

Assessing a Transitional Justice Approach for Kyrgyzstan

KYRGYZSTAN MISSION REPORT MAY 30-JUNE 6, 2010

Marcie Mersky, Bogdan Ivanišević, Eugene Huskey

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About ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. For more information, visit www.ictj.org.

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Executive Summary

During the last five years, Kyrgyzstan has experienced two popular uprisings—in March 2005 and April 6–7, 2010—that have led to the overthrow of the government and the deepening of political and social divisions in the country. In both cases, the uprisings came as a reaction to governments that were increasingly corrupt, repressive, and authoritarian. After former president Kurmanbek Bakiy fled on April 7, 2010, an interim government made up of opposition political leaders took power. A nationwide referendum held on June 27 approved a new constitution, with a number of potentially democratizing reforms, and confirmed Roza Otunbaeva as the country’s president. Elections for a new parliament are now set for October.

In the wake of the April uprising, the International Center for Transitional Justice (ICTJ) undertook a weeklong mission in Kyrgyzstan to assess whether a transitional justice approach might assist the country in its transition process. In this sense, the mission was not an inquiry into past abuses, but an assessment of how Kyrgyzstan might address them by providing effective mechanisms for acknowledging past human rights violations and other abuses of power, securing accountability for those abuses and reparations for victims, and preventing a repetition of patterns of abuse and impunity. This assessment report draws heavily on the results of some 30 interviews conducted by ICTJ’s expert team in Bishkek, with a broad range of Kyrgyzstani civil society leaders and high-level government officials.

Until very recently, Kyrgyzstan’s past did not correspond neatly to the circumstances for which transitional justice mechanisms are generally used. While political opponents and journalists were clearly the target of state repression in recent years, there was not a history or systematic pattern of massive violations of the most fundamental human rights, such as the right to life and to physical integrity. The violence in the country’s southern region in June 2010, which erupted just days after the ICTJ mission, adds a significant new dimension to the situation. The atrocities and destruction committed there revealed much deeper divisions and a greater degree of deterioration—of respect for human rights, state institutional capacity, and national unity—than had been acknowledged before.

The ICTJ team found that in the vibrant Kyrgyzstani civil society community there is a strong demand for accountability and recognition of the importance of exploring other means to that end in addition to criminal prosecutions. In this context, a transitional justice approach designed to engage broad sectors of Kyrgyzstani society, especially those who have suffered abuses or been marginalized from public participation, could potentially help Kyrgyzstan

achieve accountability for past crimes, move toward national reconciliation, and solidify the commitment to democratic governance.

In general terms, well-designed and implemented transitional justice measures could contribute to these objectives by demonstrating and giving formal recognition to the fact that serious human rights violations and other abuses of power have affected the lives of thousands of Kyrgyzstani citizens of all economic and ethnic groups, and by providing some forms of redress for them. Such measures would also document and help correct the systematic and system-wide abuses in law enforcement agencies and the justice system; open a public discussion and establish a broader social consensus regarding the moral and ethical rules for acceptable political practice; and generate a greater sense of inclusion and greater public trust in state institutions.

In the debate about future transitional justice work—which would need to happen among Kyrgyzstani activists and political leaders—in addition to the necessary focus on grave human rights violations, serious consideration should be given to broadening the efforts to cover other kinds of rights violations and pervasive abuses of state power. The latter could include corruption, electoral fraud, system-wide abuses by law enforcement and justice institutions, and discrimination on religious and ethnic grounds. These are the issues that civil society and political leaders identified as major, long-standing sites of impunity and major impediments to breaking the deepening tendency toward authoritarian rule and conflict.

There is already considerable work under way in Kyrgyzstan that falls broadly into a transitional justice framework. This includes event-focused commissions of inquiry, criminal proceedings on past crimes (although these have focused on corruption cases rather than on human rights violations), an economic compensation program for victims of the April uprising, and broad constitutional reform that provides for some important modifications of justice sector and law enforcement institutions. Nonetheless, the impact of these initial efforts could be hampered by insufficient transparency (in the case of the government commission of inquiry into the April events and the prioritization of cases for prosecution), or the limited scope of the measures (in the case of the compensation program and the reform efforts).

With regards to particular, future, transitional justice measures, the ICTJ assessment suggests that the following could prove beneficial in the Kyrgyzstani context:

- A truth commission: While decisions about how it would function and its scope should be based on public discussion and backed with some form of official recognition, consideration should be given to defining a framework that encompasses all of the periods of repression and forms of abuse in order to help identify systemic problems and patterns of violations (in addition to clarifying specific cases or incidents). Consideration should also be given to incorporating public hearings as a part of the process because they facilitate public involvement and social debate on the issues.
- A comprehensive reparations program: This could extend to all victims of serious past human rights violations, including those of the June events, and provide them not only with material compensation and rehabilitation, but also undertake symbolic measures aimed at affirming to the society as a whole that the victims are full citizens of Kyrgyzstan, whose rights and dignity must be respected, independent of their ethnic origin, religion, or political beliefs.

- Criminal prosecutions: A key step forward could be the creation of a transparent prosecutorial strategy based on a systematic mapping of abuses committed in the past and during the events of June, with cases that led to death and serious harm to physical integrity given priority in investigation and prosecution. Decisions on prosecution for human rights abuses should not depend on the political affiliation, status, or ethnicity of the suspects and victims.
- A vetting process in law enforcement and justice sector institutions: While the pertinence of implementing a thorough vetting process (through reappointment or review) is for the post-election government to decide, such a process, if carried out with transparency and well-defined professional criteria, could be very helpful for removing the worst offenders and establishing a clear set of standards for professional behavior in the future. Obstacles to vetting, such as resistance within the existing institutions, are easy to envisage, but can be overcome if the political will exists.

In any discussions in Kyrgyzstan about whether to go forward with new transitional justice measures, it would be important to ensure consultation with all of the stakeholders, especially the victims of the violations and abuses, and promote transparency in decision-making and proceedings. Final decisions regarding these measures might best be made once the new parliamentary government is installed, since that would provide the strongest legitimacy and demonstration of political will. In preparation, over the next few months efforts could focus on activities that open a debate on these issues, generate interest and political will, and introduce international experiences with transitional justice measures to Kyrgyzstani civil society and political leaders, as there has been relatively little access to that experience until now.

1. Introduction

During the last five years, Kyrgyzstan has experienced two popular uprisings—in March 2005 and April 6-7, 2010—that have led to the overthrow of a government and the deepening of political and social divisions in the country.¹ In both cases, the uprisings came as a reaction to governments that had become increasingly corrupt, repressive, and authoritarian. After former president Kurmanbek Bakiev fled on April 7, 2010, an interim government made up of opposition political leaders took power. A nationwide referendum held on June 27 approved a new constitution, with a number of potentially democratizing reforms, and confirmed Roza Otunbaeva as the country's new president. Elections for a new parliament are now set for October.

In the wake of the April uprising, the International Center for Transitional Justice (ICTJ) undertook a mission in Kyrgyzstan to assess whether a transitional justice approach could assist the country to formally acknowledge past human rights violations and other abuses of power, secure accountability for those abuses, and prevent a repetition of its patterns of abuse and impunity.²

The team comprised three consultants. Marcie Mersky and Bogdan Ivanišević both have extensive experience in transitional justice issues in different parts of the world; Eugene Huskey is a political scientist who has studied and written about Kyrgyzstan for a number of years.³ The ICTJ team traveled to Kyrgyzstan between May 31 and June 5, 2010, conducting more than 30

1 By the middle of the 1990s, Kyrgyzstan began a slow descent toward corrupt and authoritarian rule under its first president, Askar Akaev. The fraudulent parliamentary elections of February 2005 triggered a popular uprising in March, known as the Tulip Revolution, which led to the exile of President Akaev and the introduction of a new government headed by Kurmanbek Bakiev, who proved to be even more corrupt and repressive. Indeed, the two years before the April Revolution of 2010 are considered by many to be the darkest in the history of post-communist Kyrgyzstan. Criminal forces began to be employed by the state as agents of repression and intimidation. Accompanying the hardening of repressive policy was an ever greater concentration of political and economic power in the hands of President Bakiev and his family. Popular discontent boiled over, especially over the worsening economic conditions, and led to demonstrations on April 6 and 7, 2010, which brought down the Bakiev government. Government forces had open fired on the crowds; some of the demonstrators were armed as well. In all, 86 people were killed in the demonstrations in Talas and Bishkek; more than 1,500 were injured, including the minister of Internal Affairs and 70 policemen.

2 Transitional justice mechanisms are understood to include the following: truth-seeking and other forms of inquiries; criminal justice; reparations, including memorials; and institutional reform, including vetting.

3 See biographical information on team members in the front pages of this report.

extended interviews with leading representatives of government and civil society in Bishkek.⁴ This report is the result of that mission.

During the mission, the ICTJ team sought to understand how activists, political leaders, analysts, and government officials analyze the characteristics of past human rights violations and other major abuses of power, the sources of impunity for politically motivated crimes, and the challenges to achieving accountability. The team also sought to identify the actions already being implemented to address these challenges and to explore views on the potential utility of a truth commission and other transitional justice measures for Kyrgyzstan. While the team gathered information about the situation in the country, this was not a fact-finding mission about events in Kyrgyzstan. This information served as essential background for the assessment regarding transitional justice measures, which is presented in this report.

The report does not aim to be exhaustive in its approach, nor could it be. The team was limited by the short time in the country to conduct its work—one week—and by the fact that, given the time constraints, it was not able to travel to other parts of the country. In addition, the mission was conducted before the terrible wave of violence and destruction in the south of Kyrgyzstan, which began on June 10. Clashes between ethnic Kyrgyz and Uzbeks spiraled out of control in Osh and spread to the neighboring region of Jalal-Abad. The latest official death toll stands at more than 300, with thousands of people injured and 375,000 reportedly initially displaced from their homes.⁵ Based on a preliminary UN assessment on June 18, some 1,749 homes were completely destroyed in the city center of Osh alone.⁶ None of the people interviewed during the ICTJ mission—not even activists in Osh and Jalal-Abad who participated in a video conference with the ICTJ team in early June—mentioned any fears that interethnic violence on this scale was conceivable in Kyrgyzstan.

The events in June introduced dramatic new dimensions to the challenges of achieving accountability for human rights violations in Kyrgyzstan. This report attempts to integrate aspects of this new situation into its assessment and recommendations, although it does not focus exclusively on them. Rather, the assessment that follows takes a longer view and considers how Kyrgyzstan might use transitional justice measures to address some of the more structural problems that have beset the country in recent years.

A Transitional Justice Approach for Kyrgyzstan?

Until the recent widespread violence in Osh and Jalal-Abad, Kyrgyzstan's past did not correspond neatly to the set of circumstances for which transitional justice mechanisms are generally used. Most significantly, as our interviews in early June illustrated, there was not a history or pattern of massive violations of human rights often found at the center of justice efforts in many transitional contexts, such as the right to life and to physical integrity. While

4 An interview list is included at the end of this report.

5 Kutueva, Aizada, "Death toll from the clashes in S Kyrgyzstan rises to 356," July 29, 2010, News Agency 24.kg <http://eng.24.kg/community/2010/07/29/12827.html>; "Kyrgyzstan Flash Appeal June 2010," United Nations Office for the Coordination of Humanitarian Affairs (OCHA), revised July 23, 2010, <http://ochaonline.un.org/HUMANITARIANAPPEAL/webpage.asp?Page=1890>; see also "Timeline: Unrest in Kyrgyzstan's South," Reuters, June 27, 2010, <http://www.reuters.com/article/idUSTRE65Q0XQ20100627>.

6 The assessment was completed by the UN Institute for Training and Research (UNITAR) Operational Satellite Operations Program (UNOSAT) and was cited in "Razrusheniia v Oshe i Bazar-Korgone rassmotreli so sputnika OON," Ferghana.ru, June 24, 2010, <http://lenta.ru/news/2010/06/24/osh/>.

journalists and opposition politicians had clearly been the target of state repression in recent years, the number of cases and the dimension of the problems were relatively limited compared with other contexts where transitional justice mechanisms have been implemented. Nor was there a major fault line dividing the society's understanding about the nature of the abuses under the governments of presidents Akaev and Bakiev, who committed them, and whether they were "justified" or not, as is often the case in war-torn or other transitional contexts.

Nonetheless, even before the crisis in the south, there were a number of other compelling factors that led the ICTJ team to conclude that transitional justice mechanisms, if properly designed and implemented, could be very helpful in achieving accountability and preventing the repetition of abuses. This would require that the scope of the work in at least three areas (truth-seeking, institutional reform, and criminal prosecution) be expanded beyond the usual violations of physical integrity and liberty rights that tend to be the primary focus of a transitional justice approach to address other kinds of pervasive abuses of state power. Based on our conversations in Kyrgyzstan, corruption, electoral fraud, system-wide abuses by law enforcement and justice institutions, and discrimination on religious and ethnic grounds should be addressed. These are the issues that civil society and political leaders identified as the major sites of impunity and major impediments to breaking the deepening tendency toward authoritarian rule and conflict.

Transitional justice measures designed to address a wide range of issues and engage broad sectors of Kyrgyzstani society could be both appropriate and helpful in the following ways:

1. to demonstrate and recognize formally that serious human rights violations and other abuses of power have affected the lives of thousands of Kyrgyzstani citizens of all economic and ethnic groups, while perhaps weighing more heavily on some than others, depending on the issue;
2. to document and help correct the systematic and system-wide abuses in law enforcement agencies and the justice system, and their lack of independence from the executive;
3. to open a discussion about and establish a broader social consensus regarding the moral and ethical rules for acceptable political practice; and
4. to generate a greater sense of inclusion and greater public trust in state institutions.

The violence in Osh and Jalal-Abad in June (which occurred shortly after ICTJ's mission to Kyrgyzstan) adds a significant new dimension to the situation. Witness accounts of involvement by military and police in some of the atrocities, the strong possibility of a planned component to the conflict, as well as the scale of the interethnic violence that unfolded, have, by all reports, generated deep distrust and animosity toward government authorities and among former neighbors. One Kyrgyzstani nongovernmental organization (NGO) has already characterized the events as having included crimes against humanity. Whether this is the case or not is a matter for further investigation. In addition to eventual criminal investigations, well-conceived and executed truth-seeking and reparation efforts could, in this context, be very helpful in achieving accountability and reconciliation.

While this most recent violence draws Kyrgyzstan into the territory of massive abuses of physical integrity and displacement often covered by transitional justice measures, it does not change our assessment that such measures should encompass not only the usual serious human

rights violations, but should also examine and offer responses to other patterns of abuse and impunity mentioned above.

2. Transitional Justice Mechanisms

Truth-seeking

Truth-seeking mechanisms are generally central pieces of a transitional justice approach to seeking accountability for serious abuses committed in the recent past under authoritarian governments or during an armed conflict. Truth-seeking mechanisms can be helpful in establishing an authoritative account of abuses, especially when what happened is in dispute; identifying who was harmed and who, individually or institutionally, was responsible; and establishing the underlying causes and contexts. The term refers broadly to nonjudicial inquiries and covers a wide range of forms and mandates. These can be established by governmental or parliamentary action and can thus be considered “official;” in some places where there was no state support for such endeavors, civil society organizations have conducted their own unofficial truth-seeking initiatives, often on a local level. Truth-seeking mechanisms can take a variety of forms, from a narrowly focused, fact-finding inquiry into a specific event to a much broader form, which has come to be known as a truth commission.

Truth commissions can be simply defined as “non-judicial, independent panels of inquiry typically set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country’s past.”⁷ Like other truth-seeking mechanisms, they are temporary, ad hoc bodies that generally produce a public report on their findings. There have been close to 40 truth commissions around the world, although none in a former Soviet republic or in a country within the former Soviet sphere of influence.⁸ What distinguishes most truth commissions in practice from other kinds of truth-seeking mechanisms is:

1. their effort to engage a significant part of society in the truth-seeking process by creating ways to facilitate the participation of victims and even perpetrators, whose testimonies are used as a major resource for the findings of the commission; public hearings based on some of those testimonies allow for broad public recognition and debate on the abuses under investigation;

⁷ “Truth-seeking: What is Truth-seeking,” ICTJ, <http://www.ictj.org/en/tj/138.html>.

⁸ There was, however, a parliamentary commission in Germany denominated the Study Commission for the Overcoming of the Consequences of the SED Dictatorship in the Process of German Unity. See U.S. Institute for Peace (USIP) Truth Commissions Digital Collection, available at: <http://www.usip.org/resources/truth-commission-germany-95>.

2. their focus on putting victims' voices into the public sphere, because victims have generally been marginalized, and their versions of events have often been ignored or denied by those in power;
3. their focus on identifying and analyzing broad patterns of abuse, in addition to clarifying the facts of specific incidents or cases;
4. their greater attention to historical factors and external forces that have contributed to patterns of abuses; and
5. the formulation of broad recommendations for institutional reform, and/or for the creation of reparations programs or other mechanisms to follow up on the findings they have produced.

Experiences with Truth-seeking Initiatives in Kyrgyzstan

Commissions of inquiry and other truth-seeking efforts have been used as a tool in past years in Kyrgyzstan to examine cases of human rights violations and other politically motivated cases. Some of these have been traditional parliamentary commissions, such as the panel that investigated the March 2002 events in the village of Aksy (Jalal-Abad region), where security forces killed six people and wounded and tortured others demonstrating against the trial of then-parliamentarian Azimbek Beknazarov. The 2003 commission that looked into police abuses is another example; that commission was headed by Bolot Sherniyazov, who was the interim government's first minister of Internal Affairs (MVD).

Civil society organizations have also established their own commissions of inquiry or carried out investigations under the auspices of the country's ombudsman. The most significant example of the latter arrangement was the work done to determine the facts regarding the October 2008 events in Nookat, examine multiple allegations of false charges, torture, and serious violations of due process rights of those arrested there, and identify responsibilities for abuses in that incident.⁹ After the Bakiev government was deposed in April, several Kyrgyzstani NGOs created a fact-finding commission focused on some of the most controversial aspects of the April 6–7 events in Talas and Bishkek, such as the timeline of events, the source of the arms used by some of the demonstrators, the use of force by the police, and possible collusion between opposition leaders and state security forces. They interviewed many participants and eyewitnesses and produced a preliminary report of their findings.¹⁰

In some instances, according to our interviews, these commissions have produced solid reports, which provided a strong basis for potential corrective actions and other measures of redress. Nonetheless, the experiences have also generated considerable frustration because there is rarely follow-up on the findings or meaningful implementation of any of the recommendations made. In the Nookat case, for example, after the ombudsman's report was released in January 2009, the Supreme Court conducted a judicial review, but upheld the lower court verdicts and did not open investigations into the well-documented allegations of

⁹ In October 2008, observant Muslims in the southern town of Nookat were arrested, and 32 of them were sentenced to lengthy prison terms after unrest was triggered by the local authorities' decision to ban the celebration of the Muslim holiday Eid al-Fitr. Some were wrongly accused of being members of an Islamist militant organization, and a number of them were tortured.

¹⁰ Zakliuchenie nezavisimoi obshchestvennoi komissii po rassledovaniuu tragicheskikh sobytiy 6-8 aprelya 2010 v Kyrgyzstane (April 20, 2010).

torture.¹¹ Some of those interviewed also cited the lack of progress on any of the recommendations from the much earlier Aksy commission of inquiry.

After the interim government decided not to seek international support for a national commission of inquiry, on May 20, 2010, President Roza Otunbaeva issued a decree that established a commission to undertake a “comprehensive [all-sided] study of the reasons for and circumstances relating to the tragic events of April and May 2010 in the cities of Talas, Bishkek and Jalal-Abad and in the village of Maevka. The commission should also offer a political assessment of these events.” The very brief decree appointed the 25 commission members, who were to volunteer their time. It also indicated that the commission could draw on experts from government ministries and that heads of state organizations would be expected to support its work, and allowed one month for the commission to carry out its work and issue a report, with travel costs to be covered by the organizations or institutions of the participating members. Former Member of Parliament and opposition leader Abdygany Erkebaev was named to chair the commission, which was expected to have a staff of three or four people to be provided by the interim government.

The commission was to begin its work immediately, and although our mission occurred during the second week of the commission’s mandate, few of our interlocutors, including leading members of human rights organizations and some government officials, knew anything concrete about the plans, substance of the work, or how commission members were chosen. Several expressed concerns that the commission would be biased because many of its members hold political or administrative posts in the interim government or are otherwise affiliated with the former opposition political parties whose leaders are now in power. They were generally of the opinion that the decision to create the commission was politically motivated, designed to serve as a vehicle to further condemn the Bakiev government, and to strengthen public support for approval of the new constitution and the interim government. The fact that the report was to be produced in one month and made public before the constitutional referendum lends credence to this analysis. The inclusion of four academics and five civil society activists as commissioners did not seem to allay any of these concerns.¹²

During June, there were occasional articles in the Kyrgyzstani media about the work of the commission, but there has been no mention that the work has been completed or a report provided by June 20, as defined in the decree. It could well be that the current political and humanitarian crises resulting from the interethnic violence in the south have overshadowed the work of the commission, with the unanswered questions and the dimensions of the losses from the April–May events paling in comparison to what transpired in June in Osh and Jalal-Abad.

While the interim government is to be applauded for its recognition that truth-seeking regarding past human rights violations and other acts of political violence can provide important lessons for a society struggling to construct democratic governance, unfortunately the way in which the commission was created—with little or no public discussion about a potential mandate or composition—may have fatally limited its credibility from the start. This weakness is particularly significant in the current Kyrgyzstani political context, in which civil

11 “Kyrgyzstan,” *World Report 2010*, Human Rights Watch.

12 One of the commissioners from civil society with whom we spoke claimed not to have been officially informed that he had been named a member of the commission, nor did he know that the commission had already met twice at the time of our meeting with him.

society leaders are demanding active participation and transparency in government decision-making and are highly critical when these are lacking. Resource limitations—of staff, funds, and time—are another factor that may also have a negative impact on the final results—not only on the quality of the report, but also on its acceptance by Kyrgyzstani society.

At this point it appears unlikely that the interim government's commission of inquiry will be able to overcome these shortcomings in the public eye. Even if it produces an exceedingly fair and well-documented account, defects in the process of forming the commission will probably weigh heavily in people's assessment of its work.

Current Conditions and Possibilities for a Truth Commission

One of the main objectives of this mission was to assess the potential feasibility and utility of creating a truth commission in Kyrgyzstan, how it might fit in with other transitional justice measures, and how it could build on other efforts already under way. The ICTJ team explored these issues with virtually all of those interviewed. What follows is a discussion, based on those meetings and our team members' experiences in other countries, of both the potential advantages and some of the challenges to be addressed if there were to be a truth commission. We also make some recommendations for further action.

In general, one key factor for the success of any truth commission is the engagement and concerted support of civil society organizations. This stems from their capacity to mobilize participation, their contacts with victims, and their accumulated knowledge and skills regarding the issues; without these, even the most correctly drawn mandate will not produce a strong outcome. Civil society organizations in Kyrgyzstan have been working for years, with considerable professional skill, to document abuses, make use of international human rights instruments, provide assistance to victims and/or develop policy proposals for the reform of judicial and security sector institutions. A number of such organizations have organized or participated in specific commissions of inquiry and recognize the potential power of the facts. These qualities would provide an enormous boon to any effort to have a truth commission.

Nonetheless, none of the NGO leaders we met had detailed knowledge of the particular characteristics of truth commissions (compared with other types of commissions of inquiry) or what a truth commission entails. This is probably due to at least three factors: the dearth of information available in Russian on truth commissions (or transitional justice); the fact that there has not been a truth commission in any nearby country or any that shares the experience of having been in the former Soviet sphere of influence; and the general impression that truth commissions are only for countries, such as those in Africa or Latin America, that have a history of internal warfare, crimes against humanity, and/or extremely repressive regimes. No one considered Kyrgyzstan to be in that category, although the recent carnage in Osh and Jalal-Abad may have changed some opinions in this regard.

When asked, most expressed strong interest in the idea of a truth commission, although a few were skeptical, given the poor results with Kyrgyzstan's commissions of inquiry in the past, or believed that their own efforts at investigating or documenting violations could be sufficient. Virtually everyone, however, spoke to the central importance of accountability for past abuses as a key element in breaking the patterns of authoritarianism, increased repression, and continued violations by law enforcement and justice institutions. As mentioned below in the section on prosecutions, there was a shared sense that criminal prosecution was not necessarily

the only option, except in the most glaring cases, and that many of the abuses were the result of systems and institutions that leave everyone in them with some degree of guilt and responsibility. Some posited that the kind of moral condemnation that could come from a truth commission process, including a public process that would allow mid- and low-level officials to recognize their wrongdoing, could be very powerful. This nuanced understanding of accountability is an excellent starting point for a truth commission and a transitional justice approach in general.

The creation of an official truth commission would also require a formal agreement by the government. For now, it seems that the interim Government has chosen the path of a limited commission of inquiry. After the parliamentary elections, the panorama should be explored more fully, as interest and opportunities may emerge with new members.

In very general terms then, among major Kyrgyzstani NGOs there is considerable demand for accountability and recognition of the importance of exploring other mechanisms to that end, beyond criminal prosecutions. Most believe that truth-seeking mechanisms could be vital in the process, but no one was yet calling for a truth commission as such. Finally, cleavages within the government and the broader society pose additional challenges for a truth commission, which requires the selection of members whose reputations rise above these narrow divisions. The current operation of a state committee of inquiry with a relatively broad mandate could also complicate the formation of a more carefully conceived truth commission operating on a longer time -frame and following international best practices.

Why a Truth Commission for Kyrgyzstan?

Given this complex array of factors and perspectives, it is clear that some key conditions would still have to be generated to make it feasible to establish a truth commission with any possibility of success. Despite this challenging complexity, there are compelling arguments for taking additional steps toward creating those conditions, given the potential advantages for the society.

Grave human rights violations in Kyrgyzstan have not been committed on the same scale or over as extended a time period as has been the case in most other places where national-level truth commissions have been held. Fortunately large-scale incidents, such as the events in Osh and Jalal-Abad in June, have been few in number (although this in no way diminishes the gravity of the recent violence). Nonetheless, when asked to compare the problems of the Akaev and Bakiev governments and the issues that brought them down, most of our interlocutors explained that there were many similarities in terms of heightened authoritarianism, repression, nepotism, and corruption, but that the last two years were worse than any others in the country's recent history. Thus, a major issue for the country's future is the tendency over the past several years toward a political regime that is increasingly restrictive of human rights and increasingly willing to use violence against its opponents. A truth commission, held in the context of the current broad constitutional reform, could be helpful in staunching this tendency and could represent a unique opportunity to establish a clear "before" and "after" in the country's political life.

At the same time, the realization of any of the potential advantages discussed below would, of course, depend on a variety of factors. Key among these would be the development of a process around a truth commission, which demonstrates a practical commitment to broad

consultation, transparency, and independence in the ways the mandate is defined, how commissioners are selected, and how their work is conducted. These elements provide the foundation and framework for the credibility and legitimacy of any commission of inquiry. International best practices in all of these areas have been developed and would provide an excellent starting point for Kyrgyzstan, if the decision were taken to establish a truth commission.¹³

While the potential advantages for Kyrgyzstan are similar to those that have been identified in other places, it is relevant to highlight a few of these, given the country's particular political and historical context.

Kyrgyzstani human rights organizations and journalists have reported on violations and abuses and placed these problems in the public domain, yet human rights defenders everywhere know that their work often faces serious limitations—of resources, access, and projection to a broad public. A truth commission would create an officially sanctioned opportunity, with a broader public space, to establish the full extent of the violations and authoritative accounts of incidents, which have remained cloaked in impunity. It would also provide a mechanism to examine why events have occurred and to search for answers to questions such as: are the violations and abuses mostly concentrated in a set of isolated events, or are there patterns that point to structural or systemic problems? Are they mostly the result of the actions of bad leaders, or are there deeper issues about the way power is exercised and institutions work in the country that must also be addressed and changed? Thus, a truth commission could contribute to a more structured framework for a reform agenda, while at the same time providing a common language and shared set of criteria for analyzing the country's recent history and making it more understandable to the society as a whole. In the aftermath of the June events, this may be especially important in order to elevate debate about the violence to an informed, national discussion.

A truth commission would create an opportunity to shine a light squarely on those human rights violations and serious abuses of power that often are only spoken about in whispers and then are tolerated in silence. It would allow ordinary people of all ethnic groups, religions, and gender who have suffered serious abuses to be heard by the larger society and claim a greater stake in limiting future abuses. Through public hearings, and with the support of the media, a truth commission would project those voices—the voices of those who have suffered the abuses (and maybe some of those who have committed them)—beyond the confines of the locality or region where they occurred and allow them to become a matter of national concern.

In places like Kyrgyzstan, where the judicial system has often been unable or unwilling to establish accountability and provide redress for human rights violations, serious abuse of power, and other politically motivated crimes, citizens come to expect impunity as the norm. In this context, the work of a truth commission can reflect a first, official recognition that this is not the norm, but rather that something has gone very wrong in the way state power has been used. In this sense, it would provide a chance to open a public discussion on the need for new

¹³ The UN “Updated Set of principles for the protection and promotion of human rights through the action to combat impunity” (E/CN.4/2005/102/Add.1), the Office of the High Commissioner for Human Rights (OHCHR) “tool kit” for truth commissions, and several publications of ICTJ provide guidance on international best practices.

moral and ethical rules for political and judicial practice, that is, about what will be acceptable practice in the future and what will no longer be tolerated by the country's citizens.

Finally, it is important to note that a truth commission is not a jurisdictional body; it in no way replaces the criminal justice process and the responsibilities of the competent institutions to conduct criminal investigations, prosecute, and try cases. A truth commission process can be conducted simultaneously with criminal proceedings; its work can build on what has already been established by the criminal justice system regarding a given case; or its findings can be handed over to the competent authorities, either for specific cases or as a backdrop to addressing system crimes—characterized by their organized nature—for follow-up by those authorities.¹⁴

Some Possible Characteristics of a Truth Commission for Kyrgyzstan

The specifics of how a truth commission would function and the scope of its inquiry should be the result of a national discussion that takes into account diverse perspectives across political, ethnic, and regional lines. The organizational model would depend in large measure on how the objectives are defined in the mandate and how best to facilitate access and participation to people across the entire national territory. Thus, what follows are some of the issues that can be explored as part of that discussion; the ideas are intended to suggest possibilities and should not be taken as a guide to action.

Thematic Scope

Truth-seeking efforts in Kyrgyzstan have tended to focus on individual cases and events, most often when there have been deaths or when the events have had particular political importance. Given that authoritative accounts of these cases have not been fully established in the public eye, nor have responsibilities been clearly defined, they should be included for further inquiry in any truth commission, building on the work already done that is considered credible. At the same time, the national reach of a truth commission would allow a careful examination of additional cases of extrajudicial killings, cruel treatment, torture, and other grave violations that may never have transcended local or regional concerns. Beyond these kinds of violations, given the problems as described by our interlocutors in Kyrgyzstan—the serious abuse of power, long-standing impunity, and a considerable degree of official denial about the crimes—full consideration should also be given to defining a scope of inquiry that might address such issues as corruption, electoral fraud, system-wide abuses by law enforcement and justice institutions, the role of external actors, and discrimination on religious and ethnic grounds. Given the relative lack of attention to some of these issues in traditional truth commissions, to include them in Kyrgyzstan would demand considerable innovation and represent important challenges for those involved in designing and implementing the commission.

Time Frame

While most of the current concern is focused on establishing the facts around the events that have occurred since April, the problems that gave rise to a wave of increasing political repression during the preceding two years and the second violent change of government in five years are not that recent in origin. In this context, consideration should be given to establishing

¹⁴ The relationship of a truth commission to the criminal justice system has varied in each country. The Peruvian experience is particularly interesting because the truth commission there was empowered by its mandate to “support the courts” by clarifying crimes and human rights violations; in practice, the commission conducted special investigations into a small subset of cases and, at the end of its work, handed the results over to the public prosecutor for criminal action.

a time frame that covers at least the period beginning in 1994, when President Akaev engineered the dissolution of the parliament, and the country began its slide away from pluralist and open politics. In addition, this kind of broader time frame is important if one of the objectives of a truth commission is to reveal potential patterns and to uncover more system-wide problems.

There must also be an end date for the period to be covered, since a truth commission is not a permanent watchdog body, nor is it intended as an instrument to investigate violations that are ongoing or may occur while it is operating. Those would be issues for the country's regular institutions such as the Procuracy, the courts, or the ombudsman's office to handle.

In Kyrgyzstan, the issue of the end date for the time frame may generate more controversy than the starting date. Usually the end date is identified by a significant political event, such as a change in the regime or the signing of peace accords. In Kyrgyzstan, this might logically have been April 7, when the interim government took power. Nonetheless, some of the worst violence in the country's history took place in June, with serious allegations of participation by government security forces, and this period would clearly need to be included in a truth commission mandate. For that reason, it may be wise to consider extending the period under review to June 27, when the new Constitution was approved by a popular referendum, Ms. Otunbaeva was confirmed as president and a process of broad institutional reform got under way, marking a clear break with the previous regime.

Public Hearings

Kyrgyzstan could benefit greatly if a truth commission included public hearings as part of its operations since they can help bridge regional, ethnic, and political divides and send a message that the issues demand the attention of the entire nation. Public hearings have been a part of truth commission practice in a number of places, including South Africa, Peru, Timor-Leste, and Morocco. They can be organized regionally (and projected nationally), around specific cases, or to highlight special issues that are known to be problematic or that may emerge during the investigation. In Kyrgyzstan, if a thematic approach is taken, the issues to be covered might include such matters as politicization of police and security forces, prisoner abuse and torture, complicity by doctors and/or lawyers in covering up violations, corruption in the justice system, or ethnic and religious discrimination, to cite only a few. All public hearings—no matter how they are organized—involve having victims, witnesses, and experts provide public testimony directly before the commission in sessions that are then broadcast nationally. They may also include people who have some degree of responsibility in committing the violations and who have come forward to admit that involvement. With broad media coverage, public hearings can take part of the proceedings of a truth commission into people's homes and, hopefully, into their conscience. In addition, as acts of transparency, public hearings can provide an opportunity to further ensure the credibility of a commission.

International Involvement

Truth commissions are generally set up as part of an essentially national process, established through national legislation and with strong national leadership. Nonetheless, with the exception of some of the first truth commissions that worked in Latin America in the early 1990s, many have also had some kind of international support, generally in the form of specialized technical assistance, some staff members, or additional funding. Kyrgyzstan may decide to draw on some kind of international assistance if it moves forward on a truth

commission, with the specific needs to be defined initially by the Kyrgyzstani organizations or political leaders who move the process forward and later by the commissioners.

Several of our interlocutors in Kyrgyzstan raised the issue of having commissioners from other countries. Some insisted that this would be necessary since there are so few people in Kyrgyzstan who would have, in their view, the professional qualifications, political neutrality, and a totally untainted past.¹⁵

Only three truth commissions that have finalized their work to date have had foreigners among their commissioners: El Salvador, Guatemala, and Sierra Leone. All were in immediate post-civil war contexts with heavy UN involvement, and it was believed that an international presence in the respective commissions was required to guarantee objectivity and legitimacy.¹⁶ Thus, it is possible, but not common. This is an issue that would merit considerable discussion, because the composition of a commission and how the commissioners are chosen important elements of its credibility.

Next Steps

At this stage, the most important next steps would be for Kyrgyzstani human rights and political actors to have more in-depth information on truth commissions and, with that foundation, to open a discussion in the country on whether a truth commission makes sense for Kyrgyzstan. The latter would require leadership from some (even just a few) respected Kyrgyzstani organizations and/or individuals to advance the discussion and begin to construct the political will that would be needed to carry the process forward. Eventually some stakeholders would need to take on the task of advocating publicly for a commission. This would involve speaking and writing about the need for a truth commission, working to convince others, and generating a degree of popular demand for it. Without this social action and commitment to the idea, it is impossible to imagine a successful endeavor, even if there is an objective need for a truth commission.

This national discussion could be enriched if Kyrgyzstani activists, political leaders, opinion-makers, and academics had access to more information on international best practices and experiences in other countries with truth commissions. Our impression is that Peru and Morocco at least could be important experiences for Kyrgyzstan. Although Kyrgyzstan has not experienced the kind of armed conflict or mass violations that marked the Peruvian experience, the truth commission process there could provide helpful insight at least in the following areas: the relationship between a truth commission and the criminal justice system; the involvement of civil society organizations; the use of public hearings; the treatment of interethnic issues; and

15 Although Human Rights Watch does not refer specifically to a truth commission with a broader mandate, but rather to the June events in Osh and Jalal-Abad, it has called for an international investigation to ensure that the investigations are “prompt, impartial, independent, and thorough.” The organization’s additional recommendation that international expertise be incorporated into the national investigation into these events that is already under way, could also help to increase the impartiality and credibility of that investigation. (“Kyrgyzstan: New Evidence Emerges on Brutality of Attacks,” Human Rights Watch, June 25, 2010, <http://www.hrw.org/en/news/2010/06/25/kyrgyzstan-new-evidence-emerges-brutality-attacks>.)

16 In El Salvador all of the commission members (and all of the staff) were foreign; in Guatemala, one of the three commissioners—the chair of the commission—was foreign (the staff was about 50 percent foreign). In Sierra Leone, three of the seven commissioners were foreigners. In El Salvador and Guatemala, the international commissioners were appointed by the UN Secretary-General; in Sierra Leone, the UN High Commissioner for Human Rights coordinated the selection of the international commissioners, and the president appointed them.

the relationship to the creation of a reparations program. The Moroccan experience would be interesting to explore in Kyrgyzstan with respect to the emphasis on reparations, including rehabilitation measures, the methodology used with a much smaller universe of victims, the resolution of gender issues, and public hearings.

To the extent that the discussions could move forward in a timely manner, the issue of a truth commission could be inserted into the political debates that will open with the elections and the inauguration of a new government. This could enhance possibilities for generating the needed political will, taking advantage of a potentially positive political environment in that context.

Reparations

Reparations for Victims of the April 6–7 Events¹⁷

Almost immediately after the interim government was established, it announced a program to provide monetary compensation and some other forms of reparations to victims of the events of April 6 and 7. The program does not contemplate compensation for other victims of gross human rights violations under the Bakiev government.

A government commission headed by the deputy minister of justice was established to coordinate the program, with overall supervision falling to the interim government's deputy chief minister in charge of the social sector. A government social development agency has received and reviewed requests and channeled the monetary compensation. Levels of compensation, to be paid as a lump sum, were established to reflect different degrees of damage. Next of kin of those who had been killed would receive 1,000,000 som (about US \$20,000). Two levels of injury were defined: those with the serious injuries would receive 100,000 som (about US \$2,000), and those with less serious injuries would receive 50,000 som.¹⁸ In addition, the Ministry of Health was tasked with providing free medical treatment and free rehabilitation services in specialized hospitals to those injured. Some mental health services are also being provided, but these are particularly limited given the lack of national capacity to provide such services. Finally, there are a number of initiatives under way to create memorials for those who died in the April events, although these did not appear to be coordinated by any central body. Political and civil society groups are also promoting memorialization efforts, including the construction of a monument to the opposition journalist Gennadii Pavliuk, who died after being thrown from a sixth-floor window.

While there have been disputes and continuing challenges for the compensation program, as well as some criticism, according to our interlocutors, it has functioned adequately. At the time of our mission, of the 86 families who lost loved ones and had applied for compensation, 85 had already received compensation. Most received the funds shortly after presenting the required documentation, while in 22 cases the compensation process was slower because there were conflicts over who was legally entitled to receive the funds. These disputes generally had a strong gender component. In some cases they involved competing claims for compensation between the parents of a victim and a woman, whose union to their son they did not recognize

¹⁷ This section is based on limited information provided by four people: the Minister of Justice and her deputy, a civil society leader who has worked with some aspects of the program, and an OHCHR official. No beneficiaries were interviewed, and most civil society leaders did not mention the program in conversations with us.

¹⁸ Fifty thousand som is the equivalent of about 10 months' salary for an average worker in Kyrgyzstan.

since the marriage had not been consecrated in a religious ceremony. In other cases, the woman had no legal documentation to prove her marriage to the victim. The contentious cases were sent to the Ministry of Justice for review and a ruling by the courts. By early June, only one claim had yet to be resolved.

The mechanism to compensate those who were wounded or injured has not worked nearly so well, and many of the complaints regarding the program have focused on this aspect. The lack of clear criteria to differentiate the levels of injury, the significant differences in the amounts assigned for each level, and people's economic needs all combined to create a very conflictive situation, in which victims often challenged medical findings and even pressured (or paid) doctors to change their diagnosis.

More recently, the interim government identified 225 families whose livelihoods depended entirely on businesses that were destroyed in Bishkek. While the total value of those businesses was estimated at around US \$7.7 million, the interim government has announced plans to establish a fund worth US \$1.15 million to help compensate the families.¹⁹

According to one civil society leader who has been involved in the compensation efforts, there is general public support for the decision to compensate victims. This has been reflected, in part, in the willingness of ordinary citizens to contribute donations for those who suffered damages. The Treasury Department created a fund to receive private donations to be channeled to victims, with a joint state-civil society commission acting to oversee the use of these funds.

Nonetheless, there has been some criticism of the program as being politically driven, aimed at casting the interim government as the heir to the sacrifices of the revolution's heroes, who died or were injured in the protests. Other criticism has focused on issues of transparency in the use of funds or the lack of investigation into the specific circumstances surrounding the deaths and injuries.

Challenges for the Future

The scope of the compensation program to date has been limited to those who suffered damages in the April events. There have been recent proposals to provide compensation to victims from the May events in Jalal-Abad and to the families of journalists who were killed or injured under Bakiev, but, as of early June, no decision had been taken.

Beyond those specific considerations, in order to avoid the potential for the politicization of these measures, or the perception of politicization, the interim government and/or the future parliamentary government should give serious consideration to establishing a broader and more integrated reparations program in line with international principles on remedies and reparations for victims of gross human rights violations.²⁰ Such a program could encompass victims from the entire period that would be investigated by a truth commission or some other relevant time frame that reflects the increasing repression and violent political and ethnic upheaval of recent years.

19 "Zavershilas' rabota zasedeniia Vremennogo pravitel'stva," July 1, 2010, website of the interim government, http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=596&Itemid=1.

20 "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," UN Doc. A/Res/60/147, Dec. 16, 2005 (hereafter "UN Basic Principles").

If there were already significant challenges for creating a fair mechanism for compensating victims of the events in April and May, they pale now in comparison to the situation after the mass killings and destruction in Osh and Jalal-Abad in mid June. After initial humanitarian and reconstruction needs have been met, what will be needed is a well-conceived reparations program that would not only provide material compensation, restitution, or rehabilitation to victims and their families, but would also undertake more symbolic measures aimed at affirming to the society as a whole that the victims are full citizens of Kyrgyzstan whose rights and dignity must be respected, independent of their ethnic origins.

In addition, there are other potential cases of violations of human rights from the past for which reparations could be forthcoming. One such case is the Nookat incident. One of the early decisions of the interim government was to issue an amnesty to the 32 people convicted and imprisoned in connection with the Nookat protests in 2008. Civil society groups have criticized the decision; they argue that the amnesty did not provide official recognition that the judicial process was deeply flawed and violated many basic rights of those convicted, nor did it nullify the convictions. The prosecutor's office has not shown any determination to investigate fully allegations of torture in relation to these events. Thus, to date, an opportunity has been missed to provide satisfaction to those wrongly convicted, in the form of "an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim," as contemplated in the UN's statement of "Basic Principles" on reparations.²¹ The state should also provide reparations for those participants in the Nookat events who were victims of torture and/or miscarriage of justice.

There would be several potential advantages to the creation of a single reparations program to provide similar kinds of redress to the victims of gross violations of human rights, whether those violations occurred in the context of the mobilizations that led to the downfall of the former government, in exercising the right to religious freedom, in reporting on government corruption, or during the violence that devastated parts of southern Kyrgyzstan in June.²² The advantages of a single, integrated reparations program include the following:

1. It could diminish the risks of politicization, as mentioned above, since receiving reparations would not depend on the political nature of the event.
2. It would send a clear social message that these kinds of crimes will not be tolerated, no matter what the context or the characteristics of the victims; that is, that no victims of the same violation are more entitled than others or are more valuable to the society than others.
3. It would be in line with international standards that include the rights of all victims of gross human rights violations to reparations.

Experience in other countries emerging from periods of large-scale human rights violations has shown that even when the political will exists to create a reparations program, there are

²¹ Ibid., para. 22 (d).

²² As of this writing, it appeared that nonstate actors were directly responsible for many of the crimes committed during the June crisis. The UN Basic Principles set forth an obligation of a state to "provide reparation to victims for acts or omissions which can be attributed to the State" (para. 15). At the same time, they call on states to "endeavour to establish national programmes for reparation and other assistance to victims *in the event that [other] parties liable for the harm suffered are unable or unwilling to meet their obligations*" (para. 16, emphasis added).

numerous pitfalls and challenges to actually establishing an effective program. In general terms, it has often been difficult to define the types of crimes to be covered, to ensure adequate means for victims' involvement in the creation and oversight of the program, and to define criteria for establishing who is a victim and who is a beneficiary of the program. Defining the right measures of reparation, including appropriate levels of material compensation, finding a balance between individual and collective forms of reparation and between material and symbolic forms pose additional challenges.²³ As with truth-seeking mechanisms, process is important for the potential success of such a program; transparency and the active participation of victims' groups and other civil society actors with expertise on the issues are two particularly important factors.

A broad reparations initiative should build on the truth-seeking efforts suggested in the previous section, which would cover an agreed time frame and include the June events in Osh and Jalal-Abad. Publicizing the findings of these investigations would constitute an initial form of reparation for the victims of the June events.²⁴ At the same time, the substance of the findings could provide important criteria for defining the substantive framework and further measures to be included in the reparations program.

In addition, consideration should be given to:

1. Establishing a mechanism for effective consultations with victims about the forms and means of reparation that would be most meaningful to them, especially regarding nonmaterial or symbolic forms;
2. Ensuring that victims be “treated with humanity and respect for their dignity and human rights and ... care [taken] to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation;”²⁵
3. Including rape and other gender-based violence among the violations for which reparations are provided; in these cases, in addition to special attention to the point above, measures should be included to protect the identity of the victims, if they so desire;
4. Ensuring that the mechanisms for obtaining reparations are easily accessible to women;
5. Including symbolic measures aimed at bridging ethnic, religious, and regional differences;
6. Drawing on international experiences in designing and implementing reparations programs.

Criminal Justice

Criminal justice is generally a key component of any transitional justice approach. Criminal investigations and prosecutions, especially of those most responsible for serious abuses of human rights, serve to counter impunity, ensure the rule of law, and signal a commitment to effective protection of human rights. The events of June have given rise to increased debate in Kyrgyzstan about whether some international justice mechanism may be required to deal with

²³ A useful taxonomy that refers to some of these issues can be found in *The Handbook of Reparations*, edited by Pablo de Greiff (Oxford University Press, 2006).

²⁴ The UN Basic Principles consider the “verification of the facts and full and public disclosure of the truth” to be one form of reparation (para. 21 [b]).

²⁵ UN Basic Principles (para. 10).

the seriousness and scope of this most recent period of violence.²⁶ Since ICTJ's mission preceded the June events, the team did not address this question specifically, but rather focused on the nature of offenses, failures of accountability to date, and the ways in which national justice institutions might confront the abuses of Kyrgyzstan's recent past as part of a transitional justice approach. Any discussion of the need for international justice mechanisms following the extensive violence in June should also start with this threshold question.

Prosecutable Abuses Pre- and Post-Bakiev

At the time of the ICTJ team's visit to Kyrgyzstan, there had been no incidents of violence whose ferocity and scale approached what the country would experience in the south just a few days after the team's departure. The enormity of those crimes must be taken into consideration in defining priorities in prosecutorial policies as part of a transitional justice strategy in Kyrgyzstan. The information available in the international and Kyrgyzstani media and from initial investigations by Human Rights Watch several weeks after the mayhem still leaves some key questions unanswered, including how the violence began, the number killed, the extent of property damage and destruction, whether state security forces participated in the violence and committed human rights violations, the extent to which members of both the Kyrgyz and the Uzbek communities were engaged in the commission of crimes (as opposed to a pogrom of one group—the Uzbeks—by the other), and the possible coordinated nature of the criminal actions.

Prosecutable abuses committed during the reign of Bakiev included at least the following: electoral fraud; beating of journalists; assassination of two journalists and one member of the political opposition; police brutality, and torture of ordinary criminal suspects and, more recently, of religious activists. Due process violations occurred in connection with trials of political opponents and religious activists.

There was also a consensus among the interlocutors in Kyrgyzstan that corruption has plagued the country in the past two decades and that the Bakiev family effectively turned corruption into state policy. While the status of corruption as a human rights abuse remains debatable, there is little doubt that in the case of Kyrgyzstan it had a direct bearing on conventional forms of human rights abuses. For example, corruption in the judiciary led to conviction of innocents and nonprosecution or acquittals of actual criminal offenders. In constructing their corruption schemes, government officials and individuals closely connected with the government acted to suppress and repress members of the media who reported about corruption, as well as others who stood in the way of the deals, often using state security forces or other state resources to accomplish their goals. It is probable that the same sources were also behind the use of physical violence and, in specific cases, the assassination of journalists critical of the regime.

The crimes committed in mid-June 2010 during the unrest in southern Kyrgyzstan exceed in magnitude and gravity the abuses committed under Bakiev or his predecessor, Akaev. The media reported on widespread witness allegations of participation by the Kyrgyzstani army and police in some of the crimes. Human Rights Watch researchers found that both Kyrgyz and Uzbek mobs in the city of Osh and the towns of Jalal-Abad and Bazar-Kurgan were responsible for acts of violence.²⁷ There is little doubt, however, that ethnic Uzbeks were the

²⁶ Kyrgyzstan is not yet a party to the Rome Statute of the International Criminal Court.

²⁷ "Kyrgyzstan: New Evidence Emerges on Brutality of Attacks," Human Rights Watch, June 25, 2010, www.hrw.org/en/news/2010/06/25/kyrgyzstan-new-evidence-emerges-brutality-attacks.

principal targets and victims of violence. Thousands of their houses were destroyed, and hundreds of thousands of Uzbeks fled to other parts of Kyrgyzstan or across the border to Uzbekistan.

It remains unclear how the June violence began and whether the attacks against Uzbek civilians were systematic. Government officials repeatedly claimed to have arrested individuals who instigated and led the attacks on behalf of former president Bakiev. The government has, however, failed to produce concrete evidence backing the allegations. The acts committed in June were criminal in nature and should be prosecuted, regardless of whether they could be classified as crimes against humanity or as ordinary crimes. For a crime to amount to crime against humanity, it must be part of a widespread or systematic attack directed against a civilian population, with the perpetrators' knowledge of the attack. It appears that the scale of the attacks in the south of Kyrgyzstan was such that these would meet the "widespread" requirement, but a final determination on this and other elements of the crime can only be the result of a thorough investigation. Such an investigation could also establish whether the attacks were systematic, i.e. whether the acts of violence were organized, instead of having occurred randomly.²⁸

Impunity Under Bakiev and the Demand for Accountability

Although definitive evidence on the subject of accountability for police abuse is not available, according to a human rights lawyer representing victims of police abuses, the prosecutor's office had registered 785 criminal complaints against abusive policemen during the Bakiev regime. Of these, 26 resulted in an opening of a criminal investigation and seven or eight in indictments. None of the indicted policemen have been convicted. In the few cases in which trials were held, police officers were charged with exceeding official authority (Article 305 of the Criminal Code) rather than torture (Article 305/1).²⁹ The Criminal Code currently provides for a maximum five-year prison sentence for those committing torture.

In addition to the general lack of prosecutorial and judicial independence, a specific problem appears to have marred prosecutions for police brutality: alleged collusion of the medical profession with police structures. The ICTJ team heard from different sources that, upon examining victims of police abuses, doctors regularly issued medical reports wrongly describing or not mentioning the injuries.

Virtually all of the civil society representatives and government representatives interviewed readily stated that criminal prosecutions should be used as a means of addressing past abuses. At the same time, they expressed a preference for limited prosecutions. Trials of the worst offenders would, in their view, serve as an example and teach a societal lesson that similar abuses of human rights will not be tolerated. Other perpetrators should not necessarily face criminal charges, interlocutors reasoned, because the system in some way forced the lower-level perpetrators to become implicated against their will in the abuses, and nonprosecution would facilitate reconciliation in the country.

²⁸ Jurisprudence of the International Criminal Tribunal for the former Yugoslavia has elucidated the meaning of the term "widespread." See e.g., *Prosecutor v. Tihomir Blaskić*, Appeals Judgment, July 29, 2004, para. 101.

²⁹ NGO interview June 1, 2010 and interview with Bolot Sherniyazov, minister of Internal Affairs, June 5, 2010.

However, it should be noted that international obligations require that cases of torture be investigated and prosecuted. Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to which Kyrgyzstan is a party) provides that, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” Article 7 stipulates that if a person allegedly involved in torture is found in the territory of a state party, that state is to “submit the case to its competent authorities for the purpose of prosecution,” or extradite the person for prosecution elsewhere.³⁰

Ongoing Investigative Initiatives

At the time of the ICTJ team’s visit, criminal investigations for past abuses focused on corruption by Bakiev, his family, other members of his government, and their close collaborators. As of early June, the Office of the Procurator General had launched 24 cases against former government officials accused of involvement in corruption schemes and an additional 28 cases on corruption charges against members of the Bakiev family and people close to them.³¹ The rest of the approximately 100 cases under review concerned the events in Bishkek on April 7 and the examination of the legality of court verdicts against Bakiev’s political opponents. Eleven former government officials, including ministers and members of Bakiev’s secretariat, have been charged with murder and/or abuse of official capacity relating to the April 7 events in Bishkek.³² Overall, 10 former ministers and five former members of Bakiev’s secretariat have been charged with crimes.³³

There appeared to be only a handful of ongoing criminal investigations for torture, abuse of authority with the objective to stifle media freedoms and coerce court decisions, or beatings and assassinations of journalists. When asked by the ICTJ team whether his office had opened cases for human rights abuses, the procurator general responded, “Yes, but human rights should be understood in a broad sense. If a member of the government illegally sold state property, this is a mass violation of human rights of the citizens of the state.” The absence of investigations into police abuses is of special concern in light of the widespread nature of police abuses and the lack of accountability in the past for such abuses.

At the time of the team’s visit, all criminal cases on corruption or human rights abuses were in the investigative stage. Criminal investigations are by nature not transparent, so it was difficult to assess the quality of ongoing investigations. The team took note, however, of the widespread allegations made by nongovernmental activists that the investigations were selective on political and financial grounds. Some feared that the prosecutions could turn into a witch hunt against people associated with the former government. In addition, prosecutors and the financial police were allegedly targeting businessmen who had been close to the Bakiev government; even these suspects could allegedly escape prosecution if they agreed to pay employees of the Procuracy (Office of the Procurator General) and/or the Financial Police certain amounts of money in order to be exempted from further investigation. The team’s mission did not involve

30 Kyrgyzstan acceded to the convention in 1997. See the website of the Office of High Commissioner for Human Rights at www.unhchr.ch/tbs/doc.nsf/0/80256404004ff315c125638b005e6b15?OpenDocument.

31 *Monitoring the Situation in Kyrgyzstan after Events of 6-7 April 2010: Situation Analysis for May 2010*, Citizens against Corruption (Bishkek), 3.

32 *Ibid.*, 4.

33 Interview with Baytemir Ibrayev, procurator general, June 2, 2010.

verification of such allegations, but it is telling that at least one of member of the interim government assessed them as credible.

A highly positioned official directly involved in the work of an investigating agency told the ICTJ team that major progress had been made in the investigations of two high-profile human rights cases from Bakiev's era and that the results would soon become public. One case concerns planting heroin in the luggage of Omurbek Tekebayev, leader of the Ata-Meken Party and until recently a member of the interim government, when he traveled to Warsaw in 2006. The other case relates to the death of Medet Sadyrkulov, Bakiev's former chief of staff, who died in a mysterious fiery automobile accident in March 2009. At the time of this writing, results of the investigations have not been made public.

On April 30, 2010, the interim government issued a decree that offers amnesty to those who confess to the crime, assist the investigation, and—in the case of an economic crime—compensate for the damage. The court needs to be satisfied that the claims made by the person are truthful so the amnesty would be granted at the end of the prosecutorial process.

At the same time, in the interpretation of the procurator general, the decree does not allow amnesty for the most serious criminal offences, such as the abuse of power by a judge who, following a political order, has sentenced an innocent person to long-term imprisonment. Curiously, the decree includes torture among the crimes for which amnesty is permitted. This may be a simple case of oversight, but it should in any case be corrected to prevent impunity for this serious crime.

Next Steps

The government should, as a matter of urgency, examine the allegations of continued abuse of prosecutorial powers and, if it is proven that abuses persist, it should create mechanisms to prevent them. This is a process that may be linked to the application of other transitional justice mechanisms, such as institutional reforms (including vetting of prosecutors) and other steps to strengthen judicial independence, and investigation of the truth (an aspect of which could contribute to exposing prosecutorial abuses). Judicial independence also requires a clearly communicated and enforced political decision that law enforcement and the justice system must not be used as political weapons.

In view of the scale of the crimes committed in June, their ethnic aspect, and the weakness of Kyrgyzstan's judicial and prosecutorial agencies, the government should consider seeking assistance from the United Nations or the Justice Rapid Response in conducting criminal investigations;³⁴ this assistance could take the form of advisors or of investigators and prosecutors working with a clearly defined mandate, side by side with Kyrgyzstani counterparts. The involvement of international practitioners could weaken the political resistance to sensitive prosecutions, enhance the perception of impartiality, alleviate political pressure on domestic prosecutors and judges, and enhance professionalism, which the domestic structures sometimes lack. However, in discussing this option, it would be important to take into account that direct international involvement could generate resistance in some Kyrgyzstani political and legal

³⁴ Justice Rapid Response is an international standby mechanism for rapid deployment of criminal justice and related professionals, at the request of a State or international institution in situations "where the identification, collection and preservation of information would assist at any stage a wide range of international and transitional justice options." See www.justicerapidresponse.org/about_jrr.htm.

quarters, and that securing international experts to participate in different ways can take considerable time and resources.

In any event, a key task for the government should be the creation of a transparent prosecutorial strategy based on a systematic mapping of abuses committed in the past and during the events of June. The cases that led to death and serious harm to physical integrity should be given priority in investigation and prosecution. So far, corruption cases have dominated the prosecutors' agenda. A new strategy should ensure that political or ethnic bias with regard to the suspects and victims does not taint future prosecutions.

Institutional Reforms

Reform of institutions can help prevent violations of human rights and is a key component of transitional justice. As part of a transitional justice approach, institutional reform measures generally focus on law enforcement and judicial and security sector institutions, as these have most often been responsible for practices that constitute violations. Although there is no single set of institutional arrangements that assures respect for human rights, there are best practices that make it more difficult for states and powerful segments of society to carry out repressive measures. The section below surveys the areas of institutional vulnerability in Kyrgyzstan, notes those areas where the government has already begun to take appropriate measures, and suggests some possibilities for further changes.

Abuses by Public Institutions

A short description of some of the major problems in the functioning of four key institutions—the judiciary, the Procuracy, the police force, and the National Security Agency—provides background for a discussion on reforms.³⁵

The current regime has inherited a judicial corps whose level of professionalism is low and whose tolerance for corruption—including in its own ranks—and subservience to political authorities is high. A term known to all observers of Kyrgyzstan's politics and society, "telephone justice," refers to the frequent use of phone calls by individuals in a position of power to judges, requesting that they rule in favor of the caller or the interests he or she represents. Judges find it difficult to resist such pressures. Judicial submissiveness has been particularly disquieting in cases with political overtones, such as the Nookat case, criminal trials of prominent political opponents under the Bakiev regime, and cases dealing with exclusion of opposition candidates from election races.

The Procuracy is another institution in need of reform, in the opinion of a number of interlocutors and international organizations interviewed. Prosecutors are widely believed to be implicated in bribery and corruption, as well as extortion of businesses and others, even now in the post-Bakiev period. Prosecutors were instrumental in bringing politically motivated charges against Bakiev's real or perceived opponents. At the same time, the Procuracy has shielded institutions engaged in abuse—most prominently the police—from prosecution for human rights violations and corruption.

³⁵ The army is not included in this analysis, because none of the interlocutors with whom the team met included it among the key institutions responsible for human rights abuses or heavily involved in corruption, although this perception may have changed following the events of June.

More generally, the Procuracy has far-reaching supervisory functions. The “general supervision of legality” grants it broad powers to initiate proceedings or issue warnings on what it considers to be violations of law on economic, political, and social matters. This attribute has been the focus of much criticism, as has the ability of the Procuracy to effectively be a “judge in its own case;” it carries out criminal investigations in certain serious cases and prosecutes the cases in court, while at the same time overseeing the legality of the investigation.

Several law enforcement bodies in Kyrgyzstan operate under the umbrella of the Ministry of Internal Affairs (MVD): traffic police, ordinary police (militia), criminal investigation departments, and the Internal Security Force (in charge of maintenance of order in unstable situations). The reputations of these police forces have been gravely damaged by widespread allegations of corruption, inefficiency, and mistreating people in police detention.

Virtually all interlocutors took it for granted that the police are corrupt. This is a common situation in countries in which the police force is underpaid and overstuffed. In Kyrgyzstan the salaries have until most recently lagged, and the monthly average salary was about 6,000 som (US \$130). The low salaries have led to other abuses, in particular forms of racketeering and extortion from individuals and small businesses. At the same time, the underpaid and demoralized Kyrgyzstan police have been inefficient in their main task: preserving public order. Some of the human rights defenders interviewed asserted that hundreds of policemen were injured in Talas and Bishkek in April, and some were subsequently denied medical care, which may have a negative impact on loyalty and morale and suggests that reform is needed at many levels.

The police have also had a major role in committing human rights abuses. By all accounts, use of excessive force is routine in arrests of individuals suspected of even petty crimes. Ill-treatment, sometimes amounting to torture, also occurs in police detention facilities, in particular during the period before the arrested person has seen a lawyer.

The National Security Agency (SNB) has been used by previous governments as an instrument of intimidation or extrajudicial repression. The SNB was the frontline institution in the repression of political opponents in the Akaev and Bakiev regimes, and there have been reports of torture of suspects held in detention cells of the SNB. The SNB has responsibility for the investigation of criminal cases in anti-state cases, such as terrorism and treason.

Ongoing Reforms

In the first two months after the April events, efforts by the interim government to reform law enforcement and judicial institutions developed in two main directions: proposing changes to the draft constitution and making other kinds of provisional changes by means of government decrees and ministerial bylaws. The reform process remains incomplete, insofar as comprehensive reforms have been left for after the parliamentary elections, planned for early October.

The interim government’s former minister of MVD informed the ICTJ team of several significant measures during his tenure. The Ninth Department of the Ministry, which was used to intimidate the political opposition, has been closed. The government significantly increased

salaries for police officers. All deputy heads of the national ministry in Bishkek, all provincial MVD heads, and 25 percent to 30 percent of the heads of district offices have been replaced.³⁶

With respect to the judiciary, the interim government has announced that judges themselves, rather than the president, would select court chairs to be rotated every three years. The chairs assign cases to judges and influence judicial remuneration and promotions. The new constitution strengthens the oversight role of the parliament in relation to the Procuracy. It also introduces new procedures for appointment and dismissals in the judiciary and Procuracy. These appear to be positive steps.

In the case of Supreme Court justices, the president will propose candidates to parliament for its approval, but these candidates must be nominated by the Council for Judicial Selection. In the case of appointments to lower courts, the president will appoint judges from among candidates proposed by the same council. Unlike the previous nominating body, the Council for Judicial Selection will be broadly representative of Kyrgyzstani society and is less likely to become a tool of the executive. The council will have one-third of its members selected by the parliamentary majority, one-third by the parliamentary minority, and one-third by civil society organizations.³⁷ It is anticipated that a majority of the members of the new council will be judges.

Instead of a separate Constitutional Court, the new constitution establishes a Constitutional Chamber within the Supreme Court that will rule on constitutional cases in the future.³⁸

The procurator general will be appointed by the president, as was done in the previous regime, with parliamentary approval; parliament will also have powers with regard to the removal of a procurator general, which it did not have before.³⁹ The constitution also strengthens the autonomy of the Procuracy by granting the procurator general the right to propose to the president nominees for positions as deputy procurators general. The reach of the Procuracy's general supervisory function is narrowed to government executive officials alone; and the constitution reduces the Procuracy's direct criminal investigative responsibilities to cases involving government officials. These reforms are considered generally positive.

Broad Outline of Some Possible Future Reforms

This section is not meant to present a guide for the reform of law enforcement, security, and judiciary bodies, nor is it in any way exhaustive. Rather it aims to help further the ongoing discussion in Kyrgyzstan on this issue by focusing on some practical experiences with vetting processes and highlighting a few other issues that emerged during this mission.

³⁶ The ICTJ team was not in a position to assess to what extent these changes were driven by a concern for greater respect for human rights and greater professionalism in the performance of police duties.

³⁷ In 2004 President Bakiev issued a decree establishing for the first time a judicial nominating body, the National Council for Justice Affairs, which is similar in some respects to the proposed Council for Judicial Selection. The former council had 15 members—with five drawn from the judiciary, two from parliament, three legal scholars, and one each from the legal department of the president and prime Minister, the Ministry of Justice, Union of Advocates, and Union of Jurists.

³⁸ The interim government abolished the Constitutional Court because of its role in facilitating the rise of Bakiev's personalist rule.

³⁹ The president will only be able to remove a procurator general if one-third of the members of the parliament approve; additionally, the parliament itself will have the right to remove the procurator general by a two-thirds vote.

Courts and Prosecutorial Offices

Most pertinent for a transitional justice agenda, the ICTJ team was informed of proposals in Kyrgyzstan to carry out a vetting process in the judiciary after parliamentary elections in the fall. Our interlocutors indicated that only new judges appointed after the fall elections would have a permanent appointment. Sitting judges will have to submit to an assessment of their work before a permanent appointment is granted. If not done precipitously, this offers an important opportunity to consider respect for human rights and judicial independence as relevant evaluation criteria.

The exact form the vetting process will take remained open at the time of the team's visit.⁴⁰ In international experience, two approaches are possible: review and reappointment. The former represents the gradual restructuring of a continuously existing institution. It implies "examining the background of serving employees and the removal of those who are found unsuitable for public service because they have been involved in serious abuses."⁴¹ The reappointment process involves declaring all positions in the institution vacant and then allowing personnel to reapply for their own jobs or any other job in the institution. An independent body examines applications from former employees and external applicants; officials continue to function in their posts during the process.

In a review process, the reviewing body has the burden of proof that the official is unfit to hold office, and the official has a right to a hearing or judicial review if he or she is not selected. In a reappointment process, the applicant needs to prove that he or she is best qualified for the vacant post, and fundamental due process requirements do not necessarily apply "as there is no right to be appointed to public office."⁴²

Because of the invasive nature of a reappointment process, it is considered appropriate only in circumstances "when the public institution in question is fundamentally dysfunctional and when an overall improvement of the rule of law is unlikely to be accomplished without it."⁴³ Review processes have been much more common than reappointment as a vetting procedure, including the lustration efforts in Poland, Czech Republic, and Hungary. In either type of process, procedural standards and fairness would have to be satisfied. The standards include legitimacy, safeguarding human rights, objectivity, being governed by rule of law, and individual application.⁴⁴

40 Since the team's visit, there have been developments. In late July and early August, the dismissal of judges was the subject of at least two decrees in a process that some human rights advocates have criticized, according to the press. "Kyrgyzstan's human rights activists state 'the decrees on dismissal of judges are legally unsound and violate their rights,'" *News Agency 24.kg*, Aug. 9, 2010, accessed at <http://eng.24.kg/community/2010/08/09/13000.html> on Aug. 10, 2010. ICTJ's team was not able to assess this recent development.

41 Alexander Mayer-Rieckh, "On Preventing Abuse: Vetting and Other Transitional Reforms," in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York: Social Science Research Council, 2007), 487.

42 *Rule-of-Law Tools for Post-Conflict States — Vetting: An Operational Framework* (New York and Geneva: OHCHR, 2006), 27.

43 *Ibid.*, 28.

44 Legitimacy of vetting measures means that their objective is to remove individuals implicated in gross human rights violations from state institutions. Vetting procedures safeguard human rights of the people targeted by such measures by, inter alia, upholding the principle of nondiscrimination and by offering a legal remedy. Objectivity of vetting procedures is achieved when they are based on objective and reasonable criteria, setting aside any unlawful discrimination as well as prosecution based on political or ideological opinion. The requirement of legality is satisfied if vetting procedures are governed by law so as to ensure they not be taken

The reappointment process provides a better opportunity to change public perceptions of and promote trust in a public institution that was involved in serious abuses. It is also more suitable than review to promoting minority or gender representation, or to decreasing the overall number of personnel.⁴⁵ A reappointment process would entail a removal of all judges from their positions and an open competition in which they could apply along with external candidates. The need for and political feasibility of a reappointment process in Kyrgyzstan is for the post-election government to assess. Obstacles such as resistance within the existing institutions are easy to envisage, but can be overcome if the political will exists.

The example of Bosnia and Herzegovina shows that an intervention of this kind can have positive effects on the professionalism of judges (and prosecutors) and their adherence to human rights principles. The process of appointment and reappointment, which included both judges and prosecutors, was carried out between 2002 and 2004 by mixed domestic-international judicial and prosecutorial councils, and resulted in the reappointment of 70 percent of incumbents. At least in some of the remaining 30 percent, failure to be reappointed was a consequence of misconduct during the war from 1992-95 or during the post-war period, when some judges and prosecutors refused to vacate houses and apartments belonging to people displaced by the war, or engaged in other types of improper conduct. A key component of the reappointment process was the interviewing of all applicants, conducted in panels with one international and two Bosnian members present. The process ran simultaneously with the restructuring of courts and prosecutorial offices, including the reduction of judicial and prosecutorial positions from 1,200 to 970. While there has been no empirical research to assess the effects of the reappointment process, the Bosnian legal system now appears to be more independent of the nationalist political parties than in the past, and the multiethnic character of Bosnia's judiciary that was destroyed by war was rebuilt in part.⁴⁶ Successful prosecutions for corruption, money laundering, and other economic crimes were extremely rare—if not altogether absent—in the past; such prosecutions have now become frequent.

A similar vetting process could also be helpful for the Procuracy in Kyrgyzstan, as it is similarly plagued with allegations of abuse and corruption. Nonetheless, it is unlikely to be undertaken anytime soon. The draft constitution does not address this issue, and the current procurator general told us, “No internal changes in the Procuracy need to be made. There were already many reforms introduced in the prosecution system. All that is needed is that other [structures] not interfere in the activities of the Procuracy.”⁴⁷

Some may fear that vetting would leave the affected institutions paralyzed during the process. It is important to note, however, that judges (and prosecutors) whose posts are declared vacant could continue to perform their duties during the process. Finally, some interlocutors expressed doubt that the body in charge of vetting could operate independently. In that regard, consideration might be given to including internationals in the interviewing and decision-

arbitrarily. Vetting measures should be applied individually in the sense that they must set aside any form of objective or collective responsibility based, for example, on mere political affiliation or membership in the structures or services of the state. See Federico Andreu-Guzmán, “Due Process and Vetting,” in *Justice as Prevention*, 467-68.

⁴⁵ Alexander Mayer-Rieckh, “On Preventing Abuse: Vetting and Other Transitional Reforms,” in *Justice as Prevention*, 489-90.

⁴⁶ See Caspar Fithen, *The Legacy of Four Vetting Programs: An Empirical Review*, ICTJ, 2009, 8.

⁴⁷ Interview with Baytermir Ibrayev, prosecutor general, Bishkek, June 2, 2010.

making bodies to enhance the perception of impartiality and to make the tough calls that the Kyrgyzstani members might prefer to avoid.

Police

Kyrgyzstan's police force, no less than the judiciary and the prosecutorial offices, appears to be in need of a fundamental change, including removal of MVD officials who have systematically violated human rights or are manifestly corrupt. In this context, reappointment offers certain advantages over a review process: a shorter time frame, fewer procedural burdens on the body in charge of the process, and greater potential for enhancing public trust in the police. Reappointment would also provide an opportunity to address the extreme imbalance in the ethnic composition of the Kyrgyzstan's police.⁴⁸ The advantage of review is that its less invasive character cushions the risks to stability. Regardless of whether a reappointment or review process is chosen, criteria for the dismissal as well as for the recruitment should be clear and transparent. It would also be crucially important that the international community provide adequate financial and technical support from the outset, while leaving the major role in the process with national actors.

Reappointment as a form of vetting in the police force may appear as a hugely demanding endeavor, difficult to implement. However, in at least one recent case—Georgia—the personnel change took an even more radical form, and the results have been positive on balance.⁴⁹ The government dismissed 16,000 employees of the Ministry of Internal Affairs—most of them from the especially corrupt traffic police—soon after Mikheil Saakashvili became president in 2004.⁵⁰ A recent public opinion poll showed that 82 percent of Georgians had a favorable opinion of the new police—a significant jump from 65 percent in 2004.⁵¹ The traffic police, particularly corrupt in the past, no longer take bribes on the roads.⁵² In the Transparency International ranking of countries free of corruption, Georgia has risen from number 124 in 2004 to 66 in 2009.⁵³ In other sectors of the police where vetting (review) was employed, the change of personnel has been more gradual.

Neither reappointment nor a review process is a panacea. The difficult decision about their appropriateness lies with the new government, which will need to carefully weigh different considerations. For example, while reappointment opens a route for removal from service of police officers who have been shown to be consistent violators of human rights or especially

48 For example, in Osh Province, ethnic Uzbeks comprise 52 percent of the total population, according to the figures from 2005. Yet only 10 percent of the Department of Interior staff were Uzbeks, while 80 percent were Kyrgyz. *Concept Paper – Kyrgyz Republic: Ethnic Minorities Issues*, OSCE, 2005, 3, www.osce.org/documents/cib/2005/04/13865_en.pdf.

49 *Georgia: Compliance with obligations and commitments - Regular report prepared by the Directorate General of Democracy and Political Affairs (January 2010)*, SG/Inf(2010)1, Council of Europe, para. 21, [www.coe.mfa.gov.ge/files/coe/Regular_report_prepared_by_the_Directorate_General_of_Democracy_and_Political_Affairs_\(January_2010\).doc](http://www.coe.mfa.gov.ge/files/coe/Regular_report_prepared_by_the_Directorate_General_of_Democracy_and_Political_Affairs_(January_2010).doc). (“Since 2005, a comprehensive police reform has been carried out in the country and is broadly regarded as one of the most successful achievements of the Government, in particular in relation to the fight against corruption.”)

50 Alexander Kupatadze, George Siradze, and Giorgi Mitagvaria, “Policing and Police Reform in Georgia,” in *Organized Crime and Corruption in Georgia*, Louise Shelley, Erik R. Scott, and Anthony Latta. eds. (Oxon and New York: Routledge, 2007), 97.

51 International Republican Institute, *Georgian National Study, September 29 – October 5, 2009*, www.iri.org.ge/eng/poll/October2009-eng.pdf, 47, and *Georgian National Voter Study*, October - November 2004, www.iri.org.ge/eng/poll/2004-November.zip, 52.

52 Olga Allenova, “Бюро полицейских услуг” (“Bureau of Police Services”), *Kommersant'Vlast'* (Moscow), № 12 (865), March 29, 2010, www.kommersant.ru/doc.aspx?DocsID=1341796.

53 Ibid.

corrupt, it could entail risks for stability if those removed join forces with political and criminal groups opposed to the new government. It is important to understand in this regard that the final result of a vetting process is not the removal of everyone from the public institution—a concern expressed by some of our interlocutors. As a rule, the majority retains the existing post—or obtains another—in the institution. (Exceptionally, as was the case in Georgia, the government dismissed most of the police cadre.)

The Ministry of Internal Affairs has already made efforts to introduce best practices in training and selecting personnel, and these should be supported. There is also a need to sensitize the police engaged in multiethnic areas to ethnic issues. Special training on policing in multiethnic communities could be used for this purpose. The need to address this issue is even more urgent after the events in June in Osh and Jalal-Abad.

National Security Agency

There is little indication in the draft constitution, in public statements of the leaders of the interim government, or in the comments of our interlocutors that a reform of the SNB is a matter of priority. It is clear, however, that human rights in the country will remain under threat if the SNB is not held to greater accountability. One option outlined to the ICTJ team during its time in Bishkek was the transformation of the SNB into an intelligence service dealing with foreign matters exclusively and the transfer of domestic responsibilities to the MVD. A careful study of the options is needed to ensure that the security services, wherever they are housed or whatever they are called, are not used in the future as an instrument of intimidation or extrajudicial repression.

3. Conclusions and Recommendations

1. **The importance of addressing past abuses.** A major issue for Kyrgyzstan's future is how best to address the tendency over the past several years toward the existence of a political regime that is increasingly restrictive of human rights and increasingly willing to use violence against its opponents. The serious abuses of power and impunity for politically motivated crimes have become normal and expected in Kyrgyzstani society. The atrocities and destruction committed in June in Osh and Jalal-Abad revealed much deeper divisions and a greater degree of decomposition—of respect for human rights, state institutional capacity, and national unity—than had been acknowledged before.
2. **Elements of a transitional justice approach.** In the vibrant Kyrgyzstani civil society community, there is a strong demand for accountability for past crimes and recognition of the importance of exploring other mechanisms to that end, in addition to criminal prosecutions. In this context, a transitional justice approach designed to engage broad sectors of Kyrgyzstani society, especially those who have suffered abuses or have been marginalized from public participation, could potentially help Kyrgyzstan both to achieve accountability for these past crimes and solidify the commitment to democratic governance. In particular, serious considerations should be given to:
 - a. holding a truth commission and using public hearings to engage a broad public and explore patterns of abuse over a number of years, in addition to clarifying specific incidents;
 - b. defining a transparent prosecutorial strategy for past crimes that prioritizes cases that led to death or serious harm to physical integrity and limits the risk of politicization of the criminal process;
 - c. creating a comprehensive reparations program that provides victims not only with material compensation and rehabilitation, but also undertakes symbolic measures aimed at building greater inclusion and national unity; and
 - d. carrying out a vetting process in law enforcement and justice sector institutions to weed out those responsible for the worst abuses.

3. **Potential value of a transitional justice approach.** In general terms, these measures could contribute by:
 - a. demonstrating and giving formal recognition to the fact that serious human rights violations and other abuses of power have affected the lives of thousands of Kyrgyzstani citizens of all economic and ethnic groups, and providing some forms of redress for them;
 - b. documenting and helping to correct the systematic and system-wide abuses in law enforcement agencies and the justice system;
 - c. opening a public discussion and establishing a broader social consensus regarding the moral and ethical rules for acceptable political practice; and
 - d. generating a greater sense of inclusion and greater public trust in state institutions.
4. **Range of abuses to be addressed.** In addition to the urgent and necessary focus on grave human rights violations, in the debate on and planning of transitional justice work in Kyrgyzstan, serious consideration should be given to broadening the scope of the efforts to include other kinds of rights violations and pervasive abuses of state power. The latter could include corruption, electoral fraud, system-wide abuses by law enforcement and justice institutions, and discrimination on religious and ethnic grounds. These are the issues that civil society and political leaders identified as major sites of impunity and/or major impediments to breaking the deepening tendency toward authoritarian rule and conflict.
5. **The importance of consultation.** In any discussions in Kyrgyzstan about whether to go forward with these kinds of transitional justice measures, it would be important to ensure consultation with all of the stakeholders, especially the victims of the violations and abuses, and transparency in the decision-making and the proceedings.
 - a. Final decisions regarding these measures might best be made once the new parliamentary government is installed, since that would provide the strongest legitimacy and demonstration of political will.
 - b. In preparation, over the next few months efforts could focus on activities that open a debate on these issues and introduce international experiences with transitional justice measures to Kyrgyzstani civil society and political leaders, as there has been relatively little access to that experience until now.
6. **With respect to a truth commission.** Should this idea find the requisite traction and support nationally, decisions about how it would function and the scope of its inquiry should be made based on a participatory discussion; any commission should be granted independence and backed with some form of official, legal recognition. In those discussions, consideration should be given to:
 - a. Encompassing all of the periods of repression and abuse to permit the identification of any more systemic problems and patterns in the violations (in addition to clarifying specific cases or incidents). Such a period might

begin in 1994, when the country began a decline toward authoritarian rule, and end on June 27, 2010, when the new Constitution was approved.

- b. Strong consideration should be given to incorporating public hearings as part of the process because they can greatly facilitate public involvement and broad social debate on the issues.
 - c. Finally, international involvement—either through different forms of technical assistance or with the participation of international members of the commission—could help strengthen the credibility of such an endeavor.
7. **Reparation for victims of past abuses.** If there were already challenges for creating a fair and inclusive mechanism for providing reparations to victims of serious human rights violations of the past (beyond the compensation provided to victims of the April and May events), the situation has become more complex after the mass attacks, killings, displacement, and destruction in Osh and Jalal-Abad regions in mid-June. Further discussion of this issue is required; however, a well-conceived reparations program would:
- a. Provide material compensation, restitution, and rehabilitation to victims and their families;
 - b. Undertake more symbolic measures aimed at affirming to the society as a whole that the victims are full citizens of Kyrgyzstan, whose rights and dignity must be respected, independent of their ethnic origin, religion, or political beliefs;
 - c. Build on or contribute to truth-seeking efforts;
 - d. Include a mechanism for effective consultations with victims about the forms of reparation that would be most meaningful to them; and
 - e. Draw on relevant international standards and experiences in designing and implementing reparations programs.
8. **Accountability through criminal justice.**
- a. In view of the scale of the crimes committed in June, their ethnic aspect, and the weakness of Kyrgyzstan’s judicial and prosecutorial agencies, the government should consider seeking international assistance in conducting criminal investigations; this assistance could take the form of advisors or investigators and prosecutors working with a clearly defined mandate, side by side with Kyrgyzstani counterparts.
 - b. A key task for the government should be the creation of a transparent prosecutorial strategy based on a systematic mapping of abuses committed in the past and during the events of June.
 - c. Cases that led to death and serious harm to physical integrity should be given priority in investigation and prosecution.

- d. Going forward, decisions on prosecution for human rights abuses should not depend on the political affiliation, social status, or ethnicity of the suspects and victims.
 - e. The government should amend the Criminal Code to increase the penalty for the crime of torture from the current five-year maximum prison sentence to a penalty consistent with the gravity of the crime; the amnesty decree should be reformed to exclude its application to the crime of torture.
9. **Institutional reforms.** Important institutional reform measures are already under way, strengthened by the framework provided by the new constitution, and both civil society organizations and members of the interim governments are working on further initiatives. Nonetheless, given the generalized view that law enforcement and judicial institutions have been plagued by corruption and other serious abuses:
- a. The implementation of transparent, objective, and fairly executed reform or vetting processes in those institutions could prove helpful for removing the worst offenders and establishing a clear set of standards for professional behavior in the future.
 - b. The political feasibility of a reappointment or a review process in Kyrgyzstan is for the post-election government to assess.
 - c. Obstacles to vetting, such as resistance within the existing institutions, are easy to envisage, but can be overcome if the political will exists. This generally coincides with much of the broad good governance and democratization agenda that the EU, United States and OSCE have pursued in Georgia. Since the Rose Revolution, the West has pledged significant financial aid as well as practical expertise to reform Georgia's institutions in all three branches of government. Efforts have focused in particular on reform in the rule of law sphere, including the security sector, the judiciary and the penitentiary system. Some capacity building has been done with the Georgian parliament.

LIST OF PEOPLE INTERVIEWED

Aziza Abdirasulova, Director, Human Rights Defenders' Centre Kylym Shamy
Duishon Adbylдаev, Muslim community representative to the Constitutional Assembly
Tursunbek Akun, Ombudsman of the Kyrgyz Republic
Sultan Alchikenov, First Deputy Director, Finance Police
Ulukbek Babakulov, journalist
Sardar Bagishbekov, Executive Director, Public Foundation Voice of Freedom/Freedom House
Edil Baisalov, (at the time of ICTJ's visit) advisor to President Roza Otunbaeva
Kumar Bekbolotov, Executive Director, Soros Foundation-Kyrgyzstan
Andrea Berg, Human Rights Watch
Cholpon Dzhakupova, Legal Clinic Adilet
Abdygany Erkebaev, Head, Commission of Inquiry into April events
Baytemir Ibrayev, Procurator-General
Gulnara Iskakova, Professor, American University of Central Asia
Tolekan Ismailova, Director, Citizens against Corruption
Chinara Jakypova, Director General, Institute for Public Policy, and Bishkek Press Club
Shairbek Juraev, Professor, American University of Central Asia
Dimitri Kabak, Public Foundation Open Position
Scott Kearin, Country Director, National Democratic Institute (NDI), Kyrgyzstan
Ruslan Khakimov, Law Program Director, Soros Foundation-Kyrgyzstan
Burul Makenbaeva, Director, Mental Health and Society
Dinara Oshurakhunova, Executive Director, Coalition for Democracy and Civil Society
Saltanat Sadykova, National Programme Officer, Regional Office of the High Commissioner for Human Rights (OHCHR) for Central Asia
Aida Salyanova, Minister of Justice
Asiya Sasykbaeva, Director, Centre Interbilim
Natalya Seitmuratova, Human Rights Officer, Regional Office of OHCHR for Central Asia
Bolot Sherniyazov, (at the time of ICTJ's visit) Minister of Internal Affairs
Sintija Smite, Junior Political Officer, Office of the Head of Mission, Organization for Security and Cooperation in Europe (OSCE)
Nurbek Toktakunov, lawyer
Nazgul Turdubekova, Director, Children's Rights Defenders League
Begaim Usenova, Director, Media Policy Institute
Alexander Vinnikov, Senior Political Officer, OSCE

Videoconference with civil society organizations in Osh and Jalal-Abad, including representatives of:
Advocacy Center
Fund for Public Tolerance
Inter Bilim/Osh branch
"Law and Order" Public Fund



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