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UN HUMAN RIGHTS COMMITTEE

Human Rights Watch Concerns and Recommendations on Kyrgyzstan

Submitted to the United Nations Human Rights Committee in Advance of its Review of Kyrgyzstan

This document provides an updated overview of Human Rights Watch’s concerns and recommendations on Kyrgyzstan, submitted to the Human Rights Committee (“the Committee”) in advance of its upcoming review of Kyrgyzstan.

It complements our April 2103 memorandum, submitted to the Committee in advance of its pre-sessional review of Kyrgyzstan, and covers relevant human rights developments and updates since then on the following issues: justice and accountability for the ethnic violence in southern Kyrgyzstan in June 2010; the prohibition of torture and ill-treatment; **repression of civil society**; and sexual orientation and gender identity. Although the present submission does not include sections on repression of media and speech freedoms, gender-based violence, and forced extraditions of refugees and asylum seekers, the concerns outlined in our April 2013 memorandum in these areas remain relevant for the upcoming review as well (see: <http://www.hrw.org/news/2013/04/26/submission-un-human-rights-committee-concerns-and-recommendations-kyrgyzstan>).

For additional information, please see Human Rights Watch’s Kyrgyzstan page: <http://www.hrw.org/europecentral-asia/kyrgyzstan>.

We hope the information provided here will inform the Committee’s consideration of the Kyrgyz government’s (“the government”) compliance with the International Covenant on Civil and Political Rights (“the Covenant”), and that the concerns raised will be reflected in the resulting concluding observations, along with recommendations for specific steps the Kyrgyz authorities should take to remedy the problems identified.

Justice and Accountability for June 2010 Violence (Covenant articles 2, 6, 7, 14, 17)

Justice for crimes committed during the ethnic violence in southern Kyrgyzstan in June 2010 remains elusive. The flawed justice process – marred by allegations of ill-treatment and torture, threats and violence against defendants and lawyers perpetrated by people at trials, and other due process violations – has produced long prison sentences for mostly ethnic Uzbeks. To date, the authorities have not reviewed convictions where defendants alleged torture or in which there were other glaring violations of fair trial standards. New detentions of ethnic Uzbeks in Kyrgyzstan and in Russia in 2013 point again to prosecutorial bias against this minority group.

Approximately three and a half years after Dilmurat Khaidarov, 40; Shukurullo Kochkorov, 34; Bahadir Sabirov, 37; Ganijan Sadikzhanov, 39; and Khairullo Saipov, 37, were arrested, and nearly three years after Daniyar Kadirov, 43, was arrested, the Osh City Court in southern Kyrgyzstan rendered a verdict in the case against these six men. Although their case suffered repeated delays and other gross violations of fair trial standards, including claims of ill-treatment and torture that were not investigated by prosecutorial authorities, on January 22, 2014, the six men were sentenced to extended prison terms for crimes related to the June 2010 violence: Khaidarov to 7 years in prison; Kadyrov, Kochkorov, and Sabirov to 6 years in prison; and Saipov and Sadykzhanov to 8 years in prison. The prosecution has appealed the verdict, claiming it was too lenient.

Between February 2012 and March 2013, authorities in Russia detained no less than eight ethnic Uzbeks after Kyrgyzstan requested their extradition to stand trial on June 2010-related charges. Between February and May 2012, Russian authorities detained Bakhtior Mamashev, 29; Gairatbek Saliev, 25; and Makhammadillo Kadirjanov, 43. Russian courts upheld their extradition orders, but the three men were released from custody after their lawyers filed for interim measures under Rule 39 with the European Court of Human Rights. In addition, Russian authorities detained Mirodil Tojibaev in October 2012; Botir Turgunov and Abdilaziz Khamrakulov in January 2013; and Vokhid Aliev and Nabid Abdullaev in March 2013. In October and November 2013, courts declined to uphold the extradition orders for Aliev and Tadjibaev, and they were released from custody. Khamrakulov and Abdullaev's extraditions were stayed subject to Rule 39 following an appeal to the European Court of Human Rights. Turgunov is still contesting his extradition order in court.

All eight men are ethnic Uzbeks, raising serious concerns that the justice process for the June 2010 events continues to be skewed against this minority ethnic group.

The acute problem of courtroom violence by audiences in trials across Kyrgyzstan perpetuates an environment that seriously undermines defendants' fair trial rights. Yet Kyrgyz authorities have failed to tackle this serious issue or hold perpetrators accountable. The case of Mahamad Bizurukov, an ethnic Uzbek defendant standing trial on June 2010-related charges, stands out as one of the most egregious. Bizurukov and his lawyers have been subjected to repeated threats, harassment, and physical attacks since his trial started in 2011, with no accountability for perpetrators. Despite a November 2013 Supreme Court decision to move Bizurukov's case from Osh to Bishkek due to security concerns for the defendant and his lawyers, in January 2014, at the Chui Regional Court in Bishkek, Bizurukov's lawyer was again threatened and attacked by persons in the audience. His case is ongoing.

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment (Covenant Articles 2, 7, 10, 14)

Despite the adoption of a national torture prevention mechanism in 2012, and the organization of a related National Center for the Prevention of Torture in 2013, authorities still often refuse to investigate allegations of torture and ill-treatment and perpetrators go unpunished. On rare occasions when charges have been filed against police, investigations and court proceedings are unduly protracted.

For example, after an armed robbery took place in Osh in November 2013, three people detained in connection with the case alleged that they had been subject to various rights abuses, including arbitrary detention, ill-treatment, and extortion attempts by the police. Two of the men were hospitalized following alleged mistreatment amounting to torture. At the end of November, Kyrgyz authorities declined to open a criminal investigation into claims by one suspect, Davlet Marazykov, that police beat him, including on his broken leg, on November 9 and 10 to coerce him to confess to the crime of armed robbery. In the case of two other suspects, Mirbek Teshebaev, who alleged he was arbitrarily arrested, beaten, and suffocated by plainclothes police officers, and that police attempted to extort money from his family to secure his release, and Farkhat Yulbasarov, who alleged he was similarly arbitrarily detained by plainclothes police, the General Prosecutor's Office has opened an

investigation into their claims. To date, however, the Osh Regional Prosecutor's Office, which is leading the investigation, has not brought charges against any police officers. The cases against the three men on charges of armed robbery are ongoing.

In July 2013 Nurkamil Ismailov was found dead in a temporary detention facility in southern Kyrgyzstan after police detained him for disorderly conduct. Authorities alleged he committed suicide by hanging himself with his t-shirt. Following an intervention by the Jalalabad-based human rights group Spravedlivost, authorities opened a criminal investigation on charges of negligence. However, in September 2013, Ismailov's relative and the police settled out of court for an undisclosed sum, with no admission of liability.

Human Rights Watch remains especially concerned about the lack of accountability for the August 2011 death of an ethnic Uzbek detained on charges related to the June 2010 ethnic violence. Usmonjon Kholmiraev died several days after his release without charge, apparently from injuries he sustained from beatings in custody. A criminal case was opened against four police officers, but their prosecution has been subjected to repeated delays over the last two and a half years and no one has yet been held accountable for Kholmiraev's death.

Repression of Civil Society and Persecution of Human Rights Defenders (Covenant articles 7, 9, 10, 14, 17, 19, 21, 22)

In 2013 the government and some members of parliament sought to tighten control over civil society, proposing three legislative amendments that would impose unnecessarily burdensome reporting obligations and restrictions on civil society groups. In January 2013 the State Financial Intelligence Unit under the prime minister's office introduced a draft law on money laundering that, had it been adopted, would have imposed further burdensome and restrictive reporting obligations on noncommercial organizations and would have authorized a new state body to "monitor and control" the activities of noncommercial organizations in Kyrgyzstan. These provisions would have placed excessive restrictions on NGOs operating in Kyrgyzstan and threatened their right to freedom of association. The discriminatory provisions were ultimately removed after civil society groups organized a public hearing and formed a working group with representatives of the unit.

Later in the year, some members of parliament introduced a draft “treason law” that would have unduly tightened controls over citizen groups and activism by amending the country’s criminal code, broadening the definition of treason to include routine nongovernmental activities such as international advocacy or briefing foreign counterparts, for example. However, in late November 2013 the bill failed to garner enough votes in parliament to pass its second reading.

A third bill, a “foreign agents” law was similarly proposed by two parliamentarians in September 2013. The draft “foreign agents” law would require domestic nongovernmental organizations in Kyrgyzstan that receive foreign funding and engage in vaguely worded “political activities” to register as “foreign agents.” It would also create criminal liability for the leaders of nongovernmental organizations “whose work incites citizens to refuse to fulfill their civic duties or commit other unlawful acts.” This overbroad and vague formulation could have the effect of criminalizing any type of civil disobedience, even moderate forms, according to the October 16, 2013 joint interim opinion by the Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission, an advisory body of the Council of Europe. The bill has not yet come before parliament for review.

Azimjon Askarov, a human rights defender who worked to document police treatment of detainees, continues to serve a life sentence despite a prosecution marred by serious violations of fair trial standards. Askarov was found guilty of involvement in the gruesome killing of a policeman and injuring several officers during mass disturbances in the southern city of Bazar-Kurgan in June 2010. Despite repeated complaints filed by Askarov’s lawyer, prosecutorial authorities have refused to open an investigation into Askarov’s credible allegations of torture in custody. In May 2013 the prosecutor general’s office formed an investigations team to review Azimjon Askarov’s case and consider the possibility of reopening a formal investigation. In early February 2014 the prosecutor general’s office concluded their review of the case but declined to reopen an investigation. Askarov’s November 2012 complaint filed with the Committee is pending.

Discrimination and Police Abuse of Lesbian, Gay, Bisexual, and Transgender People (Covenant articles 2, 7, 9, 10, 17, 26)

Lesbian, gay, bisexual, and transgender (LGBT) people are a highly stigmatized group in Kyrgyzstan, making them particularly susceptible to abuse by various actors, including law enforcement agencies, their own families, and street thugs. As a result of this stigmatization and the deep social conservatism prevalent in Kyrgyzstan, many LGBT people fear disclosing their sexual orientation to their families and employers and try to keep it a secret. In a 2008 report on violence against lesbian and bisexual women and transgender men (see: <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations>) and a 2014 report on police abuse of gay and bisexual men (see: <http://www.hrw.org/reports/2014/01/28/they-said-we-deserved>), Human Rights Watch documented dozens of cases of violence, including police violence, against LGBT people.

From January through August 2013, Bishkek-based LGBT organizations Labrys and Kyrgyz Indigo documented at least 11 cases of human rights violations against lesbian, gay, and bisexual people based on their sexual orientation. Of these, five gay men and two lesbians were victims of police abuse. Kyrgyzstan does not have hate crime legislation that would allow hate motivation to be taken account in crimes committed against LGBT people. In most cases the victims were too scared to file complaints with the police about violence they have experienced.

i. Police Abuse and Extortion Targeting Gay and Bisexual Men

Human Rights Watch documented multiple cases of physical abuse, threats, or extortion, or all of these abuses, by police of gay or bisexual men and boys aged 17 to 50 between 2004 and 2013 in the report *“They Told Us We Deserved This”* (see link above). Police actions documented included severe and prolonged beatings, rape, threats of rape, death threats, and denial of food and water to detainees for extended periods, acts that can constitute torture or ill-treatment. The Ministry of Internal Affairs pledged to investigate cases of police abuse and extortion against gay and bisexual men, but only on condition that they file formal complaints with identifying personal information.

Over a dozen gay and bisexual men Human Rights Watch interviewed reported ill-treatment in police detention, including being punched, kicked, or beaten with a gun butt or other objects. Fifteen reported threats of rape, and six reported sexual violence by police officers,

including rape, group rape, attempts to put a stick, a hammer, or an electric shock weapon in their anus, unwanted touching during a search, or being forced to undress in front of police.

Human Rights Watch also documented how police also often asked humiliating personal questions, such as whether men or boys play an active or a passive role in sex. Many gay men reported they were compelled to give the police money, ranging from US\$12 to US\$1,000 to avoid further physical violence, being taken into custody, or police disclosing their sexual orientation to family members or others.

Human Rights Watch further found that police arbitrarily stop gay and bisexual men and boys in public places or take them into custody solely because of their sexual orientation. Police identify gay and bisexual men and boys to target through dating websites, outside of gay clubs, and in parks where gay and bisexual men and boys meet, among other locations. However, police in Kyrgyzstan have no legal right to detain LGBT people solely on the basis of their sexual orientation. In 1998 Kyrgyzstan ended Soviet-era criminalization of consensual sex between men with the adoption of a new criminal code.

Current systems of addressing police abuse are not sufficient for protecting gay and bisexual people from violence and extortion. Many gay and bisexual men feel unable to file complaints and access existing systems of redress in Kyrgyzstan without serious negative repercussions. They have legitimate fears of retaliation by those who abused them in the first place or by other law enforcement officials. They also fear that law enforcement officials will fail to respect their privacy and confidentiality and will disclose their sexual orientation to the public, family members, or others.

ii. Rape and Sexual Violence against Gay and Bisexual Men in Police Custody

Five gay men and one 17-year-old gay boy told Human Rights Watch that they experienced sexual violence by police, including rape, group rape, attempts by police to put a stick, a hammer, or an electric shock weapon in their anus, unwanted touching during a search, or being forced to undress in front of police. In two cases documented by Human Rights Watch, police officers disclosed the victim's sexual orientation to other detainees, who then beat or raped the victims. Fifteen gay and bisexual men and boys told Human Rights Watch that police threatened to rape them, including group rape or rape with a hanger or

bottle. LGBT activists interviewed by Human Rights Watch said that sexual assault by the police is one of their biggest fears both for themselves and for other gay men in the community.

Demetra D., a 32-year-old gay man from Bishkek, told Human Rights Watch that in four different incidents between 2004 and 2011, police officers raped him, attempted to rape him, and allowed other detainees to rape him. In 2004, men who later identified themselves as police officers grabbed Demetra D. and his friend as they left a gay club, forced them into an unmarked car, drove them to the city outskirts, and beat and raped them.

iii. Insufficient Complaint Mechanisms and Impunity

In the rare instances that gay men have filed complaints about police abuse, investigations are not opened or are ineffective. Human Rights Watch is not aware of any convictions of police officers for the types of abuses against gay men described in this submission.

In October 2010 Mikhail Kudryashov, 22, was detained by the Financial Police for allegedly disseminating gay films. While in detention, Kudryashov was beaten with bottles and hangers, received sexual threats, and was forced to undress. When he declined to write a “confession” dictated to him by the police, an officer stabbed him in the hand with a pen. On November 4, 2010, Kudryashov filed a complaint against the Financial Police officers who ill-treated him. In response, the Bishkek City Prosecutor’s Office conducted an internal inquiry about the alleged conduct but on November 30, 2010, refused to open a criminal investigation. Kudryashov appealed the refusal to open a criminal investigation to the General Prosecutor’s Office and through the courts, but his appeal was unsuccessful.

Police Violence and Abuse against Sex Workers (Convention Articles 7, 9, 10, 17)

Sex work is not illegal in Kyrgyzstan, yet police often detain sex workers for alleged public disturbance. Studies by Kyrgyz civil society groups report high rates of extortion of and

physical and sexual violence against sex workers by police.¹ A 2012 survey of 590 sex workers revealed that at least 10 percent of them experienced sexual abuse at the hands of the police, and 37 percent reported that police subjected them to physical abuse and torture.² Various studies conducted by local human rights NGOs in Kyrgyzstan found that police extortion of sex workers is even more widespread, with every sex worker interviewed reporting it, and some sex workers reporting that they pay off police every day or even multiple times per day.

In 2013 the Ministry of Internal Affairs established a new unit called the “morality police” whose mandate consists of fighting trafficking in human beings and upholding “morality.” Local human rights groups have documented this unit’s involvement in arbitrarily detaining dozens of sex workers to forcibly test them for HIV and other sexually transmitted infections (STIs). In some instances officers confiscated the passports of detained sex workers until they returned for their test results. Under Kyrgyz law, testing for HIV and STIs has to be voluntary.

In December 2013 the “morality police” invited local media to film how sex workers who had been arbitrarily detained were finger printed and tested at the police station. Although Human Rights Watch has not been able to interview any of these sex workers, it seems likely that these HIV tests were conducted without informed consent. The “morality police” publicly stated that the raids aimed to identify sex workers who are HIV positive and have STIs. It stated that one third of the sex workers had tested positive for STIs. According to media reports, over 200 sex workers were detained in the period December 2013-January 2014.

¹ Shadow report to the Third Periodic Report of Kyrgyzstan to the Committee on the Elimination of Discrimination Against Women (2008). NGO “Tais Plus”: Bishkek; Arrest the Violence: Human Rights Violations Against Sex Workers in Central Eastern Europe and Central Asia (2007). SWAN: Budapest.

² The Sex Workers Rights Advocacy Network is a network of civil society organizations that advocates for the human rights of sex workers in Central, Eastern, and Southeast Europe and the Commonwealth of Independent States.

Recommendations for Steps the Committee Should Urge the Kyrgyzstan Government to Take:

- Conduct an independent review with the participation of international legal experts of all proceedings related to the June 2010 violence.
- Reopen proceedings in cases in which the authorities have not properly investigated allegations of torture, or in which there have been serious violations of defendants' fair trial rights.
- Direct the General Prosecutor's Office to fulfill its responsibility under Kyrgyz law to investigate, in a thorough, impartial, and timely manner, all torture allegations against law enforcement officials, regardless of rank and whether the victim or family has filed a formal complaint, and prosecute to the fullest extent of the law any official found responsible for ordering, carrying out, or acquiescing to torture or ill-treatment.
- Take urgent measures to end courtroom violence, in particular in the case of Mahamad Bizurukov, and hold accountable before the law those who incite or participate in violent acts against defendants, lawyers, or judges.
- Release human rights defender Azimjon Askarov pending a full, impartial, and fair investigation.
- Publicly condemn violence against LGBT people and investigate promptly and impartially all cases of family violence, police abuse, and hate crimes against LGBT people and provide redress to victims.
- Create an independent complaints mechanism in conformity with international standards to allow victims of police abuse, including members of the LGBT community, to report cases of ill-treatment in a manner that guarantees full confidentiality and respect for their right to privacy.
- Conduct awareness-raising campaigns for all officials, including police who are in direct contact with victims of violence, which would include promoting tolerance and respect for diversity, including sexual orientation and gender identity.
- Condemn at the highest level police abuse against sex workers, encourage sex workers to file complaints about police abuse, and effectively investigate cases of reported police abuse.
- Clarify the mandate of the "morality police" and ensure that they have no authority to conduct forced testing, engage in arbitrary detention and violations of privacy of sex workers, or other illegitimate actions.