article 19, which stipulates that the president has a right to return to CSJ the proposed candidates for judges of local courts without any reasoning; and CSJ is now stripped of its powers to override the President's veto on the candidates, being obliged to conduct a new selection process and propose new candidates instead of those vetoed by the President. ROCA believes that this provision seriously undermines the independence of the selection process conducted by CSJ and may inadvertently lead to the exertion of covert pressure on CSJ to propose only those candidates acceptable to the President.

35. On 17 January 2012, President Atambaev issued a Decree creating a Commission to develop various legislative proposals by 31 March 2012, including the selection and appointment of judges; improvement of judicial oversight ensuring adversarial trial proceedings and equality of arms; improvement of the material and financial resources of courts; the security of the parties to the trial, and effective implementation of court decisions through adoption of laws on court bailiffs; improving the system of training for judges and court staff; introducing effective accountability mechanisms for judges; as well as other measures aimed at the improvement of the judicial function. Discussions are ongoing to clarify which branch of power plays the leading role in the reform process, how thematic areas covered by the mandate of the Commission will be streamlined, and who will initiate legislative proposals developed by the Commission.

36. A seminar for CSJ took place from 2-5 November 2011, co-organized by ROCA and international partners. Five international experts provided their expertise on applicable international standards and national best practices concerning the selection of judges.

C. Administration of justice in the aftermath of the June 2010 violence

37. Since the June 2010 violence in the south of Kyrgyzstan, serious institutional deficiencies have hampered the delivery of justice and undermined the rule of law. Lack of progress in addressing these matters impacts on reconciliation and peacebuilding efforts between the ethnic communities, as well as between civil society and authorities, and poses serious risks for the long-term stability of the country.

38. Criminal investigations into the June 2010 violence appear to have been marred by discriminatory practices against ethnic minorities. Only 7 per cent of the criminal cases related to the June 2010 violence have been initiated.³ Official statistics indicate that ethnic Uzbeks currently comprise 77 per cent of those detained and charged for serious crimes committed during the June 2010 violence. If the investigations and prosecutions into these crimes are not radically improved in terms of fairness and impartiality, the exercise will continue to lack legitimacy.

Arbitrary arrests, ill-treatment and torture

39. Human rights violations continue to be committed during police investigations into the June 2010 violence. These include arbitrary arrests, torture and ill-treatment in detention, forced confessions, and extortion including of private property. The impact of these violations on the affected individuals and the broader communities is hard to measure,

³ Office of the General Prosecutor, 28 February 2012.

although there are reports of individuals sustaining injuries, psychological trauma, loss of financial and material resources and even of life. In the Osh region, two ethnic Uzbek citizens of Kyrgyzstan, arrested in relation to the June 2010 violence, died on 11 July and 14 August 2011 respectively, allegedly as a result of injuries sustained while in police custody. In the Jalal-Abad region on 9 August 2011, an ethnic Uzbek man of Russian nationality was arbitrarily detained by law enforcement officials. He was allegedly tortured and a forensic examination confirmed severe internal injuries which led to his death two days after his release.

40. Violations of the rights of those arrested continue to be compounded by a lack of adequate prosecutorial oversight. Torture is generally used by police to extract confessions to crimes, which are later accepted in court. Thorough criminal investigations in response to complaints by lawyers are lacking and are frequently discontinued after inadequate preliminary inquiries by prosecutors.

41. Allegations of torture and ill-treatment in detention remain common. The cases reported to OHCHR typically exhibit similar characteristics: (i) police officers conduct arrests in violation of legal procedures; (ii) detainees are denied access to a lawyer; (iii) arrests are only registered 18 hours or more post facto; (iv) detainees are reportedly ill-treated or tortured in the hours immediately following arrest; (v) ill-treatment or torture is frequently aimed at extracting confessions to crimes.

42. Deficiencies in the administration of justice are aggravated by corruption and extortion at all levels of the justice system. Police officers often use arbitrary arrest with the purpose of extorting money. In 2011, there were reports of migrants returning from Russia being targeted for extortion by border police with demands of up to US\$4,500. In early 2012, reports surfaced that individuals who had received financial compensation for damages or the death of family members during the June 2010 violence had been subjected to extortion by police officers and representatives of the local public administration.

43. The impunity of law enforcement officials for torture and other abuses remains a widespread and serious problem. Prosecutors continue to fail to effectively investigate torture allegations. Investigations into and prosecutions of cases of torture have also been closed after victims withdrew their complaints following reports of intimidation by law enforcement officials. There is no effective protection programme for victims and witnesses of torture.

44. Despite steps taken to ensure accountability of law enforcement officers, the Office of the General Prosecutor acknowledged that the percentage of cases initiated in 2011 is incommensurably low in comparison with the number of complaints received by prosecutors. Since October 2011, eight law enforcement officers have been facing prosecution for torturing detainees, abuse of power and extortion during investigations into the June 2010 violence.

45. In 2011, the General Prosecutor issued three decrees (in April, September and October), aimed at strengthening prosecutorial oversight of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, in particular in places of detention. ROCA has welcomed the decrees and continues to urge their full implementation by the authorities to ensure where appropriate that perpetrators of torture are prosecuted.

46. Following the April 2011 decree, three Memorandums of Understanding were signed between prosecutors and human rights organizations in Osh Province, Osh City and Jalal-Abad Province. These agreements set out mechanisms for regular dialogue and cooperation on the prevention and prosecution of torture within the framework of public councils. ROCA/OMO supported the establishment of these public councils, participating in discussions as an independent observer and advising all parties. Ten months after the signature of the Memorandums of Understanding, little substantial progress has been made,

due in part to the lack of trust on the part of human rights NGOs in the prosecutorial authorities and the overall lack of strategic engagement by all parties, posing challenges to the effective functioning of the public councils.

47. Closed circuit television (CCTV) cameras have been installed in the temporary police detention centres (IVS) in Jalal-Abad, and are also planned for the IVS in Osh. The Prosecutor's Office believes this will assist in preventing cases of torture and ill-treatment of detainees. ROCA has advised the General Prosecutor that while CCTV can be an additional measure to prevent torture, it is not a panacea for the human rights violations observed in detention centres, given the potential ease with which the system can be bypassed or disabled. Worse, it risks lending a measure of protection to law enforcement officials if the CCTV system proves susceptible to tampering.

48. In November 2011, ROCA supported a training seminar for lawyers and representatives of the Ombudsman Institution on strategic litigation in torture cases. ROCA, with the OSCE Centre in Bishkek, is also working with the General Prosecutor's Office on the design of a human rights training module, with a corresponding manual to reinforce the training curriculum for prosecutors.

49. ROCA/OMO supported the visit of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his visit to Kyrgyzstan from 3-5 December 2011. The Special Rapporteur concluded that there is a "serious lack of sufficiently speedy, meaningful, thorough and impartial investigations" into allegations of torture and ill-treatment, as well as a lack of effective prosecution of law enforcement officials, and that the use of torture is exacerbated by the reliance placed on confessions in the judicial system.

50. ROCA/OMO continue to ensure that individuals at risk are provided with independent legal representation free of charge through a consolidated referral system with local partners.

Trials

51. In general, trials related to the June 2010 violence do not uphold basic fair trial standards and judges have failed to respond to allegations that defendants confess to crimes under duress, with such evidence being admitted in the judicial proceedings.

52. Physical violence, intimidation and harassment targeting ethnic Uzbek defendants and their lawyers continue to occur in trials related to the June 2010 violence, despite measures taken by the authorities to increase security for such trials. Judges continue to fail to use their powers to take disciplinary measures against individuals responsible for violent assaults and intimidation inside court rooms, merely issuing verbal warnings. ROCA/OMO observed only one case where legal action was taken, against an individual alleged to have attacked lawyers in the court room.

53. In 2011, the Supreme Court reviewed appeals related to the June 2010 violence, but failed to provide a full assessment of fair trial violations, to address admissibility of confessions as evidence or to reverse verdicts of lower courts where serious claims of fair trial violations were raised.

54. For instance, on 20 December 2011, the Supreme Court upheld the life sentence handed down to human rights defender Mr. Azimjan Askarov (the case of Askarov et al) on charges of organizing mass disorder and inciting inter-ethnic hatred in connection with the June 2010 violence. However, his trials at lower courts had not met basic standards of fair trial, with, inter alia, evidence of torture having been used by law enforcement bodies to extract a confession.

55. During the reporting period, ROCA/OMO conducted trial monitoring in connection with the June 2010 violence. In general, ROCA/OMO observed flagrant violations of the right to a fair trial, including the partiality of judges, intimidation of defendants, absence of an interpreter, delayed trial proceedings, beatings of defendants and forced confessions.

D. Truth and accountability for the June 2010 violence

56. Follow-up to the recommendations to the four inquiries into the June 2010 violence is still required. The severe deficiencies in the administration of justice, together with the lack of effective response to address past violence and to bring perpetrators to justice, undermine the rule of law and threaten the peaceful coexistence of ethnic communities and the long-term stability of the country.

57. The failure of the authorities to investigate and deliver justice for the June 2010 violence has resulted in further human rights violations. The right to justice for all victims of the 2010 inter-ethnic violence has been seriously impeded. Furthermore, in many cases, victims who claim their right to compensation as provided for by law face serious obstacles as well as further harassment and intimidation by local authorities.

E. Housing, land and property

58. Access to adequate housing and the protection of housing, land and property rights remain of serious concern. The June 2010 inter-ethnic violence in Osh and Jalal-Abad further exacerbated the situation as it resulted in large-scale destruction of properties and businesses. When implementing master plans for the construction and development of urban areas, local administrations must ensure that property rights are respected and upheld. Assurance on this has been given to ROCA/OMO by the authorities of Jalal-Abad but is still pending from the Osh authorities.

59. Beneficiaries of emergency transitional shelters constructed by UNHCR and ICRC remain at risk regarding respect for their property rights. They still face obstacles concerning the technical acceptance and registration of the constructions as private property. Whereas at the time of construction, the State Directorate for reconstruction and development of the cities of Osh and Jalal-Abad (SDRD) guaranteed the full registration of the emergency shelters as permanent houses and private property, at the end of 2011, of the approximately 1,620 buildings reconstructed, only 38 were registered in Jalal-Abad city and region, with none in Osh City or the region.

60. Recent changes in the legislative and administrative frameworks governing this issue lack reference to the specific procedures necessary for property registration. Currently, this legal uncertainty makes it almost impossible for affected households to register their shelters, leaving them vulnerable to infringement of their property rights. This further impedes the right to compensation in case of expropriation or demolition, as beneficiaries lack the required registration documents necessary to file compensation claims. This vulnerability is exacerbated by previous hurdles cited by authorities against reconstructing and registering the shelters and uncertainties regarding implementation of the master plans in affected areas.

F. Education

61. In 2011, UNICEF reported that 29,000 children did not attend school in Kyrgyzstan.⁴ In the south of Kyrgyzstan, socio-cultural and economic factors were found to be the main contributors to this, including issues such as poverty, negative parental attitude towards education, migration of parents, security concerns, lack of available transportation means, language barriers at school and limited access for children with special needs.⁵ Exposure to child labour also contributed to children being out of school. During the winter season, access to education is particularly difficult in rural and remote areas, due to the combination of harsh weather conditions and poverty. Children are unable to attend school because of their lack of appropriate winter clothing, limited public transport, and the time required for travel.

62. Financial constraints limit the availability of books or other learning support materials, particularly in minority languages. The minority languages of instruction are Uzbek, Tajik and Dungan. A UNICEF project provided textbooks in Uzbek in the south of Kyrgyzstan; teaching materials in other languages, such as Tajik and Dungan, are not available.

63. In September 2011, Kyrgyz language classes were integrated into Uzbek schools in two districts in Jalal-Abad and Osh oblasts. This was reportedly at the request of parents, with the aim of ensuring a more comprehensive education for all in the Kyrgyz language. While teaching of the State language is essential, it is important that the State supports instruction for minorities in their native languages. The Government adopted the Concept of Multicultural and Multilingual Education in 2008. Although the Concept mentions the value of having education in a child's native language at primary school and, if possible, at other levels of the education system, the legislation does not contain explicit obligations to guarantee minority language education.

64. In December 2011, ROCA, with international and national partners, supported an event on language policy in the education sector. It highlighted the need for strategies to improve the quality of teaching, and access to instruction in the State language as well as inclusion in the curriculum of instruction in minority languages.

G. Gender-based violence

65. Gender-based violence, including domestic violence, remains a widespread problem, requiring an effective and comprehensive response from all relevant stake-holders. It is compounded by the lack of economic and social independence of women and the prevalence of poverty. Many women are forced to stay in an environment where violence occurs, in the absence of a functioning referral mechanism and lack of access to appropriate and professional services. Women's shelters operated by non-governmental organizations receive no financial support from central and local authorities. Women hesitate to report and, when they do, have to overcome problems such as intimidation, inadequate professional services and harassment, due in part to the lack of trained and skilled professional staff in medical, psychological and law enforcement institutions. As with all public services, there is also the risk of a lack of trust among minority ethnic populations, where centre staff are ethnically Kyrgyz.

⁴ National Statistical Committee, data collected in 2009 and published in 2010.

⁵ United Nations Children's Fund (UNICEF), *Study on identification of the main barriers to education for children of Osh, Jalal-Abad and Batken oblasts* (2011).

66. Bride kidnapping leads to 30 per cent of all marriages in the country.⁶ Some victims of bride kidnapping are reportedly under 18 years of age.⁷

67. In December 2011, ROCA organized a consultation for both central and regional authorities to promote and raise awareness about the recommendations of the Special Rapporteur on Violence against Women,⁸ and with other partners is urging the Government to undertake more work on the implementation of the 2008 CEDAW recommendations,⁹ which have only partially been implemented.

H. Minorities

68. Levels of minority representation in official bodies are low, which severely undermines the ability of minority communities to fight discrimination, to voice their specific concerns and to influence the design and implementation of public policies. ROCA is working on a detailed assessment of levels and causes of underrepresentation of minorities in elected bodies, public institutions and in law enforcement agencies. Such an assessment should generate indicators of minority exclusion from participation in public life, and provide a baseline situation analysis, with a set of recommendations on legislative norms and policy practices required to address the issues of underrepresentation.

69. There is a wide gap between the authorities' view of inter-ethnic relations and those of ethnic minority communities themselves. Authorities paint a positive picture, while communities raise concerns including: (i) the need to stop any police misconduct, in particular arbitrary arrest, extortion, ill-treatment and torture; (ii) requests for justice to be done and crimes committed during the June 2010 violence to be prosecuted; (iii) the lack of effective and meaningful participation in political and economic life; (iv) discrimination and harassment in the field of education and employment; (v) seizure of businesses and a takeover of the economic sector by ethnic Kyrgyz; (vi) migration of the male workforce to foreign countries.¹⁰

70. On 21-22 June 2011, ROCA co-organized a regional conference in Bishkek on "Advancing the Rights of Minorities in Central Asia" with a focus on effective minority participation in public life and ensuring effective participation in political, economic, social and cultural life. A concluding statement adopted by Governments' representatives pledged to strengthen efforts to further improve minority participation in the countries represented and to continue dialogue on these issues.

71. ROCA supported efforts to inform and educate minority voters about forthcoming local elections, on 4 March 2012. Local elections traditionally receive less attention than national-level elections, although they are extremely important for the situation of national and ethnic minorities. ROCA, with UNDP, is assessing the effects of voter education on voter turnout surrounding the local council elections of March 2011 in Osh, Tokmok and

⁶ Human Rights Watch report, *Reconciled to Violence: State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan*, Volume 18, No. 9 (D), (September 2006) p. 90 (footnote 341), <http://www.hrw.org/sites/default/files/reports/kyrgyzstan0906webwcover.pdf> and reported by the Special Rapporteur on violence against women, Ms. Rashida Majoo, in her report on her mission to Kyrgyzstan (A/HRC/14/22/Add.2).

⁷ 18 years is the legal age of marriage. Multiple Indicator Cluster Survey (UNICEF and the National Statistical Committee) research indicates that 12.2 per cent of women in Kyrgyzstan marry before this age (2007).

⁸ Mission to Kyrgyzstan, 2009.

⁹ See CEDAW/C/KGZ/CO/3, paras. 19-22.

¹⁰ ROCA/OMO field research, January 2012.

Batken regions. The results will be used for future large-scale voter education/information campaigns directed at increasing the civic and political engagement of the minority population.

I. Support for legal aid

72. ROCA has provided advice, guidance and capacity-building aimed at the long-term sustainability of national human rights organizations, lawyers and human rights defenders. ROCA has supported local partners in their work to provide free legal assistance and aid, which continues to be particularly needed in Osh and Jalal-Abad in cases related to the June 2010 violence.

J. Support for the Ombudsman Institution

73. ROCA contributed to the United Nations Joint Technical Assistance Programme for the Ombudsman Institution throughout 2009-2011. The Programme focused on the improvement of the internal structure and procedures regarding the review of individual complaints, the development of gender-disaggregated indicators, and the improvement of communication between the central office and provincial offices of the Ombudsman Institution. ROCA intends to support the second phase of the Joint Programme 2012-2013.

74. In December 2011, ROCA assisted the Ombudsman Institution in the preparation of its Statement on Compliance with the International Coordinating Committee Sub-Committee on accreditation, which will be reviewed in late March 2012.

III. Cooperation of Kyrgyzstan with the United Nations human rights mechanisms

75. On 6 September 2011, the Parliamentary Committee on health care, social policy, labour and migration approved the accession of Kyrgyzstan to the United Nations Convention on the Rights of Persons with Disabilities. It was signed by the Minister of Foreign Affairs in New York on 25 September 2011.

76. In October 2011, in order to promote ratification of the Convention, ROCA organized an international conference on the Convention in cooperation with the Open Society Institute and the public association Movement of Young Disabled People. This event took place with participation of the relevant authorities, international experts and local groups of persons with disabilities.

77. On 20 February 2012, the Prime Minister formally approved reports on the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Approval is still pending for the prepared drafts of the common core document and the draft periodic report for the Convention against Torture. Drafting of these reports was undertaken by a working group comprising representatives from the Ministry of Foreign Affairs and five national experts. On 12 August 2011, ROCA facilitated a round table at which the State authorities and civil society discussed the draft national periodic reports. The final national periodic reports to the United Nations human rights bodies are to be submitted to relevant United Nations treaty bodies in the spring of 2012.

78. In December 2011, ROCA organized a workshop for government officials and NGO representatives on individual communications to United Nations human rights mechanisms.

The overall objective was to raise awareness of the United Nations human rights mechanisms, relevant procedures and the obligations of the State in this area, including cooperation with the relevant committees, and to discuss strategies and mechanisms for the implementation of recommendations.

79. A draft decree on the Universal Periodic Review (UPR) Action Plan, which will serve as a basis for implementation of the accepted recommendations from the 2010 review, has been open for public comments since September 2011. At that time ROCA assisted with the organization of the first and only public discussion of the draft Action Plan. Due to internal changes in the Ministry of Justice, the draft Action Plan has not been finalized. ROCA is providing guidance on steps to be taken for the formal adoption of the Action Plan, as well as for the preparation of an interim report on the implementation of the accepted UPR recommendations.

80. In addition, ROCA is advising the authorities on an overall comprehensive approach to the implementation of recommendations of the United Nations Human Rights mechanisms – treaty bodies, Human Rights Council special procedures and UPR. The Presidential Administration has announced its intention to create an interdepartmental body for the implementation of recommendations of all United Nations Human Rights mechanisms, and would link in recommendations from the reports of the High Commissioner and the Commissions of Inquiry into the June 2010 violence, including that of the Kyrgyzstan Inquiry Commission (KIC). ROCA is advising on the formation of this interdepartmental body, with a recommendation that it coordinate with civil society and the Ombudsman Institution, and be supported by the United Nations system and the donor community.

IV. Conclusions and recommendations

81. **The United Nations High Commissioner for Human Rights welcomes the continued cooperation between the Government and other relevant State authorities of Kyrgyzstan and OHCHR, and supports the commitment of the Government to taking steps to improve the national human rights protection system. The efforts it has made to bring national laws into line with international human rights standards illustrates the will to comply with its obligations.**

82. **The High Commissioner commends the Government of Kyrgyzstan for its efforts in connection with legislative reforms and the adoption of policies that promote and protect human rights. However, concerns remain about continued delays in the adoption or implementation of these new policies and legislation.**

83. **The ongoing judicial reform is a major challenge particularly with regard to the selection of judges. An independent and impartial judiciary is a fundamental guarantee for a democratic State based on the rule of law. The selection of judges should be carried out in a transparent and impartial manner, in line with international human rights standards. Also, the integration of a gender perspective in the justice system is key to ensuring the representation of women in the judiciary.**

84. **In addition to all her previous recommendations, the High Commissioner has formulated the recommendations which follow.**

On discrimination

85. **The authorities should take all appropriate measures to ensure equality and non-discrimination in all spheres of public and political life. Rights guaranteed by international and national human rights law should be exercised without**

discrimination of any kind, including any form of indirect discrimination or perceived discrimination, in particular regarding access to social and health services, participation in public life, law enforcement and judiciary and any other public service.

On administration of justice

86. The authorities should urgently address investigative deficiencies, severe patterns of abuses and widespread corruption of the police forces through a comprehensive reform, with the support of the international community. Urgent changes are needed in particular in the criteria for assessment of the performance of law enforcement bodies and in the incentive structure for investigators and police officers.

87. The authorities should support continued efforts of the Office of the General Prosecutor to strengthen prosecutorial functions and performances. The orders issued in 2011 by the General Prosecutor on strengthening prosecutorial oversight (regulations N40, N70 and N76) should be supported to enable their comprehensive implementation.

88. The authorities should take urgent steps to address the current and past deficiencies in the protection of rights to fair trials. The Government should conduct an assessment of all judicial proceedings related to the June 2010 violence reviewed by the Supreme Court and in which there have been allegations of serious violations of defendants' fair trial rights. In case of a retrial, the hearings should take place in the north of the country in order to ensure the impartiality of judges.

89. The authorities should ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Judges should have recourse to disciplinary measures, including administrative detention, to halt violent behaviour in audiences attending trials. Prosecutors should react promptly to attacks against lawyers and witnesses and launch criminal investigations for serious incidents.

On torture and detention

90. The authorities should ensure timely and effective investigations into all cases and allegations of torture and ill-treatment, and ensure that victims are protected from adverse repercussions when investigations or prosecutions of law enforcement bodies are launched.

91. The authorities should bring national legislation into compliance with the Convention against Torture and establish clear procedural legal safeguards against torture at all stages of the legal process.

92. The authorities should complete the reform of the police and declare unambiguously that torture and ill-treatment will not be tolerated, and that perpetrators will be held to account.

On economic, social and cultural rights

93. The authorities should make efforts aimed at the development of policies and programmes for poverty alleviation and eradication, with special emphasis on vulnerable groups, including people with disabilities, women and children, and mainstream a gender perspective into all relevant policies and programmes being developed.

On housing, land and property

94. The authorities should take all appropriate steps to ensure that people whose houses were rebuilt following their destruction in the June 2010 violence receive all the necessary documents to register the houses as private property and thus ensure that they do not remain vulnerable to arbitrary interference in their land and property rights.

95. The authorities should continue their efforts to develop a comprehensive national housing strategy, including a social housing component, to ensure that the right to adequate housing is fully realized, as expressed in general comment No. 9 (1998) of the Committee on Economic, Social and Cultural Rights.

On education

96. The authorities should take appropriate measures to ensure that all children enjoy full access to primary education and beyond.

97. The authorities should take all appropriate steps to ensure that all children are provided with a high standard of instruction in the State and official languages of Kyrgyzstan, and that minorities enjoy access to education in their own language, with instruction in minority languages progressively integrated into the curriculum.

On gender equality and gender-based issues

98. The authorities should prioritize the fight against any form of gender-based violence, such as domestic violence, forced marriages and trafficking in human beings. This should include the strengthening of provisions for the investigation and punishment of such crimes, support for and protection of victims, and raising public awareness. The authorities should further adopt measures to ensure full compliance with laws criminalizing bride kidnapping, forced marriage and polygamy, and should ensure mechanisms of protection for victims of domestic violence.

99. The authorities should fully support the establishment of a separate body in the executive power that would be tasked with formulating a comprehensive State policy on gender equality and coordinate its implementation among various government entities.

On minorities

100. The authorities, at all levels, should publicly condemn any attacks against minorities, including hate speech and hate crime, and ensure that such attacks are investigated in order to bring the perpetrators to justice.

101. The authorities should undertake inclusive and longer-term measures with respect to linguistic policy, education and participation in decision-making for minorities.

102. The authorities should take all appropriate measures to ensure better representation of minorities in Parliament, Government and in public administration, by eliminating obstacles preventing their appointment or restricting their promotion.

On the Ombudsman Institution

103. Parliament should remove from the Law on the Ombudsman those provisions that are not in line with the Paris Principles. The Ombudsman Institution should intensify its efforts to comply fully with the Paris Principles.

104. The Ombudsman Institution should continue its efforts to become a more effective entity to promote and protect human rights and should ensure that its representative offices in the various provinces of Kyrgyzstan effectively address cases of human rights violations.

On human rights mechanisms

105. The Government should submit as soon as possible any overdue reports to international human rights treaty bodies, and increase its responses to communications from special procedures of the Human Rights Council, and views of the United Nations Human Rights Committee on individual communications.

106. The Government should establish an interdepartmental body reporting to the Presidential Administration to implement the recommendations of the United Nations Human Rights mechanisms. Participation of all key ministries and other relevant stakeholders, such as the Ombudsman Institution and civil society, should be ensured. The Government should consider submitting an interim report to the universal periodic review on the implementation of recommendations accepted in September 2010.

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