Alternative Report

To the fifth, sixth, and seventh periodic reports on implementation by the Kyrgyz Republic of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).


This report was prepared on issues related to access to legal defense and the administration of justice. The text of the report was prepared based on materials from human rights organizations including the Open Viewpoint public foundation, the Kylym Shamy Center for Defending Human Rights, and the Independent Human Rights Group public foundation. Dmitry Kabak, Gulshaiyr Abdirasulova and Jibek Ismailova assisted in the search and preparation of information for this report.

This report consists of three parts that include Introduction, Commentaries to the State Party Report, and Recommendations.

Introduction

1. The fifth, sixth, and seventh periodic reports on the Kyrgyz Republic cover the period during which a number of significant events have occurred in Kyrgyzstan, some with particular significance to this report.

Events during the reporting period

2. Nookat. 1 October 2008 in Nookat there was a clash between the police and religious followers accused of having links to the Khizb-ut-Takhrir political party. As a consequence of the clash religious followers faced harsh repression, the majority of them being Uzbeks. Torture and mistreatment was carried out by investigators from internal affairs, national security agencies, and were accompanied by humiliation on ethnic and religious grounds, as well as extortion. Neither the court nor the prosecution upheld the rule of law. Following the change President Bakiev in power in 2010 the government has not looked into this case in accordance with legal procedures, having declared amnesty for the convicted. Thus, the Nookat case has become an example of impunity. It demonstrates the background before the June 2010 in Kyrgyzstan.

3. Change of power in 2010 and earlier in 2005. The change in power was accompanied by a surge of aggressive ethnically based nationalism and intolerance. Examples of intolerance include posters of anti-Semitic nature which appeared near the Government building or in various publications which as a rule produced no reaction from the government. Political leaders did not suppress similarly hateful public speeches, and in fact some political parties speculated upon nationalist rhetoric in order to gain more votes among the electorate. Riding this sentiment, one political party supporting a mono-ethnic society was able to gain seats in the Jogorku Kenesh (parliament).

---

4. **May 2010**, increased activity in society related to discussions of a Kyrgyz Constitution project. Some politicians appeal to the support of national minorities, which is perceived negatively by nationalist organizations. The demands of ethnic minorities (Uzbeks) on a fixed legal guarantee of the use of their native language and guaranteed participation in public life meets with sharp opposition from part of society.

5. **May 2010** Land seizures in Kyrgyzstan. In the village of Maevka near Bishkek (the capital), government agencies inexplicably do not provide action plans for a response to these land grabs. Ethnic Kyrgyz seize land from ethnic Turkish, destroying homes. Other ethnic minorities are also killed or injured.

6. In May 2010, conflicts on ethnic grounds occur throughout the country. The government does not take effective measures to prevent intolerant acts and crimes by the ethnic majority. Politicians who came to power in April 2010 shy from active discussion of intolerance and nationalist rhetoric ahead of elections for the president of the transitional period, subsequent constitutional referendum, and parliamentary elections.

7. **In June of 2010** in the south of Kyrgyzstan in the cities of Osh and Jalal-Abad, densely populated by Uzbeks, tension increases. Periodic ethnic clashes are on the rise. In the night of the 10th and 11th of June, state forces open fire on civilians, killing several, contributing to further distrust of the government. The government fails to investigate the use of weapons and the proportional use of force during the night of the 10th-11th 2010 near the Alai hotel in Osh.

8. The ethnic minority (Kyrgyz) actively take part in burning homes, theft of property, and injuring and killing minorities. There were instances of weapons seizures and in some cases security forces provided weapons to the crowd. State forces are unable to stand up to crowds, and in some cases they participated in worsening the situation. For example, in Osh teams removed barricades protecting Uzbek areas of the city from the onslaught of mobs, without providing safety or guaranteeing protection. In the village of Nariman near Osh a purge is accompanied by destruction of property, acts of intolerance, destruction of documents, injury and murder of civilians.

9. The interim government that came to power following the fall of Bakiev in 2010, was unable to effectively quell rumors that become the driving force of the conflict. Private television companies Osh TV and Mezon TV, owned by minorities stopped working. A large number of homes and property belonging to Uzbeks (the minority) are damaged. Regular military and army forces were unable to provide security or protect all citizens, especially ethnic minorities.

10. Formed in 2010, the parliament, although it has proposed the creation of party lists with a balance of representatives of ethnic minorities, young people, and genders, in fact many of these representatives remain at the bottom of party lists or not allowed by party leaders to sit in parliament at all. The law does not establish a legal requirement for government agencies to take into account ethnicity and diversity.

**Legal Framework for Protecting Against Discrimination**

11. Although in 2010 the Constitution of the Kyrgyz Republic includes sections prohibiting discrimination, it does not include mechanisms for holding violators responsible. Responsibility for inciting ethnic hatred (art. 299 of the KR CC) is generally used against the
ethnic minorities themselves. Investigations of art. 299 of the KR CC are conducted by national security agencies. Holding violators responsible for the violations of equality (art 134) is not effective because it requires the claimant to request that the prosecutor collect the necessary evidence. It is necessary to define a wide range of responsibility for acts competed with motives of hate or intolerance.

**Article 5b**

12. As the conflict escalated in June of 2010, several ethnic Kyrgyz citizens seized arms from military arsenals, internal affairs departments, the police, border points, and military faculties\(^2\). There were also instances of voluntary handing over of arms to mobs. Around 500 were killed from shootings and around 2000 injured\(^3\). The Committee should ask the State Party for what reason members of the interim government failed to prevent volunteers (ethnic Kyrgyz) sent to Osh and Jalal-Abad instead of using the police to ensure safety and the rule of law, having the appropriate preparation and subject to the laws of the government?

13. During a campaign to buy back weapons, the government spent 300,000 som (6383) dollars, with the rate of 47 som to one US dollar). A machine gun would be purchased for 8000 som (around $180), a Kalashnikov for 4500 som (around $100). On the black market the price of a pistol is around $300, a machine gun around $600. Renumeration offered by the state intended to return weapons was not effective in disarming the population\(^4\).

14. Overall 29 criminal cases were opened on charges of stealing weapons, of these 21 went to court, with 23 people held legally responsible. 13 cases were dismissed by the court due to them committed due to emergency necessity\(^5\). The committee should ask the State Party for information on who exactly was held responsible for distributing weapons (the responsible official) as well as for the seizure of weapons (civilian population), and their ethnicity. It is critical that the committee pay attention to the ethnicity statistics of those who were held responsible for illegal arms possession.

15. Investigations by public organizations into the seizure of arms revealed problems of contradictions in the legislation on measures for responding to seizures and the conditions for using firearms. They also noted the inaction and demoralized state of law enforcement structures which did not fulfill their duties to protect all peaceful members of the population; separate facts witness that representatives of the state were unable to avoid the pressures of their own ethnicities.

**Article 5d v)**

---

\(^2\) See the report entitled “Ensuring Security of Firearms, Ammunition and Military Equipment During the Riots from the Perspective of the State. Research, Conclusions, and Recommendations”, Kylym Shamy, 2011. Website: [http://ksh.kg](http://ksh.kg)

\(^3\) During the change in power in April of 2010 and the events of June 2010, 1033 firearms and 43,045 pieces of ammunition were seized in the south of Kyrgyzstan. 465 firearms were returned (45%) along with 16 701 pieces of ammunition (38%). In June of 2010 there were 25 cases of weapons seizures from the population and 7 cases of civilians returning weapons to representatives of state structures.

\(^4\) Gulshayir Abdirasulova “Firearm Safety in Kyrgyzstan: Experience and Conclusions”, 2013

\(^5\) From the report of the deputy military prosecutor D. Erkinbaev at the roundtable on 16 December 2012
16. In sentencing for the 2010 June events, in part the confiscation of property does not resolve the question of factual ownership of property and shared property belonging to other individuals living with the accused. Currently carrying out these sentences violates the rights of private individuals not married to the accused as well as children born and raised with them, the property rights of whom are not related to the convicted.

17. The scale of compensation for material loss and moral damage in verdicts on the June Events raises the question of the necessity to integrate a single procedure for paying compensation into the judicial system. In 2010 a Work Group of the ministry of justice developed a bill on implementing the decisions of international bodies, however it has still not been adopted.

Article 6:

18. According to data on the number of killed and injured, during the 2010 June events a total of 492 people were killed: 412 in Osh and the Osh oblast (approx. 83.7%) and 79 in the Jalal-Abad oblast (approx. 16%). The ethnic make up of those killed was 138 Kyrgyz (approx. 28%), 349 Uzbeks (71%), and 4 of other ethnicities (0.82%)\(^6\). The committee should ask the state party why do the statistics of those sentenced for participation in the 2010 June Events show that most of the accused are ethnic Uzbeks?

19. Analysis of 2010 June Events sentencing shows that Uzbeks were generally held responsible, and cases where Kyrgyz were held responsible are singular and dubious. For the majority of cases of the murder of Uzbeks the perpetrators remain unknown. Uzbeks accused of participating in the June Events, received harsh penalties (longer prison sentences, and larger damage compensation payments).

20. One example is well known when the court\(^7\) granted house arrest for four Kyrgyz individuals—Cholponbek Aljanov Rustam Jeenbekov, Turatbek Mamarasulov, Medetbek Mamazakirov—for killing two Uzbeks Shukrat Abdullaev and Khusnudina Tashmatov. Ethnic Uzbeks were never granted house arrest as punishment.

21. In the cases where ethnic Kyrgyz were killed – Abdykaluk Kaiypov, Misirat Obodoev, Kanybek Esengulov and one Uzbek Rakhmatully Khanibulaev\(^8\) – ethnic Kyrgyz were found guilty, but some of them are homeless: Islamidin Aidaraliev (Kyrgyz), Duishebai Madatov (Kyrgyz), and Ms. Tanzila Mamatova, which calls into question the objectivity of the judicial process.

22. The state did not provide standards for a fair trial and impartial judicial process for the 2010 June Events. There was no uniform approach to the administration of justice. For example, Munarbek Salaev (Kyrgyz), found guilty of committing crimes under four statues, including the murder of Alisher Ibaidullaev (Uzbek) and Dilshod Sodikov (Uzbek)\(^9\), received a punishment of 3 years and 6 months of imprisonment.

23. Examples of harsh punishment related to Uzbeks was in the case of the death of Myktybek Sulaimanov (Kyrgyz), in the sentences for human rights defender Azimjan Askarov (Uzbek),

---


\(^7\) The verdict of the Jalal-Abad City Court on 12.08.2011 against the four defendants called for house arrest, and the case was forwarded to the prosecutor for further investigation.

\(^8\) Criminal case №141-10-408.

\(^9\) Criminal case №152-10-231.
Dilshodbek Rozubaev (Uzbek), Isroilbek Abdyraimov (Uzbek), Elmurad Rasulov (Uzbek), Minyura Mamadalieva (female, Uzbek), Shurukjan Mirzalimov (Uzbek) and Sanjarbek Muvlakhunov. The first five men were sentenced to life imprisonment and a confiscation of their property.

24. According to the defense, the prosecution did not provide evidence against the accused and thus their guilt remains unproven. The defense was unable to look into the case, not considering this unobserved procedural guarantee that in the first and second sittings of court, as well as attacks on the accused and their attorneys within the courtroom and temporary detention centers. Individuals willing to testify to the innocence of Mr. Azimjan Askarov and others indicted for the killing of the police officer Mr. Sulaimanov were unable to give their testimony in order to provide a guarantee of a just legal process. The government did not ensure the safety of defense witnesses nor attorneys.  

Recommendations

25. The State Party to provide for case review that was not provided by the corresponding guarantees of the suspects or accused, as well as attorneys, in accordance with standards of international law.

26. The State Party to develop legislation to fight hate crimes.

27. Provide for the necessary measures to facilitate the representation of all ethnic groups in the government and ensure effective communication with voters.

28. Ensure the adoption of the law on enforcing the decisions of international human rights agencies. Develop a procedure for calculating fair amounts of compensation.

29. Ensure the development and production of awareness programs that demonstrate society's diversity, and the united and indivisible history of all ethnic groups.

30. Review sentences from judicial organs from the 2010 June events, paying especial attention to procedural violations, incomplete procedures, and threats to judges, attorneys, and defendants. Pay attention to strengthening the enforcement of court sentences from the second sitting. This includes the scale of damage compensation and ethnicity. Review court decisions in terms of their compliance with judges' ethics.

31. Ensure the protection of property rights and the return of property, as well as involuntary changes of title during 2010. It is necessary to request information on property ownership changes during June 2010. Focus on compensation for destroyed and damaged homes of ethnic Uzbeks.

32. Clarify which regulations or rules the KR Supreme Court and the courts of general jurisdiction follow in dispensing damage compensation (material and moral).

33. Provide for the independent and quick formation and launch of a Constitutional Chamber composed of competent judges and human rights experts.

See reports on monitoring the judicial process in Kyrgyzstan by the Independent Human Rights Group public foundation or the Kylym Shamy public foundation.