COMPENDIUM[1]

Kyrgyzstan's Compliance with Human Rights Obligations: Compendium of Recommendations, Concluding Observations and Decisions of the U.N. Human Rights Council Universal Periodic Review (UPR), Special Procedures, and Treaty Bodies

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INTRODUCTION

This Report provides an overview of the actions that the Kyrgyz Republic should undertake to comply with its human rights obligations as specifically recommended by State parties under the U.N. Human Rights Council Universal Periodic Review (UPR) process, by Special Rapporteurs completing missions to Kyrgyzstan, the Concluding observations of various Treaty Bodies to which Kyrgyzstan is a party, and the decisions of the Human Rights Committee in cases brought under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Over the past decade, the U.N. Human Rights Council, its Special Rapporteurs, and various Treaty Bodies have called upon Kyrgyzstan to improve its compliance with human rights standards and recommended specific actions that the Kyrgyz Republic should take to better protect, respect, promote and fulfill human rights pursuant to its treaty obligations. This Report also includes the recommendations given by the Kyrgyz Inquiry Commission which investigated events in southern Kyrgyzstan in June 2010, as well as those in the report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan.

The Report contains four parts. Section 1 briefly describes the various bodies that have issued recommendations or decisions relating to the Kyrgyz Republic regarding its compliance with international human rights standards and treaties, and their authorities under international law. Section 2 describes the actions recommended or required in the sphere of civil and political rights, including in the areas of criminal procedure, torture and treatment in detention, fair trial, freedom of expression and association, and minorities. Section 3 describes the actions recommended in the sphere of economic, social and cultural rights, and Section 4 presents recommendations on the treatment of protected groups, including women and children.

This Report also contains an Appendix with short summaries of decisions made by the Human Rights Committee under the Optional Protocol to the ICCPR regarding individual complaints brought against Kyrgyzstan.

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SECTION 1: AUTHORITIES FOR THE UNIVERSAL PERIODIC REVIEW PROCESS, SPECIAL RAPPORTEURS AND TREATY BODIES

Kyrgyzstan has a number of obligations to implement human rights, including civil, political, economic, social and cultural rights, as a member of the United Nations, participant of the U.N. Human Rights Council and as a State Party to International Human Rights Treaties. The United Nations Human Rights Council and the Treaty Bodies have provided recommendations to Kyrgyzstan under the following mandates and authorities.

1.1 UNITED NATIONS HUMAN RIGHTS COUNCIL

Universal Periodic Review Process

Under the Universal Periodic Review (hereinafter "UPR") mechanism of the U.N. Human Rights Council, Kyrgyzstan's observation of human rights was reviewed by State parties in 2010 and States provided a number of recommendations[2] to Kyrgyzstan within the scope of civil, political, economic, social, cultural rights. These are discussed in Sections 2, 3, and 4 of this Report.

The U.N. High Commissioner for Human Rights

The U.N. High Commissioner for Human Rights issued a report on technical assistance and cooperation on human rights for Kyrgyzstan on April 1, 2011.[3] The recommendations of these findings are discussed in Sections 2, 3, and 4 of this Report.

Special Procedures

Under the Human Rights Council Special Procedures[4], Kyrgyzstan was visited and issued recommendations by Juan Mendes, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment[5] in 2011; Okechukwu Ibeanu, Special Rapporteur on toxic and dangerous wastes[6] in 2009; Rashida Manjoo, Special Rapporteur on Violence against Women[7] in 2009; Leandro Despouy, Special Rapporteur on independence of judges and lawyers[8] in 2005; Bernards Mudho, Independent Expert on structural adjustment policies and foreign debt[9] in 2004; and Hina Jilani, Special Representative of the Secretary General on the situation of human rights defenders[10] in 2001. Their

[2] Report of the Working Group on the Universal Periodic Review on Kyrgyzstan, Human Rights Council, A/HRC/15/2, dated from June 16, 2010 (hereinafter "UPR ").

[3] Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan, A/HRC/17/41, dated from April 1, 2011.

[4] Special procedures is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special procedures are either an individual ("Special Rapporteur" or "Independent Expert") or a working group. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities. Mandate holders also carry out country visits to investigate the situation of human rights at the national level. After their visits, special procedures' mandate-holders issue a mission report containing their findings and recommendations.

[5] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, mission to Kyrgyzstan, A/HRC/19/61/Add.2, dated from February 21, 2012 (hereinafter "SR on Torture").

[6] Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu, mission to Kyrgyzstan, A/HRC/15/22/Add.2, dated from June 24, 2010 (hereinafter "SR on toxic and dangerous wastes").

[7] Report of Special Rapporteur on Violence against women, its causes and consequences, Rashida Manjoo, mission to Kyrgyzstan, A/HRC/14/22/Add.2, dated from May 28, 2010 (hereinafter "SR on VAW").

[8] Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, mission to Kyrgyzstan, E/CN.4/2006/52/Add.3, dated from December 30, 2005 (hereinafter "SR on Judiciary).

[9] Report of Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social an cultural rights, Bernards Mudho, mission to Kyrgyzstan, E/CN.4/2005/42/Add.1, dated from January 20, 2005 (hereinafter "IE on policies and foreign debt").

[10] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002 (hereinafter "SR on HR defenders").

mission reports contain findings and recommendations for Kyrgyzstan, reflected in Sections 2, 3 and 4 of this Report.

1.2 TREATY BODIES OF CONVENTIONS TO WHICH KYRGYZSTAN IS A STATE PARTY

Human Rights Committee

Kyrgyzstan acceded to the International Covenant on Civil and Political Rights (hereinafter "ICCPR") in 1994 by which Kyrgyzstan expressed its consent to be bound by provisions of ICCPR. The Human Rights Committee (hereinafter "HRC") is a Treaty Body monitoring the implementation of ICCPR by its State parties. The HRC considered the initial report of the Kyrgyz Republic[11] and adopted the Concluding observations in 2000,[12] in which it addressed its concerns and provided recommendations to Kyrgyzstan. These are examined in Section 2 of this Report.

Kyrgyzstan acceded to the First Optional Protocol to the ICCPR (hereinafter "OP 1 to the ICCPR") in 1994. The OP 1 to the ICCPR gives the HRC competence to examine individual communications/complaints with regard to alleged violations of the ICCPR by States. The HRC issued eleven decisions in examining fourteen individual communications against Kyrgyzstan where it found violations of individuals' civil and political rights. Kyrgyzstan acceded to the Second Optional Protocol to the ICCPR on the abolition of the death penalty (hereinafter "OP 2 to the ICCPR") in 2010. The Human Rights Committee decisions on individual communications against Kyrgyzstan are contained in Section 2 of this Report and summarized in the Appendix.

Committee on Economic, Social and Cultural Rights

Kyrgyzstan acceded to the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR") in 1997. The Committee on Economic, Social and Cultural Rights (hereinafter "Committee on ESCR") is a Treaty Body monitoring the implementation of the ICESCR by its State parties. The Committee on ESCR considered the initial report and issued Concluding observations with recommendations to Kyrgyzstan in 2000.[13] These, for the most part, are examined in Section 3 of this Report. Kyrgyzstan is not a party to the Optional Protocol to the ICESCR, which allows the Committee on ESCR to examine individual complaints with regard to alleged violations of the ICESCR.

Committee on Torture

Kyrgyzstan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "CAT") in 1997. The Committee on Torture (hereinafter "CAT Committee") is a Treaty Body monitoring the implementation of CAT. The CAT Committee considered the initial report and adopted Concluding observations in July 2000,[14] in which it addressed its concerns and provided recommendations to Kyrgyzstan. These are examined in Section 2 of this Report.

Committee on Elimination of all Forms of Discrimination against Women

Kyrgyzstan acceded to the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW") in 1997. The Committee on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW Committee") is a Treaty Body monitoring the implementation of CEDAW by its State parties. The CEDAW Committee considered the initial report of

[11] All States parties are obliged to submit regular reports to the treaty-bodies on how the rights are being implemented. States must report initially after acceding to the treaty and then whenever the treaty-body requests.

[12] The Human Rights Committee considered the initial report of the Kyrgyz Republic in 2000, and adopted the Concluding observations, CCPR/CO/69/KGZ, dated from July 24, 2000 (hereinafter "HRC, Concluding observations").

[13] Concluding observations of the Committee on Economic, Social and Cultural Rights to Kyrgyzstan, E/C.12/1/Add.49, dated from September 1, 2000 (hereinafter "Committee on ESCR, Concluding observations").

[14] The CAT Committee considered the initial report of the Kyrgyz Republic at its 403rd, 406th and 408th meetings on 16-18 November 1999 and adopted the conclusions and recommendations (A/55/44, paras.70-75) dated from November 18, 1999 (hereinafter "CAT Committee, Concluding observations").

the Kyrgyz Republic in 1999, second periodic report in 2004, and third periodic report in 2008[15] in which it addressed its concerns and provided recommendations to Kyrgyzstan. The Concluding observations of the Committee's review in 2008 are examined in Section 4 of this Report. Kyrgyzstan ratified the Optional Protocol to the CEDAW in 2002, which allows the CEDAW Committee to examine individual complaints with regard to alleged violations of the CEDAW by States. The CEDAW Committee has not examined any individual complaints against Kyrgyzstan.

Committee on the Rights of the Child

Kyrgyzstan acceded to the Convention on the Rights of the Child (hereinafter "CRC") in 1993. The Committee on the Rights of the Child (hereinafter "CRC Committee") is a Treaty Body monitoring the implementation of the CRC by its State parties. The CRC Committee considered the initial report of the Kyrgyz Republic in 2000, and its second periodic report in 2004[16], in which it addressed its concerns and recommendations to Kyrgyzstan. The Concluding observations of the Committee's review in 2004 are examined in Section 4 of this Report. Kyrgyzstan acceded to the CRC Optional Protocol on Armed conflict and to the CRC Optional Protocol on Sale of Children in 2003. In 2007 the CRC Committee issued Concluding observations on both initial reports of Kyrgyzstan.[17]

Committee on the Elimination of All Forms of Racial Discrimination

Kyrgyzstan acceded to the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD") in 1997. The Committee on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD Committee") is a Treaty Body monitoring the implementation of CERD by its State parties. The CERD Committee considered the initial report of the Kyrgyz Republic in 1999 and then combined second, third and fourth periodic reports in 2007[18] in which it addressed its concerns and recommendations to Kyrgyzstan. These are presented in Section 4.

Committee on Migrant Workers

Kyrgyzstan acceded to the International Convention on the Protection of All Migrant workers and Members of their Families in 2003. The Committee on Migrant Workers is a Treaty Body monitoring the implementation of the Convention on Migrant Workers. Kyrgyzstan has not submitted any reports. It is discussed in Sections 3 and 4.

Rights of Persons with Disabilities

Kyrgyzstan signed the Convention on the Rights of Persons with Disabilities in 2011, discussed in Section 4.

1.3 THE KYRGYZ INQUIRY COMMISSION

In July 2010, following inter-ethnic violence in Southern Kyrgyzstan, the former President Roza Otunbayeva invited Dr. Kimmo Kiljunen, Special Representative for Central Asia of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, to form an Independent International Commission of Inquiry into the events in southern Kyrgyzstan and suggest the necessary measures for achieving justice, accountability, and reconciliation. The Kyrgyz Inquiry Commission (KIC) was established and undertook its investigation in 2010-2011. On May 3, 2011 it issued its recommendations discussed in Section 2 of this Report.

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[15] Concluding observations of the Committee on Elimination of all Forms of Discrimination against Women to Kyrgyzstan, CEDAW/C/KGZ/CO/3, dated from November 14, 2008 (hereinafter "CEDAW Committee, Concluding observations").

[16] Concluding observations of the Committee on the Rights of the Child to Kyrgyzstan, CRC/C/15/Add.244 dated from November 3, 2004 (hereinafter "CRC Committee, Concluding observations").

[17] Concluding observations of the Committee on the Rights of the Child to Kyrgyzstan, CRC/C/OPAC/KGZ/CO/1 dated from May 2, 2007 (hereinafter "CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict") and CRC/C/OPSC/KGZ/CO/1 dated from May 4, 2007 (hereinafter "CRC Committee, Concluding observations under the Optional Protocol on Sale of Children").

[18] Concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination to Kyrgyzstan, CERD/C/KGZ/CO/4 dated from August 17, 2007.

SECTION 2: CIVIL AND POLITICAL RIGHTS: RECOMMENDATIONS OF THE U.N. AND TREATY BODIES

2.1 RATIFICATION OF INTERNATIONAL TREATIES

Kyrgyzstan had been recommended to ratify the Second Optional Protocol to the ICCPR on abolition of death penalty, as soon as possible.[19] Kyrgyzstan responded to the recommendations and ratified OP 2 to the ICCPR in 2010.

During the UPR review, States recommended that Kyrgyzstan ratify the following additional treaties:

- International Convention for the Protection of All Persons from Enforced Disappearance;[20]
- Convention on the Rights of Persons with Disabilities[21] and its Optional Protocol;[22] and
- Rome Statute of the International Criminal Court,[23] including accession to the Agreement on Privileges and Immunities.[24]

They also recommended Kyrgyzstan accomplish the Human Rights Voluntary Goals set out in resolution 9/12 of the Human Rights Council.[25]

2.2 CONSTITUTIONAL REFORM, RULE OF LAW AND GOOD GOVERNANCE

In 2010 when Kyrgyzstan was adopting constitutional reforms, States participating in the UPR process recommended that Kyrgyzstan take the following actions:

- Establish constitutional reforms that will guarantee the separation of powers, the rule of law, […] and the civil and democratic rights of Kyrgyzstan's citizens;[26]
- Provide for the comprehensive protection and promotion of all human rights and fundamental freedoms,[27] with particular emphasis on the rights of women and children;[28]
- Re-establish expeditiously constitutional order and the rule of law in the country, and ensure full accountability for all human rights violations following the events of 6 to 7 April 2010;[29] and
- Abide by all of its international obligations and commitments[30] and ensure an early return to constitutional order, the rule of law and respect for human rights.[31]

Within the holding of the referendum on the new constitution and parliamentary elections in 2010, State parties recommended to the Interim Government of Kyrgyzstan to:

- Guarantee the right of all citizens to participate, without discrimination, in the country's public and political life, including the right to vote and be elected;[32]
- Hold open and transparent,[33] free and fair[34] elections, consider inviting international observers to ensure that the new authorities are elected democratically and by legal means;[35] and

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[19] Report of the Working Group on the Universal Periodic Review on Kyrgyzstan, Human Rights Council, A/HRC/15/2, dated from June 16, 2010 (hereinafter "UPR "), recommendation by Belgium, para. 76.2.
[20] UPR, recommendations by Brazil, para. 77.1; France, para. 77.2; Spain, para, 77.4; Argentina para. 77.9; Uruguay, para. 77.11.
[21] UPR, recommendations by Iran, para. 77.3.
[22] UPR, recommendations by Brazil, para. 77.1; Spain, para. 77.4; Algeria, para. 77.5; Jordan, para. 77.6; Egypt, para. 77.7; Argentina, para. 77.9.
[23] UPR, recommendations by Austria, para. 77.8; Brazil, para. 77.1; Uruguay, para. 77.11.
[24] UPR, recommendations by Slovakia, para. 77.10.
[25] UPR, recommendations by Brazil, para. 77.1.
[26] UPR, recommendations by Germany, para. 76.4.
[27] UPR, recommendations by Pakistan, para. 76.5, Armenia, para. 76.7.
[28] UPR, recommendations by Egypt, para. 76.6.
[29] UPR, recommendations by Slovakia, para. 76.8.
[30] UPR, recommendations by Lithuania, para. 76.16.
[31] UPR, recommendations by Latvia, para. 76.12; Switzerland, para. 76.38.
[32] UPR, recommendations by Mexico, para. 76.90.

- Urgently take all steps necessary to ensure the holding of the referendum on the new constitution and parliamentary elections – announced for 27 June and 10 October 2010 - in a free, fair and democratic manner, and fully take into account the relevant expert opinion of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe as well as of the Venice Commission of the Council of Europe.[36]

To improve the **rule of law**, Kyrgyzstan was recommended to:

- Continue to implement its national plans, including for the reform of its human rights legislation, and further to improve the effectiveness of enforcing its national laws;[37]
- Continue more actively the pursuit of perpetrators of human rights violations;[38]
- Review the compliance of its national legislation with provisions of ICCPR on freedom of expression, association and assembly;[39]
- Provide for the comprehensive protection and promotion of all human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights;[40]
- Improve and strengthen good governance, institutions and the rule of law for long-term stability;[41]
- Seek to incorporate human rights considerations in accordance with Kyrgyzstan's international obligations in any reform process it plans to carry out;[42] and
- Ensure that judges, as the rule of law guarantors, were guided exclusively by the new Constitution of Kyrgyzstan and applicable international human rights standards.[43]

Regarding **corruption**, States though the UPR mechanism recommended Kyrgyzstan seize this opportunity to create a corruption-free environment,[44] fight corruption at all levels,[45] and adopt a zero-tolerance policy towards corruption.[46]

2.3 COOPERATION WITH THE INTERNATIONAL COMMUNITY AND CIVIL SOCIETY

Under the theme of cooperation with the U.N., civil society organizations, and other states, State parties through the UPR process recommended that Kyrgyzstan:

- Continue to cooperate with the United Nations and the Human Rights Council in protecting and promoting human rights;[47]
- Further improve its cooperation with all United Nations human rights mechanisms, submitting its overdue reports to Treaty Bodies, as well as its response to communications of the special procedures;[48]

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[33] UPR, recommendations by Tajikistan and Pakistan, para. 76.92; Afghanistan, para.76.94; Lebanon, para. 76.99.
[34] UPR, recommendations by Canada, para. 76.93.
[35] UPR, recommendations by Mexico, para. 76.97, Czech Republic, para. 76.98.
[36] UPR, recommendations by Austria, para. 76.9; Ireland, para. 76.10; Italy, para. 76.11; Norway, para. 76.42; Slovenia, para. 76.95; United Kingdom of Great Britain and Northern Ireland, para. 76.96.
[37] UPR, recommendations by Saudi Arabia, para. 76.13.
[38] Concluding observations of the Committee on Economic, Social and Cultural Rights to Kyrgyzstan, E/C.12/1/Add.49, dated from September 1, 2000 (hereinafter "Committee on ESCR, Concluding observations"), para. 24.
[39] UPR, recommendations by Czech Republic, para. 76.17.
[40] UPR, recommendations by Tajikistan, para. 76.19.
[41] UPR, recommendations by Kazakhstan, para. 76.22.
[42] UPR, recommendations by Lebanon, para. 76.40.
[43] Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan, A/HRC/17/41, dated from April 1, 2011, para. 78 (b).
[44] UPR, recommendations by Singapore, para. 76.32.
[45] UPR, recommendations by Jordan, para. 76.29.
[46] UPR, recommendations by Tajikistan, para. 76.27; Afghanistan, para. 76.28.
[47] UPR, recommendations by Lao People's Democratic Republic, para. 76.41.

- Strengthen cooperation with the international community and organizations including the United Nations in building capacity and technical cooperation in crucial areas such as poverty eradication, increase access to sanitation, and education, and combat drug abuse and illegal drug trafficking;[49]
- Make efforts to strengthen national capacities in the field of human rights while benefiting from the technical assistance of the Office of the High Commissioner for Human Rights;[50]
- Cooperate actively with the international community and international financial institutions in the implementation framework for development cooperation programmes, in order to fully implement the protection and promotion of human rights;[51]
- Share experience and good practices with others;[52]
- Work closely with civil society organizations and other international organizations in the implementation of the recommendations emanating from this process;[53]
- Allow the forces of a free society (human rights defenders, journalists and lawyers working in defence of a free media, civil liberties and human rights in Kyrgyzstan) to operate in the country;[54] and
- Ensure that the basic civil and political rights of civil society organizations are protected in line with the obligations set out in the ICCPR.[55]

2.4 NATIONAL HUMAN RIGHTS INSTITUTION, LEGISLATION AND AWARENESS RAISING

The UPR States and Treaty Bodies a number of times recommended Kyrgyzstan establish, as soon as possible, a National Human Rights Institution, accredited with the International Coordinating the Committee of the National Human Rights Institutions,[56] in conformity with the Paris Principles (1991),[57] strengthen the mandate of the Ombudsman;[58] and establish a national preventive mechanism that will constitutionally guarantee the rights of all people, particularly the rights of minorities.[59]

Under the UPR procedure the States recommended Kyrgyzstan to speed up the drafting of the strategy to protect human rights and civil rights.[60] The Committee on Economic, Social and Cultural Rights also encouraged earlier that Kyrgyzstan elaborate and implement a national action plan for human rights in accordance with the 1993 Vienna Declaration and Plan of Action.[61]

The Human Rights Committee (hereinafter "HRC") was concerned that the Law on Public Emergency in the Kyrgyz Republic does not specifically restrict the power of derogation from specific ICCPR provisions. Kyrgyzstan should take measures to bring its Law on Public Emergency into compliance with article 4 of the ICCPR.[62]

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[48] UPR, recommendations by Slovakia, para. 76.44; Brazil, para. 77.22; France, para. 77.23; Spain, para. 77.24; Austria, para. 77.26; Czech Republic ; Uruguay, para. 77.28; Republic of Korea, para. 77.29; Latvia, para. 77.30.
[49] UPR, recommendations by Malaysia, para. 76.126.
[50] UPR, recommendations by Iran, para. 76.127.
[51] UPR, recommendations by Kazakhstan, para. 76.123.
[52] UPR, recommendations by Lao People's Democratic Republic, para. 76.125.
[53] UPR, recommendations by Austria, para. 76.43.
[54] UPR, recommendations by Norway, para. 76.87.
[55] UPR, recommendations by Spain, para. 76.88.
[56] UPR, recommendations by Algeria, para. 77.16.
[57] Committee on ESCR, Concluding observations, para. 25; UPR, recommendations by United Kingdom of Great Britain and Northern Ireland, para. 76.15; Democratic People's Republic of Korea, para. 76.21; Malaysia, para. 77.17; by Egypt, para. 77.19.
[58] UPR, recommendations by Norway, para. 77.18
[59] UPR, recommendations by Tajikistan, para. 76.20; Turkey, para. 23, by China, para. 76.24; by Afghanistan, para. 76.25.
[60] UPR, recommendations by Libyan Arab Jamahiriya, para. 76.34.
[61] Committee on ESCR, Concluding observations, para. 26.
[62] Concluding observations of the Human Rights Committee, CCPR/CO/69/KGZ, dated from July 24, 2000 (hereinafter "HRC, Concluding observations"), para. 12; article 4.2 of the ICCPR provides that there shall be no

The HRC noted that the general public in the Kyrgyz Republic, as well as public officials, remain insufficiently aware of the ICCPR and its Optional Protocol and the accompanying mechanisms.[63] It further stated that measures should be taken to enhance awareness of the ICCPR, and its Optional Protocol through a programme of dissemination of human rights texts and the systematic training of all persons involved in the administration of justice, in particular judges, lawyers, prosecutors and prison personnel.[64]

The Special Representative on human rights defenders recommended that the Government of the Kyrgyz Republic strengthen its institutions; this should be a priority on the agenda of reform. The Special Representative stated that steps for building public confidence in the independence of the judiciary are critical for the legislative framework in order to make a positive impact on the situation of human rights in the country, and to provide better protection to human rights defenders.[65]

2.5 EQUALITY AND NON-DISCRIMINATION

Under article 2 of the ICCPR each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ICCPR, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[66] The UPR recommended Kyrgyzstan review compliance of its national legislation with provisions of the ICCPR on non-discrimination, in particular with regard to women, persons of minority ethnicity, sexual orientation or gender identity.[67]

A number of recommendations were made on different categories of the population:

- *Women;*
- *Sexual orientation and gender identity;*
- *Children;*
- *Race;*
- *Persons with Disabilities; and*
- *Refugees.*

derogation from articles 6 (right to life and its protection), 7 (right to be free from torture or to cruel, inhuman or degrading treatment or punishment), 8 (paragraphs 1 (prohibition of slavery).

[63] HRC, Concluding observations, para. 6.

[64] HRC, Concluding observations, para. 6.

[65] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002, para. 176.

[66] The ICCPR, article 2.1.

[67] UPR, recommendations by Czech Republic, para. 77.13.

2.6 THE JUDICIARY

During the 2010 UPR review, States expressed concern about the **independence of the judiciary** in Kyrgyzstan.[68] States recommended Kyrgyzstan ensure that the independence of the judiciary is fully guaranteed in its legal framework[69] and that guarantees of fair trial for everyone are implemented.[70] They also recommend Kyrgyzstan provide training programmes on human rights for the judiciary, law enforcement personnel and lawyers,[71] especially on the process of the gradual entry into force of the 2009 Law on Jury Trials.[72]

The Committee on Economic, Social and Cultural rights was concerned that the independence of the judiciary may be impaired in cases where the designation of high court judges is effected without full participation of the legislature. The Committee was particularly concerned to learn about cases of criminal prosecution of human rights activists, and the dissolution of the Kyrgyz Committee for Human Rights, which operated in exile.[73] Moreover the Committee noted with concern that, according to information at the disposal of the Committee, the **"tribunals of eminent persons"** convened informally to discuss issues of law and order in local communities often take upon themselves the functions of the judiciary, including recommendations on the death penalty.[74]

At the invitation of the Government of Kyrgyzstan, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy**,** carried out a mission to Kyrgyzstan from 18 to 22 September and 1 October 2005. The Special Rapporteur, in his mission report dated from December 30, 2005,[75] made the following recommendations:[76]

- The Constitutional Court should in no way be downgraded to a chamber of the Supreme Court. Furthermore, the right of individuals to bring complaints on the constitutionality of official acts should be reintroduced;
- The supervisory power of the prosecutor should be repealed. The power to issue warrants for arrest, detention, search and seizure should be transferred from the procuracy to the judiciary as a matter of priority and not be postponed to 2010, as envisaged by the draft constitutional amendments; and
- The judiciary should be accorded greater control over the budgetary funds allocated to the court system. The Special Rapporteur noted that the Supreme Court and the Constitutional Court already enjoy budgetary autonomy but he would welcome further autonomy for the lower courts. At the same time, a proper independent auditing of the judiciary should be guaranteed.

The Special Rapporteur on the Judiciary was concerned that the conduct of judicial proceedings does not sufficiently conform to the principle of equality of arms, and that the **prosecutor** currently exerts excessive control over the proceedings at both the pretrial and trial stages. Furthermore, higher-level prosecutors could bring special appeals even after a final judgement had been rendered. He indicated that it is vital that steps be taken, in law and in practice, to reduce the dominant role of the prosecutor in judicial proceedings in order to ensure a fairer balance between the respective roles of the prosecutor and the defense lawyer. The Special Rapporteur made the following recommendations:[77]

- The constitutional guarantee on **access to a lawyer** as from the moment of arrest should be reflected in the Criminal Procedural Code and implemented in a consistent and effective manner.

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[68] UPR, recommendations by Ireland, para. 70; the Republic of Korea, para. 71.
[69] UPR, recommendations by Ireland, para. 76.66; Germany, para. 76.4.
[70] UPR, recommendations by Austria, para. 76.70.
[71] UPR, recommendations by Jordan, para. 76.68.
[72] UPR, recommendations by Hungary, para. 76.67.
[73] Committee on ESCR, Concluding observations, para. 12.
[74] Committee on ESCR, Concluding observations, para. 13.
[75] Report of the Special Rapporteur on the independence of judges and lawyers, Mission to Kyrgyzstan, E/CN.4/2006/52/Add.3, December 30, 2005 (hereinafter "SR on Judiciary").
[76] SR on Judiciary, para. 82.
[77] SR on Judiciary, para. 83.

The requirement that a lawyer should obtain permission from the investigator before gaining access to his or her client should be repealed;

- The system for legal aid should be drastically improved to ensure that all persons who are accused of a criminal offence have access to an independent legal counsel and that advocates receive adequate remuneration for legal aid;
- The use of **metal cages** in courtrooms should be discontinued, particularly in the case of persons accused of non-violent offences, as this practice seriously questions the principle of the presumption of innocence;
- The introduction of a **summary procedure** (rendering summary judgment in cases where the defendant admits to the charges),[78] as foreseen by the draft Criminal Procedure Code, may encourage the use of torture or ill-treatment to obtain confessions. Any such procedure must be complemented by sufficient procedural safeguards;
- Existing procedure allowing judges **to remit cases for further investigation**, as in cases where the prosecutor had failed to provide sufficient evidence to convict, should be repealed. In the event that the prosecution failed to present sufficient evidence to convict, the defendant should be acquitted;
- Steps should be taken, in the context of the reform of the Criminal Code, to introduce **alternatives to the deprivation of liberty** and to reduce the upper limit of prison sentences;
- In the interests of legal certainty and the right to a trial within a reasonable time, the procedure for appellate review should be amended to ensure that the higher courts render **final decisions**, as opposed to returning cases to the lower courts for further review; and
- The right of prosecutors to bring special appeals, known as **supervisory reviews**, even after cases have been closed, should be repealed. This practice has a negative impact on the equality of arms and undermines the principle of legal certainty. The reopening of closed cases should be made subject to an exhaustive list of preconditions, such as the existence of new evidence on behalf of the person convicted.[79]

The Special Rapporteur on the Judiciary was of the opinion that the **judiciary** must be significantly strengthened in order to enable it to act as a fully independent institution capable of protecting fundamental human rights and freedoms.[80] In this regard, the Special Rapporteur made the following recommendations, which should be seen in the context of the ongoing process of constitutional reform:

- The judicial candidates should be required to have a high level of relevant professional experience, and candidates for judicial positions in the higher courts should be required to have a prior solid judicial experience;
- The selection procedure should be carried out in an objective and transparent manner. In this regard, the Special Rapporteur was concerned about the position of the National Judicial Council under the Office of the President. An independent body, preferably composed of judges only, should administer the selection procedure;
- The Special Rapporteur was concerned at the short periods of judicial tenure, which in his view seriously undermined judicial independence. The constitutional reform process should not further decrease judicial tenure, and full consideration should be given to the progressive introduction of life tenure for judges;
- The reappointment procedure should be carried out on an objective basis, in a manner that is not linked to the judicial judgements made by the candidate during his or her previous period of tenure. In particular, complaints about specific judicial decisions made by the prosecutor should in no way be taken into account in the reappointment procedure;
- The Constitution should clearly list possible grounds for the removal of judges at all levels before the end of their term, along with a clear and transparent procedure to be followed in this regard. Furthermore, serious steps should betaken to protect judges from external pressure to resign before the end of their period of tenure;

[78] SR on Judiciary, para. 31.
[79] SR on Judiciary, para. 83.
[80] SR on Judiciary, para. 84.

- With a view to preventing corruption, salary levels of the judiciary must be progressively increased, and salaries must be paid in a timely manner;
- The current provisions on judicial ethics should be rationalized into a clear and accessible code that it is widely disseminated within the judiciary. Training on judicial ethics should be included in the training provided to incoming judges and any professional development course provided to sitting judges; and
- Disciplinary procedures should be administered by an institution which is independent from the executive branch.[81]

The Special Rapporteur on the Judiciary considered that a series of steps should be taken to strengthen **the legal bar**, ensuring that it can play its fundamental role in protecting the human rights of clients.[82] In this regard, he recommended the following:

- Steps should be taken to ensure the quality and consistency of the legal education provided by universities. To this end, in close cooperation with all interested parties, a national curriculum should be developed, integrating practical legal skills, professional ethics and training on international human rights norms;
- A mandatory entrance examination for all candidates who wish to be admitted to the bar should be introduced. In particular, the current waiver that is applied to candidates with five years' experience with a relevant government body should be repealed. The examination should be in a written format and head ministered and assessed by a body made up of members of the profession;
- A body comprised primarily of members of the profession should be responsible for issuing licences, on an objective basis, to new members of the profession. The current role of the Ministry of Justice accords the Government too much control over the composition of the bar;
- Serious consideration should be given to the creation of a single bar association to represent the profession as a whole. The creation of a unified association may assist the profession in playing a greater self-regulatory role and to more effectively promote the interests and independence of the profession; and
- A unified code of professional ethics for advocates should be introduced and efforts should be made to train and increase awareness and understanding of professional ethics. The profession should be responsible for regulating disciplinary procedures.[83]

The Special Rapporteur on the Judiciary also recommended measures for strengthening the court system and other relevant institutions and to provide them with the appropriate material resources to enable them to function in an effective and transparent manner.[84] These included:

- The mandate of the Judicial Training Centre should be extended to include training for incoming judges, and serious consideration should be given to making participation in such courses mandatory. The Judicial Training Centre should be sufficiently funded to ensure that it can effectively fulfill its important role;
- The Office of the Ombudsman should be strengthened, in line with the Paris Principles. In particular, the Special Rapporteur considered that training programmes for staff members regarding the processing of individual complaints would be appropriate;
- Legislators should carry out broad consultations to identify the most appropriate mechanism for Kyrgyzstan, keeping in mind the need to ensure the independence of any lay assessors;
- The judicial system should be equipped with sufficient computers and access to legislative databases to enable all judges to have unimpeded access to Kyrgyz laws and regulations. The judiciary and relevant court personnel should receive training in the use of such databases;
- Steps should be taken to increase the security of judges and court personnel in the courtroom. This could include, for example, providing guards for all levels of the court system. The court buildings should also be maintained in an appropriate state of repair;

[81] SR on Judiciary, para. 84.
[82] SR on Judiciary, para. 85.
[83] SR on Judiciary, para. 85.
[84] SR on Judiciary, para. 86.

- Supreme Court judgements, as is currently the case with Constitutional Court judgements, should be disseminated to the lower courts free of charge. A system should be instituted to ensure that the courts maintain accurate transcripts of all court hearings. Judgements and transcripts should be made public on a consistent and coherent basis, in accordance with the law; and
- In order to increase the transparency of judicial proceedings, steps should be taken to ensure that there are sufficient courtrooms available so that all civil and criminal cases can be heard in courtrooms, as opposed to private offices. It is important to ensure that the constitutional and legislative guarantees on the publicity of court proceedings are uniformly implemented.[85]

The Special Rapporteur called upon the international community to support Kyrgyzstan in the reform efforts,[86] and encouraged the Government to proactively come forward with proposals to international donors.[87]

See recommendations in Section 4.3.18 for further discussion of juvenile justice.

2.7 RIGHT TO FAIR TRIAL

The Special Rapporteur on Torture indicated that police stations, temporary detention facilities, the premises of criminal police departments of the Ministry of the Interior and the pretrial detention facility of the State Committee on National Security were the locations most often cited as where the ill-treatment occurred.[88] He found that the use of torture by the criminal investigation police was exacerbated by the heavy reliance on confessions in the judicial system.[89] He further recommended that Kyrgyzstan ensure that legislation concerning evidence presented in judicial proceedings is brought into line with the provisions of article 15 of CAT[90] in order to exclude explicitly any evidence or extrajudicial statement obtained under duress, unless the person interrogated affirms the veracity of the statement before a judge, and that persons convicted on the basis of such evidence are acquitted and released; and that Kyrgyzstan ensure that any allegation of torture and ill-treatment made in court is promptly dealt with by the judicial authorities without the need for a specific motion by the defence lawyer.[91]

2.7.1 Evidence Obtained under Torture Used to Convict, Violates the Right to Fair Trial

The Special Rapporteur on Torture received reports according to which, in practice, confessions obtained under torture were not expressly excluded as evidence in court.[92] Moreover, the majority of verdicts in criminal cases were mostly based on voluntary confessional statements made during the investigation or at the time of surrender.[93] In addition, the courts encouraged this practice by giving undue weight to confessions when evaluating evidence. If a defendant claims during trial that the confession was obtained through torture, the courts either ignore such statements altogether or conduct a superficial inquiry by simply questioning the police officers in court.[94] After the officers deny the use of torture, the judge concludes that the defendant's allegations are not substantiated. The Special Rapporteur recommended Kyrgyzstan to recall that evidentiary rules and their incorrect interpretation should not

[85] SR on Judiciary, para. 86.
[86] SR on Judiciary, para. 88.
[87] SR on Judiciary, para. 88.
[88] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, mission to Kyrgyzstan, A/HRC/19/61/Add.2, dated from February 21, 2012 (hereinafter "SR on Torture"), para. 38.
[89] SR on Torture, para. 38.
[90] Article 15: Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
[91] SR on Torture, para, 80 (b).
[92] SR on Torture, para. 46.
[93] SR on Torture, para. 46.
[94] SR on Torture, para. 46.

reward police and investigator misconduct; the exclusion of **evidence at trial** is one effective means to combat misconduct and abuses in the course of a criminal investigation.[95]

The Special Rapporteur on the Judiciary in his mission to Kyrgyzstan in 2005 stated also that the judiciary must ensure that **evidence** that may have been obtained by torture is not relied upon as evidence. As part of the legislative reform process, the law should henceforth provide a definition of inadmissible evidence and detailed rules on the exclusion of inadmissible evidence at the pretrial and trial stages of criminal proceedings.[96]

The Special Rapporteur on Torture recommended that the State ensure that **defence lawyers** are given procedural opportunities to collect evidence independently of investigators through, inter alia, the deposition of witnesses and experts directly before a judge.[97]

The Human Rights Committee (HRC), in its Concluding observations of Kyrgyzstan, was also concerned about the number of persons held in pre-trial detention, some of them incommunicado, that all the grounds for authorizing pre-trial detention are not exhaustively listed in the present laws, and the lack of judicial control over the prolongation of detention. It indicated that Kyrgyzstan should ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge (ICCPR, article 9, paragraph 3), that all other aspects of its law and practice are harmonized with the requirements of article 9 of the ICCPR and that detained persons have access to counsel and contact with their families. In the next report precise statistics should be provided on the number of persons held in pre-trial detention and the length of such detention.[98]

The HRC noted with approval the time limits ensuring expeditious commencement of criminal trials, but was concerned at the court's power under the Code of Criminal Procedure not to reach decision at the end of a trial, but rather to remit the case to the prosecutor for further inquiries. The Committee indicated that this procedure should be abolished.[99]

In 2011, the U.N. High Commissioner on Human Rights report stated that 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.[100]

[95] SR on Torture, para. 81 (f).
[96] SR on Judiciary, para. 83.
[97] SR on Torture, para. 81 (g).
[98] Concluding observations of the Human Rights Committee, CCPR/CO/69/KGZ, dated from July 24, 2000, para, 9.
[99] HRC, Concluding observations, para, 16.
[100] Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan, A/HRC/17/41, dated from April 1, 2011, para. 78 (a).

2.7.2 Individual Communications on the Right to Fair Trial

The U.N. Human Rights Committee (hereinafter "HRC") has examined individual complaints against Kyrgyzstan in the area of right to fair trial and found on the following complaints a violation of article 14 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR").[101]

- **Kulov v. Kyrgyzstan** (Communications No. 1369/2005)
  - Military court examined Kulov's case in a closed meeting; the investigation classified his case file as secret without giving any grounds and the 63-page judgement was prepared within three hours, putting into question the partiality of the judges;[102]
  - The HRC found a violation of presumption of innocence, as the authorities allegedly used national media to portray him as a criminal. It also found a violation of the right to fair trial because: his lawyers were given only limited time to study the evidence, and "obstacles" were added to examine the additional evidence presented by the prosecution. Author had been judged already two times for malpractice in office but a third set of criminal proceedings was still pending at the time of submission of the present communication, on the same grounds; his request to be represented by a lawyer from Russia was ignored, though allowed under national law; NSS created additional obstacles for lawyers' participation in the author's case; and, finally, he was not allowed to examine witnesses against him in court, as the courts refused to call them without justifying their refusal;[103] and

[101] **Article 14 of ICCPR**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

[102] HRC, Communications No. 1369/2005, CCPR/C/99/D/1369/2005, para. 8.6.
[103] HRC, Communications No. 1369/2005, CCPR/C/99/D/1369/2005, para. 8.7.

- The examination of the author's case under the supervisory (*nadzor*) procedure by the Supreme Court took place in his and in his lawyers' absence, although with the participation of a prosecutor.[104]

- **Krasnova v Kyrgyzstan** (Communication No. 1402/2005)
  - The HRC found that the author's son did not benefit from a right to a fair hearing by a competent, independent and impartial tribunal and thus found a violation of the right to fair trial because:
    - Most of the investigative actions in his case had been carried out in the absence of a lawyer;[105] and
    - The court proceedings lasted for almost five years during which the author's minor son was acquitted three times and three times found guilty on the basis of the same evidence, witness statements and testimonies of the co-accused.[106]
- **Akhadov v. Kyrgyzstan** (Communication No. 1503/2006)
  - The HRC found a violation of the right to fair trail because the courts failed to address properly the victim's complaints related to his ill-treatment by the police. The HRC considered that as a consequence, the criminal procedures in Mr. Akhadov's case were vitiated by irregularities, which casts doubts on the fairness of the criminal trial as a whole.[107]
- **Gunan v. Kyrgyzstan** (Communication No. 1545/2007)
  - The HRC found a violation of the right to fair trial since the author was not granted legal assistance in a timely manner after being extradited to Kyrgyzstan and because upon arrest, he was interrogated on several occasions in the absence of a lawyer. Moreover, the defense counsel was refused copies of the Prosecutor's Office applications to the Supreme Court and thus the author was deprived of the right to raise any objections in relation to those submissions;[108] and
  - The courts, *inter alia*, [had] failed to properly assess the inconsistencies in the witness testimonies.[109]

The HRC stated that Kyrgyzstan has an obligation to fulfill individual remedies towards the claimants in the above cases whose rights were violated, and to take measures in law and practice to prevent similar violations in the future.

[104] HRC, Communications No. 1369/2005, CCPR/C/99/D/1369/2005, para. 8.8.
[105] HRC, Communications No. 1402/2005, CCPR/C/101/D/1402/2005, para. 8.6.
[106] HRC, Communications No. 1402/2005, CCPR/C/101/D/1402/2005, para. 8.7.
[107] HRC, Communications No. 1503/2006, CCPR/C/101/D/1503/2006, para. 7.5.
[108] HRC, Communications No. 1545/2007, CCPR/C/102/D/1545/2007, para. 6.3.
[109] HRC, Communications No. 1545/2007, CCPR/C/102/D/1545/2007, para. 6.4.

2.8 TORTURE AND ILL-TREATMENT IN DETENTION

Kyrgyzstan is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including International Covenant on Civil and Political Rights (hereinafter "ICCPR"), Convention against Torture (hereinafter "CAT"), Convention on the Right of the Child and Women's Convention. Kyrgyzstan acceded to the Optional Protocol to the CAT in 2008, to the Second Optional Protocol to the ICCPR on abolition of the death penalty in 2010.

In 1999 the Committee Against Torture expressed concerns on the numerous and continuing reports of allegations of torture in breach of the CAT; and other cruel, inhuman or degrading treatment or punishment (sometimes involving children) by law enforcement personnel, contrary to article 16 of the CAT.[110] The Committee recommended Kyrgyzstan take all necessary effective steps to prevent these events from occurring.[111] One year later, in 2000, the Human Rights Committee (hereinafter "HRC") expressed a grave concern about instances of torture, inhuman treatment and abuse of power by law enforcement officials.[112]

During the 2010 UPR review, numerous States expressed concerns on allegations of torture and other forms of ill treatment,[113] in particular relating to minors, others noted and were troubled by reports of widespread torture.[114] States recommended that Kyrgyzstan fight against torture,[115] condemn the use of torture and other ill treatment,[116] and adopt all provisions necessary to prevent acts of torture and cruel, inhuman or degrading treatment committed by penitentiary or law enforcement personnel.[117]

Moreover, under the First Optional Protocol to the ICCPR, to which Kyrgyzstan is party, there has been a number of individual communications considered by the HRC finding a violation of article 7 of the ICCPR on the prohibition of torture. Kyrgyzstan has an obligation to fulfill individual remedies towards those whose rights were violated, and to prevent similar violations in the future. These individual cases are discussed later in this section.

Finally, most recently in February of 2012, the Special Rapporteur on Torture, Juan Mendez, issued a mission report after visiting Kyrgyzstan in December of 2011.[118] In his report, the Special Rapporteur indicated he had received numerous accounts and eyewitness testimonies suggesting that torture and ill-treatment had been historically pervasive in the law enforcement sector.[119] Throughout the mission, testimonies of victims and their lawyers pointed to general patterns of torture and ill-treatment committed by police officers after arrest and during the first hours of informal interrogation.[120] During interviews with victims, the Special Rapporteur heard multiple allegations of torture that shared the same pattern: asphyxiation with plastic bags and gas masks with no flow of oxygen; punches and beatings with truncheons; the application of electric shock and the introduction of foreign objects into the anus, or the

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[110] CAT Committee considered the initial report of the Kyrgyz Republic at its 403rd, 406th and 408th meetings on 16-18 November 1999 and adopted the conclusions and recommendations (A/55/44, paras.70-75) dated from November 18, 1999 (hereinafter "CAT Committee, Concluding observations"), para. 74, b.
[111] CAT Committee, Concluding observations, para. 75 (b).
[112] HRC, Concluding observation, 2000, para. 7.
[113] UPR, recommendations by France, para. 33; Italy, para. 40.
[114] UPR, recommendations by the United Kingdom of Great Britain and Northern Ireland, para. 47; Canada, para. 50.
[115] UPR, recommendations by Italy, para. 76.51.
[116] UPR, recommendations by Denmark, para. 76.54.
[117] UPR, recommendations by France, para. 76.50.
[118] Through UPR mechanism Switzerland recommended Kyrgyzstan to issue an invitation to the Special Rapporteur on Torture to visit Kyrgyzstan. UPR, recommendations by Switzerland, para. 76.23.
[119] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, mission to Kyrgyzstan, A/HRC/19/61/Add.2, dated from February 21, 2012 (hereinafter "SR on Torture"), para. 37.
[120] SR on Torture, para. 38.

threat of rape.[121] The Rapporteur noted that there are significant gaps in legislation, policies and law enforcement practices,[122] and then recommended that the Government, with appropriate assistance from the international community, including the United Nations and other actors, take decisive steps to implement the recommendations provided in the report.[123]

The following sub-sections describe the specific recommendations of the Special Rapporteur on Torture, those of States during the UPR process, the HRC and the CAT Committee

2.8.1 Amending Existing Legislation to Prevent Torture and Ill-Treatment in Detention

In 1999, the Committee Against Torture concerning on the absence of a **definition** of torture as provided in article 1 of the Convention in Criminal Code of the Kyrgyz Republic[124] recommended amending domestic penal law to include the crime of torture, consistent with the definition in article 1 of the Convention, and supporting it by an adequate penalty.[125] In its review of Kyrgyzstan, the HRC stated that Kyrgyzstan should amend the Criminal Code to ensure that acts of torture and the persons responsible be prosecuted.[126]

Though the Criminal Code of the Kyrgyzstan has included an article prohibiting torture, the Special Rapporteur has noted that under the Criminal Code torture belongs to the crimes of minor gravity involving lesser public danger.[127] He recommended amending, as a matter of priority, article 305-1 of the Criminal Code to ensure that torture is defined as a serious crime in accordance with article 1 of the Convention against Torture, sanctioned with penalties commensurate with the gravity of the crime.[128]

The Special Rapporteur also noted that the insignificant sanction provided for under article 305-1 inevitably creates an environment conducive to impunity as perpetrators usually get conditional sentencing as first-time offenders or are released on amnesty.[129] In Kyrgyzstan, the crime of torture is not differentiated from other types of abuse of power, making it hard to distinguish torture from lesser forms of cruel, inhuman, or degrading treatment or punishment.[130] Therefore, the Special Rapporteur recommended Kyrgyzstan ensure in the **Law on Amnesty** that no person convicted for the crime of torture will be entitled to benefit from an act of amnesty.[131] The same was recommended earlier by the Committee against Torture, which was read in order to ensure that the perpetrators of torture and ill-treatment do not enjoy impunity, the State party was recommended to ensure the investigation and, where appropriate, the prosecution of all those accused of having committed such acts, and ensure that amnesty laws exclude torture from their reach.[132]

The Special Rapporteur indicated that neither the Code of Criminal Procedure nor the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of a Crime in Custody include a provision on the right of suspects to a **free telephone call with family members or relatives** in accordance with Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[133] In temporary detention facilities, access to and the length of family visits are determined by investigating officers on a case-by-case basis, which is an incentive for bribery

[121] SR on Torture, para. 38.
[122] SR on Torture, para. 73.
[123] SR on Torture, para. 80.
[124] CAT Committee, Concluding observations, 1999, para. 74 (a).
[125] CAT Committee, Concluding observations, 1999, para. 75 (a).
[126] HRC, Concluding observations, para. 7.
[127] SR on Torture, para. 13.
[128] SR on Torture, para. 80.1 (a).
[129] SR on Torture, para. 13.
[130] SR on Torture, para. 13.
[131] SR on Torture, para. 80 (a).
[132] CAT Committee, Concluding observations, 1999, para. 75.c.
[133] SR on Torture, para. 22.

and arbitrariness.[134] The Special Rapporteur observed that most pretrial detainees in temporary detention facilities were either not aware of their right to receive visits from their families or thought that they were not entitled to it during pretrial detention.[135] The almost total denial of contact with the outside world, often for prolonged periods, clearly contradicts the principle of the presumption of innocence and puts disproportionate psychological pressure on suspects.[136] Outside temporary facilities, the Special Rapporteur heard testimonies about reprisals by the administration of the facility against inmates filing a complaint.[137] The Special Rapporteur recommended Kyrgyzstan to amend the Code of Criminal Procedure and the Law on Procedure and Conditions of the Detention of Persons Suspected or Accused of Crime to include a provision on the right of the suspect to one free telephone call with family members or relatives; and reduce the 12-hour period envisaged for notification of arrest by the investigator to the family stipulated in article 99 of the Code of Criminal Procedure.[138]

The Special Rapporteur concluded that arbitrary arrests and forced confessions continue. The same applies to ill-treatment and coercion during arrest and while suspects are in unregistered police custody, denial of access to a lawyer of one's choosing, lack of independent medical aid, and threats and extortion in exchange for dropping charges.[139] To avoid this, the Special Rapporteur recommended amending the Code of the Criminal Procedure and other legislative acts (including the law on operational investigations and search activities) with a view to ensure that the time period starting from the moment of actual arrest until the formal initiation of the criminal case is in accordance with international standards, with clear designation of procedural status, rights and safeguards.[140]

Despite the Government's move to open the detention facilities to external oversight, the Special Rapporteur concluded that access is still on an ad hoc basis and has limited impact.[141] He reported that he was unable to obtain information on any complaints initiated following visits by monitoring bodies and that the Ombudsman's office is unable to ensure regular and effective oversight of detention places.[142] It is therefore imperative that a national preventive mechanism be established in accordance with the Optional Protocol to the Convention against Torture and that it be equipped with the and human resources necessary to embark on its mission.[143]

2.8.2 Safeguards and Prevention

2.8.2.1 Unrecorded detention and denial of access to a lawyer

The Special Rapporteur on Torture concluded that there is a serious lack of effective safeguards during the first hours of detention,[144] and that arbitrary arrests and forced confessions continue.[145] There are also concerns of ill-treatment and coercion during arrest and while suspects are in unregistered police custody, denial of access to a lawyer of one's choosing, lack of independent medical aid, and threats and extortion in exchange for dropping charges.[146]

The Special Rapporteur on Torture was further concerned that torture or coercion may occur at the time of apprehension and transfer to a police station, an action that is not recorded.[147] The law

[134] SR on Torture, para. 62.
[135] SR on Torture, para. 62.
[136] SR on Torture, para. 64.
[137] SR on Torture, para. 64.
[138] SR on Torture, para.80 (c).
[139] SR on Torture, para. 76.
[140] SR on Torture, para.80 (d).
[141] SR on Torture, para. 79.
[142] SR on Torture, para. 79.
[143] SR on Torture, para. 79.
[144] SR on Torture, para. 43.
[145] SR on Torture, para. 44.
[146] SR on Torture, para. 76.
[147] SR on Torture, para. 44.

authorizes police to make an arrest on suspicion of criminal responsibility and without judicial warrant, which by itself constitutes an invitation to mistreatment.[148] On the other hand, the law also states that, within three hours of making an arrest, the police officer must take the person to an investigating officer or release him/her.[149] The irregular – but almost routine – procedure of unregistered arrest makes it impossible to establish whether the three-hour maximum term for the first stage of deprivation of liberty is observed.[150]Owing to the failure to register suspects at the time of apprehension, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment, given that it is during this time when basic safeguards are generally not provided for in practice and the arrested person remains without any protection.[151] The Special Rapporteur recommended the State to ensure strict adherence to **registration** from the very moment of apprehension.[152]

Nearly all detainees interviewed by the Special Rapporteur indicated that they had been subjected to mistreatment or beating since the time of apprehension and delivery to the temporary detention facility for the purpose of extracting a confession.[153] During this unaccounted period of time, suspects may be held in unofficial detention settings (unregistered custody), such as in police vehicles or office rooms, where police officers have "conversations" with suspects or witnesses.[154] This involves inviting a person to the police station without recording the time and purpose of the visit, and often holding a person incommunicado for an unlimited period of time.[155] These individuals do not in effect enjoy the rights that are provided for by criminal procedure law to suspects or accused.[156] The Special Rapporteur recommended that Kyrgyzstan abolish unacknowledged custodies and ensure strict surveillance devices in police stations; make police station chiefs and investigating and operative officers criminally accountable for any unacknowledged detention and make it a serious crime; define clearly the ability and obligation of judges to inspect places of detention and enforce the prohibition on unacknowledged detention and torture by initiating criminal prosecutions; ensure that access to lawyers of the suspect's own choosing is granted from the very moment of apprehension; and repeal the recent restrictions on access by lawyers to their defendants requiring multiple authorizations.[157] He also recommended that the Government ensure that pretrial detainees are transferred from temporary detention facilities to pretrial detention centres at the expiration of the 48-hour period.[158]

In addition, the Special Rapporteur recommended the Government overhaul the system of **State-appointed lawyers** completely and replace it with an open and transparent process of fairly remunerated independent lawyers, a process that is not controlled in practice by the investigating officers; and establish national legal aid programmes that guarantee access to a lawyer for all detainees, including prior to interrogation.[159]

Under the UPR process, States recommended Kyrgyzstan introduce human rights education and training to members of the police, prison and detention staff, and ensure their accountability for human rights violations.[160]

[148] SR on Torture, para. 44.
[149] SR on Torture, para. 44.
[150] SR on Torture, para. 44.
[151] SR on Torture, para. 43.
[152] SR on Torture, para. 81, (a).
[153] SR on Torture, para. 45.
[154] SR on Torture, para. 45.
[155] SR on Torture, para. 45.
[156] SR on Torture, para. 45.
[157] SR on Torture, para. 81, (a).
[158] SR on Torture, para. 81 (n).
[159] SR on Torture, para. 81 (b).
[160] UPR, recommendations by Czech Republic, para. 76.71.

2.8.2.2 Individual communications on the right to liberty and security of persons, arbitrary arrest or detention

The HRC issued eleven decisions in examining fourteen individual communications against Kyrgyzstan, of which seven decisions involved violations of article 9 of the ICCPR on the right to liberty and security of person,[161] arbitrary arrest or detention. Violations were found in the following cases:

- **Latifulin v. Kyrgyzstan** (Communications No. 1312/2004), the detention was unlawful, as the offence in question at the time, assault, was not one for which a constraint measure was prescribed by law. The charge of fraud was put forward only after the appeal in detention. Author was not informed of the charges during the first ten days in detention;[162]
- **Kaldarov v. Kyrgyzstan** (Communication No. 1338/2005), the violation was found since the placement in custody was authorized by a prosecutor, who cannot be considered independent;[163]
- **Kulov v. Kyrgyzstan** (Communications No. 1369/2005), the violation on unlawful detention was found since the decision on placing pretrial detention was made by a prosecutor, i.e. a representative of the executive branch, in his absence, and that he was not brought before a judge or other officer authorized by law to exercise judicial power. The detention was allegedly prolonged on several occasions between 2001 and 2003 by the investigators, and with the prosecutor's authorization, but in absence of any judicial control;[164]
- **Krasnova v Kyrgyzstan** (Communication No. 1402/2005), the violation was found since the author's son and the legal representative were not informed of the reasons for the arrest;[165]
- **Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan** (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), the violation was found since placement in custody was not authorised by the Kyrgyz prosecutor and was done in the absence of their counsel;[166]
- **Akhadov v. Kyrgyzstan** (Communication No. 1503/2006), the violation was found due to unlawful detention for two weeks before being brought before a court and given the opportunity to challenge the lawfulness of his detention;[167] and
- **Torobekov v. Kyrgyzstan** (Communication No. 1547/2007), the violation was found since the placement in custody was authorized by a prosecutor who cannot be considered independent.[168]

Kyrgyzstan has an obligation to fulfill individual remedies towards those whose rights were violated, but also Kyrgyzstan is also under an obligation to prevent similar violations in the future.

2.8.2.3 Independent medical examinations

The Human Rights Committee in its review of Kyrgyzstan also concluded that provision should be made for medical examination of detained persons, particularly of persons held in pre-trial detention, in order to ensure that no physical abuse of detainees occurs.[169]

The Special Rapporteur on Torture noted in his report that it is hard to prove torture when medical examinations by independent and impartial forensic experts are not promptly conducted; even in

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[161] **Article 9**
1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

[162] HRC, Communications No. 1312/2004, CCPR/C/98/D/1312/2004, para. 8.2 and 8.3.
[163] HRC, Communications No. 1338/2005, CCPR/C/98/D/1338/2005, para. 8.2.
[164] HRC, Communications No. 1369/2005, CCPR/C/99/D/1369/2005, para. 8.4 and 8.5.
[165] HRC, Communications No. 1402/2005, CCPR/C/101/D/1402/2005, para. 8.5.
[166] HRC, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, para. 12.2 and 12.3.
[167] HRC, Communications No. 1503/2006, CCPR/C/101/D/1503/2006, para. 7.4.
[168] HRC, Communications No. 1547/2007, CCPR/C/103/D/1547/2007, para. 6.2 and 6.3.
[169] HRC, Concluding observations, para. 7.

those cases, the defendants should not have to bear the burden of proof at trial of coercion to exclude self-incriminating statements.[170] Since independent medical examinations must be authorized by the supervising authority (such as the investigators, the prosecutors or the penitentiary authorities), that authority has ample opportunity to delay authorization so that any injuries deriving from torture have healed by the time an examination is conducted.[171] At trial, courts tend not to take into account conclusions other than the ones provided by official State-appointed forensic experts. The Special Rapporteur was informed that forensic doctors in Kyrgyzstan do not have adequate training on documenting torture and other forms of ill-treatment and, because of the existing institutional set-up, under-equipped laboratories owing to the general budgetary restraints, and lack of independence from the authorities in whose custody the alleged ill-treatment took place.[172]

The Special Rapporteur on Torture recommended that Kyrgyzstan:

- Set in legislation a minimum timeline within which medical examination is to be provided without delay, in conformity with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);[173]
- Ensure timely access to independent medical examination at all stages of the criminal process, in particular when the suspect is placed in a temporary police detention facility; when taken out for any investigative activity, and upon return;[174]
- Ensure that a forensic examination is conducted on the basis of the victim's application or his/her lawyer's motion for forensic service as a matter of law subject to judicial review in the event of delay or refusal, and that reports of independent forensics are attributed the same evidentiary weight as reports prepared by State-appointed forensic experts;[175]
- Ensure that independent forensic reports are admissible in court upon submission by a defence counsel without any prior approval by an investigator or a State prosecutor to include them in the case file;[176] and
- Increase the number of qualified health personnel in temporary and pretrial detention facilities and ensure that medical staff in places of detention are independent by transferring them from the State Service for the Execution of Punishments and the Ministry of the Interior to the Ministry of Health; and provide forensic medical services with training in the medical investigation of torture and other forms of ill-treatment.[177]

2.8.2.4 Burden of proof

The Special Rapporteur noted that he was not able to obtain information on any instance when judges and prosecutors are known to have ordered medical examinations at their own initiative in response to allegations or signs of abuse.[178] The Rapporteur stated that international law and precedent clearly puts the burden on the State and its agents to initiate investigations ex officio whenever there is any suspicion of torture.[179]

The Special Rapporteur indicated that judges were widely seen as formally present at the criminal process, but mainly to rubberstamp decisions of investigating officers or prosecutors rather than take a genuine interest in following up on torture allegations.[180] He was unable to obtain information on cases where evidence had been excluded because it was found to have been obtained under torture.[181] A

[170] SR on Torture, para. 51.
[171] SR on Torture, para. 51.
[172] SR on Torture, para. 51.
[173] SR on Torture, para. 81 (c).
[174] SR on Torture, para. 81 (c).
[175] SR on Torture, para. 81 (c).
[176] SR on Torture, para. 81 (c).
[177] SR on Torture, para. 81, e.
[178] SR on Torture, para. 50.
[179] SR on Torture, para. 50.
[180] SR on Torture, para. 52.
[181] SR on Torture, para. 52.

worrying feature of the system repeatedly described to the Special Rapporteur was that, since crimes need to be solved, previous convicts are often accused of having committed them and their cases are simply fabricated, often by obtaining confession under duress, to which false evidence is then added. Moreover, The Special Rapporteur received credible reports according to which official replies of prosecutors do not usually contain information on how the decision not to initiate a criminal investigation was reached.[182] It is reported that preliminary inquiries have been frequently inadequate as prosecutors fail to take all possible steps to verify allegations of torture.[183]

The Special Rapporteur recommended Kyrgyzstan the following:

- Shift the **burden of proof** to prosecution to prove beyond reasonable doubt that a confession or other evidence has not been obtained under any kind of duress, and consider filming and audio taping interrogations;[184]
- Encourage **judges and prosecutors** to routinely ask persons arriving from police custody how they have been treated and to order an independent medical examination if they suspect that the detainee has been subjected to ill-treatment; an ex officio investigation should be initiated whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment; these cases tried under article 305-1 of the Criminal Code are prosecutable ex officio and should not be subject to termination upon the victim's request;[185] and
- Improve the effectiveness of existing **alternatives to pretrial detention** and consider the introduction of new alternatives by encouraging the use of non-custodial measures such as bail, reporting to a police station, radio-monitored bracelets and house arrest.[186]

2.8.2.5 Impunity and lack of effective investigation of torture allegations

The Special Rapporteur concluded that the absence of prompt, impartial and full investigations into allegations of torture and ill-treatment makes such acts a crime that goes unpunished.[187] He noted that impunity in turn reinforces reliance on confessions in the administration of criminal justice and to the unfettered discretion of investigating officers to authorize or refuse independent forensic expertise.[188] It is imperative that public confidence in the judiciary, and in the fairness and predictability of its rulings, be restored.[189] He recommended the State expedite prompt, impartial and thorough investigations into all allegations of torture and cruel, inhuman or degrading treatment or punishment, and undertake **public prosecutions** without delay where the evidence warrants them; unless the allegation is manifestly unfounded, those involved should be suspended from their duties during the investigation and proceedings.[190]

Moreover, the Special Rapporteur recommended Kyrgyzstan establish clearly set out enforcement mechanisms to provide victims with **effective remedy and redress**, including compensation and as full rehabilitation as possible by allocating funds in the national budget; and fulfil the right of the victim to obtain redress through civil litigation regardless of whether the guilt of a public agent has been determined by a court on a criminal case.[191]

The Human Rights Committee concluded as well that Kyrgyzstan should amend the Criminal Code to ensure that all allegations of torture are properly investigated and the persons responsible prosecuted.[192]Complaints about torture and other abuses by officials should be investigated by

[182] SR on Torture, para. 56.
[183] SR on Torture, para. 56.
[184] SR on Torture, para. 81 (h).
[185] SR on Torture, para. 81 (i).
[186] SR on Torture, para. 81 (j).
[187] SR on Torture, para. 77.
[188] SR on Torture, para. 77.
[189] SR on Torture, para. 77.
[190] SR on Torture, para. 81 (d).
[191] SR on Torture, para. 81 (k).
[192] HRC, Concluding observation, para. 7.

independent bodies.[193] Additionally, the Committee against Torture had earlier concluded that there has been an apparent failure generally to provide prompt, impartial and full **investigation** into allegations of torture and cruel, inhuman or degrading treatment or punishment, as well as a failure generally to prosecute, where appropriate, the alleged perpetrators.[194]

States participating in the UPR mechanism recommended Kyrgyzstan establish a system for the independent monitoring of all detention centres without exception;[195] ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture of any person subjected to any form of arrest, detention or imprisonment,[196] and ensure accountability members of the police and prison and detention staff for human rights violations.[197] They recommended Kyrgyzstan to adopt all provisions necessary to prevent acts of torture and cruel, inhuman or degrading treatment committed by penitentiary or law enforcement personnel,[198] condemn the use of torture and other ill treatment and ensure the prompt, impartial and comprehensive investigation of all complaints involving the torture of any person subjected to any form of arrest, detention or imprisonment.[199] Kyrgyzstan should strengthen its safeguards against torture, including through the improvement of conditions in prisons and detention facilities and the establishment of a complaint mechanism for victims of torture.[200]

The Special Rapporteur on the Judiciary also noted that it is imperative to ensure prompt, impartial and full investigations into **allegations of torture** and cruel, inhuman or degrading treatment or punishment, as well as to prosecute, where appropriate, the alleged perpetrators.[201]

2.8.2.6 Individual communications on the right to effective remedy

The Human Rights Committee (hereinafter "HRC") examined individual complains against Kyrgyzstan on article 2 of the ICCPR[202] and found the violations on the following complaints:

- **Umetaliev v. Kyrgyzstan** (Communication No. 1275/2004), the case involved the right to life; arbitrary deprivation of the life of a Kyrgyz national in the course of an anti-riot security operation in Aksy region; failure to conduct an adequate investigation and to initiate proceedings against the perpetrator/s. Persistent failure over six years of the State party's authorities properly to investigate the circumstances of Eldiyar Umetaliev's death effectively denied the authors a

[193] HRC, Concluding observations, para. 7.
[194] CAT Committee, Concluding observations, para. 74 c.
[195] UPR, recommendations by France, para. 76.50.
[196] UPR, recommendations by Denmark, para. 76.54.
[197] UPR, recommendations by Czech Republic, para. 76.71.
[198] UPR, recommendations by Denmark, para. 76.54.
[199] UPR, recommendations by France, para. 76.50.
[200] UPR, recommendations by Czech Republic, para. 76.53.
[201] Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, mission to Kyrgyzstan, E/CN.4/2006/52/Add.3, dated from December 30, 2005 (hereinafter "SR on Judiciary), para. 83.
[202] **Article 2 of ICCPR**
1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

remedy. The criminal case remain[ed] suspended without any indication from Kyrgyzstan when the case [would] be completed. Authorities of Kyrgyzstan ha[d] not indicted, prosecuted or brought to justice anyone in connection with these events. The authors' civil claim for compensation from the authorities of Kyrgyzstan for their son's death was suspended until the completion of the criminal case;[203]

- **Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan** (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), the violation was found due to the extradition of four recognized refugees from Kyrgyzstan to Uzbekistan, where the HRC found substantial grounds for believing that there is a real risk of irreparable harm contemplated by article 6 of the ICCPR; despite request for interim measures of protection. As to the claim that no effective remedies were available to challenge the Kyrgyz General Prosecutor's extradition decision;[204] and
- **Zhumbaeva v. Kyrgyzstan** (Communication No. 1756/2008), Kyrgyzstan failed in its procedural obligation to properly investigate the victim's death and allegations of torture, and to take appropriate investigative and remedial measures. The police sergeant, Mr. Abdukaimov, was never charged or prosecuted.[205]

Kyrgyzstan has obligation to fulfill individual remedies towards those whose rights were violated, but also Kyrgyzstan is also under an obligation to prevent similar violations in the future.

2.8.2.7 National preventative mechanism and monitoring of torture and ill-treatment in detention

The Special Rapporteur on Torture recommended to establish an effective national preventive mechanism in accordance with the Optional Protocol to the CAT, ensure budgetary allocations and equip the mechanism with sufficient human and other **resources** to enable it to inspect all places of detention regularly, to receive complaints, initiate prosecutions and follow them through to their conclusions.[206] The same was recommended earlier by Switzerland through the UPR mechanism to guarantee that its national mechanism respects all the provisions of the Optional Protocol to the CAT, ensuring that it has all the necessary financial and human resources.[207] He also suggested the State consider adopting a law to allow regular inspections of all places of detention by an independent monitoring mechanism (in addition to the national preventive mechanism); ensure that **oversight mechanisms**, inter alia, public advisory councils, are able to conduct unimpeded and effective oversight of places of detention and that their findings and recommendations are made public; and introduce independent, effective and accessible complaint mechanisms to all places of detention through the installation of telephone hotlines or confidential complaints boxes, and ensure that every detainee has unimpeded and unsupervised access to the prosecutor upon request and that complainants do not suffer any reprisals.[208]

The Human Rights Committee earlier had also indicated that Kyrgyzstan should institute an independent **system of monitoring** all places of detention with the purpose of preventing torture and other abuses of power by law enforcement officials.

[203] HRC, Communication No. 1275/2004, CCPR/C/94/D/1275/2004, para. 9.6.
[204] HRC, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, CCPR/C/93/D/1461, para. 12.7.
[205] HRC, Communications No. 1756/2008, CCPR/C/102/D/1756/2008, para. 8.10.
[206] SR on Torture, para. 81 (l).
[207] UPR, recommendations by Switzerland, para. 76.23.
[208] SR on Torture, para. 81 (m).

2.8.3 Conditions in Detention

2.8.3.1 Conditions of pretrial detention facilities

The Special Rapporteur on Torture stated that conditions in pretrial detention facilities are far from compliant with international standards and amount to inhuman and degrading treatment.[209] The Special Rapporteur acknowledged that the penitentiary system is severely underfunded and suffers from decades of accumulated problems; he nonetheless found that, with no current overcrowding in places of detention, improving decrepit infrastructures should be easier. A coordinated approach and State budgetary allocations are needed to improve the inhuman conditions in temporary detention facilities. In addition, while recognizing that many of the problems observed are caused by a lack of resources, he noted that some important steps could be taken that are not resource-dependent, such as establishing stronger legal and procedural safeguards and a more widespread application of non-custodial measures for persons accused of petty crimes.

The Special Rapporteur noted that the penitentiary policies applied have an essentially punitive nature rather than aim at reintegrating prisoners into society. The execution of sentences still consists of placing convicted persons in standard, reinforced or strict regime penal colony settlements.[210]

Conditions in pretrial detention facilities and the colony visited were relatively bearable[211]: unsanitary conditions, poor or non-existent ventilation or daylight, most lacking heating, minimum food and water, little space for movement, showers with no hot water with once a week access, in some temporary detention facilities – restricted use of the toilet only twice a day at scheduled times.[212]The Special Rapporteur therefore recommended that the Government appoint a high-level commission of multidisciplinary, credible specialists to conduct an urgent inspection of all detention centres with the aim of closing down immediately all facilities that are declared unfit for human habitation.[213]

2.8.3.2 Condition of Prisons

On the conditions of prisons, the Committee against Torture in its review of Kyrgyzstan in 1997 had recommended that Kyrgyzstan adopt measures to improve prison conditions, taking into account the 1955 Standard Minimum Rules for the Treatment of Prisoners;[214] supervise military places of detention and prisons and ensure that inmates are not maltreated and they, as should everyone, can be represented by counsel at their trials;[215] consider making the declarations under articles 21 and 22 of the CAT.[216] Countries under the UPR mechanism recommended also on improvement of conditions in prisons and detention facilities[217] and establish a system for the independent monitoring of all detention centres without exception.[218]

In 2000, the Human Rights Committee stated that it remained concerned about inhuman prison conditions, characterized by overcrowding, inadequate food and medical care, and at the fact that convicted persons are frequently not kept segregated from accused persons and that juvenile offenders are frequently detained in the same detention centres as adults, in violation of article 10 of the ICCPR.[219] The HRC stated that Kyrgyzstan must take measures to improve prison conditions and to ensure that juveniles are detained in segregated centres. It must ensure that all persons deprived of their liberty are treated with

[209] SR on Torture, para. 78.
[210] SR on Torture, para. 59.
[211] SR on Torture, para. 65.
[212] SR on Torture, para. 60, 64.
[213] SR on Torture, para. 82.(a).
[214] CAT Committee, Concluding observations, para. 75 (e).
[215] CAT Committee, Concluding observations, para. 75 f.
[216] CAT Committee, Concluding observations, para. 75 h.
[217] UPR, recommendations by Czech Republic, para. 76.53.
[218] UPR, recommendations by France, para. 76.50.
[219] HRC, Concluding observations, para. 11.

humanity and respect for their inherent dignity. Specifically, Kyrgyzstan must ensure that all detainees are afforded adequate food and medical care.[220]

In 2011, the U.N. High Commissioner on Human Rights confirmed that 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.[221]

The Special Rapporteur on Torture continues stating that in almost all temporary and pretrial detention facilities visited, there was no separation between convicted and pretrial inmates.[222] Most detainees indicated that their arrest had been confirmed by a court within the first 48 hours, as provided by law (albeit counted from the initial interrogation, not the actual detention).[223] Most inmates interviewed confirmed that, however, their detention in a temporary detention facility continued after that court hearing instead of being remanded to a pretrial detention facility, as the law would require.[224] Continued detention in temporary detention facilities can last from one month to several months, and even a year.[225] In practice, owing to the shortage of pretrial detention facilities and the need for prolonged investigations, temporary facilities are used as pretrial ones.[226]

2.8.3.3 Inmates serving life imprisonment

The Special Rapporteur on Torture revealed that following the abolition of the death penalty in 2007, more than 200 death penalty sentences have been commuted to life imprisonment.[227] Currently the 259 prisoners sentenced to life imprisonment are housed in various pretrial detention centres.[228] In facility No. 1 and Colony No. 47, inmates live in basements in dreadful conditions, confined in virtual isolation and solitary confinement in cells built in 1943 and designed for death row prisoners.[229] Their isolation is applied automatically because of their life sentence and is not related in any way to their behaviour in custody.[230] In effect, the system has given up on any possibility of rehabilitation.[231] The Special Rapporteur was informed that the construction in the village of Jany-Jer of a special building for inmates serving life terms had been delayed for years owing to lack of funding.[232] The Special Rapporteur recommended to eliminate the complete isolation of inmates sentenced to life imprisonment and move them to open or semi-open facilities.[233]

2.8.4 Institutional Reforms

On the institutional reforms, the Special Rapporteur on Torture recommended Kyrgyzstan to:

- Allocate sufficient budgetary resources to improve conditions in detention facilities with a view to provide adequate health care, improve food quality and ensure the separation of minors from adults and of pretrial prisoners from convicts; and design the system of execution of punishments

[220] HRC, Concluding observations, para. 11.
[221] Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan, A/HRC/17/41, dated from April 1, 2011 (hereinafter "Report of the U.N. High Commissioner for Human Rights"), 2011, para. 40.
[222] SR on Torture, para. 61.
[223] SR on Torture, para. 61.
[224] SR on Torture, para. 61.
[225] SR on Torture, para. 61.
[226] SR on Torture, para. 61.
[227] SR on Torture, para. 69.
[228] SR on Torture, para. 69.
[229] SR on Torture, para. 69.
[230] SR on Torture, para. 69.
[231] SR on Torture, para. 69.
[232] SR on Torture, para. 70.
[233] SR on Torture, para. 82 (c).

in a way that truly aims at rehabilitating and reintegrating offenders by abolishing restrictive regimes and creating work opportunities and recreational activities for inmates;[234]

- Complete the ongoing reform of the police apparatus, and have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or ill-treatment by their subordinates and that perpetrators will be held to account;[235] and
- Take measures to transfer authority over temporary detention facilities from the Ministry of the Interior to the State Service for the Execution of Punishments.[236]

The Committee against Torture had earlier recommended that the State party also continue its **reforms in the police, prosecution and judicial institution**s to ensure that each is sensitive to their obligations under CAT; in particular, urgent steps should be taken to ensure the centrality and independence of the judiciary in the penal system, particularly with reference to limited renewable-term appointments, so as to bring them into line with the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Guidelines on the Role of Prosecutors.[237]

2.8.4.1 Trainings, education and awareness-raising

The Special Rapporteur and States during the UPR process recommended Kyrgyzstan introduce human rights education and training to members of the police and prison and detention staff, as well as to:[238]

- Raise the awareness of personnel of the Prosecutor General's Office and investigating officers of the Ministry of the Interior of their role in preventing torture and ill-treatment, by means of mandatory training on international standards on the prohibition of torture, the provisions governing investigations of torture and ill-treatment, and interrogation techniques and develop training programmes for health and legal professionals on detecting, reporting and preventing torture, to be delivered during professional qualification courses;[239] and
- Strengthen the training of the judiciary in relation to torture and other cruel, inhuman or degrading treatment or punishment, and ensure effective follow-up.[240]

2.8.5 Health-care in Detention Facilities and Psychiatric Institutions

The Special Rapporteur on Torture stated that pretrial detention facilities and the colony visited had modestly equipped medical units, but there was an acute shortage of medical personnel, especially dentists and gynecologists, and no psychiatric assistance.[241] There was no permanent medical presence in temporary detention facilities, and health emergencies were handled by simply calling an ambulance.[242] While existing medical personnel in pretrial detention facilities employed by the Ministry of the Interior and the penitentiary administration perform check-ups upon arrival, they clearly lack independence, because they are accountable to the prison administration.[243] If a medical worker observes bodily injuries tending to show evidence of torture, in the absence of a complaint, his or her report will rarely provide a description of injuries.[244] In addition, medical personnel lack specific training in assessing and documenting cases of torture and ill-treatment.[245]

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[234] SR on Torture, para. 82 (b).
[235] SR on Torture, para. 83 (a).
[236] SR on Torture, para. 83. (b).
[237] CAT Committee, Concluding observations, para. 75 d.
[238] UPR, recommendations by Czech Republic, para. 76.71.
[239] SR on Torture, para. 83. (c).
[240] SR on Torture, para. 83. (d).
[241] SR on Torture, para. 65.
[242] SR on Torture, para. 63.
[243] SR on Torture, para. 63.
[244] SR on Torture, para. 63.
[245] SR on Torture, para. 63.

The Special Rapporteur visited the Kyzyl-Yhar psychiatric hospital in Djalal-Abad province and received a favorable impression, although the infrastructure itself is very old and the facility has a shortage of doctors.[246] At the time of the visit, 36 patients were undergoing forced treatment.[247] Although no cases of mistreatment were identified at the time of the visit, the Special Rapporteur received reports of ill-treatment of patients, including complaints about the extensive use of tranquilizers when patients do not comply with orders.[248] The Special Rapporteur recommended that appropriate bodies use institutionalization as a last resort and provide alternatives, including non-custodial psychiatric assistance available at local hospitals, and ensure the patient's right to free and informed consent to treatment in compliance with international standards.[249]

2.8.6 Women and Children in Detention

The Special Rapporteur on Torture found that for women in detention, conditions are generally better than in men's cells.[250] However, in only one pretrial facility were there female guards as required by international minimum standards.[251] In pretrial facility No. 1, a terminally ill woman continued to be detained.[252] The Special Rapporteur urged the authorities to release the woman on humanitarian grounds.[253]

Countries expressed concern about allegations of torture against minors in detention[254] and recommended to fight against torture, in particular torture against minors;[255] to ensure the full legal protection of the freedom of children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including corporal punishment in any setting; and take further practical measures to stem the occurrence of violence against children.[256]

2.8.7 Human Rights Defenders, Peaceful Demonstrators and Journalists

States participating in the UPR process noted several communications based on allegations involving the intimidation and harassment of human rights defenders.[257] Kyrgyzstan was recommended to undertake clear commitments to put an end to all forms of intimidation, harassment, aggression, arbitrary arrest and detention, and torture against all persons, in particular human rights defenders, peaceful demonstrators and journalists;[258] and to stop all acts of intimidation, corporal punishment or arrest linked to the activities of human rights defenders, political activists and journalists, and guarantee freedom of expression, without introducing any provisions restricting its exercise.[259]

[246] SR on Torture, para. 71.
[247] SR on Torture, para. 71.
[248] SR on Torture, para. 72.
[249] SR on Torture, para. 84.
[250] SR on Torture, para. 68.
[251] SR on Torture, para. 68.
[252] SR on Torture, para. 68.
[253] SR on Torture, para. 68.
[254] UPR, recommendations by France, para. 33; Italy, para. 40.
[255] UPR, recommendations by Italy, para. 76.51.
[256] UPR, recommendations by Sweden, para. 76.56 .
[257] UPR, recommendations by France, para. 33.
[258] UPR, recommendations by France, para. 76.52.
[259] UPR, recommendations by Argentina, para. 76.57.

2.8.8 Individual Communications on Torture

The Human Rights Committee (hereinafter "HRC") examined individual complains against Kyrgyzstan related to the prohibition of torture under article 7 of the ICCPR[260] and found the violations on the following complaints:

- **Kulov v. Kyrgyzstan** (Communications No. 1369/2005), the violation was found since the author was held incommunicado detention and total isolation, he was not allowed any correspondence and communication, and was kept without any contact with the outside world;[261]
- **Krasnova v Kyrgyzstan** (Communication No. 1402/2005), the violation was found since the case involved the torture for the purpose of extracting a confession from 14 year old minor;[262]
- **Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan** (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), there was extradition of four recognized refugees from Kyrgyzstan to Uzbekistan, where the HRC found substantial grounds for believing that there is a real risk of irreparable harm contemplated by article 7 of the ICCPR; despite request for interim measures of protection;[263]
- **Akhadov v. Kyrgyzstan** (Communication No. 1503/2006), the Kyrgyzstan failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately;[264]
- **Gunan v. Kyrgyzstan** (Communication No. 1545/2007), Kyrgyzstan's competent authorities failed to give due and adequate consideration to the author's complaints of torture made during the domestic criminal proceedings;[265] and
- **Zhumbaeva v. Kyrgyzstan** (Communication No. 1756/2008), the case involved the death in police custody. The autopsy report revealed various injuries on the victim's face and neck. Kyrgyzstan is responsible for the security of any person in custody and, when an individual is injured while in detention. Kyrgyzstan failed in its procedural obligation to properly investigate the victim's death and allegations of torture, and to take appropriate investigative and remedial measures. [266]

Kyrgyzstan has obligation to fulfill individual remedies towards those whose rights were violated, but also Kyrgyzstan is also under an obligation to prevent similar violations in the future.

[260] **Article 7:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
[261] HRC, Communications No. 1369/2005, CCPR/C/99/D/1369/2005, para. 8.2.
[262] HRC, Communications No. 1402/2005, CCPR/C/101/D/1402/2005, para. 8.2.
[263] HRC, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, CCPR/C/93/D/1461, para. 12.4 and 12.5.
[264] HRC, Communications No. 1503/2006, CCPR/C/101/D/1503/2006, para. 7.3.
[265] HRC, Communications No. 1545/2007, CCPR/C/102/D/1545/2007, para. 6.2.
[266] HRC, Communications No. 1756/2008, CCPR/C/102/D/1756/2008, para. 8.9 and 8.10.

2.9 RIGHT TO LIFE AND ARBITRARY DEPRIVATION OF LIFE

2.9.1 Individual Communications under ICCPR Article 6 on the Right to Life

Out of eleven decisions, the Human Rights Committee (hereinafter "HRC") found a violation of the right to life under article 6 of the ICCPR in five following communications:

- **Umetaliev v. Kyrgyzstan** (Communication No. 1275/2004), the case involved the right to life; arbitrary deprivation of the life of a Kyrgyz national in the course of an anti-riot security operation in Aksy region. The article was violated due to the failure to conduct an adequate investigation and to initiate proceedings against the perpetrator/s;[267]
- **Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan** (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), the article was violated due to the extradition of four recognized refugees from Kyrgyzstan to Uzbekistan, where the HRC found substantial grounds for believing that there is a real risk of irreparable harm contemplated by article 6 of ICCPR; despite request for interim measures of protection;[268]
- **Akhadov v. Kyrgyzstan** (Communication No. 1503/2006), the article was violated due sentencing to death following a trial held in violation of the fair trial guarantees;[269]
- **Gunan v. Kyrgyzstan** (Communication No. 1545/2007), the article was violated due the sentencing to death following a trial held in violation of the fair trial guarantees;[270] and
- **Zhumbaeva v. Kyrgyzstan** (Communication No. 1756/2008), the case involved the death in police custody. The autopsy report revealed various injuries on the victim's face and neck. Kyrgyzstan is responsible for the security of any person in custody and, when an individual is injured while in detention. Kyrgyzstan failed in its procedural obligation to properly investigate the victim's death and allegations of torture, and to take appropriate investigative and remedial measures. [271]

Kyrgyzstan has obligation to fulfill individual remedies towards those whose rights were violated, but Kyrgyzstan is also under an obligation to prevent similar violations in the future.

2.10 ENFORCED DISAPPEARANCES

Under the Universal Periodic Review process, States recommended Kyrgyzstan to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.[272]

2.11 HUMAN TRAFFICKING

Pakistan recommended Kyrgyzstan to continue its institutional efforts to combat human trafficking,[273] and the Czech Republic recommended Kyrgyzstan give high priority fight against forced marriages and trafficking in human beings, including through the strengthening of provisions for the investigation of and punishment for such crimes, the provision of support and protection to the victims, and raising public awareness of them.[274]

See recommendations in Section 4.1.6 on Women's Rights of this Report for further discussion of trafficking of women.

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[267] HRC, Communication No. 1275/2004, CCPR/C/94/D/1275/2004, para. 9.4 and 9.5.
[268] HRC, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, CCPR/C/93/D/1461, para. 12.6 and 12.7.
[269] HRC, Communications No. 1503/2006, CCPR/C/101/D/1503/2006, para. 7.5.
[270] HRC, Communications No. 1545/2007, CCPR/C/102/D/1545/2007, para. 6.5.
[271] HRC, Communications No. 1756/2008, CCPR/C/102/D/1756/2008, para. 8.9 and 8.10.
[272] UPR, recommendations by Brazil, para.77.1; France, para. 77.2; Spain, para. 77.4; Argentina, para. 77.9; Uruguay, para. 77.11.
[273] UPR, recommendations by Pakistan, para.76.65.
[274] UPR, recommendations by Czech Republic, para.76.60.

2.12 HUMAN RIGHTS DEFENDERS

The Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, (hereinafter "Special Representative on HR defenders"), States participating in the Universal Periodic Review (hereinafter "UPR") process and the Human Rights Committee (hereinafter "HRC") expressed concerns on the status of human rights defenders.

States participating in the UPR process recommended Kyrgyzstan:

- Undertake clear commitments to put an end to all forms of intimidation, harassment, aggression, arbitrary arrest and detention, and torture in particular against human rights defenders, peaceful demonstrators and journalists;[275]
- Stop all acts of intimidation, corporal punishment or arrest linked to the activities of human rights defenders, political activists and journalists;[276]
- Investigate and punish cases involving the intimidation, harassment, persecution and torture of journalists, activists and human rights defenders, as well as participants in demonstrations;[277]
- Continue to take all the measures necessary to prevent interference with the work of human rights defenders;[278]
- Present official, individualized documents to human rights defenders whose bans are lifted[279]
- Ensure that all human right defenders can work in safe conditions;[280]
- Introduce measures to ensure and promote the freedom and security of reporters and human rights defenders and refrain from endorsing measures that limit the activity of independent civil society;[281]
- Allow the forces of a free society (human rights defenders, journalists and lawyers working in defence of a free media, civil liberties and human rights in Kyrgyzstan) to operate in the country;[282] and
- Ensure civil society activists and political parties, are free from pressure and are not prosecuted for exercising this right.[283]

In 2001, the Special Representative on HR defenders noted with the concern that an environment of mistrust between the Government and civil society prevailed, despite some initiatives taken to open a dialogue. Although governmental authorities in general recognized the legitimacy of the work of human rights NGOs, the Special Representative stated that the growing influence of civil society organizations on public opinion is seen as a threat by the Government.[284] The right to participate in the government of the country and conduct of public affairs is exercised under a great deal of strain.[285] The Special Representative on HR defenders strongly urged the Government of Kyrgyzstan to ensure that the legislative reforms under consideration reinforce guarantees for the protection of human rights and provide for the establishment of effective mechanisms for their implementation. Specific provision in the mandate of the Ombudsman for protection of human rights defenders should be seriously considered.[286]

The Special Representative further stated that in order to improve the environment for the work of human rights defenders, a **dialogue between the Government and civil society** should be initiated and

[275] UPR, recommendations by France, para.76.52.
[276] UPR, recommendations by Argentina, para.76.57.
[277] UPR, recommendations by Uruguay, para.76.74.
[278] UPR, recommendations by Switzerland, para.76.81.
[279] UPR, recommendations by Norway, para.76.86.
[280] UPR, recommendations by Denmark, para.76.104.
[281] UPR, recommendations by United Kingdom of Great Britain and Northern Ireland, para.77.38.
[282] UPR, recommendations by Norway, para.76.87.
[283] UPR, recommendations by Lithuania, para.76.89.
[284] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002 (hereinafter "SR on HR defenders"), para. 158.
[285] SR on HR defenders, para. 159.
[286] SR on HR defenders, para. 172.

measures should be taken to build mutual trust and respect. A positive step in this direction would be the withdrawal of cases against human rights defenders.[287]

The Special Representative expressed her distress over the fact that the freedom of human rights defenders had been curtailed by violations of their rights to life, personal security, liberty, privacy, integrity and reputation.[288] Groups and individuals working in almost every field of human rights have experienced some degree of harassment.[289] While constitutional and legal provisions regarding human rights and fundamental freedoms have failed to protect them, laws on national security, libel and defamation had been extensively used to punish them for their activities in defence of human rights.[290]

She strongly urged the Government to investigate **violations committed against human rights defenders** and to bring the responsible parties to justice. Complaints of harassment of human rights defenders must receive a prompt response and adequate measures for their safety should be taken. In this regard, the Special Representative urged the special unit within the Office of the General Procurator to investigate cases of abuse of human rights defenders committed by law enforcement and security services and to make the results of the investigation known. Public officials found to be responsible for such actions should be prosecuted in order that the growing tendency of these officials to intimidate human rights defenders may be effectively deterred.[291]

The Special Representative of the Secretary-General on the situation of human rights defenders further stated that although the law provides for remedy in cases of violation of human rights, lack of confidence in the independence and impartiality of judicial or other authorities has discouraged any action for seeking such remedies.[292] Therefore, she stated that the judiciary has a critical role in the protection of human rights defenders, particularly when criminal prosecution and civil litigation is the method of harassment used against them.[293] The Special Representative was informed that the Government has in numerous instances been able to use judicial proceedings to harass political and human rights activists and journalists.[294] Further Hila Jilani, Special Representative on Human rights defenders, stated that the training of persons involved in the administration of justice as well as training of government officials could improve the judicial and administrative systems. The Special Representative encouraged the Government to undertake such training, which could also be a part of technical cooperation sought through the OHCHR.[295]

The HRC in its review of Kyrgyzstan had also expressed its concern about **the intimidation and harassment, in particular by government officials, of journalists and human rights activists, including members of human rights non-governmental organizations, who have been subjected to prosecution, fines and imprisonment**. On this matter, the HRC stated that Kyrgyzstan must protect journalists and human rights activists from harassment. It should ensure that journalists can perform their profession without fear of being subjected to prosecution and libel suits for criticizing government policy or government officials. Journalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the ICCPR should be released, rehabilitated and given compensation pursuant to articles 9.5 and 14.6 of the ICCPR.[296]

See recommendations in Section 2.8.7 particularly on torture of human rights defenders, peaceful demonstrators and journalists and in Section 4.1.15 on women human rights defenders.

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[287] SR on HR defenders, para. 173.
[288] SR on HR defenders, para. 161.
[289] SR on HR defenders, para. 161.
[290] SR on HR defenders, para. 161.
[291] SR on HR defenders, para. 174.
[292] SR on HR defenders, para. 165.
[293] SR on HR defenders, para. 132.
[294] SR on HR defenders, para. 132.
[295] SR on HR defenders, para. 177.
[296] Concluding observations of the Human Rights Committee, CCPR/CO/69/KGZ, dated from July 24, 2000 (hereinafter "HRC, Concluding observations"), para. 20.

2.13 FREEDOM OF EXPRESSION AND JOURNALISTS

Hila Jilani, the Special Representative of the Secretary General on the situation of human rights defenders, who visited Kyrgyzstan in 2001, concluded that the ability of human rights defenders, and the people in general, to freely publish, impart or disseminate to others views on human rights and to draw the attention of the public to issues of concern is severely hampered because of the policy of restraint adopted by the Government. The people's right to information has yet to be fully respected.[297]

She was also concerned at the lack of freedom of expression and the press in Kyrgyzstan. The numerous cases brought to her attention indicate a pattern of harassment of the media and journalists aimed at controlling freedom of expression, including the exposure of human rights abuses. The right to carry out professional activities has been denied by imposing penalties that are clearly intended to prevent journalists from carrying out their professional duties. The use of civil and criminal proceedings for defamation and libel inhibit the ability of the press to inform the public about actions of the Government that impair democratic development and violate human rights.[298]

Most recently, States participating in the UPR mechanism expressed concern about the vulnerable situation of journalists and lawyers,[299] harassment of journalists,[300] media freedom,[301] allegations involving attacks against journalists and recent media blackouts.[302] Slovenia expressed concern at the deterioration of human rights, including a large number of unresolved cases involving the deaths of journalists. Slovenia referred to, inter alia, the imposition of controls over democratic freedoms through the blocking of independent news websites.[303]

States through the UPR mechanism recommended Kyrgyzstan undertake the following:

- Guarantee freedom of the media in the draft media law in accordance with international standards;[304]
- Modify relevant legislation; in particular, remove provisions of the Criminal Code on the prosecution of journalists for libel;[305]
- Remove the offence of liable for journalists from the Criminal Code;[306]
- Review the compliance of its national legislation with provisions of the ICCPR on freedom of expression;[307]
- Continue to take all the measures necessary to prevent interference with press freedom;[308]
- Guarantee freedom of expression[309], without introducing any provisions restricting its exercise;[310]
- Ensure that all journalists can work in safe conditions;[311]
- Guarantee an environment for journalists free of intimidation and attacks;[312]
- Introduce measures to ensure and promote the freedom and security of reporters including revoking the criminal liability of journalists for libel and slander, and refrain from endorsing measures that limit the activity of independent civil society;[313]

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[297] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002 (hereinafter "SR on HR defenders") para. 162
[298] SR on HR defenders, para. 164.
[299] UPR, recommendations by Norway, para. 21.
[300] UPR, recommendations by Italy, para.40; Netherlands, para. 59.
[301] UPR, recommendations by the United Kingdom of Great Britain and Northern Ireland, para. 47.
[302] UPR, recommendations by Canada, para. 50; Ireland, para. 70; Netherlands, para. 59.
[303] UPR, recommendations by Slovenia, para. 36.
[304] UPR, recommendations by Ireland, para. 76.18.
[305] UPR, recommendations by Lithuania, para.77.12.
[306] UPR, recommendations by Ireland, para.77.15.
[307] UPR, recommendations by Czech Republic, para.76.17.
[308] UPR, recommendations by Switzerland, para. 76.81.
[309] UPR, recommendations by Mexico, para. 76.90.
[310] UPR, recommendations by Argentina, para. 76.57.
[311] UPR, recommendations by Denmark, para.76.104.
[312] UPR, recommendations by Italy, para.76.79.

- Investigate all attacks on journalists thoroughly in a timely manner;[314]
- Investigate and punish cases involving the intimidation, harassment, persecution and torture of journalists, activists and human rights defenders, as well as participants in demonstrations;[315]
- Investigate all attacks on journalists and members of the opposition, and take appropriate measures to fight against impunity for such crimes;[316]
- Take steps to ensure the safety of journalists and to properly investigate attacks against them;[317]
- Take measures to ensure the right to freedom of expression, including guaranteeing unhindered access for independent media to airtime and the Internet, and to introduce criminal measures for the threatening of journalists and media outlets;[318]
- Take measures to ensure the unhindered exercise of freedom of expression;[319]
- Take all measures necessary to ensure full respect for the freedom of expression in accordance with Kyrgyzstan's international obligations;[320] and
- Allow human rights defenders, journalists and lawyers working in defence of a free media, civil liberties and human rights in Kyrgyzstan to operate in the country.[321]

The Human Rights Committee had expressed its concern earlier about the closing of newspapers on charges of tax evasion and to secure the payment of fines. It was also concerned about the functions of the National Communications Agency, which is attached to the Ministry of Justice and has wholly discretionary power to grant or deny licences to radio and television broadcasters. Delay in the granting of licences and the denial of licences have a negative impact on the exercise of freedom of expression and the press guaranteed under article 19 of the ICCPR and result in serious limitations in the exercise of political rights prescribed in article 25, in particular with regard to fair elections. On this matter, the HRC stated that the tasks and competences of the National Communications Agency should be clearly defined by law, and its decisions should be subject to appeal to judicial authority.[322]

The Committee was especially concerned about the use of libel suits against journalists who criticize the Government. On this matter, the Human Rights Committee stated that Kyrgyzstan must protect journalists and human rights activists from harassment. It should ensure that journalists can perform their profession without fear of being subjected to prosecution and libel suits for criticizing government policy or government officials. Journalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the ICCPR should be released, rehabilitated and given compensation pursuant to articles 9.5 and 14.6 of the ICCPR.[323] Special Representative of the Secretary General on the situation of human rights defenders also emphasized the laws on libel and defamation should, in particular, be reformed to eliminate the possibility of such laws being applied to curb the freedom of the press.[324]

The Committee on Economic, Social and Cultural Rights particularly noted with alarm on female journalists' situation that the repressive measures taken against female journalists for their protest against inequality between men and women in Kyrgyz society.[325]

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[313] UPR, recommendations by United Kingdom of Great Britain and Northern Ireland, para. 77.38.
[314] UPR, recommendations by, para. Netherlands.76.73.
[315] UPR, recommendations by Uruguay, para.76.74.
[316] UPR, recommendations by Slovenia, para.76.78.
[317] UPR, recommendations by Lithuania, para.76.80.
[318] UPR, recommendations by Canada, para.76.82.
[319] UPR, recommendations by Austria, para.76.83.
[320] UPR, recommendations by Sweden, para.76.84.
[321] UPR, recommendations by Norway, para. 76.87.
[322] Concluding observations of the Human Rights Committee, CCPR/CO/69/KGZ, dated from July 24, 2000 (hereinafter "HRC, Concluding observations"), para. 21.
[323] HRC, Concluding observations, para. 20.
[324] SR on HR defenders, para. 171.
[325] Committee on ESCR, Concluding observations, para. 18.

2.13.1 Individual Communications on the Right to Seek and Receive Information

The Human Rights Committee (HRC) examined an individual communication involving article 19 of the ICCPR against Kyrgyzstan and found a violation of Toktakunov's right. **Toktakunov v. Kyrgyzstan** (Communication No. 1470/2006), the HRC found violation based on unjustifiable denial of the right to seek and receive information.[326] The facts of the case include that the Central Directorate of Corrections of the Ministry of Justice refused to provide Nurbek Toktakunov with information on the number of individuals sentenced to death in Kyrgyzstan as of 31 December 2003, as well as on the number of individuals sentenced to death and currently detained in the penitentiary system due to its classification as 'confidential' and 'top secret' by the laws of the Kyrgyzstan. The Bishkek City Court upheld the decision of the Bishkek Inter-District Court, on the grounds that the information on individuals sentenced to death was made secret by the Ministry of Interior and access to such information was restricted. The HRC concluded that Kyrgyzstan violated article 19 and has an obligation to fulfill individual remedies towards those whose rights were violated, and is also under an obligation to prevent similar violations in the future.

2.14 RIGHT OF ASSEMBLY

States participating in the UPR process expressed concerns about obstacles to the right to peaceful assembly.[327] In 2000, the HRC had been concerned about restrictions on the holding of public meetings and demonstrations, which exceed those permitted under article 21 and about the lack of appeal procedures in the case of denial of permission.[328]

In 2001, the Special Representative of the Secretary General on the situation of human rights defenders urged the Government to review restrictions imposed by laws and regulations on the freedoms of assembly, association and expression and to bring them into conformity with the spirit of the ICCPR and the obligations of Kyrgyzstan under international human rights law.[329] Further the Special Representative urged the Government to respect the right of citizens to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.[330]

States under the UPR process recommended Kyrgyzstan do the following:

- Bring the Law on Peaceful Assembly into compliance with international human rights standards;[331]
- Ensure that the basic civil and political rights of civil society organizations are protected in line with the obligations set out in the International Covenant on Civil and Political Rights;[332]
- Take measures to ensure the unhindered exercise of freedom of assembly;[333]
- Ensure the effective implementation of freedom of assembly, and, in particular, guarantee that participants in peaceful assemblies;[334]
- Guarantee in law and in practice the right to the freedoms of association and peaceful assembly. In this regard, it is urgent that the bill on freedom of assembly be concluded and approved;[335] and
- Train armed forces and police in the respect of fundamental rights of the citizens, notably the right to assembly and legally ban the disproportional use of force against its own population.[336]

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[326] HRC, Communication No. 1470/2006, CCPR/C/101/D/1470/2006, para. 7.7.
[327] UPR, recommendations by Slovenia, para. 36; Ireland, para. 70.
[328] HRC, Concluding observations, para. 22.
[329] SR on HR defenders, para. 171.
[330] SR on HR defenders, para. 175.
[331] UPR, recommendations by Norway, para. 76.14. Hungary, 76.17. Czech Republic.
[332] UPR, recommendations by Spain, para. 76.88.
[333] UPR, recommendations by Austria, para. 76.83.
[334] UPR, recommendations by Lithuania, para. 76.89.
[335] UPR, recommendations by Mexico, para. 76.90.
[336] UPR, recommendations by Germany, para. 77.39.

2.15 FREEDOM OF RELIGION

Under the UPR process, States expressed their concern about the restrictive law on religion adopted in 2007,[337] and recommended Kyrgyzstan review the Law on Religion so as to ensure that the right to freedom of religion is upheld in compliance with international legal standards.[338]

In 2000, the Human Rights Committee had taken note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms. The Committee regretted that Kyrgyzstan had not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service. It indicated that conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 of the ICCPR, bearing in mind that article 18 also protects freedom of conscience of non-believers. The Government should fix the periods of military service and alternative service on a non-discriminatory basis.[339]

The Special Representative on human rights defenders concluded from the circumstances observed during that mission that the fundamental policy of the Government of Kyrgyzstan was to create an environment as close to secularism as practicable.[340] It stated further "it can be said that the Government's primary goal is to promote inter-religious and inter-communal tolerance and harmony. It is, however, clear that activities of radical Muslim groups is a matter of deep concern for the Government. The Government continues to deal with this as a security issue. It is feared that such an approach creates political tensions and brings the Government's policy of religious tolerance into question. More significantly, this has allowed elements with power and control over religious institutions created by the State, such as the muftiat, to use religion as a means of imposing political authority over the populace. This would present a new and different challenge to the Government."

2.16 FREEDOM OF MOVEMENT AND CIRCULATION

Mexico recommended in regard to freedom of movement that Kyrgyzstan make more flexible the requirements for those people who change their place of residence within the country so that they have equitable access to social security, health care, education and pensions. [341] In 2000, the Human Rights Committee had raised the issue of propiskas and concluded that the continued existence of the propiska system violates the right to freedom of movement and choice of residence under article 12 of the ICCPR. Kyrgyzstan should abolish the system of authorizations (propiska) and give full effect to the provisions of article 12 of the ICCPR.[342]

2.17 OTHER ISSUES: LAND MINES, TERRORISM AND DRUG USE

Uruguay recommended Kyrgyzstan to request cooperation and technical assistance from the relevant UN bodies for the removal of land mines and the demarcation of border zones.[343]

Other recommendations were that Kyrgyzstan strengthen its efforts to eradicate the illegal spread of narcotic drugs[344] and continue its efforts to combat terrorism financing and de-legitimize income generated through criminal means.[345]

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[337] UPR, recommendations by Italy, para. 40; Netherlands 59.
[338] UPR, recommendations by Netherlands, para. 77.37.
[339] HRC, Concluding observations, para. 18.
[340] SR on HR defenders, para. 150.
[341] UPR, recommendations by Mexico, para. 77.36.
[342] HRC, Concluding observations, para. 17.
[343] UPR, recommendations by Uruguay, para. 77.40.
[344] UPR, recommendations by Pakistan, para. 76.117.
[345] UPR, recommendations by Kuwait, para. 76.124.

2.18 KYRGYZ INQUIRY COMMISSION AND INVESTIGATION OF THE JUNE 2010 EVENTS

The Kyrgyz Inquiry Commission was established as an Independent International Commission of Inquiry into the Events in southern Kyrgyzstan (KIC) in 2010. It was mandated to investigate the facts and circumstances relevant to incidents that took place in southern Kyrgyzstan in June 2010, qualify the violations and crimes under international law, determine responsibilities and make recommendations, particularly on accountability measures, so as to ensure the non-repetition of the violations and to contribute towards peace, stability and reconciliation.

The mandate of the KIC required it to make recommendations targeted towards the non-repetition of the violations to contribute to peace, stability and reconciliation. The KIC undertook an extensive investigation and made recommendations in May of 2011 under three broad headings: reconciliation, accountability and impunity. Most of the recommendations are directed towards the government of Kyrgyzstan. The KIC also made recommendations to the international community.[346]

2.18.1 Recommendations on Conflict Prevention and Reconciliation

On inclusive State building

The KIC indicated that Kyrgyzstan should take an explicit stand on improving the relations between various communities. It should publicly acknowledge that Kyrgyzstan is a multiethnic society, that the government is committed to the notion of a multiethnic state, and recognize that unless the Kyrgyz political class accepts the Uzbeks and other groups as equals little will change. On this Kyrgyzstan should commit to the following measures:[347]

- Take a strong public stand against extreme nationalism and ethnic exclusivity by declaring that Kyrgyzstan is a multiethnic society and facilitating the integration of its minorities into all spheres of public life;
- Restore the name 'Republic of Kyrgyzstan' as more responsive to the civic basis of nation building than the name 'the Kyrgyz Republic'; and
- Engage with and support NGOs in developing public awareness strategies on inter-ethnic dialogue and integration.

On Language, Culture and Education

Since other languages, particularly Uzbek, are used,[348] the Government should avail itself of the possibility of acceding to the European Charter for Regional or Minority Languages. The Uzbek language should have a special status at municipal and regional levels in southern Kyrgyzstan, including the availability of official forms, public notices, education, cultural and legal facilities.

As school and university facilities and the language of education are central to social integration, therefore:[349]

- Schools destroyed or damaged should be rebuilt as a matter of priority;
- The Kyrgyz-Uzbek University of People's Friendship should be rebuilt and given a license to operate;
- School curricula should be inclusive of various cultural, language and historical traditions and perspectives.

Since culture plays an important role in social interaction and specifically in reconciliation in post conflict situations,[350] KIC recommended the following additional specific measures:

- The Uzbek Drama Theatre and other cultural facilities destroyed or damaged should be restored;

[346] Report of the Kyrgyz Inquiry Commission (hereinafter "KIC"), para. 401.
[347] KIC, para. 402.
[348] KIC, para. 403.
[349] KIC, para. 404.
[350] KIC, para. 405.

- The Ministry of Culture should promote the diverse cultural heritage of Kyrgyzstan; and
- Artistic endeavours should be encouraged and used as part of the healing and reconciliation process.

On Governance

The KIC indicated that a culture of merit in the public service, particularly in recruitment and promotion, is key to good governance and is also a safeguard against corruption and nepotism and further recommended the Kyrgyz Government provide for the following:[351]

- Appointment to public service positions should be based on competence and a transparent selection process;
- Municipal and Regional authorities should ensure broad public consultation in the design and implementation of development plans, including those that encourage integrated neighbourhoods; and
- The offices of the Mayor and Governor of Osh should each create a position of adviser on interethnic relations with the assistance of the Office of the OSCE High Commissioner for National Minorities.

On Women's Rights and Gender Equality

The KIC highlighted the point that that the full participation of women in the society of Kyrgyzstan is vital to the sustainability of peace and development, and recommended the Government should:[352]

- Establish an independent national body for the promotion of women's rights and gender equality, with a policy-making, coordination and monitoring mandate and sufficient funds from the national budget;
- In accordance with United Nations Security Council Resolution 1325, integrate women from different communities into peace and reconciliation initiatives;
- Disseminate the 2008 Concluding observations of the Committee on the Eliminations of Discrimination against Women in its review of Kyrgyzstan and take measures to ensure that its recommendations are implemented; and
- Acknowledge the role of women's NGOs and provide support for their activities;
- Adopt a zero tolerance policy on violence against women.

On Media

The KIC noted that the media is one of the most powerful players in modern societies, having the power to shape the facts and create images of reality, and it is an interlocutor in relationships between communities. It recommended that:[353]

- The media should adopt a code of conduct that will reflect the cultural and ethnic diversity of Kyrgyzstan in order to promote tolerance; and
- National television and radio programs should be available in at least the Kyrgyz, Russian and Uzbek languages.

On Public Safety and Security

The KIC found that the security situation in southern Kyrgyzstan remains volatile. Tensions between ethnic communities are still high. Criminality is widespread. The credibility of the security forces has been severely eroded.[354] In addressing these issues the KIC recommended the Government ensure that:

- Security forces carry out their function according to law and not permit ethnic and other extraneous factors to affect their actions;

[351] KIC, para. 406.
[352] KIC, para. 407.
[353] KIC, para. 408.
[354] KIC, para. 409.

- The composition of the security forces reflects the ethnic diversity of the society employ a regional rotation policy in personnel of the security forces improve the pay scales of the security forces; and
- Undertake more targeted and sustained measures to combat criminal gangs as a matter of urgency, that the security forces are trained and equipped to deal with situations of civil unrest in accordance with human rights requirements.

The Government should further:

- Cooperate with the OSCE Police Advisory Group in Kyrgyzstan, headquartered in Osh, to enhance the professionalism and credibility of the security forces; and
- Increase cooperation with international and regional anti-narco-trafficking organisations.

On prevalence of weapons among civilians

The KIC findings revealed that a significant proportion of the population of southern Kyrgyzstan hold arms. There is a wide discrepancy between the legislation regulating the ownership of weapons and its implementation. The KIC recommended the Government:[355]

- Organize an effective disarmament campaign for the surrender of illegal weapons in Kyrgyzstan and implement criminal sanctions attaching to illegal possession; and
- Enforce the 4 August 2001 law on the ownership of weapons.

2.18.2 Recommendations on Accountability

The KIC found in its investigation that hundreds, perhaps thousands, of crimes under the law of Kyrgyzstan were committed during the events of June 2010. If the investigations and prosecutions of these crimes are not radically improved in terms of fairness and impartiality, the exercise will lack legitimacy. Furthermore, **if the evidence of certain acts committed during some of the attacks against the mahallas was proven beyond reasonable doubt in a court of law, those acts could amount to crimes against humanity**.[356]

On criminal and disciplinary accountability

- The Government should conduct thorough, independent and impartial investigations into crimes, without reference to the ethnicity of alleged perpetrators, and ensure that prosecutions conform with international fair trial standards;
- The prosecution and the judiciary should ensure that all relevant evidence is submitted to and considered by the court and that convictions are only based on confessions when the probity and fairness of the processes by which they were obtained can be confirmed; and
- The Government should consider seeking international assistance in the conduct of investigations and prosecutions arising out of the events of June 2010. This assistance could encompass training for investigators, prosecutors, lawyers, and judges.

The KIC findings revealed that some members of the security forces were directly or indirectly involved in the violence, others surrendered weapons and other equipment to civilians with minimal or no resistance.[357] It urged the Government to:

- Undertake an immediate investigation into the actions of the security forces during the events including the loss of military and police equipment and weapons; and
- Prosecute or, where appropriate, take disciplinary action in respect of individuals found to have committed crimes or breaches of military or police discipline either by action or omission during the events.

[355] KIC, para. 410.
[356] KIC, para. 411.
[357] KIC, para. 412.

On the issue of the Crimes against humanity, and the finding of the KIC that certain acts committed during the June 2010 events may qualify under international law as crimes against humanity, it recommended the Government:[358]

- Incorporate crimes against humanity in the Criminal Code of Kyrgyzstan; and
- Either ratify the Rome Statute or accept the jurisdiction of the International Criminal Court as a non-party state.

On gender-based violence

The KIC investigation found that sexual and gender-based violence committed during the events remains underreported and largely unacknowledged by the authorities, therefore, the Government should:[359]

- Recognise that violence against women is a serious offence, create a more gender-sensitive law enforcement response and ensure the prosecution of perpetrators of sexual and gender based violence in southern Kyrgyzstan; and
- Provide financial and other forms of assistance to victims of gender based violence, including ensuring access to adequate medical and psychological care.

In its report of 2011, the U.N. High Commissioner on HR stated that 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 had been documented and reported to OHCHR, comprehensive data is limited due to the sensitive nature of this issue.[360] The gender-based violence, including sexual violence that took place in June 2010 highlighted 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 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. [361]

The U.N. High Commissioner on Human Rights recommended that 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;[362]
- Provide sufficient resources to ensure that victims of gender-based violence have access to adequate medical and psychological care;[363] and
- Take steps to ensure greater inclusion, participation and representation of civil society, especially women's organizations, in the peace building and reconciliation efforts, as per various universal periodic review recommendations, in particular 76.91, supported by Kyrgyzstan, and as a matter of urgency.[364]

On violations of human rights and fair trial

The KIC report stated that serious human rights violations occurred and were still occurring in southern Kyrgyzstan. Torture and ill-treatment of detainees and breaches of fair trial guarantees are of particular concern. Therefore, the Government should to take the following actions:[365]

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[358] KIC, para. 413.
[359] KIC, para. 414.
[360] Report of the United Nations High Commissioner for Human Rights on technical assistance and cooperation on human rights for Kyrgyzstan, A/HRC/17/41, dated from April 1, 2011 (hereinafter "Report of the U.N. High Commissioner for Human Rights"), 2011, para. 65.
[361] Report of the U.N. High Commissioner for Human Rights, 2011, para. 66.
[362] Report of the U.N. High Commissioner for Human Rights, para. 81 (a).
[363] Report of the U.N. High Commissioner for Human Rights, para. 81 (b).
[364] Report of the U.N. High Commissioner for Human Rights, para. 81 (c).
[365] KIC, para. 415.

- Immediately stop all arbitrary arrests, torture in detention, and other violations of due process rights;
- Immediately publicly condemn the use of torture and other ill-treatment and ensure the prompt, impartial and comprehensive investigation of such complaints and the prosecution of any official suspected of having breached the law;
- Accede to the European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment;
- Ensure that no statements obtained as a result of torture or other ill-treatment are used as evidence in trial proceedings; and
- Ensure that all people deprived of their liberty are informed promptly of the reasons for their detention and any charges against them, and allowed prompt and regular access to a lawyer of their choice and that lawyers can perform their functions unimpeded by intimidation, harassment, or attacks.

In 2011, the United Nations High Commissioner on Human Rights expressed serious concerns relating to **life-sentenced prisoners**, in relation to defendants in criminal cases prosecuted for 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 were a need to:

- Replace life imprisonment with 25 years of deprivation of liberty as a fixed punishment;
- 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
- Build additional facilities for life prisoners.[366]

2.18.3 Recommendations on Fighting Impunity

The KIC noted that the mechanisms to combat impunity and promote of reconciliation contribute to the prevention of further conflict, the strengthening of democracy and the re-establishment of the rule of law, as well as the restoration of dignity to victims through justice, truth and reparation.[367] The international donor community should support the reparations programme. The Government should:

On truth seeking and reconciliation

- Establish a truth and reconciliation commission composed of respected and independent experts to examine the June events, their causes and consequences, and engage all communities;
- Seek the support of the international community for, and invite their active participation in, the work of the truth and reconciliation commission;

On reparation of victims

- As a matter of priority, create a comprehensive reparation programme to provide victims with adequate material compensation for loss and rehabilitation; and
- Undertake symbolic measures aimed at affirming to the society as a whole that the victims of June 2010 are citizens of Kyrgyzstan, whose rights and dignity must be respected, independent of their ethnic origin, sex, religion, or political beliefs.

2.18.4 Recommendations on International Follow-up

The KIC suggested that in order to demonstrate its commitments to the process of ensuring justice and promoting reconciliation, the Government of Kyrgyzstan should ensure that an independent audit is undertaken to evaluate the extent to which it has been able to implement the recommendations contained in the KIC's report. The Government should request the UN Office of the High Commissioner for Human Rights to undertake an evaluation of the progress that has been made and of the challenges that remain in the implementation of the KIC report. The evaluation process should begin six months after the final publication of the report and could also involve the OSCE High Commissioner for National Minorities and other relevant international bodies.[368]

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[366] Report of the U.N. High Commissioner for Human Rights, 2011, para. 41.
[367] KIC, para. 416.
[368] KIC, para. 417.

SECTION 3: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

States participating in the UPR process, Special Procedures under the Human Rights Council, including the Independent expert on policies and foreign debt[369] and the Special Rapporteur on toxic and dangerous wastes, and the Committee on Economic, Social and Cultural Rights made recommendations to the Government of Kyrgyzstan on needed reforms to comply with international standards and the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR") to which Kyrgyzstan is a party.

As a general question, Brazil inquired about steps taken to combat the shortcomings regarding economic, social and cultural rights.[370] Spain particularly recommended the Government ratify the Optional Protocol to the ICESCR.[371] Mexico recommended that Kyrgyzstan, in regard to freedom of movement, make more flexible the requirements for those people who change their place of residence within the country so that they have equitable access to social security, health care, education and pensions.[372] The specific issues on which there has been extensive comment are presented below.

3.1 POVERTY

The concern on poverty was expressed by countries through the UPR process, by the Committee on Economic, Social, and Cultural Rights (hereinafter "Committee on ESCR"), and by the Independent expert on policies and foreign debt.

During the UPR process India noted that 35 per cent of the population continued to live below the poverty line.[373] It further expressed the hope that the adoption of national development strategies would improve the standard of living.[374] On the issue of poverty, States recommended Kyrgyzstan pursue development policies and programmes aimed at poverty alleviation and eradication,[375] through pursuing development policies and programmes,[376] with special emphasis on vulnerable groups, including people with disabilities and women and children. They recommended the Government mainstream a gender perspective into all relevant policies and programmes being developed,[377] especially in rural areas, and improve living standards[378] with the support of the international community.[379]

The Independent expert on policies and foreign debt submitted the following recommendations to the Government of Kyrgyzstan and other concerned parties:

- The international community should provide further support to Kyrgyzstan, in the form of another round of Paris Club debt relief expected in early 2005, and in the form of more assistance in grants terms so as not to negatively affect the debt sustainability strategy adopted by the Government;[380] and
- Human rights norms and principles such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the National Poverty Reduction Strategy (NPRS) and other programmes at all stages. The NPRS

[369] The Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights undertook a country mission to Kyrgyzstan from 7 to 15 June 2004 (hereinafter "IE on policies and foreign debt").
[370] UPR, recommendations by Brazil, para. 22.
[371] UPR, recommendations by Spain, para. 77.4.
[372] UPR, recommendations by Mexico, para. 77.36.
[373] UPR, recommendations by India, para. 30.
[374] UPR, recommendations by India, para. 30.
[375] UPR, recommendations by Pakistan, para. 76.107; China, para. 76.108; Egypt, para. 76.109; Iran, para. 76.115.
[376] UPR, recommendations by Tajikistan, para. 76.110; Afghanistan, para. 76.111; Armenia, para. 76.112.
[377] UPR, recommendations by Armenia, para. 76.112.
[378] UPR, recommendations by Islamic Republic of Iran, para. 76.113.
[379] UPR, recommendations by Bangladesh, para. 76.114.
[380] IE on policies and foreign debt, para. 65 (a).

should be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them, linking with the NPRS objectives in all spheres.[381]

In 2000 the Committee on Economic, Social and Cultural Rights was deeply concerned about the high rate of poverty, estimated to affect more than 50 per cent of the population. The most affected areas are the remote southern rural areas, where persons over the age of 60, women and children, especially, suffer from poverty. In particular, the Committee is concerned about malnutrition, which mostly affects infants (19.7 per cent), children and adolescents.[382]

The Committee on ESCR noted the decrease in the resources available to the Government to fund social insurance, due to the need to reduce the national budget deficit.[383] The Committee on ESCR indicated it would appreciate information in the Government's second periodic report on the progress made in the implementation of "Araket", the National Poverty Alleviation Programme, and related governmental programmes.[384] The Committee urged the Government to continue to seek international financial and technical assistance, as provided for in articles 2.1 and 23 of the ICESCR, in its efforts to improve the enjoyment of economic, social and cultural rights in Kyrgyzstan, and to continue to direct resources to those most in need.[385] The Committee also urged Kyrgyzstan to assess the impact of its economic reforms on the well-being of the population.[386] In this regard, the Committee reminded the Government of its obligation, even under severe resource constraints, to protect the vulnerable groups of society, as stated in paragraph 12 of the Committee's General Comment No.3.[387]

3.2 EMPLOYMENT AND LABOR

The Committee on ESCR noted in its Concluding observations concern for the estimates of unemployment reaching 26 per cent in Kyrgyzstan.[388] The Committee regretted that despite the efforts of the Government to raise the statutory minimum wage to match the minimum consumer budget, the minimum wage did not provide a decent standard of living to the worker and his/her dependants. Furthermore, the Committee noted with regret that the Government is in arrears in payments of pensions and of civil servants' salaries.[389]

The Committee regretted the extensive limitations on the right to strike at present in force in Kyrgyzstan. The Committee was disturbed to learn that some employers are hampering the activities of trade unions and that trade union rights in general are not protected by law as vigorously as they should be protected.[390] The Committee encouraged the Government to review the limitations in the Labour Code on the right to strike with a view to bringing them into conformity with the Covenant. It also urged the Government to apply all legal means to end the interference of employers with the freedom of trade union activity by discouraging workers from forming trade unions.[391] The Committee indicated it would appreciate information, in the second periodic report of the State party, on the application of labour standards in the Free Economic Zones used as export processing areas.[392]

See further discussion on employment of women in Section 4.1.10.

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[381] IE on policies and foreign debt, para. 65 (b).
[382] Concluding observations of the Committee on ESCR to Kyrgyzstan, E/C.12/1/Add.49, dated from September 1, 2000 (hereinafter "Committee on ESCR, Concluding observations"), para. 19.
[383] Committee on ESCR, Concluding observations, para. 20.
[384] Committee on ESCR, Concluding observations, para. 29.
[385] Committee on ESCR, Concluding observations, para. 29.
[386] Committee on ESCR, Concluding observations, para. 29.
[387] Committee on ESCR, Concluding observations, para. 29.
[388] Committee on ESCR, Concluding observations, para. 14.
[389] Committee on ESCR, Concluding observations, para. 14.
[390] Committee on ESCR, Concluding observations, para. 15.
[391] Committee on ESCR, Concluding observations, para. 28.
[392] Committee on ESCR, Concluding observations, para. 27.

3.3 RIGHT TO ADEQUATE HOUSING AND WATER

States through the UPR processes recommended Kyrgyzstan request cooperation and technical assistance from the relevant UN bodies to improve the distribution of drinking water and the access to sanitation services.[393]

The U.N. High Commissioner for Human Rights, reviewing the issue of the right to adequate housing recommended that the Government:

- Review and streamline its legislation and policies on housing in order to ensure their consistency with relevant international human rights norms and standards;[394]
- 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;[395]
- 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;[396] and
- 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.[397]

The Committee on ESCR was concerned that the right to adequate housing was hampered in Kyrgyzstan by the decrease in housing construction, the lack of living space for rural migrants arriving in cities, and the insufficient provision of sanitation and potable water.[398] The Committee recommended that the right to housing be ensured to all and that problems of the lack of housing be solved in the most expedient manner possible.[399] In this regard, the Committee reminded about its General Comment No. 4 on the right to adequate housing.[400] The Committee also requested the Government provide, in its second periodic report, information on the extent of homelessness in Kyrgyzstan.[401]

3.4 HEALTH

Through the UPR process Kyrgyzstan was recommended to provide high-quality health care for sustainable development.[402]

The Independent Expert on policies and foreign debt was concerned about the deterioration of facilities and the prevalence of informal payments in health sectors, which undermine the availability of and accessibility by the poor and the vulnerable to these services for the enjoyment of their rights to health. While welcoming the intention of the Government to increase expenditures on these sectors under the MTBF period 2005-2007, more concrete measures and innovative approaches should be taken to better target these services to meet the needs of the most vulnerable segment of the population. Useful lessons could be drawn from community-based initiatives supported by UNDP and UNICEF[403]

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[393] UPR, recommendations by Uruguay, para. 77.40.
[394] Report of the U.N. High Commissioner for Human Rights, para. 80 (a).
[395] Report of the U.N. High Commissioner for Human Rights, para. 80 (b).
[396] Report of the U.N. High Commissioner for Human Rights, para. 80 (c).
[397] Report of the U.N. High Commissioner for Human Rights, para. 80 (d).
[398] Committee on ESCR, Concluding observations, para. 21.
[399] Committee on ESCR, Concluding observations, para. 32.
[400] Committee on ESCR, Concluding observations, para. 32.
[401] Committee on ESCR, Concluding observations, para. 32.
[402] UPR, recommendations by Kazakhstan, para. 76.106.
[403] IE on policies and foreign debt, para. 65 (c).

The Committee on ESCR noted its concern that, although the general state of health of the population was satisfactory, new health threats such as increasing alcoholism and drug abuse, the growing incidence of sexually transmitted diseases and the re-emergence of communicable and vaccine-preventable diseases such as tuberculosis, and above all the decreasing resources allocated to the health sector demanded the Kyrgyzstan's urgent response.[404]

The Committee urged the Government to continue its efforts to address the prevailing health threats, and to target progressively resources to health services.[405] The Committee requested the Government, in its second periodic report, to provide information on how the recently adopted health laws and policies are implemented.[406] The Committee indicated it would appreciate statistics on the progress made by the Government in its efforts to fulfill the right to health for its population by providing comparative statistics with reference to the information given in its initial report.[407]

Also see recommendations in Section 4.1.11 specifically on women's health and Section 4.3.12 specifically on children's health.

3.5 EDUCATION

Through the UPR process, States recommended Kyrgyzstan provide high-quality education for sustainable development,[408] focus on the development of an efficient education system for all throughout the country,[409] take inclusive and longer-term measures with respect to linguistic policy, education and participation in decision-making for minorities.[410]

The Committee on Economic, Social and Cultural rights was concerned about the phenomenon of children dropping out of school to provide income for their families.[411] The situation of girls is particularly alarming, as their access to education is being curtailed by a revival of the tradition of early marriage, and a decrease in the prestige of having a formal education.[412]

The Committee called upon the Government to take special care to ensure the right to education, in particular of the girl child.[413] The Committee also requested the Government to provide information, in its second periodic report, on the extent of the phenomenon of school dropout and abandoned children, including measures taken to address the problem.[414]

The Independent Expert on policies and foreign debt raised concerns about the deterioration of facilities and the prevalence of informal payments in the education sectors, which undermine the availability of and accessibility by the poor and the vulnerable to these services for the enjoyment of their rights to education. While welcoming the intention of the Government to increase expenditures on these sectors under the MTBF period 2005-2007, more concrete measures and innovative approaches should be taken to better target these services to meet the needs of the most vulnerable segment of the population. Useful lessons could be drawn from community-based initiatives supported by UNDP and UNICEF.[415]

Also see further recommendations in Section 4.3.13 on the right to education and Section 4.3.15 on the use of child labour by the State educational institutions.

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[404] Committee on ESCR, Concluding observations, para. 22.
[405] Committee on ESCR, Concluding observations, para. 33.
[406] Committee on ESCR, Concluding observations, para. 33.
[407] Committee on ESCR, Concluding observations, para. 33.
[408] UPR, recommendations by Kazakhstan, para. 76.106.
[409] UPR, recommendations by Iran, para. 76.115.
[410] UPR, recommendations by Norway, para. 76.121.
[411] Committee on ESCR, Concluding observations, para. 23.
[412] Committee on ESCR, Concluding observations, para. 23.
[413] Committee on ESCR, Concluding observations, para. 34.
[414] Committee on ESCR, Concluding observations, para. 34.
[415] IE on policies and foreign debt, para. 65 (c).

3.6 ENVIRONMENT AND TOXICS

Lithuania, during the UPR process, expressed its particular concern of child labour in radioactive waste dumps, which it suggested must be discontinued as a matter of priority.[416]

In 2009 the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (hereinafter "Special Rapporteur on toxics"), Okechukwu Ibeanu, visited Kyrgyzstan and in his report recommended the adoption of the following measures, as ***priority measures,*** in the field of radioactive waste and chemicals management:

- Take, as a matter of priority and with the assistance and support of the international community, all appropriate measures to eliminate, or reduce to a minimum, the threats that uranium tailings, toxic waste dumps, obsolete or banned pesticides and mercury waste pose to the enjoyment of human rights of thousands of people living close to these sites;[417]
- Such measures should include the relocation of the most dangerous uranium tailings and persistent-organic-pollutant pesticides to more secure locations and the rehabilitation of abandoned mines, uranium tailings and waste storage facilities to prevent soil and water contamination caused by the seepage and leaking of radioactive and toxic materials;[418]
- Existing facilities for the storage of radioactive and hazardous waste and banned pesticides should be fenced off, marked with warning signs and controlled by armed guards in order to prevent unauthorized access by the population to contaminated materials;[419]
- Carry out, with the assistance and support of the international community, a comprehensive study on the levels of radiation/chemical pollution in dump sites and adjacent areas and a comprehensive assessment of the harmful impact of radioactive and hazardous substances on the human rights of people living in the regions where storage facilities are located;[420]
- Implement, as a matter of priority and with the technical support of the United Nations Institute for Training and Research and the United Nations Environment Programme, the action plan on primary mercury mining in Kyrgyzstan. In view of the serious adverse impact that mercury may have on public health and the environment, the Special Rapporteur urged the country to consider closing, as soon as reasonably practicable, the mine in Khaidarkan, and replacing the present mercury mining operations with other viable economic activities;[421] and
- Develop and implement, in close consultation with the affected local communities, programmes aimed at improving the socio-economic conditions in villages and towns that once relied heavily on the uranium and mercury ore mining and processing industries. Priority actions should include the creation of new employment opportunities and the improvement of access to education, health care and safe drinking water.[422]

The Special Rapporteur indicated that the lack of comprehensive information on the radiological or ecological safety of radioactive and hazardous waste storage facilities and the potential risks they pose to local populations and the environment has so far hampered the efforts undertaken by the country to protect affected individuals and communities from the impact of radioactive and hazardous materials on their human rights, including the right to life, the right to health and the right to a safe environment.[423]

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[416] UPR, recommendations by Lithuania, para. 49.
[417] Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu, mission to Kyrgyzstan, A/HRC/15/22/Add.2, dated from June 24, 2010 (hereinafter "SR on toxic and dangerous wastes"), para. 78.
[418] SR on toxic and dangerous wastes, para. 79.
[419] SR on toxic and dangerous wastes, para. 80.
[420] SR on toxic and dangerous wastes, para. 82.
[421] SR on toxic and dangerous wastes, para. 83.
[422] SR on toxic and dangerous wastes, para. 84.
[423] SR on toxic and dangerous wastes, para. 81.

Normative framework

The Special Rapporteur on toxics also made a number of comments and recommendations on developing an appropriate normative framework for protection of the environment. These included that Kyrgyzstan**:**

- Finalize the adoption of the draft environmental code;[424]
- Review and expand its regulatory framework on radioactive waste management and radiation safety in order to ensure its consistency with international norms and standards on radiation safety and the security of radioactive sources;[425] and
- Review its normative framework on chemicals management, and consider adopting a comprehensive law on chemicals management. Such a law should rationalize existing norms, standards and procedures to protect human health and the environment from the threats arising from the unsound handling, management, use, transport and disposal of hazardous chemical products.[426]

Considering that the country was situated at the upper portion of the region's water basins, and taking into account the trans boundary threat posed by radioactive and toxic wastes stored on its territory, the Special Rapporteur called on the Government of Kyrgyzstan to consider ratifying the United Nations Economic Commission for Europe Convention on the Protection and Use of Trans boundary Watercourses and International Lakes and its Protocol on Water and Health.[427]

On the ***institutional framework***, the Special Rapporteur recommended that Kyrgyzstan should:

- Define the role and functions of the various institutions responsible for the implementation and enforcement of national legislation on radioactive waste and chemicals management at the central, provincial and local levels, and develop appropriate mechanisms in order to ensure better coordination and cooperation among these institutions;[428]
- As recommended by the International Atomic Energy Agency (IAEA), consider establishing an independent regulatory body with overall responsibility for radioactive waste management and radiation safety, and allocate adequate human, financial and technical resources to enable it to carry out its functions.[429] and
- Consider reviewing the status of the State Agency for Environmental Protection and Forestry, with a view to raising it to that of a ministry.[430]

Enforcement and monitoring

The Special Rapporteur on toxics further recommended that Kyrgyzstan provide, with the support of the donor community, adequate human, technical and financial resources to the ministries, State agencies, and local authorities which are responsible for the implementation and enforcement of national legislation on radioactive waste and chemicals management.[431]

The Government should also allocate, with the support of the donor community, adequate financial resources, technical means and expertise to State owned analytical laboratories, so as to improve their capacity to ensure accurate measurements of radiation and chemical pollution.[432]

The Special Rapporteur called on relevant international organizations such as the World Health Organization and IAEA to organize professional trainings for staff of analytical laboratories and provide

[424] SR on toxic and dangerous wastes, para. 85.
[425] SR on toxic and dangerous wastes, para. 86.
[426] SR on toxic and dangerous wastes, para. 87.
[427] SR on toxic and dangerous wastes, para. 88.
[428] SR on toxic and dangerous wastes, para. 89.
[429] SR on toxic and dangerous wastes, para. 90.
[430] SR on toxic and dangerous wastes, para. 91.
[431] SR on toxic and dangerous wastes, para. 92.
[432] SR on toxic and dangerous wastes, para. 93.

laboratories with state-of-the-art equipment needed to monitor radioactivity levels and to calibrate the instruments used for measuring radioactivity.[433]

The current system of environmental inspections should be reviewed. Existing restrictions on access to industrial sites should be eliminated, and inspection authorities should be granted the power to carry out, in addition to the annual planned inspection, additional inspections without prior notice whenever the safety situation at the industrial site so requires.[434]

The Special Rapporteur recommended that Kyrgyzstan adopt all appropriate measures to combat the illegal import and export of hazardous products, including mercury and banned pesticides, to and from the country, including the allocation of adequate human and financial resources to custom authorities and the provision of training opportunities for custom officials. The country should also strengthen its capacity to prosecute and punish environmental crimes by, inter alia, organizing appropriate training opportunities for judges and prosecutors.[435]

On ***the right to information and participation***, the Special Rapporteur stated the following:

- People living near radioactive or hazardous waste storage facilities are often unaware of the serious risks that long-term exposure to radioactive or toxic material sor substances poses to their health and the environment. The Special Rapporteur on toxics recommended that Kyrgyzstan ensure, through public information and awareness raising campaigns, access to information on the status of tailings and waste dumps, on the adverse effects of exposure to radioactive materials or hazardous substances, and on the safety measures to minimize these risks;[436]
- Information on chemical products sold in the country should be available, accessible, user-friendly, adequate and appropriate to the needs of all stakeholders. People handling hazardous chemicals, such as farmers and employees in the chemicalor energy sector, should receive appropriate information and training on such chemicals and their intrinsic properties, and on how to use them in ways that minimize adverse health consequences. The Special Rapporteur called on the Government to consider ratifying the Convention concerning Safety in the Use of Chemicals at Work, 1990 (No. 170) of the International Labour Organization;[437] and
- Kyrgyzstan should develop a detailed strategy or an action plan for the implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Such a plan should envisage the organization of adequate training opportunities and information campaigns to familiarize civil servants and the general public with the Convention.[438]

International cooperation

The Special Rapporteur on toxics considered that better assessment and prioritization of required action at the country level is needed in order to ensure a more efficient use of international financing and technical assistance in the areas of radioactive waste and chemicals management.[439]

He also emphasized that, in accordance with the Charter of the United Nations, international cooperation for the realization of civil, cultural, economic, political and social rights is an obligation of all States. He therefore called on the donor community, international and regional organizations, financial institutions and the private sector to continue to provide the Government of Kyrgyzstan with assistance and financial support in order to enable it to strengthen the protection of individuals and communities within its jurisdiction from the adverse effects of uranium tailings, obsolete or banned pesticides, mercury and other hazardous wastes.[440]

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[433] SR on toxic and dangerous wastes, para. 94.
[434] SR on toxic and dangerous wastes, para. 95.
[435] SR on toxic and dangerous wastes, para. 96.
[436] SR on toxic and dangerous wastes, para. 97.
[437] SR on toxic and dangerous wastes, para. 98.
[438] SR on toxic and dangerous wastes, para. 99.
[439] SR on toxic and dangerous wastes, para. 100.
[440] SR on toxic and dangerous wastes, para. 91.

SECTION 4: PROTECTED GROUPS, INCLUDING WOMEN AND CHILDREN

4.1 WOMEN'S RIGHTS, INCLUDING VIOLENCE AGAINST WOMEN

States through the UPR process, the Committee on Elimination of all Forms of Discrimination Against Women (hereinafter "CEDAW Committee"), the Special Rapporteur on Violence against Women and the United Nations High Commissioner for Human Rights expressed their concerns and made recommendations to Kyrgyzstan on the topic of women and violence against women.

Through the UPR process, States recommended Kyrgyzstan to give special regard to women,[441] ensure that the new constitution guarantee equality between women and men,[442] enhance their enjoyment of human rights and fundamental freedoms[443] through emphasis on the rights of women in State policies and programmes,[444] and ensure that gender issues are appropriately addressed.[445] They also recommended that Kyrgyzstan continue to promote women's emancipation[446] through empowerment of women and broadening the scope for their participation[447] in all spheres of society.

The CEDAW Committee called upon Kyrgyzstan to:[448]

- Take more active and concrete measures to disseminate information about CEDAW, the procedures under the Optional Protocol to the CEDAW and the CEDAW Committee's general recommendations;
- Design and implement programmes for prosecutors, judges, the Ombudsperson and lawyers that cover all relevant aspects of the CEDAW and its Optional Protocol;
- Sustain awareness-raising and legal literacy campaigns targeting women, including rural women, as well as non-governmental organizations (NGOs) working on women's issues, to encourage and empower women to avail themselves of available procedures and remedies for violations of their rights under the CEDAW and through the complaints procedures provided in the Law on State Guarantees for Equal Rights and Equal Opportunities; and
- Provide information regarding complaints made by women under the existing provisions of the law and related outcomes in the next report.

The U.N. High Commissioner for Human Rights acknowledged that various forms of gender-based violence and discriminatory practices against women remain key human rights challenges in Kyrgyzstan.[449]

4.1.1 Temporary Special Measures

The CEDAW Committee encouraged Kyrgyzstan to give consideration to the further use of **temporary special measures**,[450] in accordance with article 4, paragraph 1, of the CEDAW, and the General recommendation 25 to the CEDAW, in order to accelerate the realization of women's de facto

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[441] Report of the Working Group on the Universal Periodic Review on Kyrgyzstan, Human Rights Council, A/HRC/15/2, dated from June 16, 2010 (hereinafter "UPR "), recommendations by Jordan, para. 76.46.
[442] UPR, recommendations by Austria, para. 76.47.
[443] UPR, recommendations by Jordan, para. 76.46; by Japan, para. 76.64.
[444] UPR, recommendations by Tajikistan, para. 76.26, by Pakistan, para. 76.36; by Afghanistan, para. 76.37.
[445] UPR, recommendations by Lebanon, para. 76.48.
[446] UPR, recommendations by Angola, para. 76.45.
[447] UPR, recommendations by Bangladesh, para. 76.49.
[448] Concluding observations of the Committee on the Elimination of Discrimination against Women, Kyrgyzstan, CEDAW/C/KGZ/CO/3, dated from November 14, 2008 (hereinafter "CEDAW Committee, Concluding observations"), para. 14.
[449] Report of the U.N. High Commissioner for Human Rights, para. 64.
[450] **Article 4 of CEDAW**
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

equality with men in decision making at all levels, in the economy, in education, and in decision-making posts, including through:[451]

- The allocation of resources and the creation of incentives, targeted recruitment and the setting of time-bound goals and quotas; and
- Inclusion in its equality legislation provisions to encourage the use of temporary special measures, in both the public and private sectors.

4.1.2 Gender Equality and Rights under Law

The CEDAW Committee reminded the Government that the Convention is binding on all branches of State-power and invited Kyrgyzstan to encourage its national Parliament "to take the necessary steps with regard to the implementation of CEDAW Committee's Concluding observations."[452]

It also expressed concern that the Law on State Guarantees for Equal Rights and Equal Opportunities (2003) would not result in the practical realization of women's right to equality.[453] The Committee urged Kyrgyzstan to urgently conduct a **gender-focused legal analysis of its legislation**, in order to eliminate overt and covert discriminatory provisions.[454] Both the Committee and the Special Rapporteur on Violence against Women urged Kyrgyzstan to put in place a sustainable mechanism for systematic gender-based analysis of legislation, draft laws and programmes.[455]

The CEDAW Committee called upon Kyrgyzstan to **monitor**, through **measurable indicators**, the impact of laws, policies and programmes on women, to evaluate progress achieved towards the practical realization of women's substantive equality with men and to provide this information to the Committee in its next report [due March 2010].[456]

Kyrgyzstan was also invited to introduce a legislative provision according to which it will be the **responsibility** of the State to ensure that women exercise their right to equality in practice.[457]

The Special Rapporteur on Violence against Women provided that new **Parliamentary Committee on Social Policy** is recommended to have clear terms of reference on women's rights and gender equality issues, as well as a strong advocacy and monitoring role as regards the gender dimensions of policies and legislation.[458]

4.1.3 National Machinery for the Advancement of Women

States in the UPR process, the CEDAW Committee, and the Special Rapporteur on Violence against Women highly recommended establishment of an independent State body specifically responsible for women's rights and gender equality issues.[459] This body should be invested with a clear mandate, authority and sufficient human and financial resources and able to develop national gender policies, undertake coordination activities and solicit accountability from all ministries. Policy development and monitoring should be its core responsibilities, while implementation remains the separate responsibility of other bodies.[460]

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[451] CEDAW Committee, Concluding observations, para. 32.
[452] CEDAW Committee, Concluding observations, para. 8.
[453] CEDAW Committee, Concluding observations, para. 9.
[454] CEDAW Committee, Concluding observations, para. 12.
[455] CEDAW Committee, Concluding observations, para. 12, SR on VAW, para. 91.
[456] CEDAW Committee, Concluding observations, para. 10.
[457] CEDAW Committee, Concluding observations, para. 10.
[458] Report of Special Rapporteur on Violence against women, its causes and consequences, Rashida Manjoo, mission to Kyrgyzstan, A/HRC/14/22/Add.2, dated from May 28, 2010 (hereinafter "SR on VAW"), para. 91.
[459] UPR, recommendations by Ireland, para. 77.21, Norway, para. 77.18, Spain, para. 77.20.
[460] CEDAW Committee, Concluding observations, para. 26, SR on VAW, para. 91.

Kyrgyzstan had rejected the UPR recommendation on the establishment of such National machinery.

4.1.4 Promotion of Gender Equality through Media

The Special Rapporteur on Violence against Women recommended that Kyrgyzstan use the media to promote public awareness campaigns on women's human rights,[461] where the CEDAW Committee encouraged **raising awareness** particularly with respect to the nature of indirect discrimination and CEDAW's concept of substantive equality, among Government officials, the judiciary and the general public.[462]

4.1.5 Violence Against Women

States through the UPR process expressed concern about ongoing abuses related to women's rights,[463] in particular de facto discrimination against women and widespread domestic violence.[464] Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.[465] Violence against women includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.[466]

States in the UPR process and the Special Rapporteur on Violence against Women recommended that authorities of Kyrgyzstan take further legislative and practical measures to end violence against women,[467] including:

- Treat violence against women as a criminal offence;[468]
- Ensure that there is a proper legal framework for protecting women against violence;[469]
- Allocate significant financial and human resources to enforce implementation of policy prohibiting violence against women;[470]
- Allocate an adequate State budget for the programmes to combat violence against women;[471]
- Increase accountability measures for acts of violence by state actors;[472]
- Support the establishment of legal aid clinics, including in rural areas, which provide free legal services for women in need;[473]
- Provide in the next State report detailed information on sexual violence, including sexual harassment and efforts to eliminate it.[474]

These bodies also recommended that Kyrgyzstan ensure the strengthening of **law enforcement institutions,** specifically that it ensures**:**[475]

- Law enforcement personnel effectively apply the existing legal framework in the cases of violence against women;[476]

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[461] SR on VAW, para. 91.
[462] CEDAW Committee, Concluding observations, 10.
[463] UPR, recommendations by Canada, para. 50.
[464] UPR, recommendations by Ireland, para. 70.
[465] General Recommendation 19 to CEDAW (hereinafter "GR 19 to CEDAW") provides general and specific recommendations to State parties on the matter of violence against women, para. 1
[466] GR 19 to CEDAW, para. 6.
[467] UPR, recommendations by Austria, para. 76.58; Canada, para. 77.33; Malaysia, para. 76.59.
[468] SR on VAW, para. 92.
[469] UPR, recommendations by Switzerland, para. 77.32.
[470] UPR, recommendations by Canada, para. 77.33.
[471] CEDAW Committee, Concluding observations, para. 20.
[472] UPR, recommendations by Canada, para. 77.33.
[473] SR on VAW, para. 92.
[474] CEDAW Committee, Concluding observations, para. 20.
[475] UPR, recommendations by Malaysia, para. 76.59.
[476] CEDAW Committee, Concluding observations, para. 20.

- The strengthening training programmes on violence against women for the police to accompany a zero-tolerance policy; [477]
- Establishment of specialized female law enforcement units, including in rural areas;[478]
- Implementation of a comprehensive strategy to address abuse, torture and extortion while in police custody and detention, including a complaint procedure that can be activated any time upon arrest;[479] and
- Investigation of violence against women within the formal justice system meeting international standards of impartiality, thoroughness and efficiency.[480]

Kyrgyzstan was recommended to ensure that **judicial system** is strengthened[481] as well within the scope of violence against women ensure:

- The judiciary is provided with and effectively uses or strengthens the existing mechanisms so as to ensure that the rights of victims of domestic violence are properly protected;[482] and
- The prosecution of the cases on violence against women within the formal justice system.[483]

The Committee on Economic, Social and Cultural rights, in its Concluding observations of Kyrgyzstan in 2000, indicated it regretted the absence of information on the extent of violence against women and the trafficking of women in Kyrgyzstan.[484] Therefore, the Committee requested Kyrgyzstan to provide information, in its second periodic report, on the extent of violence against women and the measures taken by the Government to address this phenomenon, including facilities and remedies provided for victims. [485] The Committee on ESCR was further disturbed about the reassertion of traditional attitudes towards women in Kyrgyz society. The Committee noted with concern that although polygamy is illegal, it is nonetheless practiced in some regions. [486] The Committee also noted with deep concern the reemergence of the old tradition of bride kidnapping.[487] It recommended that Kyrgyzstan continue more actively to implement the law with regard to the practice of polygamy and bride kidnapping. [488]

States in the UPR process recommended that high priority be given to the fight against **domestic violence,**[489] **bride kidnapping,**[490] **forced marriages,**[491] **polygamy,**[492] **sexual violence**[493] **and trafficking in human beings,**[494] and that the Government should:

- Ensure full compliance with laws criminalizing bride kidnapping, forced marriage and polygamy;[495]
- Take further legislative and practical measures to address the problem of bride kidnapping;[496]

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[477] CEDAW Committee, Concluding observations, para. 20.
[478] SR on VAW, para. 92.
[479] SR on VAW, para. 92.
[480] SR on VAW, para. 92.
[481] UPR, recommendations by Malaysia, para. 76.59 .
[482] CEDAW Committee, Concluding observations, para. 20.
[483] SR on VAW, para. 92.
[484] Committee on ESCR, Concluding observations, para. 17.
[485] Committee on ESCR, Concluding observations, para. 30.
[486] Committee on ESCR, Concluding observations, para. 16.
[487] Committee on ESCR, Concluding observations, para. 16.
[488] Committee on ESCR, Concluding observations, para. 30.
[489] UPR, recommendations by Czech Republic, para. 76.60; Argentina, para. 76.61; Uruguay, para. 76.62; Japan, para. 76.64.
[490] UPR, recommendations by Austria, para. 76.58; by Argentina, para. 76.61; by Uruguay, para. 76.62; by Japan, para. 76.64.
[491] UPR, recommendations by Austria, para. 76.58; Czech Republic, para. 76.60; by Argentina, para. 76.61; by Uruguay, para. 76.62; by Japan, para. 76.64.
[492] UPR, recommendations by Argentina, para. 76.61, by Uruguay, para. 76.62.
[493] UPR, recommendations by Lithuania, para. 76.77.
[494] UPR, recommendations by Czech Republic, para. 76.60.
[495] UPR, recommendations by Argentina, para. 76.61.
[496] UPR, recommendations by Austria, para. 76.58.

- Sanction very severely cases involving domestic violence and forced marriages;[497]
- Intensify in practice sanctions in cases of domestic violence, bride kidnapping, forced marriage, polygamy and discrimination against women due to sexual orientation;[498]
- Strengthen the provisions for the investigation and punishments for such crimes;[499]
- Strengthen the provision of support and protection of victims;[500]
- Take additional actions to eliminate forced or arranged marriage, polygamy and sexual violence;[501]
- Provide sufficient resources to ensure that **victims** of gender-based violence have access to adequate **medical and psychological care**;[502]
- Take all measures to bring **to justice perpetrators** of gender-based violence;[503]
- Take immediate action to ensure full respect of the laws **penalizing bride abduction, forced marriage and polygamy;**[504]
- Take appropriate measures in order to have all cases involving these phenomena recorded, investigated and prosecuted, even in the absence of a formal complaint;[505]
- Take urgent and effective measures, including the training of the judiciary and law enforcement officials to eliminate these practices;[506]
- Conduct research on the causes for the existence and reinforcement of these phenomena [bride abduction, forced marriage and polygamy], in order to better understand what would be the most adequate measures for their eradication;[507] and
- Provide detailed information on sexual violence, including sexual harassment and efforts to eliminate it in the next CEDAW report.[508]

In particular to **Domestic Violence** Kyrgyzstan was consistently recommended to:

- Undertake reforms with regard to temporary and court protection orders and adopt practical measures to facilitate their implementation;[509]
- Allow for a defence, based on a prior history of being a victim of domestic violence as a mitigating factor in the sentencing of women who have killed their partners and/or other family members;[510]
- Train police and judicial staff in strengthening the mechanisms aimed at respecting the rights and protection of victims of domestic violence;[511]
- Take concrete measures to ensure the effective application of the law on domestic violence;[512]
- In particular increase human and financial resources for effective application of the law on domestic violence;[513] and
- Promote mechanisms of protection that guarantee the rights of victims of domestic violence.[514]

The CEDAW Committee, Special Rapporteur on Violence against Women and the States under the UPR process urged Kyrgyzstan to launch **public awareness campaigns on violence against**

[497] UPR, recommendations by Switzerland, para. 77.32.
[498] UPR, recommendations by Uruguay, para. 76.62.
[499] UPR, recommendations by Czech Republic, para.76.60.
[500] UPR, recommendations by Czech Republic, para. 76.60.
[501] UPR, recommendations by Lithuania, para. 76.77.
[502] Report, UN HCHR on technical assistance and cooperation on HR for KG, para. 81 (c).
[503] Report, UN HCHR on technical assistance and cooperation on HR for KG, para. 81. (a).
[504] CEDAW Committee, Concluding observations, para. 22.
[505] CEDAW Committee, Concluding observations, para. 22.
[506] CEDAW Committee, Concluding observations, para. 22.
[507] CEDAW Committee, Concluding observations, para. 22.
[508] CEDAW Committee, Concluding observations, para. 20.
[509] SR on VAW, para. 92.
[510] SR on VAW, para. 92.
[511] UPR, recommendations by Argentina, para. 76.61.
[512] UPR, recommendations by Belgium, para. 77.34.
[513] UPR, recommendations by Belgium, para. 77.34.
[514] UPR, recommendations by Uruguay, para. 76.62.

women,[515] which is of crucial importance in this respect[516] and target community leaders and local populations[517]. The CEDAW Committee recommended that such a public-awareness-raising campaign against violence in the family, bride abduction, forced marriage and polygamy shall be extensive and nationwide,[518] large and constant.[519] Special Rapporteur on Violence against Women urged to use the media to promote such public awareness campaigns on violence against women. [520]

The Special Rapporteur recommended Kyrgyzstan commit sustainable State support to women and girls' **crisis centres**, including in areas currently not serviced and establish information and assistance centres for women and girls at risk who have moved from rural to urban centres.[521] The U.N. High Commissioner for Human Rights indicated its concern that there are no fully funded State shelters and crisis centres for women and girls[522] and highlights the 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.[523]

See also Section 2.18 for further discussion on gender equality and violence against women at June 2010 events in the south of Kyrgyzstan.

4.1.6 Trafficking of Women and Girls

The Special Rapporteur on Violence against Women recommended the Government develop legal and social mechanisms to combat **internal trafficking and sexual exploitation** of women and girls.[524] The CEDAW Committee was concerned also about the absence in the State party's report and oral replies of sufficient information and statistical data on the phenomenon of trafficking in persons in Kyrgyzstan.[525] In this regard, the CEDAW Committee urged Kyrgyzstan to:[526]

- Produce a comprehensive study on the dynamics of trafficking, aiming at the understanding of the phenomenon and its dimensions, in order to allow the State party to better understand the causes and the methods used by traffickers, to prevent its development, and to ensure that victims benefit from adequate protection in practice, and to prosecute and punish those responsible;
- Submit information on the measures taken in this regard, including to produce detailed statistical data;
- Carry out, on a systematic basis, information campaigns on the risks and causes of trafficking in persons, in particular focusing on improving the legal literacy of rural women in this connection;
- Put in place a system of effective monitoring of migrant workers to identify links with trafficking.

4.1.7 Minimum Age of Marriage

States through the UPR process recommended Kyrgyzstan raise the minimum age of marriage.[527] The CEDAW Committee requested Kyrgyzstan to implement fully the laws on marriage and family which set the legal age of marriage at 18 years for both women and men and to adopt measures in order to

[515] SR on VAW, para. 91, UPR, recommendations by Czech Republic, para. 76.60.
[516] CEDAW Committee, Concluding observations, para. 22.
[517] SR on VAW, para. 92.
[518] CEDAW Committee, Concluding observations, para. 20.
[519] CEDAW Committee, Concluding observations, para. 22.
[520] SR on VAW, para. 91, UPR, recommendations by Czech Republic, para. 76.60.
[521] SR on VAW, para. 92.
[522] Report of the U.N. High Commissioner for Human Rights, para. 64.
[523] Report of the U.N. High Commissioner for Human Rights, para. 66.
[524] SR on VAW, para. 92.
[525] CEDAW Committee, Concluding observations, para. 29.
[526] CEDAW Committee, Concluding observations, para. 30.
[527] UPR, recommendations by Jordan, para. 76.75; Egypt, para. 76.76.

bring all marriages in line with article 16, paragraph 2, of the Convention. It requested the Government to include in its next report information on the measures taken in this regard, and the impact of such measures on the registration of marriages.[528]

Also, see further discussion on effects of early marriage on women's education in Section 3.5.

4.1.8 Gender Stereotypes

The CEDAW provisions require Kyrgyzstan to take measures to eliminate the stereotypes on the role of women and men in society and in the family and thus the Committee recommended the Government take the following measures:

- Strengthen policies and implement programmes, including awareness-raising and educational campaigns directed at women and men;[529]
- Fulfill articles 2 (f) and 5 (a) of CEDAW[530], which are to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;[531]
- Encourage the media to project a positive image of women, and to promote the value of gender equality for society as a whole;[532]
- Assess the impact of gender stereotypes, take appropriate action and report thereon to the CEDAW Committee in its next report;[533]
- Undertake a gender analysis of school books and curriculums at the primary and high-school levels, with a view to eliminating gender stereotypes and promoting gender equality and non-violence;[534]
- Analyse all existing manuals and curricula from a gender perspective, and to systematically review all new manuals and curricula, in particular in respect to secondary education;[535] and
- Provide relevant teacher training.[536]

4.1.9 Public and Political Life

The Government of Kyrgyzstan is required by CEDAW to take all appropriate measures to eliminate discrimination against women in the political and public life of the country. The Government was recommended to:

- Intensify efforts to ensure at least 30 per cent representation of women in central and local state bodies, including at the decision-making level, in line with presidential decree No. 136 of 20 March 2006;[537]
- Consider the establishment of positive temporary measures to encourage increased participation of women in local political and decision-making structures, including the local Aksakal courts;[538]
- Establish effective monitoring systems of decisions by Aksakal courts, a policy of strengthened cooperation and engagement with them and promote female participation;[539]

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[528] CEDAW Committee, Concluding observations, para. 18.
[529] CEDAW Committee, Concluding observations, para. 24.
[530] CEDAW Committee, Concluding observations, para. 24.
[531] CEDAW, articles 2 (f) and 5 (a).
[532] SR on VAW, para. 91, CEDAW, CO 3, para. 16.
[533] CEDAW Committee, Concluding observations, para. 24.
[534] SR on VAW, para. 91.
[535] CEDAW Committee, Concluding observations, para. 24.
[536] SR on VAW, para. 91.
[537] UPR, recommendations by Algeria, para. 76.91.
[538] SR on VAW, para. 91
[539] SR on VAW, para. 92

- Introduce measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendations 23 and 25, to accelerate women's full and equal participation in elected and appointed bodies, including at the international level;[540] such measures should include:
    - Time-bound numerical goals, conducting training programmes on leadership and negotiation skills for current and future women leaders;[541]
    - Regular monitoring of the progress made and the results achieved;[542]
    - Raising this matter to the attention of political parties;[543] and
    - Implementation of campaigns to raise awareness about the importance of women's participation in public and political life and at decision-making levels.[544]

4.1.10 Employment of Women

The CEDAW Committee urged Kyrgyzstan to take measures to ensure equal opportunities for women in the labour market through, inter alia:[545]

- Temporary special measures, in accordance with article 4, paragraph 1, of CEDAW and the General recommendation 25 to CEDAW;
- Ensuring that all employment-generation programmes are gender-sensitive;
- Ensuring women effectively benefit from all programmes to support entrepreneurship;
- Introduction of measures to narrow and eliminate the existing gap between the wages of women and men;
- Strengthening recommended measures that allow the reconciliation of family and employment responsibilities; and
- Further measures implemented to promote the sharing of domestic and family responsibilities between women and men.

The Special Representative on Human Rights defenders revealed that women continue to suffer discrimination in respect of their social rights. Unemployment amongst women was higher than men; they earn a lower average wage than men do and are grossly under-represented in Government and politics. [546]

The Committee on Economic, Social and Cultural rights noted in its Concluding observations its concern that unemployment rate among women is high, and that women predominantly work in spheres characterized by low wages.[547] The Government was advised to step up its efforts to promote the rights of women in employment.[548]

4.1.11 Health

The CEDAW Committee was concerned about the health situation of women in Kyrgyzstan[549] and recommended the following:

- Fully implement a holistic, life cycle approach to women's health in accordance with general recommendation 24 on women and health;[550]

[540] CEDAW Committee, Concluding observations, para. 34
[541] CEDAW Committee, Concluding observations, para. 34
[542] CEDAW Committee, Concluding observations, para. 34
[543] CEDAW Committee, Concluding observations, para. 34
[544] CEDAW Committee, Concluding observations, para. 34
[545] CEDAW Committee, Concluding observations, para. 36
[546] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002 (hereinafter "SR on HR defenders"), para. 154
[547] Committee on ESCR, Concluding observations, para. 18
[548] Committee on ESCR, Concluding observations, para. 30
[549] CEDAW Committee, Concluding observations, para. 37.
[550] CEDAW Committee, Concluding observations, para. 38.

- Ensure accessible, affordable and adequate health care to all parts of the population;[551] in particular to rural women[552] being concerned about the inequalities in access to health between urban and rural areas;[553]
- Strengthen measures to reduce the maternal mortality rates;[554] the infant mortality rates;[555] the spread of tuberculosis and other diseases among women;[556]
- Take effective steps to address and prevent alcoholism and drug addiction among women;[557]
- Adopt measures to increase knowledge of, and access to, affordable contraceptive methods, and recommends that sex education be widely promoted and targeted at adolescent girls and boys;[558]
- Undertake broadcasts on sexual and reproductive health education programmes in public media, and increase the public awareness in the domain of reproductive health;[559]
- Carefully monitor delivery of health services in order to ensure that it responds in a gender-sensitive manner to the health concerns of all women, including those in rural areas;[560] and
- Utilize its general recommendation 24 as a framework for action to ensure that all health policies and programmes integrate a gender perspective.[561]

4.1.12 Economic Consequences of Divorce

The CEDAW Committee requested Kyrgyzstan to conduct an analysis of the number of de facto marriages, in order to evaluate the economic situation of women upon separation, and to consider the adoption of laws and regulations in order to protect the property rights of women upon the dissolution of marriage or of de facto unions.[562] The CEDAW Committee also requested Kyrgyzstan to include information on the research undertaken in this regard, as well as the results, in its next periodic report.[563]

4.1.13 Vulnerable Groups of Women

States under the UPR process recommended that Kyrgyzstan continue its efforts aimed at the development of policies and programmes for poverty alleviation and eradication, with special emphasis on vulnerable groups, including people with disabilities and women and children, and mainstream a gender perspective into all relevant policies and programmes being developed.[564]

The CEDAW Committee remained concerned at the lack of detailed information in relation to **rural women**,[565] and invited State authorities to provide comprehensive statistical data on the situation of rural women, disaggregated by age, sex, occupational group, income, and so forth, in its fourth periodic report.[566]

The CEDAW Committee was also concerned about reports of discrimination and harassment against women because of their sexuality as well as about acts of harassment against **women in prostitution** by police officials, [567] and recommended Kyrgyzstan to take all appropriate measures to

[551] CEDAW Committee, Concluding observations, para. 38.
[552] CEDAW Committee, Concluding observations, para. 38.
[553] CEDAW Committee, Concluding observations, para. 37.
[554] CEDAW Committee, Concluding observations, para. 38.
[555] CEDAW Committee, Concluding observations, para. 38.
[556] CEDAW Committee, Concluding observations, para. 38.
[557] CEDAW Committee, Concluding observations, para. 38.
[558] CEDAW Committee, Concluding observations, para. 38.
[559] CEDAW Committee, Concluding observations, para. 38.
[560] CEDAW Committee, Concluding observations, para. 38.
[561] CEDAW Committee, Concluding observations, para. 38.
[562] CEDAW Committee, Concluding observations, para. 40.
[563] CEDAW Committee, Concluding observations, para. 40.
[564] UPR, recommendations by Armenia, para. 76.112.
[565] CEDAW Committee, Concluding observations, para. 41.
[566] CEDAW Committee, Concluding observations, para. 42.
[567] CEDAW Committee, Concluding observations, para. 43.

ensure that CEDAW applies to all women without discrimination and to further take all necessary steps to protect from all forms of discrimination and violence by public and private individuals.[568]

4.1.14 International Conferences on Women's Human Rights

Beijing Declaration and Platform for Action

The CEDAW Committee urged Kyrgyzstan to utilize fully, in the implementation of its obligations under CEDAW, the Beijing Declaration and Platform for Action, which reinforce the provisions of CEDAW, and requested the State party to include information thereon in its next periodic report.[569]

Millennium Development Goals

The CEDAW Committee also emphasized that for achieving the Millennium Development Goals it is indispensable full and effective implementation of CEDAW, therefore it called for the integration of a gender perspective and explicit reflection of the provisions of CEDAW in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.[570]

4.1.15 Women Human Rights Defenders

The Special Representative on Human Rights defenders noted that a significant number of human rights defenders at risk are women. These include journalists, human rights activists, environmental activists and leaders of movements for social rights.[571]

The Special Representative found that women's rights activities have not generally been restricted by the State. However, in its Concluding observations and comments on the report submitted by Kyrgyzstan, the Committee on ESCR expressed concern regarding repressive measures against female journalists for their protest against inequality between men and women (see E/C.12/1/Add.49).[572] The Special Representative was informed that some women's human rights defenders have been threatened by non-State entities, especially conservative religious elements, for their advocacy of women's rights. In such cases they did not receive adequate protection from the State. [573]

4.1.16 Civil Society Cooperation

The CEDAW Committee invited Kyrgyzstan to interact more actively and in a sustained manner with civil society and to involve NGOs in the preparation of the State party's next periodic report.[574]

Taking into account the important role of NGOs in the implementation of CEDAW, in particular as NGOs are running the majority of the crisis centres for women victims of violence and trafficking/sexual exploitation in Kyrgyzstan, the Committee urged the Government to provide adequate support and funding to such organizations.[575]

[568] CEDAW Committee, Concluding observations, para. 44.
[569] CEDAW Committee, Concluding observations, para. 45.
[570] CEDAW Committee, Concluding observations, para. 46.
[571] SR on HR defenders, para. 152.
[572] SR on HR defenders, para. 155.
[573] SR on HR defenders, para. 155.
[574] CEDAW Committee, Concluding observations, para. 28.
[575] CEDAW Committee, Concluding observations, para. 28.

4.2 SEXUAL ORIENTATION AND GENDER IDENTITY

The Special Rapporteur on Violence against Women recommended Kyrgyzstan take measures to ensure the protection of women who are victims of discrimination and violence on account of their sexual orientation or gender identity, and simplify procedures for changing the sexual identity of transgender persons in their identity cards.[576]

In the UPR process, Uruguay urged the Government to intensify in practice sanctions in cases of discrimination against women due to sexual orientation[577] and the Czech Republic recommended Kyrgyzstan to review the compliance of its national legislation with provisions of the International Covenant on Civil and Political Rights on non-discrimination, in particular with regard to women and persons of minority ethnicity, sexual orientation or gender identity.[578]

The Special Representative on Human Rights defenders noted that the new Criminal Code, in force since 1998, decriminalized homosexual acts between consenting adult men.[579] Lesbianism was, however, still an offence under the Criminal Code. This was an indication of stronger prejudice against women's sexual rights.[580]

This was also noted by the Committee on Economic, Social and Cultural rights, which was also concerned at the classification of lesbianism as a sexual offence in the Penal Code. [581] The Committee recommended that the State party proceed to remove lesbianism from the Penal Code, as indicated by the delegation.[582]

[576] SR on VAW, para. 92.
[577] UPR, recommendations by Uruguay, para. 76.62.
[578] UPR, recommendations by Czech Republic, para. 77.13.
[579] Report of the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, mission to Kyrgyzstan, E/CN.4/2002/106/Add.1, dated from March 12, 2002 (hereinafter "SR on HR defenders"), para. 154.
[580] SR on HR defenders, para. 154.
[581] Committee on ESCR, Concluding observations, para. 17.
[582] Committee on ESCR, Concluding observations, para. 30.

4.3 RIGHTS OF THE CHILD

States through the UPR process recommended Kyrgyzstan give special regard to children and enhance their enjoyment of human rights and fundamental freedoms[583] and therefore place emphasis on the rights of children in its policies and programmes.[584] They stated the importance of strengthening policies for the protection of the rights and interests of children.[585]

States through the UPR process and the Committee on the Rights of the Child made additional recommendations to Kyrgyzstan in the following areas.

4.3.1 Legislation

The Committee on the Rights of the Child (CRC) recommended Kyrgyzstan in its Concluding observations in 2004 the following:

- Undertake a comprehensive review of domestic legislation in order to ensure that it conforms fully to the principles and provisions of the CRC;[586]
- Organize a broad consultative process in order to prepare for the adoption of the Children Code and to ensure that the Code is in full compliance with the provisions and principles of CRC[587], due to the concern that the new Children Code may not be in compliance with the CRC, especially in the areas of reproductive health and adoption;[588]
- Establish a permanent inter-sectoral and multidisciplinary mechanism to coordinate all policies, strategies and activities relating to children;[589]
- Allocate sufficient financial and human resources to the coordination mechanism;[590] and
- If necessary, seek international assistance from UNICEF, among others, in the financial regard.[591]

4.3.2 Definition of the Child

The CRC Committee noted that numerous legislative acts contain differing definitions for the cut-off age for a "minor",[592] and recommended Kyrgyzstan take the necessary legal measures to ensure that all persons under 18 year of age are guaranteed by law the special protection they are entitled to under CRC.[593] The Committee was particularly concerned that assistance to families with children with disabilities or children with HIV/AIDS is being provided only to children under the age of 16; and that children in special institutions for psychological care are being transferred to adult psychiatric hospitals at the age of 16.[594]

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[583] Report of the Working Group on the Universal Periodic Review on Kyrgyzstan, Human Rights Council, A/HRC/15/2, dated from June 16, 2010 (hereinafter "UPR "), recommendations by Jordan, para. 76.46.
[584] UPR, recommendations by Tajikistan, para. 76.26; by Pakistan, para. 76.36, by Afghanistan, para. 76.37.
[585] UPR, recommendations by Angola, para. 76.39.
[586] Concluding observations of the Committee on the Rights of the Child to Kyrgyzstan, CRC/C/15/Add.244 dated from November 3, 2004 (hereinafter "CRC Committee, Concluding observations"), para. 10.
[587] CRC Committee, Concluding observations, para. 10.
[588] CRC Committee, Concluding observations, para. 9.
[589] CRC Committee, Concluding observations, para. 13.
[590] CRC Committee, Concluding observations, para. 13.
[591] CRC Committee, Concluding observations, para. 13.
[592] CRC Committee, Concluding observations, para. 24.
[593] CRC Committee, Concluding observations, para. 25.
[594] CRC Committee, Concluding observations, para. 24.

4.3.3 New Generation Programme

Kyrgyzstan was recommended by States through the UPR process to activate the New Generation programme with regard to children's rights[595] and concretely it is recommended to:

- Adopt clear programming tools within New Generation, based on the principles and provisions of CRC;[596]
- Review the New Generation programme periodically, with the active participation of children and NGOs;[597]
- Allocate sufficient resources for the effective implementation of this programme;[598]
- Continue Kyrgyzstan's reform of the system to protect children and enhance the social services for its population through New Generation programme;[599] and
- Activate the New Generation programme and initiate cooperation with UNICEF and other relevant international human rights organizations.[600]

4.3.4 Office of the Ombudsman

The CRC Committee concerned that the Law does not specifically empower the Ombudsman to receive and address individual complaints from children,[601] encouraged Kyrgyzstan to strengthen the role of the Office of the Ombudsman[602] by:

- Empowering the department of children's rights within the Office of the Ombudsman to deal with complaints from children, and do so in a child-sensitive and expeditious manner, and also provide remedies for violations of their rights under the Convention;[603] and
- Providing adequate human and financial resources.[604]

4.3.5 Cooperation with NGOs

The CRC Committee emphasized the important role civil society plays as a partner in implementing the provisions of CRC, including with respect to civil rights and freedoms, and encourages closer cooperation with NGOs. In particular, it recommended that Kyrgyzstan involve NGOs, especially rights-based ones, and other sectors of civil society working with and for children more systematically throughout all stages of the implementation of the CRC.[605]

4.3.6 Resources for Children

The CRC Committee, being concerned about the decrease, in percentage terms, in the resources allocated for children in the national budgets of recent years and that these resources are insufficient to respond to national and local priorities for the protection and promotion of children's rights,[606] recommended Kyrgyzstan to pay particular attention to the full implementation of article 4 of the CRC by:[607]

- Prioritizing budgetary allocations at the national and local levels in the context of decentralization to ensure implementation of the economic, social and cultural rights of children, in particular

[595] UPR, recommendations by Libyan Arab Jamahiriya, para. 76.35.
[596] CRC Committee, Concluding observations, para. 12.
[597] CRC Committee, Concluding observations, para. 12.
[598] CRC Committee, Concluding observations, para. 12.
[599] UPR, recommendations by Kuwait, para. 76.30.
[600] UPR, recommendations by Libyan Arab Jamahiriya, para. 76.35.
[601] CRC Committee, Concluding observations, para. 14.
[602] CRC Committee, Concluding observations, para. 15.
[603] CRC Committee, Concluding observations, para. 15.
[604] CRC Committee, Concluding observations, para. 15.
[605] CRC Committee, Concluding observations, para. 23.
[606] CRC Committee, Concluding observations, para. 16.
[607] CRC Committee, Concluding observations, para. 17.

those belonging to economically disadvantaged groups, "to the maximum extent of available resources"; and

- Identifying the amount and proportion of the State budget spent on children in the public, private and NGO sectors in order to evaluate the impact and effect of the expenditures and also the accessibility, quality and effectiveness of the services for children in the different sectors.

4.3.7 Data Collection

The CRC Committee, being concerned about the discrepancies in the data collected by the various ministries,[608] recommends that Kyrgyzstan develop a comprehensive system for collecting disaggregated data to cover all those under the age of 18 years as a basis for assessing progress achieved in the realization of children's rights and to help design policies to implement the Convention. It also recommended that the State party seek technical assistance from, inter alia, UNICEF in this regard.[609]

4.3.8 Dissemination and Training

With regards to the disseminating the Convention, the CRC Committee recommended Kyrgyzstan to:[610]

- Establish a comprehensive policy with a view to strengthening its efforts to ensure that the provisions and principles of the CRC are widely known and understood by adults and children alike; and
- Reinforce adequate and systematic training of all professional groups working for and with children, in particular law enforcements officials, teachers, health personnel (e.g. psychologists and social workers) and personnel in childcare institutions.

4.3.9 General Principles

Non-discrimination

The CRC Committee was concerned that societal discrimination persists against vulnerable groups of children, including children with disabilities, those living in institutions or in poverty, migrants and asylum-seekers with no formal residence permits[611] and recommended that Kyrgyzstan:[612]

- Increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the CRC;
- Adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups; and
- Include in the next CRC periodic report on the measures and programmes relevant to the CRC undertaken by Kyrgyzstan to follow-up on the Declaration and Programme of Action adopted in 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the CRC Committee's General Comment No. 1 (2001) on the aims of education.

The Committee was also concerned at the increasing discrimination against the girl child, in particular girls living in rural areas, due to re-emerging trends such as bridal kidnappings and forced marriages (as discussed by the CEDAW under the Rights of Women above).[613] The CRC Committee urged Kyrgyzstan to:

- Pay particular attention to the situation of the girl child, in particular girls living in rural areas, in order to halt the practices of forced marriage and bridal kidnapping, which prevent the girl child from fully enjoying the rights enshrined in the Convention;[614]

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[608] CRC Committee, Concluding observations, para. 18.
[609] CRC Committee, Concluding observations, para. 19.
[610] CRC Committee, Concluding observations, para. 21.
[611] CRC Committee, Concluding observations, para. 26.
[612] CRC Committee, Concluding observations, para. 27.
[613] CRC Committee, Concluding observations, para. 26.
[614] CRC Committee, Concluding observations, para. 27.

- Increase the minimum age of marriage for girls;[615] and
- Further improve measures to address the problems related to gender issues, including violence against women, through, inter alia, the establishment of effective coordination and the strengthening of an enforcement and judicial system for the greater protection of women and girls.[616]

Best interests of the child

The CRC Committee recommended that Kyrgyzstan review all legislation affecting children with a view to incorporating the principle of the best interests of the child as reflected in article 3 of the CRC into legislation, regulations and judicial and administrative procedures.[617]

Right to life (injured children due to landmines)

The CRC Committee urged Kyrgyzstan to:[618]

- Continue its efforts to achieve a bilateral agreement for the demining and demarcation of the border areas;
- Ratify and fully implement of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction of 1997; and
- Seek international assistance from the United Nations and other competent bodies in this regard.

Respect for the views of the child

The CRC Committee recommended that Kyrgyzstan undertake further measures to ensure that children's views are given due consideration in schools, courts, within the family and during relevant administrative processes concerning children in the light of article 12 of the CRC through inter alia:[619]

- Adoption of appropriate legislation;
- Training of all caregivers and professionals working with and for children; and
- The use of information campaigns.

4.3.10 Civil Rights and Freedoms

Birth registration

The CRC Committee was concerned that access to civil authorities for the purpose of birth registrations is not always guaranteed, in particular for asylum-seekers, persons seeking protection who have not received refugee status and those living in rural areas.[620] Uruguay urged Kyrgyzstan to improve the birth registry system as recommended by the CRC Committee,[621] which are through:[622]

- Development of mobile registration units; and
- Increased outreach activities and awareness-raising campaigns for families and traditional birth attendants.

Protection from torture and inhuman or degrading treatment or punishment

The CRC Committee iterated its concern that:[623]

- Persons below 18 allegedly continue to be subjected to torture and cruel treatment, in many cases when in police custody or awaiting trial;
- Access to legal counsel and/or medical services and communication with their families also seems limited for young persons in police custody; and
- The complaint procedures for these abuses are not child-sensitive and have not proven to be efficient as no sanctions seem to have been applied.

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[615] UPR, recommendations by Jordan, para. 76.75; Egypt, para. 76.76.
[616] UPR, recommendations by Malaysia, para. 76.59 .
[617] CRC Committee, Concluding observations, para. 30.
[618] CRC Committee, Concluding observations, para. 32.
[619] CRC Committee, Concluding observations, para. 34.
[620] CRC Committee, Concluding observations, para. 35.
[621] UPR, recommendations by Uruguay, para. 77.35.
[622] CRC Committee, Concluding observations, para. 36.
[623] CRC Committee, Concluding observations, para. 37.

The Committee recommended that Kyrgyzstan undertake all necessary measures to prevent acts of torture and inhuman or degrading treatment or punishment,[624] in particular through training of the police forces:

- Take measures to investigate, prosecute and sanction those involved in committing acts of torture and inhuman or degrading treatment or punishment against children and young persons;
- Provide information in its next report on the implementation of the 2003 amendment to the Criminal Code that made torture a crime; and
- Establish programmes for the rehabilitation and reintegration of the victims.

4.3.11 Family Environment and Alternative Care

Separation from parents and alternative care

The CRC Committee was concerned that many children in institutional care have parents and are deprived of their family environment,[625] and recommended Kyrgyzstan:[626]

- Adopt a comprehensive strategy and take preventive measures to avoid separating children from their family environment (inter alia, by providing parents or guardians with appropriate assistance) and to reduce the number of children living in institutions;
- For the limited number of children who have to be placed in institutions, take measures to make their stay as short as possible, inter alia by strengthening foster care;
- Take measures to create an environment that would allow for fuller development of the child and prevent and protect children from all forms of abuse;
- Further encourage contacts with the family while the child is institutionalized; and
- Establish procedures for the investigation of complaints from children in cases of physical and emotional abuse.

Adoption

In light of article 21 and other relevant provisions of the CRC, the CRC Committee recommended Kyrgyzstan:[627]

- Review of the above-mentioned laws and policies [the legislation concerning the secrecy of the adoption or the right of the adopted child to know who his/her biological parents are] with regard to adoption;
- Establish a mechanism to monitor adoptions; and
- Accede to the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993, when Kyrgyzstan considers lifting its moratorium on intercountry adoptions.

Child abuse and neglect

States through the UPR process recommended that Kyrgyzstan take measures for the promotion of children's rights[628] and ensure the full legal protection of the freedom of children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including corporal punishment in any setting,[629] child abuse and the sale of children,[630] and take further practical measures to stem the occurrence of violence against children.[631]

[624] CRC Committee, Concluding observations, para. 38.
[625] CRC Committee, Concluding observations, para. 39.
[626] CRC Committee, Concluding observations, para. 40.
[627] CRC Committee, Concluding observations, para. 42.
[628] UPR, recommendations by Japan, para. 76.64.
[629] UPR, recommendations by Sweden, para. 76.56.
[630] UPR, recommendations by Japan, para. 76.64.
[631] UPR, recommendations by Sweden, para. 76.56.

The CRC Committee expressed its concern about the abuse and neglect that take place in families,[632] in particular with regard to children and against adolescent girls, and recommended that Kyrgyzstan: [633]

- Enforce and closely monitor the Law on Protection from Violence (2003);
- Carry out effective public-awareness campaigns and adopt measures to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against children, including the use of corporal punishment;
- Provide more training to law enforcement officials, social workers and prosecutors on how to receive, monitor;
- Investigate and prosecute complaints in a child sensitive manner; and
- Ensure access to counselling for all victims of violence as well as assistance for their recovery and reintegration.

Corporal punishment

The CRC Committee urged Kyrgyzstan to:[634]

- Expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings; and
- Conduct awareness-raising and promotion of positive, non-violent forms of discipline, especially in families, schools and care institutions.

4.3.12 Basic Health and Welfare

Children with disabilities

The CRC Committee recommended that Kyrgyzstan to:[635]

- Establish a comprehensive policy for children with disabilities;
- Take effective measures to collect adequate and disaggregated data on children with disabilities up to the age of 18 years and use such data in developing policies and programmes to prevent disabilities and to assist disabled children;
- Reinforce its efforts to develop early detection programmes to prevent and remedy disabilities;
- Further encourage the integration of children with disabilities into the regular educational system and into society, including by providing special training to teachers and by making schools more accessible in light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on "The rights of children with disabilities" (CRC/C/69, paras. 310-339);
- Undertake awareness-raising campaigns to sensitize the public, and parents in particular, about the rights and special needs of children with disabilities, including those with mental health concerns;
- Increase resources, both financial and human, for special education, including vocational training, and the support given to families of children with disabilities; and
- Seek technical cooperation for the training of professional staff, including teachers, working with and for children with disabilities from, among others, UNICEF and WHO.

Right to health and health services

The CRC Committee recommended Kyrgyzstan:[636]

- Undertake more efforts to ensure the highest attainable standard of health for all children;
- Improve antenatal care programmes;
- Prevent the spread of contagious diseases such as HIV/AIDS and tuberculosis;
- Improve psychiatric care so as to ensure that children with psychiatric problems are treated humanely;

[632] CRC Committee, Concluding observations, para. 43.
[633] CRC Committee, Concluding observations, para. 44.
[634] CRC Committee, Concluding observations, para. 46.
[635] CRC Committee, Concluding observations, para. 48.
[636] CRC Committee, Concluding observations, para. 50.

- Explicitly prohibit placing children in adult psychiatric hospitals; and
- Request international assistance from WHO and UNICEF, inter alia to address the issue of providing safe drinking water and increased access to sanitation.

Adolescent health

The CRC Committee being concerned that:

- Adolescents do not receive adequate reproductive health or appropriate sex education,[637] recommended Kyrgyzstan ensure adequate adolescent health services, as stated in its general comment No. 4 (2003) on adolescent health, implementing in particular programmes on reproductive health, sex education and family planning;[638] and
- At the rising trend of tobacco use,[639] alcohol and drug abuse and suicide among adolescents, recommended Kyrgyzstan take measures to provide mental health services to adolescents.[640]

4.3.13 Education, Leisure and Cultural Activities

With regard to **Right to and aims of education**, the CRC Committee recommended Kyrgyzstan:[641]

- Continue to strengthen measures aimed at increasing enrolment rates in primary and secondary education, in particular with regard to early childhood education;
- Ensure that the practice of requesting that parents pay "voluntary fees" and other non official contributions for the education of children is discontinued;
- Take measures to create more favourable conditions at schools (e.g. improvement of heating and electricity facilities as well as more friendly and less abusive environments) in order to tackle the high dropout rates;
- Establish special educational programmes in order to accommodate the needs of working children, street children, migrants with no formal residence permits and children deprived of their liberty;
- Improve the educational system with a view to achieving the aims mentioned in article 29, paragraph 1, of the Convention, taking into account the Committee's General Comment No. 1 (2001) on the aims of education, and introduce human rights, including children's rights, into school curricula; and
- Seek assistance from, inter alia, UNESCO, OHCHR and other competent bodies in this regard.

Leisure, recreation and cultural activities

The CRC Committee noted with concern the general deterioration of children's access to quality leisure facilities, such as sports centres and cultural institutions, and to public libraries.[642] The CRC Committee recommended Kyrgyzstan to give priority to improving children's access to, and the quality of sports centres, cultural institutions and other leisure facilities.[643]

4.3.14 Refugee and Asylum-Seeking Children

The CRC Committee recommended Kyrgyzstan to review its regulations and practices concerning refugees in order to eliminate all discriminatory elements between adults and minors as well as between refugees of different ethnic backgrounds and ensure that asylum-seekers whose application for asylum has been rejected in the first instance are granted the right to remain in the country for the period allowed by the law for filing an appeal.[644]

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[637] CRC Committee, Concluding observations, para. 51.
[638] CRC Committee, Concluding observations, para. 52.
[639] CRC Committee, Concluding observations, para. 51.
[640] CRC Committee, Concluding observations, para. 52.
[641] CRC Committee, Concluding observations, para. 54.
[642] CRC Committee, Concluding observations, para. 55.
[643] CRC Committee, Concluding observations, para. 56.
[644] CRC Committee, Concluding observations, para. 58.

4.3.15 Economic Exploitation, Including Child Labour

States through the UPR process were particularly concerned by child labour in radioactive waste dumps, which must be discontinued as a matter of priority.[645]

The Committee remained concerned about the prevalence of child labour in Kyrgyzstan and the lack of official data in this regard, the use of children as workers by State institutions, and in particular by State educational establishments.[646] Kyrgyzstan was recommended to:

- Implement urgently the provisions enshrined in the ILO Worst Forms of Child Labour Convention, with special emphasis on articles 1 and 6;[647]
- Take steps to improve the labour conditions of children who are allowed to work and enforce the provisions of the Minors' Rights (Protection and Defence) Act with regard to child labour[648]
- Take immediate and effective steps to eliminate the practice in State institutions requiring children to work for the profit of these institutions;[649]
- Eliminate the practice of requiring boys and girls to work in the educational institutions where they are enrolled;[650]
- Fully implement the prohibition of child labour and adopt legislation providing for responsibility for the use of child labour;[651] and
- Adopt and implement necessary measures, including its national programme of action of the social partners for the eradication of the worst forms of child labour, with a view to eliminating this phenomenon.[652]

4.3.16 Sexual Exploitation/Trafficking

States through the UPR process recommended Kyrgyzstan intensify measures to criminalize and sanction cases involving the sale of children, child prostitution and child pornography; and initiate reforms of the juvenile justice system in line with international standards,[653] as well as continue making efforts to take effective measures improvements with regard to the issues of child abuse and the sale of children.[654]

The CRC Committee also recommended Kyrgyzstan to:[655]

- Undertake a study of sexually exploited children;
- Use the data to design policies and programmes to prevent sexual exploitation;
- Develop a national plan of action on commercial sexual exploitation of children as agreed at the two World Congresses against Commercial Sexual Exploitation of Children in 1996 and 2001;
- Carry out awareness-raising campaigns, particularly for children, parents and other caregivers, on the risks and effects of commercial sex;
- Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim;
- Ensure that sexually exploited children are always treated as victims and are provided with assistance and support for their reintegration; and
- Ensure that those who sexually exploit children are prosecuted.

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[645] UPR, recommendations by Lithuania, para. 49; Slovakia, para. 66.
[646] CRC Committee, Concluding observations, para. 59.
[647] UPR, recommendations by Hungary, para. 76.100.
[648] CRC Committee, Concluding observations, para. 60.
[649] CRC Committee, Concluding observations, para. 60.
[650] CRC Committee, Concluding observations, para. 60, UPR, 76.101 by Spain.
[651] UPR, recommendations by Lithuania, para. 76.102.
[652] UPR, recommendations by Slovakia, para. 76.103, by Denmark, para. 76.105.
[653] UPR, recommendations by Uruguay, para. 76.63.
[654] UPR, recommendations by Japan, para. 76.64.
[655] CRC Committee, Concluding observations, para. 62.

4.3.17 Street Children

The CRC Committee reiterated its concern with regard to the increasing number of street children in Kyrgyzstan and the vulnerable situation they face daily, with many of their rights not being protected (in particular their social and economic rights) and being subjected to frequent mistreatment by police officers.[656] Under the UPR process States recommended Kyrgyzstan address the situation of children living or working on the street.[657] The CRC Committee particular recommended to Kyrgyzstan:[658]

- Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development;
- Ensure that these children are provided with recovery and reintegration services for physical, sexual and substance abuse, protection from police brutality and services for reconciliation with their families; and
- Seek international assistance from, inter alia, UNICEF and ILO in this regard.

4.3.18 Juvenile Justice

Kyrgyzstan was recommended ensures the full implementation of juvenile justice standards,[659] in particular articles 37, 40 and 39 of the CRC, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice. In this regard, the CRC Committee encouraged Kyrgyzstan as a matter of priority to:[660]

- Expedite its work on reform of the system of juvenile justice in order for children to be tried under a specific juvenile justice system and not the ordinary justice system
- Review the existing distinction regarding criminal responsibility of minors under 14 years and those under 16 years, and ensure that alternative penalties to the deprivation of liberty exist for all minors;
- Ensure that pre-trial detention is used only in exceptional cases, and when this does occur, that access to relatives/representatives and to doctors and lawyers is guaranteed;
- Undertake all necessary measures, including through technical cooperation, to establish separate detention facilities for juveniles;
- Review the mandate and restructure the Commission on Minors' Affairs with a view to removing its punitive functions;
- Ensure that the Akzakal Courts (Elders' Courts), when dealing with children in conflict with the law, fully apply the principles and provisions of the CRC; and
- Seek technical assistance from the OHCR and UNICEF in this regard.

[656] CRC Committee, Concluding observations, para. 63.
[657] UPR, recommendations by Uruguay, para. 76.63.
[658] CRC Committee, Concluding observations, para. 64.
[659] UPR, recommendations by Egypt, para. 76.76, Afghanistan, para. 76.69, Uruguay, para. 76.63.
[660] CRC Committee, Concluding observations, para. 67.

4.3.19 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Legislation

The CRC Committee recommended Kyrgyzstan, in order to strengthen the national and international measures for the prevention of the recruitment of children for armed forces or armed groups and their use in hostilities:[661]

- Establish extraterritorial jurisdiction for the violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities when they are committed by or against a person who is a citizen of or has other links with the State party; and
- Ensure, through legislation, that military personnel do not undertake any act that violates the rights enshrined in the Optional Protocol, regardless of any military order to that effect.

The CRC Committee recommended Kyrgyzstan to review its domestic law with a view to abolishing trade of small arms and light weapons to countries with current or recent armed conflict that may involve children. In this respect, the Committee recommended that the State party indicate, in its next periodic report, what changes to the domestic law have been made and how the implementation of these changes had contributed to halting sales of small arms to those countries.[662]

Coordination and evaluation of the implementation of the Optional Protocol

The CRC Committee recommended that Kyrgyzstan speedily establish a permanent mechanism to coordinate the policies and activities on children's rights. This mechanism should include the appropriate and effective coordination and regular evaluation of the implementation of the Optional Protocol.[663]

Dissemination and training

The Committee recommended Kyrgyzstan[664]:

- Make the provisions of the Convention and its Optional Protocol widely known to children and their parents;
- Develop systematic awareness-raising campaigns, education and training on the provisions of the Optional Protocol for all relevant professional groups (such as teachers, medical professionals, social workers, lawyers, judges and military personnel), including those who are working with asylum seeking, refugee and migrant children that may have been recruited or used in hostilities; and
- Provide information in that respect in its next report.

Recruitment of children

Military schools

The CRC Committee was concerned at the lack of information on any complaints and investigation mechanism to deal with complaints by students attending military schools.[665] The Committee recommended Kyrgyzstan:[666]

- Ensure that all children attending military schools receive education in a manner consistent with CRC, in particular articles 28 and 29, duly taking into account its General Comment No. 1 on the aims of education;
- Provide children attending such schools access to complaint and investigation mechanisms; and
- Provide further information on training in the use of weapons in regular schools.

[661] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 7.
[662] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 9.
[663] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 11.
[664] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 12.
[665] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 13.
[666] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 14.

On the **measures adopted with regard to disarmament, demobilization, physical and psychological recovery and social reintegration, the** Committee encouraged Kyrgyzstan to continue and strengthen, where necessary, protection for asylum-seeking, refugee and migrant children living in Kyrgyzstan who may have been recruited or used in hostilities in their country of origin by taking, inter alia, the following measures:[667]

- Systematically collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been involved in hostilities in their home-country. In this regard, CRC Committee recommends that Kyrgyzstan to take note of the CRC Committee's General Comment No. 6 CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin;
- Provide children, who have fled with or without their families, either refugee status or another status which will allow social integration in Kyrgyz society and provide them with equal access to education, health care and other social services; and
- Provide affected children with multidisciplinary assistance for their physical and psychological recovery and social reintegration.

Protection of victims

While the CRC Committee noted the State party's intention to undertake international cooperation to provide assistance for children affected by armed conflict, it encouraged Kyrgyzstan to:[668]

- Pursue efforts to obtain international and bilateral technical cooperation and financial assistance;
- Submit information on international assistance provided for children affected by armed conflict in its next report.

4.3.20 The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Committee on the Rights of the Child provided Concluding observations on Kyrgyzstan's compliance with the Optional Protocol on the sale of children, child prostitution and child pornography in the following areas.

1. General measures of implementation

National Plan of Action and Coordination

The Committee was concerned at the absence of a specific plan of action in relation to the sale of children, child prostitution and child pornography. Furthermore, the Committee was concerned that existing financial resources provided to the "New Generation" programme were insufficient and that the coordination and cooperation between the different bodies is not fully effective.[669] Therefore, the Committee recommended that Kyrgyzstan provide the "New Generation" programme with an increased budget allocation and clearly define the competencies of the different bodies involved in the implementation of this programme in order to improve its cooperation and coordination.

Dissemination and training

The Committee recommended that Kyrgyzstan allocate adequate and earmarked resources for the development of training materials and courses for all relevant professionals including police officers, public prosecutors, judges, medical staff and other professionals involved in the implementation of the Optional Protocol. Furthermore, in the light of article 9(2) of the Protocol, the Committee recommended that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, inter alia, school curricula and long-term awareness-raising campaigns and training, about the preventive measures and harmful effects of all offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims.[670]

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[667] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 16.
[668] CRC Committee, Concluding observations under the Optional Protocol on Armed Conflict, para. 17.
[669] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 5.
[670] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 8.

Data collection and Budget allocations

The Committee regretted the lack of statistical data on issues covered by the Protocol as well as the lack of research on the prevalence of national and cross-border trafficking, sale of children, child prostitution and child pornography.[671] The Committee recommended that Kyrgyzstan ensure that data disaggregated, inter alia, by age and sex are systematically collected and analysed. The Committee encourages Kyrgyzstan to undertake research on the nature and extent of all forms of exploitation of children, including prostitution, pornography and child labour, in order to identify the causes and the extent of the problem.[672] The Committee recommended that Kyrgyzstan continue and strengthen its budget allocation in order to cover all areas of the Protocol. [673]

2. Prohibition of the sale of children, child pornography and child prostitution

Existing criminal or penal laws and regulations

The Committee urged Kyrgyzstan to implement the Protocol by taking immediate measures to amend the provisions with a view to fully including all purposes and forms of the sale of children, child pornography and child prostitution in accordance with article 3, paragraphs 1 and 2, of the Optional Protocol. The Committee therefore recommended that Kyrgyzstan undertake a legal study in order to identify inconsistencies and gaps between the national legal system and the Protocol and to seek assistance from the United Nations Children's Fund (UNICEF) and other relevant international organizations. [674]

3. Penal/criminal procedure

Jurisdiction

The Committee recommended Kyrgyzstan to take the necessary legislative measures to ensure that the domestic law provides for extraterritorial jurisdiction in full compliance with article 4 of the Protocol. [675] The Committee recommended that Kyrgyzstan increase the number of investigations and prosecutions for incidents involving the sale of children and child prostitution and especially for pornography and make the data available. [676]

4. Protection of the rights of child victims

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol

The Committee recommended that Kyrgyzstan: [677]

- In the light of article 8(1) of the Optional Protocol, protect child victims and witnesses at all stages of the criminal justice process, by taking into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20);
- Collaborate with NGOs and the International Organization for Migration (IOM) to ensure that adequate services are available for child victims, including for physical and psychological recovery and social reintegration, in accordance with article 9(3) of the Optional Protocol;
- Ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Optional Protocol; and
- Allocate adequate funds to programmes and measures necessary for the rehabilitation of child victims.

[671] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 9.
[672] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 10.
[673] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 12.
[674] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 14.
[675] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 16.
[676] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 18.
[677] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 20.

The Committee recommended that Kyrgyzstan ensure that child victims of exploitation and abuse are neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children.[678] It recommended that Kyrgyzstan establish, in collaboration with Every child and other interested NGOs, a 24-hour, toll-free helpline number to assist child victims. In this regard, it recommended that Kyrgyzstan ensure that children are aware of and can access the helpline and facilitate the collaboration of the helpline with child-focused NGOs and the police, as well as health and social workers.[679]

The Committee reiterated its recommendations (CRC/C/15/Add. 244) in which it asked for amendment of the legislation and policies with regard to adoption, in order to set up a mechanism for monitoring all adoption processes and the accession to the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993.[680]

5. Prevention of the sale of children, child prostitution and child pornography

Measures adopted to prevent offences referred to in the Optional Protocol

The CRC Committee remained concerned about allegations of complicity by officials of Kyrgyzstan in trafficking and that corruption is impeding the effectiveness of prevention measures. [681] It urged the Government to ensure that any suspicion of complicity by State officials is thoroughly investigated and adequately sanctioned, if proven. [682]

The Committee also recommended that the Kyrgyzstan pay particular attention to the situation of vulnerable groups of children who are at particular risk of being exploited and abused. In this respect it recommends that Kyrgyzstan allocate adequate human and financial resources for the implementation of programmes for the protection of the rights of vulnerable children, with special attention to their education and health care. More attention should also be devoted to raising awareness among these children of their rights,[683] and further attention be given to the implementation of this programme, including through the appropriate allocation of financial resources for the prevention of sexual and all other forms of exploitation. [684]

The CRC Committee encouraged Kyrgyzstan to undertake further targeted preventive measures and liaise with NGOs concerning the implementation of awareness-raising campaigns on all areas covered by the Optional Protocol. In particular, the Committee encouraged Kyrgyzstan to undertake research on the nature and extent of exploitation of children, including prostitution and pornography, to identify the causes and extent of the problem.[685]

6. International assistance and cooperation

The Committee encouraged Kyrgyzstan to continue cooperation with UNICEF and international NGOs to implement the "New Generation" programme for children's rights in Kyrgyzstan.[686] The Committee encouraged Kyrgyzstan to undertake regional and international judicial, police and victim-oriented cooperation activities with other States with a view to preventing and combating the sale of children, child prostitution and child pornography and to provide more detailed information in the next report.[687]

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[678] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 22.
[679] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 23.
[680] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 24.
[681] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 25.
[682] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 26.
[683] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 28.
[684] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 30.
[685] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 32.
[686] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 33.
[687] CRC Committee, Concluding observations under the Optional Protocol on Sale of Children, para. 34.

4.4 ETHNIC MINORITIES

NOTE! The Kyrgyz Inquiry Commission made recommendations regarding ethnic minorities after its investigation of the June 2010 events in the south of Kyrgyzstan. These are discussed in Section 2.18.

States through the UPR process recommended that Kyrgyzstan:

- Continue its efforts to preserve the nation's ethnic diversity and promote its cultural heritage;[688]
- Condemn anti-minority attacks be publicly by authorities, and investigate attacks in order to bring the perpetrators to justice;[689]
- Include minority communities in the process of constitution-making and the formulation of the Electoral Code, in order to take into account their wishes and aspirations;[690]
- Take inclusive and longer-term measures with respect to linguistic policy, education and participation in decision-making for minorities;[691]
- Ensure full respect for minority rights in the new constitution;[692] and
- Harmonize its national legislation with what has been recommended by the Committee on the Elimination of Racial Discrimination.[693]

The Convention on the Elimination of Racial Discrimination (hereinafter "CERD Committee") Committee, in its Concluding observations of Kyrgyzstan in 2007 recommended Kyrgyzstan bring its internal law in line with the Convention by including a **definition of racial discrimination** in keeping with that contained in article 1 of the Convention.[694]

The CERD Committee drew the attention of Kyrgyzstan to its general recommendation No. 30 (2004) on non-citizens, and recommends that the State party take the necessary measures in order to guarantee **equality between citizens and non-citizens** in the enjoyment of the rights set forth in the Convention to the extent recognized under international law. [695]

The Committee recommended Kyrgyzstan, on the basis of the findings of the Commission established to investigate the clashes between **Kyrgyz and Dungan communities** living in Iskra, bring those responsible to justice, that compensation be provided to the families which were forced to leave and that measures be adopted to promote dialogue and understanding between the Dungan and Kyrgyz communities. [696]

The Committee recommended that Kyrgyzstan take effective measures to ensure **better representation of ethnic and national minorities in Parliament as well as in Government and in the public administration**, by eliminating obstacles preventing their appointment or restricting their promotion. In particular, the Committee encouraged the State party to ensure the availability of high quality and free of charge Kyrgyz language courses for applicants to civil service positions belonging to minorities. [697]

The Committee reiterated its request that Kyrgyzstan provide detailed information on measures adopted to **ensure the practical enjoyment** by persons belonging to ethnic and national minorities of the rights listed in article 5 (e) of the Convention, in particular the right to work, including the right to equal opportunities of promotion and career development, the right to housing and the right to education.[698]

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[688] UPR, recommendations by Pakistan, para. 76.118.
[689] UPR, recommendations by Norway, para.76.119.
[690] UPR, recommendations by Norway, para.76.120.
[691] UPR, recommendations by Norway, para.76.121.
[692] UPR, recommendations by Austria, para.76.122.
[693] UPR, recommendations by Uruguay, para.77.14.
[694] CERD Committee, Concluding observations, para. 6.
[695] CERD Committee, Concluding observations, para. 8.
[696] CERD Committee, Concluding observations, para. 10.
[697] CERD Committee, Concluding observations, para. 11.
[698] CERD Committee, Concluding observations, para. 12.

The Committee requested that the Government include in its next periodic report detailed information on **complaints lodged** (including those submitted to the Office of the Ombudsman and to the National Human Rights Commission) and prosecutions launched, as well as on penalties imposed, in cases of **offences** which relate to racial discrimination. The Committee recommended that the State party provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and to undertake information campaigns to raise awareness among the public about the mechanisms and procedures provided for in national legislation in the field of racism and discrimination. [699]

The Committee recommended that the Government include in **curricula and textbooks for primary and secondary schools** information about the history and culture of the different national and ethnic groups living in its territory, and encourage and support the publication and distribution of books and other printed materials, as well as the broadcasting of television and radio programmes about their history and culture. The Committee also recommended that the State party ensure the participation of national and ethnic minorities in the elaboration of such materials and programmes.[700]

Further, it recommended that the Government organize **public awareness and education programmes** on the Convention and its provisions, and step up its efforts to make government officials and the public in general aware of the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.[701]

The Committee recommended the Government consider the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level. [702]

4.5 REFUGEES

States through the UPR process recommended Kyrgyzstan to:

- Respect in all circumstances the principle of non-refoulement, guarantee that asylum seekers have an asylum procedure which is in line with international standards, and respond to the requests for information made by the Committee on the Elimination of Racial Discrimination regarding the treatment of asylum seekers;[703]
- Review the national implementation of the principle of non-refoulement;[704] and
- Establish a national preventive mechanism that will constitutionally guarantee the rights of all people, particularly the rights of minorities.[705]

The CERD Committee urged Kyrgyzstan to provide data on **the number and outcome of requests for asylum or refugee status** presented since the entry into force of the Refugee Act in 2002, disaggregated by country of origin and, where relevant, grounds for rejection. Bearing in mind its general recommendation No. 30 (2004) on non-citizens, the Committee urged Kyrgyzstan to ensure that its asylum procedures do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin. The Committee further recommended the Government ensure that measures to combat terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and that the State party respect the principle of non-refoulement. [706]

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[699] CERD Committee, Concluding observations, para. 13.
[700] CERD Committee, Concluding observations, para. 14.
[701] CERD Committee, Concluding observations, para. 15.
[702] CERD Committee, Concluding observations, para. 18.
[703] UPR, recommendations by Belgium, para.77.41.
[704] UPR, recommendations by Czech Republic, para.77.31.
[705] UPR, recommendations by Tajikistan, para.76.20.
[706] CERD Committee, Concluding observations, para. 9.

The Human Rights Committee considered individual communications on the principle of non-refoulment in Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan case (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006). The decision is summarized in the Appendix.

Also, see recommendations in Section 4.3.14 of this Report on Refugee and Asylum-Seeking Children.

4.6 PERSONS WITH DISABILITIES

States through the UPR process recommended Kyrgyzstan:

- Protect the rights of people with disabilities;[707]
- Accede to the Convention on the Rights of Persons with Disabilities;[708] and
- Devise national policies and legislation to protect the rights of persons with disabilities. [709]

The U.N. High Commissioners for human rights stated that the Government should ratify or accede to instruments to which it is not yet a party, including 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.[710]

See also recommendations in Section 4.3.12 on children with disabilities.

[707] UPR, recommendations by Tajikistan, Afghanistan, para. 76.116.
[708] UPR, recommendations by Turkey, para.23; Egypt, para.77.7.
[709] UPR, recommendations by Egypt, para.77.7.
[710] Report of the U.N. High Commissioners for Human Rights, para. 83 (c).

APPENDIX
Decisions[711] of the ICCPR Human Rights Committee regarding Individual Communications under the Optional Protocol to the ICCPR, ratified by the Kyrgyz Republic

1	**Umetaliev v. Kyrgyzstan (Communication No. 1275/2004), decided October 30, 2008** *SUBJECT MATTER:* Allegations that Kyrgyzstan violated right to life; arbitrary deprivation of the life of a Kyrgyz national in the course of an anti-riot security operation in Aksy region; failure to conduct an adequate investigation and to initiate proceedings against the perpetrator/s; denial of justice. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated articles 6 (1)[712] and 2 (3) read together with article 6 (1) of the ICCPR.[713] **Facts:** The Committee noted that the State party conceded that Eldiyar Umetaliev's corpse was discovered on 18 March 2002 in the course of the Aksy events in Keben, with a wound on his neck from a firearm. As regards the subsequent investigation, the State party merely stated that it was suspended for failure to identify the perpetrator/s responsible. However, the investigation had not been completed, thereby preventing the authors complainants [Eldiyar Umetaliev's parents] from pursuing their claim for compensation. **Committee's considerations:** 9.2 With regard to the authors' claim that article 6, paragraph 1, was violated, the Committee recalls its General Comment No. 6 on article 6, which states that the right enshrined in this article is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. The Committee recalls its jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6. It further recalls its General Comment No. 31, that where investigations reveal violations of certain Covenant rights States parties must ensure that those responsible are brought to justice. 9.3 The Committee notes that the State party concedes that Eldiyar Umetaliev's corpse was discovered on 18 March 2002 in the course of the Aksy events in Keben, with a wound on his neck from a firearm. As regards the subsequent investigation, the State party merely states that it was suspended for failure to identify the perpetrator/s responsible. However, the investigation has not been completed, thereby preventing the authors from pursuing their claim for compensation. 9.4 The Committee also notes that in their communication to the Committee and numerous letters to the State party's authorities, the authors attributed their son's arbitrary deprivation of life to the State party's security forces and provided sufficiently substantiated arguments in support of their claim: (a) Eldiyar Umetaliev's death, attested by the Death Certificate, (b) occurred at the same time and in the same place as the anti-riot security operation conducted by militia officers; (c) the forensic medical report of the Republican Forensic Medical Bureau dated 25 April 2002 does not

[711] The Human Rights Committee issued eleven decisions, where Maksudov v. Kyrgyzstan decision involves four individual communications, which makes fourteen individual communications against Kyrgyzstan as of April 2012.

[712] **Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

[713] **Article 2**

3. Each State Party to the present Covenant undertakes: (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

exclude the possibility that Eldiyar Umetaliev's fatal wound could have been caused by a bullet from a machine gun or pistol (which, according to the authors, were and are being used exclusively by military personnel).The Committee considers that the severe consequences of the use of firearms *as such* for the exercise of one's right to life warranted at the very minimum a separate investigation of the potential involvement of the State party's security forces in Eldiyar Umetaliev's death. In addition, the Committee notes, that the State party has not advanced any arguments that it took effective and feasible measures, in compliance with its obligation to protect the right to life under article 6, paragraph 1, to prevent and to refrain from the arbitrary deprivation of life.

9.5 The Committee recalls its jurisprudence that the burden of proof cannot rest alone on the authors of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In addition, the deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities. The Committee takes into account that the arguments provided by the authors point towards the State party's direct responsibility for Eldiyar Umetaliev's death through an excessive use of force, and considers that these statements, which the State party has not contested, and which the authors have sufficiently substantiated, warrant the finding that there has been a violation of article 6, paragraph 1, of the Covenant, with regard to Eldiyar Umetaliev.

9.6 The Committee further observes that although over six years have elapsed since Eldiyar Umetaliev's killing, the authors still do not know the exact circumstances surrounding their son's death and the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with these events. The criminal case remains suspended without any indication from the State party when the case will be completed. The Committee finds that the persistent failure of the State party's authorities properly to investigate the circumstances of Eldiyar Umetaliev's death effectively denied the authors a remedy. The Committee also notes that the authors' civil claim for compensation from the State party's authorities for their son's death was suspended until the completion of the criminal case. The Committee concludes that the State party violated the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.

Remedies:

11. Under article 2, paragraph 3(a), of the Covenant, the State party [was] under an obligation to provide the authors with an effective remedy in the form, *inter alia*, of an impartial investigation in the circumstances of their son's death, prosecution of those responsible and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. The Committee wished to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party [was] also requested to publish the Committee's Views.

2	**Latifulin v. Kyrgyzstan (Communications No. 1312/2004), decided March 10, 2010** *SUBJECT MATTER:* Allegations that Kyrgyzstan violated right to fair trial, unlawful detention, no immediate access to a lawyer, unlawful constraint measure, and right to be promptly informed of the charges, conviction for failing to fulfil contractual obligations. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated article 9 (1) and (2) of the ICCPR.[714] **Facts:** 2.5 The author [Rustam Latifulin] was not given access to a lawyer for a period of three days after his arrest. He stated that his detention was per se unlawful, as the offence in question at the time, assault, was not one for which a restraining measure was prescribed by law. The charges were added only after he had appealed his detention. He was not charged with any offence for a period of 10 days, and he was not advised of his right to challenge his detention. The author challenged the lawfulness of his detention in the District Court on 19 June 2002. 2.6 The trial court failed to examine documentary evidence by the defense and relied on the testimonies of victim Kushueva, who testified only during the pre-trial investigation and not during the trial. The author's lawyer's request that the court hear witnesses who could testify in his favor was dismissed. 2.7 The appeal court also failed to examine either documentary evidence or witness testimonies, and thus upheld his sentence. **Committee's considerations:** 8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. 8.2 The Committee notes the author's claim that his detention was unlawful, as the offence in question at the time, assault, was not one for which a constraint measure was prescribed by law. It also notes his claim that the charge of fraud was put forward only after he appealed his detention. The materials before the Committee reveal that the court justified the detention with his failure to notify the court regarding the change of his residence and employment status. The Committee notes, however, that the State party has failed to address this matter in the context of the present communication. In the absence of any other information, the Committee concludes that there has been a violation of article 9, paragraph 1. 8.3 The Committee notes the author's claims that during the first ten days in detention he was not informed of the charges against him. The Committee notes that in its reply to the present communication, the State party has not factually disputed the claim but merely, as a general matter, stated that no procedural violations have been observed in the author's case. In the absence of any further information, the Committee finds that the facts reveal a violation of articles 9, paragraph 2, of the Covenant. **Remedies:** 10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party [was] under an obligation to provide the author with an effective remedy, in the form of appropriate compensation. The State party is also under an obligation to prevent similar violations in the future. 11. The Committee wishe[d] to receive from the State party, within 180 days, information about

[714] **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

	the measures taken to give effect to its Views. The State party [was] also requested to publish the Committee's Views.
3	**Kaldarov v. Kyrgyzstan (Communication No. 1338/2005), decided March 18, 2010** *SUBJECT MATTER:* Allegations that Kyrgyzstan violated rights for failure to bring a detained person before a judge and imposition of death penalty after unfair trial. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated article 9 (3) of the ICCPR. **Facts:** 2.2 On 9 March 1999, the author [Soyuzbek Kaldarov] and the other two [persons] were arrested by law-enforcement officers. Upon arrest, they confessed to having committed a crime and testified about the role played by each of the participants in the incident in question. However, investigating officers conducted "a new investigation with the use of physical pressure", as a result of which a murder of one of the policeman was attributed to the author. Author was sentenced to death, with the seizure of his property. **Committee's considerations:** 8.2 The Committee notes the author's claim, which is factually supported by what the State Party has submitted from the case file that, as his placement in custody was authorised by a prosecutor, who cannot be considered independent, his rights under article 9, paragraph 3, of the Covenant, have been violated. In this respect, the Committee recalls its jurisprudence that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is generally admitted in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the case, the Committee is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and concludes that there has been a violation of this provision. **Remedies:** 10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, in the form of appropriate compensation, to make such legislative changes as are necessary to avoid similar violations in the future. 11. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party [was] also requested to publish the Committee's Views.
4	**Kulov v. Kyrgyzstan (Communications No. 1369/2005), decided July 26, 2010** *SUBJECT MATTER:* Allegations that conviction of an opposition leader occurred after an unfair trial, and unlawful detention. Allegations of torture due to incommunicado detention and total isolation, in violation of right to fair trial, right to immediate access to a lawyer, unlawful constraint measure, presumption of innocence, right to examine witnesses. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated articles 7,[715] 9 (1), (3) and (4),[716] 14 (1), (2), (3) (b)-(e), and (5) of the ICCPR.[717]

[715] **Article 7:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

[716] **Article 9**

	Facts: 2.1 The author [Felix Kulov] submitted that he was a member and one of the leaders of the political opposition in Kyrgyzstan. Since 1990, he has been Minister of Interior, Vice-President, Minister of National Security, Governor of the Chuysk region and Mayor of the capital Bishkek. In March 1999, he resigned as Mayor of Bishkek and founded the "Ar-Namis" political party (Party of Dignity). The party openly criticized the presidential policy and proposed different measures to reform the country. As a result he was subjected to persecution. 2.2 […] On 12 March 2000, the author announced his decision to stand for President at the October 2000 elections. On 22 March 2000, he was arrested by the security services. […] **Committee's considerations:** 8.2 The Committee noted the author's claim under article 7 that during the time of his detention in the buildings of State NSS, he was not allowed any correspondence and communication, and was kept without any contact with the outside world. The Committee recalls its general comment 20 (1992), which recommends that States parties should make provision against incommunicado detention. In view of the above, the Committee finds that the author has been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. 8.4 As for the author's claim[ed] under articles 9, paragraph 3, read together with article 2, paragraphs 1 and 2, that the decision to place him in pre-trial detention was made by a prosecutor, i.e. a representative of the executive branch, under the national legislation, in his absence, and that he was not brought before a judge or other officer authorized by law to exercise judicial power: the Committee note[d] that the State party ha[d] not provided any information, showing that the prosecutor had the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9,

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3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

[717] **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

paragraph 3, of the Covenant. In these circumstances, the Committee conclude[d] that the facts as submitted reveal a violation of the author's rights under article 9, paragraph 3, of the Covenant.

8.5 The author also claimed violation of article 9, paragraph 4, as he was allegedly kept in an investigation detention centre since 6 February 2001, due to the opening of a third case against him. His detention was allegedly prolonged on several occasions between 2001 and 2003 by the investigators, and with the prosecutor's authorization, but in absence of any judicial control. The author allegedly appealed with the General Prosecutor's Office, but all his appeals were rejected. According to him, the appeal to courts was not necessary because of their ineffectiveness. The State party did not comment on these allegations. In the absence of any further information, the Committee conclude[d] that there has been a violation of article 9, paragraph 4, of the Covenant.

8.6 The author also claim[d] that he [was] a victim of violation of article 14, paragraph 1, as his case was examined by a military court in closed meeting; the investigation classified his case file as secret without giving any grounds and the 63-page judgement was prepared within three hours, putting into question the partiality of the judges. He add[ed] that military courts do not meet the standards of independence. The Committee recall[ed] its jurisprudence that the court must provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, for example, potential public interest in the case, duration of the oral hearing and the time the formal request for publicity has been made. The State party did not provide any comments on these allegations. In such circumstances, the Committee consider[ed] that the trial of the author did not meet the requirements of article 14, paragraph 1.

8.7 The Committee note[d] the author's allegations of violation of presumption of innocence, as the authorities allegedly used national media to portray him as a criminal; his lawyers were given only limited time to study the evidence, and "obstacles" were added to examine the additional evidence presented by the prosecution; he had been judged already two times for malpractice in office but a third set of criminal proceedings was still pending at the time of submission of the present communication, on the same grounds; his request to be represented by a lawyer from Russia was ignored, though allowed under the legislation; NSS created additional obstacles for lawyers' participation in the author's case; and finally he was not allowed to examine witnesses against him in court, as the courts refused to call them without justifying their refusal. The Committee note[d] that the State party did not provide any comments on any of these allegations. In the absence of any information from the State party, the Committee consider[ed] that due weight must be given to the author's allegations and conclude[d] that there ha[d] been a violation of article 14, paragraphs 2, 3 (b), (c), (d) and (e), of [ICCPR].

8.8 Regarding the claims that the examination of the author's case under the supervisory (*nadzor*) procedure by the Supreme Court took place in his and in his lawyers' absence, although with the participation of a prosecutor, the Committee note[d] that despite the fact that under the Criminal Procedure Code of the State party, the participation of the accused at the hearing of the supervisory review procedure [was] decided by the court itself, the State party failed to explain the reasons why it did not allow the participation of the author and his lawyers at the proceedings at the Supreme Court. In the absence of any other information, the Committee consider[ed] that there ha[d] been a violation of article 14, paragraph 5, of the Covenant.

Remedies:

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party [was] under an obligation to provide the author with an effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.

11. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party was also requested to publish the Committee's Views.

5	**Krasnova v Kyrgyzstan (Communication No. 1402/2005), decided March 29, 2011** *SUBJECT MATTER: Allegations of c*onviction of a juvenile person in violation of fair trial guarantees, as well as torture, cruel, inhuman or degrading treatment or punishment; alleged violations of right to be informed, at the time of arrest, of the reasons for arrest; right to humane treatment and respect for dignity; fair hearing; right to adequate time and facilities for the preparation of his defence; right to be tried without undue delay; right not to be compelled to testify against oneself or to confess guilt; procedure against juveniles shall take into account their age; arbitrary interference; privacy. *JUDGMENT OF COMMITTEE:* Kyrgyzstan violated articles 7, 9 (2); 14 (1), (3) (b) and (c) of the ICCPR. **Facts:** 2.28 On 26 August 2004, the Judicial Chamber for Criminal Cases and Administrative Offences of the Supreme Court upheld the judgment of the Sverdlovsk District Court of Bishkek of 10 June 2002, that found the author's [Tatyana Krasnova] son [Mikhail Krasnov, 14 years old] guilty of having committed the murder of D.M. and sentenced him to 12 years' imprisonment. **Committee's considerations:** 8.2 The Committee note[d] the author's allegations that her 14 year old son was beaten on his head and physically pressured by officers of the Department of Internal Affairs, for the purpose of extracting a confession from him, and that Mikhail identified in court the alleged perpetrators of these acts. […] The Committee further note[d] that the author's son ha[d] disputed the conclusions of the medical examination report [dated from 3 November 1999] that Mikhail did not have any visible bodily injuries at the time of examination] on the ground that the medical examination was carried out by a doctor while he and the other two co-accused were fully dressed. In this respect, the Committee recall[ed] that once a complaint about treatment contrary to article 7 ha[d] been filed, a State party must investigate it promptly and impartially. 8.3 The Committee also recall[ed] its jurisprudence that the burden of proof cannot rest alone on the author of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to provide to the Committee the information available to it. The State party, however, did not provide any information as to whether any inquiry was undertaken by the authorities to address the detailed and specific allegations advanced by the author in a substantiated way. In these circumstances, due weight must be given to these allegations. The Committee consider[d], therefore, that the information contained in the file [did] not demonstrate that the State party's competent authorities gave due consideration to the complaints of the author's son about being subjected to physical pressure, and conclude[d] that the facts before it amount to a violation of the rights of the author son's under article 7 of [ICCPR]. 8.5 The Committee note[d] the author's claim that neither her son nor her, as Mikhail's legal representative, were informed of the reasons for his arrest which took place on 28 October 1999. The State party [did] not dispute this claim. For this reason, the Committee conclude[d] that the rights of the author's son under article 9, paragraph 2, of the Covenant were violated. 8.6 The author ha[d] also claimed that her son's rights under article 14, paragraph 3(b), were violated, as most of the investigative actions in his case, particularly during the time when he was subjected to psychological pressure and when the crucial material evidence of the prosecution (the jogging shoes) had been seized from him, had been carried out in the absence of a lawyer. In light of the recognition by the State party's own courts that the author's son was not represented by a lawyer during one of the most important investigative actions and given his particularly vulnerable situation as a minor, the Committee considers that the facts before it reveal[ed] a violation of the rights of the author's son under article 14, paragraph 3(b), of the Covenant.

	8.7 As to the claim under article 14, paragraph 3(c), of the Covenant, the Committee recall[ed] that the right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but also to serve the interests of justice. The Committee note[d] that, in the present case, court proceedings lasted for almost five years during which the author's minor son was acquitted three times and three times found guilty on the basis of the same evidence, witness statements and testimonies of the co-accused. It further note[d] that none of the delays in the case can be attributed to the author or to his lawyers. In the absence of any explanation from the State party justifying a delay of almost five years between the formal charging of the author's minor son and his final conviction by the Supreme Court, the Committee conclude[d] that the delay in his trial was such as to amount to a violation of article 14, paragraph, paragraph 3(c), of the Covenant. 8.8 In relation to the author's claim that the State party' courts were partial in the evaluation of her son's alibi, as well as of the crucial facts and evidence in his case, and that his guilt was not established, the Committee note[d] that the author point[ed] to many circumstances which she claim[ed] demonstrate that her son did not benefit from a right to a fair hearing by a competent, independent and impartial tribunal. The Committee recall[ed] its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice. The Committee note[d], however, that the State party's authorities [had] conceded that court decisions in the present case were 'numerous and contradictory' and even suggested the establishment of an inter-ministerial commission tasked with handing down a 'legal decision' in relation to the author's son. In light of the above and given the Committee's findings of a violation of article 7, and article 14, paragraphs 3(b) and 3(c), of the Covenant, the Committee [was] of the opinion that the author's son did not benefit from a right to a fair hearing, in violation of article 14, paragraph 1, of the Covenant. **Remedies:** 10. In accordance with article 2, paragraph 3(a), of the Covenant, the State party [was] under an obligation to provide the author's son with an effective remedy, including a review of his conviction taking into account of the provisions of the Covenant, and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future. 11. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it request[ed] the State party to publish the Committee's Views.
6	**Maksudov, Rakhimov, Tashbaev and Pirmatov v. Kyrgyzstan (Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), decided July 16, 2008** *SUBJECT MATTER:* Allegation that extradition of four recognised refugees from Kyrgyzstan to Uzbekistan despite request for interim measures of protection. Death penalty; torture, cruel, inhuman or degrading treatment or punishment; *non-refoulement*; arbitrary detention; right to be brought promptly before a judge; right to adequate time and facilities for the preparation of the defence. *JUDGMENT OF COMMITTEE:* Kyrgyzstan violated articles 2, 6 (2), 7 read together with 2, 9 (1) and (3) of the ICCPR, and article 1 of the Optional Protocol to the ICCPR. **Facts:** 2.1 On 13 May 2005 authors [Maksudov, Rakhimov, Tashbaev and Pirmatov] [happened to be in the main squire in Andijan, Uzbekistan, where demonstrations were taken place]. After some time, the demonstrators were fired on; soldiers were indiscriminately shooting into the crowd. In panic and fearing persecution by Uzbek authorities, [authors] crossed the border into Kyrgyzstan on 14 May 2005.

2.2 [Authors], together with 524 other individuals who fled Andijan on 13 May 2005, was installed in a tent camp set up along the Uzbek-Kyrgyz border in the Suzak region near Jalalabad (Kyrgyzstan) by UNHCR and administered by the Department of Migration Services under the Kyrgyz Ministry of Foreign Affairs (DMS).

2.3 [On May 28 2005 for Maksudov, Rakhimov and Primatov and on 23 May 2005 for Tashbaeva] the Uzbek General Prosecutor's Office charged them in *absentia* with [different crimes] terrorism (article 155, part 3, of the Uzbek Criminal Code), violent attempt to overthrow the Uzbek constitutional order (article 159, part 3), sabotage (article 161), organization of criminal community (article 242, part 2), mass disturbances (article 244), illegal acquisition of firearms, ammunition, explosives and explosive devices (article 247, part 3) and premeditated murder (article 97, part 2). […]

2.5 In early June 2005, the Uzbek authorities requested Kyrgyzstan to extradite 33 individuals, including [authors]; all were charged with having committed crimes under various articles of the Uzbek Criminal Code (see paragraph 2.3). The extradition request was based on the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993 Minsk Convention) and the 1996 Agreement between Kyrgyzstan and Uzbekistan on the provision of mutual legal assistance in civil, family and criminal matters (1996 Agreement).

2.6 [On June] 2005, [authors] applied for asylum in Kyrgyzstan. [They were] issued a certificate confirming that [their] application had been registered by the DMS.

2.7 On 16 June 2005, [authors], together with 16 other individuals, was taken into custody by Kyrgyz law enforcement officers and placed into the temporary confinement ward (IVS) of the Jalalabad Regional Department of Internal Affairs (Kyrgyzstan) on the basis of the decision of the Uzbek General Prosecutor's Office of 28 May 2005, where the individuals concerned were designated as "terrorists". [Authors'] arrest warrant was issued by the Andijan Regional Prosecutor (Uzbekistan) on 29 May 2005. In violation of the Kyrgyz Criminal Procedure Code (Kyrgyz CPC), the legality of his placement into custody was not examined either by a supervising prosecutor or a court. […]

2.10 The DMS examined authors asylum application from [June to July] 2005. [In July] 2005, it established that [authors] asylum request was well founded, as [they] could be persecuted in Uzbekistan, as a participant in and eyewitness of the Andijan events. The DMS recognised that his case fell within the definition of "refugee", within the meaning of article 1 A-2 of the 1951 Convention on the Status of Refugees and article 1 of the Kyrgyz Refugee Law. The DMS then…concluded, that [authors] fell under the exclusion clause of article 1 F-b of the Refugee Convention […] On 26 July 2005, the DMS issued a decision rejecting author asylum application.

Committee's considerations:

12.2 […] The first issue before the Committee [was] whether the authors' deprivation of liberty [had been] in accordance with the State party's relevant laws. The authors claimed that contrary to article 110 of the Kyrgyz CPC their placement in custody was not authorised by the Kyrgyz prosecutor and was done in the absence of their counsel and therefore violated relevant domestic provisions. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they are substantiated, and it must be assumed that the events occurred as described by the authors. Consequently, the Committee [found] a violation of article 9, paragraphs 1, of the Covenant.

12.3 Under the above circumstances and in the light of the finding of a violation of article 9, paragraph 1, the Committee does not deem it necessary to separately examine the authors' claims under article 9, paragraph 3.

12.4 As to whether the authors' extradition from Kyrgyzstan to Uzbekistan exposed them to a real risk of torture or other ill-treatment in the receiving State, in breach of the prohibition of

refoulement contained in article 7 of the Covenant, the Committee observe[d] that the existence of such a real risk must be decided in the light of the information that was known, or ought to [had] been known, to the State party's authorities at the time of the extradition, and [did] not require proof of actual torture having subsequently occurred although information as to subsequent events is relevant to the assessment of initial risk.

12.5 The Committee consider[ed] at the outset that it was known, or should have been known, to the State party's authorities at the time of the authors' extradition that there were widely noted and credible public reports that Uzbekistan resorted to consistent and widespread use of torture against detainees and that the risk of such treatment was usually high in the case of detainees held for political and security reasons. In the Committee's view, these elements in their combination show[ed] that the authors faced a real risk of torture in Uzbekistan if extradited. Moreover, the offences for which the authors were sought by Uzbekistan were punishable by death in that country. Given the risk of a conviction and death sentence being procured by treatment incompatible with article 7, there was also a similar risk of a violation of article 6, paragraph 2, of the Covenant. The procurement of assurances from the Uzbek General Prosecutor's Office, which, moreover, contained no concrete mechanism for their enforcement, was insufficient to protect against such risk. The Committee reiterate[d] that at the very minimum, the assurances procured should contain such a monitoring mechanism and be safeguarded by arrangements made outside the text of the assurances themselves which would provide for their effective implementation.

12.6 The Committee recall[ed] that if a State party remove[d] a person within its jurisdiction to another jurisdiction and there are substantial grounds for believing that there is a real risk of irreparable harm in the other jurisdiction, such as that contemplated by articles 6 and 7 of the Covenant, the State party itself may be in violation of the Covenant. Since the State party [had] not shown that the assurances procured from Uzbekistan were sufficient to eliminate the risk of torture and of imposition of the death penalty consistent with the requirements of article 6, paragraph 2, and article 7, the Committee conclude[d] that the authors' extradition thus amounted to a violation of article 6, paragraph 2, and article 7 of the Covenant.

12.7 As to the claim that no effective remedies were available to challenge the Kyrgyz General Prosecutor's extradition decision of 8 August 2006, the Committee note[d] that given the presence of a real risk of torture and of imposition of the death penalty, article 2 of the Covenant, read together with article 6, paragraph 2, and article 7, require[d] that an effective remedy be available for violations of the latter provisions. The absence of any opportunity for effective, independent review of the decision to extradite in the authors' cases accordingly amounted to a breach of article 6, paragraph 2, and article 7, read together with article 2, of the Covenant.

Remedies:

14. The State [was] requested to put in place effective measures for the monitoring of the situation of the authors of the communication. The State party [was] urged to provide the Committee with updated information, on a regular basis, of the authors' current situation. The State party is also under an obligation to prevent similar violations in the future.

15. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party [was] also requested to publish the Committee's Views.

7	**Toktakunov v. Kyrgyzstan (Communication No. 1470/2006), decided March 28, 2011** *SUBJECT MATTER:* Allegation that denial of access to State-held information of public interest *violated* right to seek and receive information; effective remedy; access to court; right to a fair hearing by an independent and impartial tribunal. *JUDGMENT OF COMMITTEE:* Kyrgyzstan violated article 19 (2) of the ICCPR.[718] **Facts:** 2.1 On 3 March 2004, the Youth Human Rights Group (YHRG), a public association for which the author [Nurbek Toktakunov] work[ed] as a legal consultant, requested the Central Directorate of Corrections (CDC) of the Ministry of Justice (MoJ) to provide it with information on the number of individuals sentenced to death in Kyrgyzstan as of 31 December 2003, as well as on the number of individuals sentenced to death and currently detained in the penitentiary system. […] On 5 April 2004, the CDC refused to provide this information, due to its classification as 'confidential' and 'top secret' by the by-laws of the Kyrgyzstan. 2.4 […] On 7 December 2004, the author filed a complaint about a violation of his right to seek and receive information to the Bishkek Inter-District Court, referring to article 19, paragraph 2, of the Covenant. In his complaint, the author argued that he requested the information on behalf of a public association and on his own behalf, as a Kyrgyz citizen. […] 2.5 On 17 December 2004, the Bishkek Inter-District Court dismissed the author's complaint on the grounds that the subject matter fell outside of its jurisdiction to adjudicate civil proceedings. On 25 December 2004, the author filed a privy motion in the Bishkek City Court, challenging the decision of the Bishkek Inter-District Court. […] 2.6 On 24 January 2005, the Bishkek City Court upheld the decision of the Bishkek Inter-District Court, on the grounds that the information on individuals sentenced to death was made secret by the Ministry of Interior and access to such information was restricted. […] 4.2 The State party provide[d] the Committee with the following statistical data made available by the CDC: (a) as of 20 June 2006, 164 individuals have been sentenced to death; (b) 16 individuals were sentenced to death in 2003, 23 individuals in 2004, 20 individuals in 2005 and 6 individuals in 2006; and (c) 309 individuals have died in the penitentiary system in 2003, 233 individuals in 2004, 246 individuals in 2005 and 122 individuals in 2006. **Committee's considerations:** 7.2 The Committee note[d] that, in its submission on the author's allegations, the State party ha[d] not addressed any of the arguments raised by him in the communication to the Committee with regard to article 19, paragraph 2, of the Covenant. The State ha[d] merely stated that 'data on individuals sentenced to death had been declassified' and that 'pursuant to the by-laws it could be used exclusively for service purposes' but remained confidential for the press. In the absence of any other pertinent information from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.

[718] **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

7.3 With regard to article 19, the author claimed that the refusal by the State party's authorities to provide him with information on the number of individuals sentenced to death resulted in a violation of his right to seek and receive information guaranteed by article 19, paragraph 2, of the Covenant. He specifically argued that the classification of information on the number of individuals sentenced to death as 'secret' is not 'provided by law' and [was] unnecessary to pursue any legitimate purpose within the meaning of article 19, paragraph 3. The first issue before the Committee[was], therefore, whether the right of the individual to receive State-held information, protected by article 19, paragraph 2, of the Covenant, [brought] about a corollary obligation of the State to provide it, so that the individual may ha[d] access to such information or receive an answer that includes a justification when, for any reason permitted by the Covenant, the State [was] allowed to restrict access to the information in a specific case.

7.4 In this regard, the Committee recall[ed] its position in relation to press and media freedom that the right of access to information includes a right of the media to have access to information on public affairs and the right of the general public to receive media output. The Committee consider[ed] that the realisation of these functions is not limited to the media or professional journalists, and that they can also be exercised by public associations or private individuals […]. When, in the exercise of such 'watchdog' functions on matters of legitimate public concern, associations or private individuals need to access State-held information, as in the present case, such requests for information warrant similar protection by the Covenant to that afforded to the press…In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State. In these circumstances, the Committee [was] of the opinion that the State party had an obligation either to provide the author with the requested information or to justify any restrictions of the right to receive State-held information under article 19, paragraph 3, of the Covenant.

7.5 The next issue before the Committee [was], therefore, whether in the present case such restrictions are justified under article 19, paragraph 3, of the Covenant, which allow[ed] certain restrictions but only as provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

7.6 The Committee note[d] the author's argument, corroborated by the material contained on file, that the by-laws governing access to the information requested by him are classified as confidential and, therefore, inaccessible to him as an individual member of the general public and legal consultant of a human rights public organisation. It also note[d] the State party's assertion that 'data on individuals sentenced to death had been declassified' and that, 'pursuant to the by-laws it could be used exclusively for service purposes' but remained confidential for the press. The Committee consider[ed] that in the circumstances, the regulations governing access to information on death sentences in the State party cannot be seen as constituting a "*law*" meeting the criteria set up in paragraph 3, of article 19, of the Covenant.

7.7 The Committee ha[d] noted the author's claim that information on the number of individuals sentenced to death could not have had any negative impact on defence capability, safety, or economic and political interests of the Kyrgyzstan and, therefore, it did not fulfil criteria spelled out in the Law 'On protection of state secrets' for it to be classified as a state secret. The Committee regret[ted] the lack of response by the State party authorities to this specific argument raised by the author both at the domestic level and in his communication to the Committee. The Committee reiterate[d] the position set out in Resolutions Nos. 2003/67 and 2004/60 of the Commission on Human Rights, and in the Copenhagen Document […] that the general public has a legitimate interest in having access to information on the use of the death penalty and concludes that, in the absence of any pertinent explanations from the State party, the restrictions to the exercise of the author's right to access information on the application to the death penalty held by public bodies cannot be deemed necessary for the protection of national security or of public order (ordre public), public health or morals, or for respect of the rights or reputations of

	others. **Remedies:** 9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party [was]under an obligation to provide the author with an effective remedy. The Committee consider[ed] that in the present case, the information provided by the State party in paragraphs 4.2 above constitute[d] such a remedy to the author. The State party should also take all necessary measures so as to prevent occurrence of similar violations in the future and to guarantee the accessibility of information on death penalty sentences imposed in Kyrgyzstan. 10. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.
8	**Akhadov v. Kyrgyzstan (Communication No. 1503/2006), decided March 25, 2011** *SUBJECT MATTER:* Allegations of violation of right to life/ torture/ cruel, inhuman and degrading treatment/ arbitrary detention/ fair trial/ effective remedy/ and that if provision is made for a lighter penalty, the offender shall benefit hereby. *JUDGMENT OF COMMITTEE:* Kyrgyzstan violated articles 6 read together with article 14; 7, 9 and 14, (1), (3) (g) of the ICCPR. **Facts:** 2.1 The author [Otabek Akhadov] was arrested on 6 July 2000, on suspicion of having committed certain […] crimes. 2.2 The arrest of the author was not formally recorded until 7 July 2000. […] the author was kept in the Investigation Detention Center (SIZO) of the Department of Internal Affairs of the city of Bishkek. During that period the author was subjected to torture and cruel treatment by the criminal investigation officers. He was tortured at different times of the day, sometimes between 9 and 12 in the morning, other times in the afternoons or between 17 and 23 hours in the evenings. The author's hand were tied and police officers beat him with fists and kicked him in the sensitive parts of his body (such as his head, his back, and in the areas of his kidneys, lungs and liver); they also beat him on the soles of his feet and on the head with weights, pressed his chest against the table, hit the back of his head with objects filled with water, and burned his arms with cigarettes. He bled often and still has scars from the beatings. The author was also forced to take psychotropic substances. The author also provides the names of two high-ranked officials, who, according to him were aware of the fact that he has been tortured. 2.3 On 7 July 2000, after the papers regarding the author's arrest were formalized, the investigators assigned him a lawyer whom he did not choose. The latter did not take any steps to protect him. On 9 July 2000, unable to support the beatings and threatened with further ill-treatment, the author signed a confession admitting the commission of the crimes he was accused of by the investigators. On 10 July 2000, acquaintances of the author commissioned another lawyer, Ms Golisheva, to represent the author. On the same date the lawyer filed a complaint regarding the ill-treatment of the author and requested a medical examination of the author in order to establish that he had been tortured. The Senior Investigator based on that lawyer's request, issued an order for a medical examination to be conducted, but the examination did not take place until 10 August 2000. The medical expert provided an expertise, concluding that the traces on the author's body were consistent with the type of injuries he described and the timing of those injuries. The lawyer did not make any further complaints and did not submit any motions, because, according to the author, she was afraid of reprisals. 2.4 The author submits that he was not informed of his right to appeal against his detention and that he did not have the opportunity to do so, since he was never brought before of a court.

2.5 The Sverdlovsk District court, on 31 December 2001, convicted the author of having committed several crimes. As joint punishment for all the crimes the Court imposed the death penalty on the author.

2.6 Throughout the court proceedings the author denied his guilt. In his written testimony, submitted to the Bishkek City court on 22 July 2002, he complained that the confession he made during the investigation was extracted under torture and proclaimed his innocence. On an unspecified date in July 2002, the author also complained to the President of the Republic that he had been subjected to torture. Neither complaint was investigated.

2.7 The author appealed the verdict before the Bishkek City court, which on 30 July 2002 rejected the appeal. A subsequent appeal in the order of supervision to the Supreme Court was also rejected on 22 June 2006. […]

2.8 In 2007 all death sentences were commuted to life imprisonment, following the abolition of the death penalty in the domestic legislation of Kyrgyzstan. The author's sentence was commuted by the Supreme Court on 26 December 2007. […]

Committee's considerations:
7.2 The author claim[ed] that he was beaten and tortured by the police immediately after his arrest during two weeks' detention in the hands of the investigating authorities, and he was thus forced to confess guilt. The author provide[d] detailed information regarding his ill-treatment, and claim[ed] the complaints made to this effect were ignored by the prosecution and the courts. The State party [did] not refute these allegations specifically, but rather limit[ed] itself to contending that the guilt of the author was fully established.

7.3 The Committee recall[ed] that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. Although the decision of the Bishkek City court of 30 July 2002 mentions Mr. Akhadov's torture allegations, the latter rejects these with a blanket statement that the evidence in the case confirms the guilt of the accused. The Committee considers that in the circumstances of the present case, the State party [had] failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the present communication. Accordingly, due weight must be given to the author's allegations. The Committee therefore conclude[d] that the facts before it disclose[d] a violation of the rights of Mr. Akhadov under articles 7 and 14, paragraph 3 (g), of the Covenant. In the light of this conclusion, it [was] not necessary to examine separately the author's claim under article 10 of the Covenant.

7.4 The Committee note[d] the author's allegations that he was arrested and held for two weeks in the Department of Internal Affairs before being brought before a court and given the opportunity to challenge the lawfulness of his detention. In the absence of a reply from the State party on this particular issue, the Committee [found] that they should be given due weight, and that the facts described disclose[d] a violation of the author's right to liberty and security of person and specifically the right not to be arbitrarily detained and imprisoned. Consequently, the Committee [found] that article 9 of the Covenant [had] been violated in the present case.

7.5 The Committee consider[ed] that in the present case, the courts, and this was uncontested by the State party, failed to address properly the victim's complaints related to his ill-treatment by the police. The Committee consider[ed] that as a consequence, the criminal procedures in Mr.Akhadov's case were vitiated by irregularities, which casts doubts on the fairness of the criminal trial as a whole. In the absence of any pertinent observations from the State party in this respect, and without having to examine separately each of the author's allegations in this connection, the Committee consider[ed] that in the circumstances of the case, the facts as presented reveal[ed] a separate violation of the author's rights under article 14, paragraph 1, of the Covenant. In light of this conclusion, and given that the author [had] been sentenced to death

	following a trial held in violation of the fair trial guarantees, the Committee conclude[d] that the author [was] also a victim of a violation of his rights under article 6, read in conjunction with article 14, of the Covenant. **Remedies:** 9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee consider[ed] that the State party [was] under an obligation to provide the author with an effective remedy including: conducting full and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with appropriate reparation, including compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future. 10. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it request[ed] the State party to publish the Committee's Views.
9	**Gunan v. Kyrgyzstan (Communication No. 1545/2007), decided July 25, 2011** *SUBJECT MATTER:* Allegation that imposition of a death penalty after an unfair trial violated right to an effective remedy; right to life; prohibition of torture or cruel, inhuman or degrading treatment; right to liberty and security; right to a fair trial; right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; right to legal assistance; self-incrimination; *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated articles 6 read together with 14, 7 and 14 (1), (3) (b), (d) and (g) of the ICCPR. **Facts:** 2.3 On 12 July 1998, […] in Almaty, Kazakhstan […] during the [car] search the police found a carrier bag with a grenade, eight IEDs, seven self-made detonators, electrical detonating fuses, a battery for detonating fuse and a "Makarov" pistol. A criminal case was opened in Kazakhstan against the author [Mr. Gunan] and the other three passengers for illegal acquisition, storage and transportation of prohibited objects. 2.4 Meantime, during the criminal investigation carried out by Kyrgyz authorities into the explosion incidents [in Osh on 1 June 1998 and 30 May 1998], a connection was established between one of the suspects for the blasts, one A., and the author (who was arrested on 12 July 1998 in Kazakhstan). On 25 November 1998, the Investigative Department of the Osh Region decided that the author should be arrested on suspicion of terrorism and the Prosecutor of the Osh Region sanctioned his arrest. On 2 February 1999, in accordance with the Minsk Convention on legal assistance and legal relations in civil, family and criminal matters (adopted on 22 January 1993), the Kyrgyz authorities submitted to the General Prosecutor of Kazakhstan a request for the extradition of the author and the other three persons arrested with him in Almaty. On 14 May 1999, the author was extradited from Kazakhstan to Kyrgyzstan and placed in the Investigation Isolator (SIZO) No.1 in Bishkek. 2.5 The following day, the author was taken to the Pervomaisk Department of the Interior (police). He claim[ed] that a black plastic bag was put over his head and he was subjected to different forms of ill-treatment by officers of the National Security Service. He was beaten with sticks all over his body. He was also beaten by one police officer on the soles of his feet with a truncheon, while two other officers were holding his feet. After three days of this kind of treatment, because of swollen feet and bone pain, the author could not walk and had to be carried from the cell to the investigator's office by two men. Furthermore, he could not chew, as his jaws-bones were dislocated. Not able to withstand the torture, the author signed several

incriminating statements in the absence of a lawyer, where *inter alia* he confessed that he had participated in a military training camp in Chechnya together with the other co-accused. Although during the court proceedings all of them retracted these statements, claiming that the confession was extracted by torture and showing marks of ill-treatment on their bodies, their self-incriminating statement was used by the courts as a basis for their conviction […]. After the interrogations, they were all taken back to SIZO No. 1 […].

2.6 The author was transferred to Osh, where he was again subjected to systematic torture by officers of the National Security Service. The investigator, one T., beat up the author in the presence of a defence lawyer, who the investigator had himself assigned to the author. On one occasion, Mr. T. put a pistol to the author's head and threatened to shoot him. Out of fear, the author did not specifically complain about the torture he endured and did not petition for a medical examination during the pre-trial investigation. His *ex officio* counsel appointed by the National Security Service did not submit any complaint either. Notwithstanding, the author submits that he and his co-accused openly showed marks of ill-treatment on their bodies during the appeal proceedings before the Appeal College on Criminal Cases of the Osh Regional Court of 3 August 2000, and claimed that they were forced to sign the report of the interrogation conducted in the absence of a lawyer (for more details, *see* para. 2.7).

2.10 After numerous appeals to Kyrgyz courts to address the violations and sentence] On 18 September 2001, the Supreme Court upheld the decisions of the previous courts and rejected the author's application.

Committee's considerations:

6.2 The Committee note[d] the author's claim that he was tortured by the police and investigative officers during his interrogation, and was compelled to sign self-incriminating statements, *inter alia* that he had participated in a military training camp in Chechnya, in the absence of a lawyer. The author provide[d] detailed information regarding his torture. He claims that he was initially refused access to SIZO No. 1 in view of his bad physical condition and that he retracted his statement made under physical and psychological pressure at the time of the first instance court hearings. Eventually, his complaint was ignored by the prosecution and the courts. In this regard, the Committee recall[ed] that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. Although the author's allegations of torture and forced confession [were] mentioned in the decisions of all courts that considered his criminal case, these claims were ultimately rejected as being groundless, not supported by materials on file and made in order to avoid criminal responsibility. There [was] no indication in the decisions that the claims were investigated. The Committee therefore consider[ed] that the State party's competent authorities [had] failed to give due and adequate consideration to the author's complaints of torture made during the domestic criminal proceedings. In these circumstances, and in the absence of any observations on the author's specific claims by the State party, the Committee conclude[d] that the facts before it disclose[d] a violation of Mr. Gunan's rights under articles 7 and 14, paragraph 3 (g), of the Covenant.

6.3 The author claim[d] that he was extradited to Kyrgyzstan on 14 May 1999 and was not granted legal assistance until 30 July 1999. Upon arrest, he was interrogated on several occasions in the absence of a lawyer. Moreover, the defence was refused copies of the Prosecutor's Office applications to the Supreme Court and thus the author was deprived of the right to raise any objections in relation to those submissions. The Committee note[d] that these allegations are confirmed by the materials submitted to it by the author. In this respect, it recall[ed] that the Osh Regional Court on 3 August 2000 [had] reversed the decision of the first instance court *inter alia* on grounds that the author's interrogation was conducted in the absence of a lawyer […]. In the absence of any information by the State party to refute the author's specific allegations, and in the absence of any other pertinent information on file, the Committee consider[ed] that due weight must be given to the author's allegations. Accordingly, it conclude[d] that the facts before it reveal[ed] a violation of Mr.Gunan's rights under article 14, paragraph 3(b) and (d), of the Covenant.

	6.4 The Committee [took] note of the author's claim that his rights under article 14, paragraph 1, [had] been violated as the courts, *inter alia*, [had] failed to properly assess the inconsistencies in the witness testimonies and to establish a link between the seizure of explosives in Kazakhstan and the explosions in Kyrgyzstan…In the present case, from the uncontested information before the Committee, it transpire[d] that the evaluation of evidence against the author by national courts reflected their failure to comply with the guarantees of a fair trial under article 14, paragraphs 3(b), 3(d) and 3(g), of the Covenant. Accordingly, the Committee [was] of the view that the author's trial suffered from irregularities which, taken as a whole, amount to a violation of article 14, paragraph 1, of the Covenant. 6.5 The author finally claim[ed] a violation of his right to life under article 6 of the Covenant, as he was sentenced to death after an unfair trial. In this regard, the Committee reiterates its jurisprudence that the imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant [had] not been respected, constitutes a violation of article 6 of the Covenant. In light of the Committee's findings of a violation of article 14, it conclude[d] that the author [was] also a victim of a violation of his rights under article 6, paragraph 2, read in conjunction with article 14, of the Covenant. **Remedies:** 8. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee consider[ed] that the State party is under an obligation to provide the author with an effective remedy, including: carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with full reparation, including appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future. 9. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party [was] also requested to publish the Committee's Views.
10	**Torobekov v. Kyrgyzstan (Communication No. 1547/2007), decided October 27, 2011** *SUBJECT MATTER:* Allegation of failure to promptly bring a person detained on a criminal charge before a judge; court proceedings in violation of fair trial guarantees; arbitrary arrest and detention; right to be brought promptly before a judge; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of defence; right to be tried without undue delay; right to legal assistance; right to obtain the attendance and examination of witnesses; and arbitrary interference with one's home. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated article 9 (3) of the ICCPR. **Facts:** 2.5 The author and Mr. T.B. were charged with premeditated robbery, the use of non-lethal force or threat thereof and entry into a dwelling. They were subsequently interrogated by the investigator in their capacity of accused in the absence of a lawyer. Their placement in custody was authorized by the Prosecutor of the Pervomaysky District on 28 April 2003. **Committee's considerations:** 6.2 The Committee note[d] the author's claim that his rights under article 9, paragraph 3, of the Covenant, ha[d] been violated, as his placement in custody was authorized by a prosecutor who cannot be considered independent. In this respect, the Committee recall[ed] its jurisprudence that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is generally admitted in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the

	issues dealt with. In the circumstances of the case, the Committee finds that the public prosecutor cannot be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, and, therefore, conclude[d] that there ha[d] been a violation of this provision. 6.3 The Committee further note[d] that, according to article 9, paragraph 3, anyone detained on a criminal charge [was] entitled to trial within a reasonable time or to release. The Committee recall[ed] its jurisprudence that, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification. In the present case, the Pervomaysky District Court ha[d] determined that the author's placement in custody was necessary, because he was charged with a particularly serious crime, had been previously convicted and that, therefore, there was a concern that he might abscond if released. While the author submit[ted[that he ha[d] been released pending trial, he [did] not allege that the justification put forward by the Pervomaysky District Court for his placement in custody was inappropriate. The Committee also note[d] that the length of the author's pre-trial detention was deducted from the overall length of his imprisonment imposed by the Pervomaysky District Court at a ratio of one to two days. For these reasons, the Committee [found] that the length of the author's pre-trial detention [could not] be deemed unreasonable and that, consequently, there [was] no violation of article 9, paragraph 3, in this respect. **Remedies:** 8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party [was] under an obligation to provide the author with an effective remedy, in the form of appropriate compensation. The State party is also under an obligation to take all necessary steps to prevent similar violations occurring in the future. 9. The Committee wishe[d] to receive from Kyrgyzstan, within 180 days, information about the measures taken to give effect to the Committee's Views. Kyrgyzstan [was] also requested to publish the Committee's Views and to have them translated into the official language and widely distributed.
11	**Zhumbaeva v. Kyrgyzstan (Communication No. 1756/2008), decided July 19, 2011** *SUBJECT MATTER:* Allegation that death in police custody violated right to life, prohibition of torture, and right to an effective remedy. *JUDGEMENT OF COMMITTEE:* Kyrgyzstan violated articles 2 (3) read together with articles 6 (1), 6 (1), and 7 of the ICCPR. **Facts:** 8.3 The Committee note[d] that, on 24 October 2004 in the afternoon, the victim [Tashkenbaj Moidunov] and his wife were requested to follow the police officers to the Bazarkorgon police station after a quarrel that was qualified as a public disturbance. The victim was kept in custody, while his wife was released. According to the information provided by the State party, the author's [Turdukan Zhumbaeva] son died on 24 October 2004 at 17.00 o'clock (17.20 according to the Suzak District Court judgment). The Committee note[d] from the testimony by the ambulance doctor dated 18 November 2004, that she concluded that the victim did not have any strangulation marks but red finger marks on his neck. The Committee also note[d] from the interrogation testimony by the forensic expert dated 25 April 2005, who examined the victim's body on 25 October 2004, in the presence of doctors and two of the victim's relatives, that scratches on the eyebrow, under the chin, on the neck and the right upper arm, as well as a bloody wound on the left side of the victim's neck were observed. The forensic expert stated that the wounds could appear from something hard such as fingernails or a wrist and that the histological examination of body tissues led to the conclusion that the victim died of mechanical asphyxiation. The mechanical asphyxiation could have been caused by hanging from a soft fabric. When asked if manual strangulation could have been the cause of the victim's death, the

forensic expert mentioned that no scratches on the cervical fabrics or skin were found but that the fracture of the horn of the thyroid could result from pressure by hands.

8.4 The Committee further note[d] the Suzak District Court decision of 21 September 2005, which relied on the testimony of Mr. Mantybaev holding that the victim had hanged himself on his sport trousers in the administrative detention cell. The decision however [did] not indicate if other evidence [had] been evaluated and [did] not reconcile the different statements by Mr. Mantybaev. It notes that the victim's brother insisted that the assistant police officer be found and that the case be retried. Nevertheless, the court concluded that there has been reconciliation between the defendant and the victim's family exempting Mr. Mantybaev from criminal liability. On appeal, the Zhalalabad Regional Court found, on 5 September 2006, that during the preliminary investigation, Mr. Mantybaev, Mr. Abdukaimov and the victim's wife had given different versions of the victim's death, and that these contradictions had not been resolved during the court proceedings. It also held that the victim's family did not appear to agree with the reconciliation as they requested a retrial. It concluded that the case should be retried based on a complete and objective study of all circumstances. The Committee note[d] that the Supreme Court in its judgment of 27 December 2006, found that the fact of criminal negligence had been proven by testimonies of the victim's representative, witnesses, medical expertise and other materials in the case file, without however explaining further how the court evaluated the material it considered. The Supreme Court also noted that by payment of 30,000 Kyrgyz som to the victim's family, reconciliation was reached between the defendant and the victim's family and that the arguments by the victim's counsel about the discrepancies in the investigation were speculations.

Committee's considerations:

8.5 The Committee note[d] the author's claim that the victim died in police custody as a result of the excessive and unnecessary use of force by police officers, given that the victim was in good physical and mental health before being taken into custody, that according to his wife he did not possess any sports trousers which had allegedly been used to hang himself, that the sport trousers used as evidence were never forensically examined and that due to the victim's high alcohol level, he neither had the physical capacity nor the time to hang himself. The Committee further note[d] the author's statement according to which the acceptance of a small payment to assist with the funeral cost [had] not waived her rights to establish the truth of how her son died and to hold perpetrators accountable.

8.6 As to the author's claim in relation to the arbitrary deprivation of her son's life, the Committee recall[ed] its General Comment No. 6 on the right to life and its jurisprudence, that the State party by arresting and detaining individuals takes the responsibility to care for their life, and that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6. It further recall[ed] its General Comment No. 31, that where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.

8.7 The Committee recall[ed] that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.

8.8 The Committee observed that the State party and its judicial authorities [had] not explained on which basis the conclusion was drawn that the victim had committed suicide in police custody. This in particular considering the testimony by the forensic expert, who stated that fracture in the horn of the thyroid could have been caused by hanging from a soft fabric or by pressure by hands, as well as the testimony of the ambulance doctor who did not find any signs of strangulation but observed red finger marks on the victim's neck. It also note[d] that Mr. Mantybaev gave three different versions of the victim's death; however the State party's first instance court and the Supreme Court appear not to have evaluated the discrepancies in these

	statements and relied solely on the last statement indicating that he found the victim in the administrative detention cell having hanged himself from his sport trousers. The Committee further observe[d] that the State party's judicial authorities did not consider any testimony from the first sergeant, Mr. Abdukaimov. The Committee conclude[d] that, in the circumstances of the present case and in the absence of persuasive arguments by the State party rebutting the suggestion by the author that her son was killed in custody and in light of the information in the forensic expertise inconsistent with the State party's arguments, the State party [was] responsible for arbitrary deprivation of the victim's life, in breach of article 6, paragraph 1, of the Covenant. 8.9 The Committee note[d] that author's claim that the autopsy report of her son's body revealed various injuries on the victim's face and neck and that the State party [had] not explained how such injuries may have occurred in police custody. The Committee note[d] that the author's allegations of the victim's injuries are confirmed by the post mortem autopsy report of 25 October 2004. It also note[d] that the State party's authorities have not addressed the cause for such injuries. The Committee recall[ed] that a State party is responsible for the security of any person in custody and, when an individual is injured while in detention, it is incumbent on the State party to produce evidence refuting the author's allegations. The State party did not provide any information as to whether any inquiry was undertaken by its authorities both in the context of the criminal investigations or in the context of the present communication to address the specific allegations advanced by the author in a substantiated way. In these circumstances, the Committee conclude[d] that the author's claims [were] substantiated and [had] been corroborated by the official autopsy report and finds, therefore, that there [had] been a violation of article 7, of the Covenant with regard to the author's son. 8.10 The Committee recall[ed] its constant jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6, paragraph 1 and 7, of the Covenant. The Committee observed that the investigation order of 9 November 2004 consider[ed] as established that the victim had hanged himself and therefore [did] not take into account the author's position that the victim was killed arbitrarily. The head inspector of the Bazarkorgon police station, Mr. Mantybaev, was sentenced for criminal negligence, but was exempted from criminal liability due to presumed reconciliation between the defendant and the victim's family. The Committee note[d] the author's allegations regarding the authorities failure to obtain a detailed description of the position of the victim's body, that a mock hanging was not conducted, that the exact timing and sequence of events was not established, that medical records to establish if the victim had any suicidal tendencies were not requested, that a forensic expertise of the sport trousers was not ordered, that the cash the victim allegedly carried in his pocket was never located and that it was never established if the victim's death was a result of torture or ill-treatment. The Committee further note[d] that the police sergeant, Mr. Abdukaimov was never charged or prosecuted. In the absence of any explanation by the State party on discrepancies in the criminal investigation and the reason why one of the alleged perpetrators was never charged or prosecuted and in view of the detailed material placed before it, the Committee conclude[d] that the State party failed to properly investigate the circumstances of the author's son's death and the allegations of torture and ill-treatment and thus effectively denied the author a remedy, in violation of her rights under article 2, paragraph 3 read together with articles 6, paragraph 1 and 7. **Remedies:** 10. In accordance with article 2, paragraph 3 (a), of the ICCPR, the State party [was] under an obligation to provide the author with an effective remedy. The remedy should include an impartial, effective and thorough investigation into the circumstances of the author's son's death, prosecution of those responsible and full reparation including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future. 11. The Committee wishe[d] to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party [was] also requested to publish the Committee's Views.