

# Submission to the Committee on the Elimination of Racial Discrimination: review of Kyrgyzstan

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The Open Society Justice Initiative presents this briefing paper to the Committee on the Elimination of Racial Discrimination in preparation for its review of Kyrgyzstan during its 82<sup>nd</sup> session. This paper focuses on the lack of an effective and non-discriminatory response by the government to the ethnic violence that erupted in the summer of 2010, and in particular the continuing discriminatory and arbitrary detention of Mr Azimjan Askarov, an ethnic Uzbek human rights defender, and the lack of remedies for his torture and ill-treatment.

## Summary and recommendations

Mr. Azimjan Askarov, a prominent human rights defender and ethnic Uzbek, was detained in the aftermath of ethnic violence that shook southern Kyrgyzstan in June 2010. While in police custody he was repeatedly beaten, interrogated, and taunted due to his ethnicity and human rights work. For five days he was denied access to a lawyer, and subsequently his lawyer was attacked twice when he attempted to visit. Mr. Askarov was sentenced to life imprisonment after a sham trial in 2010. He remains in prison today.

His case exemplifies the widespread torture and discrimination of people of Uzbek ethnic origin following the ethnic violence in the country in 2010, as well as the lack of accountability for the perpetrators of the abuse, which violate the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Article 5(a) and (b) and Article 6.

The Open Society Justice Initiative promotes the rule of law through litigation, legal advocacy and reform of legal institutions aimed at enhancing the protection of human rights. The Justice Initiative is acting as co-counsel for Mr. Askarov in relation to his communication to the United Nations Human Rights Committee.<sup>1</sup>

The Justice Initiative urges the Committee during its review of Kyrgyzstan to give priority attention to the pattern of discrimination, torture and ill-treatment of ethnic Uzbeks of which Mr. Askarov's case is emblematic, and make the following recommendations to the Kyrgyz government to redress these violations and prevent their re-occurrence:

- Immediately release Mr. Askarov and provide redress to him by a) quashing his conviction; b) providing a full medical examination and the necessary treatment; c) ensuring that those responsible for his torture and ill-treatment are held to account; and d) paying just compensation for the torture and illegal detention he suffered, and providing comprehensive rehabilitation;
- Create an independent commission of inquiry to review all convictions related to the violence in southern Kyrgyzstan in June 2010 and ensure that they comply with fair trial guarantees and human rights standards;
- Investigate violations of rights of members of ethnic minorities, including allegations of torture and inhuman, degrading treatment or punishment and ensure that perpetrators are held to account.

# Response to ethnic violence entrenches discrimination and impunity

## A. Pattern of discriminatory prosecutions against ethnic Uzbeks

The detention and mistreatment of Mr. Askarov, a prominent human rights activist of Uzbek ethnicity, form part of a pattern of persecution of ethnic Uzbeks, and impunity for offences committed against them, in the aftermath of the June 2010 violence.<sup>2</sup> Although the vast majority of the victims of events in June 2010 were ethnic Uzbeks, the selective investigations and prosecutions which have since been conducted have disproportionately targeted Uzbeks and have resulted in few prosecutions of anyone else.

Ethnic Uzbeks were more than twice as likely to be victims of crimes during the events of June 2010 as ethnic Kyrgyz, and they were almost three times more likely to have been killed.<sup>3</sup> As the UN High Commissioner for Human Rights explained when discussing the 2010 violence, “around 75 percent of those killed were Uzbek, while some 77 percent of those arrested and charged with crimes relating to the violence were also Uzbek. Having three-quarters of the victims and three-quarters of the alleged perpetrators from the same group, during an episode of inter-ethnic violence, simply does not add up.”<sup>4</sup> The UN Special Rapporteur on Torture observed that there is “alarming evidence that many criminal proceedings were marred by widely reported bias against members of certain ethnic minorities.”<sup>5</sup>

The pattern of discriminatory prosecution of Uzbek suspects in the aftermath of the June 2010 violence has been confirmed by the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan (KIC), which was commissioned by then-Kyrgyz President Roza Otunbayeva in 2010 and headed by Mr. Kimmo Kiljunen, a member of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE), in its findings published in May 2011. As a result of the disparities in the composition of the victims and the persons prosecuted, the KIC calculated that “Uzbeks are more than 30 times more often accused of murder [by authorities] than the Kyrgyz”.<sup>6</sup>

The KIC’s findings do not provide effective accountability as the Commission operated under a limited mandate, without the ability to identify persons suspected of being responsible for violations or require individuals to testify.<sup>7</sup> The Government, furthermore, criticized the Commission’s report, has not implemented its findings and recommendations, and the Kyrgyz Parliament has designated Mr. Kiljunen, the head of the Commission, as *persona non-grata* in Kyrgyzstan.<sup>8</sup>

Some recent initiatives have aimed to address the pattern of discrimination, torture and impunity, including visits by the UN Special Rapporteur on Torture and to the UN High Commissioner for Human Rights, some steps towards internal investigations and, according to Amnesty International, even a small number of prosecutions of police officers.<sup>9</sup> However, these steps do not change or adequately address the discriminatory arrests, torture, and fair trial violations against ethnic Uzbeks that took place after the June 2010 violence of which Mr. Askarov’s case is emblematic.

## B. The case of Mr. Askarov and the pattern of torture and ill-treatment of ethnic Uzbeks

On June 12, 2010, ethnic clashes in southern Kyrgyzstan prompted residents of Bazar-Korgon village, many of them ethnic Uzbeks, to gather at a bridge to protect their village in the event of an attack. On the morning of June 13, police officers arrived to allegedly disperse the crowd, violence ensued, and one police officer was killed. Later that day, the ethnic violence shaking the region spread to Bazar-Korgon region, leaving 20 people dead and over 200 houses destroyed. A few days later, on June 15, 2010, Mr. Askarov was documenting the damage and deaths caused by the violence when police officers took him to the Bazar-Korgon police station, where the deceased officer had worked.

Over a period of four days Mr. Askarov was humiliated and severely beaten by police officers because of discrimination against him as an ethnic Uzbek (described in more detail below), and due to his human rights work. Mr. Askarov was repeatedly struck and kicked to the point of losing consciousness, he was dealt vicious blows with the handle of a pistol and a large water bottle, and he had a plastic bag put over his head. The beatings that Mr. Askarov endured caused bleeding from his head and blood to froth from his mouth, damage to his eye and lasting pain and damage to his kidneys. The police threatened to rape his wife and daughter in front of him. Mr. Askarov was then charged with numerous crimes including complicity in the murder of the police officer, illegal acquisition and storage of firearms and extremist materials, and organization of mass disorder. He was denied access to a lawyer and was repeatedly interrogated as the police attempted to coerce him into testifying against leaders of the Uzbek community.

The torture and ill-treatment suffered by Mr. Askarov were routinely used by Kyrgyz law enforcement authorities and intensified during the investigations into the June 2010 violence. The consistent torture of predominantly ethnic Uzbek suspects during the investigations after the June 2010 violence represents a continuation and intensification of a pattern of torture in police custody in the Kyrgyz Republic, and a persistent failure to provide accountability for such torture. The UN Special Rapporteur on Torture during his mission to the country in December 2011 reported that the practice of torture “has been intensified by the turbulence of the past two years with the ousting of President Bakiev in April 2010, followed by the violence that took place in the South in June 2010. During the violence in June 2010 and its aftermath, reports consistently highlighted the frequency and gravity of arbitrary detention, torture and ill-treatment by law enforcement bodies.”<sup>10</sup> Observing the “attested widespread and routine use of torture and other ill-treatment by law-enforcement bodies in the southern part of Kyrgyzstan in respect of members of the Uzbek community”, the European Court of Human Rights held that the extradition of an ethnic-Uzbek suspect to Kyrgyzstan where he would be detained and prosecuted in Jalal-Abad province would violate Article 3 of the European Convention (the prohibition of torture).<sup>11</sup>

# Breaches of the Convention on the Elimination of Racial Discrimination

## A. Article 5(a): Arbitrary detention and unfair trial of Mr. Askarov

Under ICERD Article 5(a) states parties have an obligation to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, to equal treatment before the tribunals and all other organs administering justice. The Committee has stated that states parties have a duty to “guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, the enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments”, including the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge.”<sup>12</sup>

In the circumstances of Mr. Askarov’s ethnically-motivated prosecution, trial and mistreatment, Kyrgyzstan breached its obligations under Article 5(a).

Mr. Askarov’s detention was motivated by his ethnicity and his role as a human rights defender who had exposed police abuse and was recording the recent abuses during and in the aftermath of the June 2010 violence, making it both discriminatory and arbitrary and denying Mr. Askarov equal protection of the law as provided for in ICERD Article 5(a).

The discriminatory basis for Mr. Askarov’s detention was evident from the repeated ethnic taunts and slurs that the police used against Mr. Askarov and his fellow detainees. On the first day of his detention Mr. Askarov was mocked, told by the Kyrgyz police officers that “it is time for you to serve us”, and forced to sing the national anthem after he had been beaten so badly he could barely stand. At the hearing to authorize his detention, officers goaded him to insult the Uzbek president (which he refused to do). At a later date, they undressed Mr. Askarov, called him a “sart” – a term often used in a derogatory way against ethnic Uzbeks – and kicked him repeatedly in the lungs. His lawyer Mr. Nurbek Toktakunov was also attacked at Bazar-Korgon police station when he came to visit Mr. Askarov because of his decision as an ethnic Kyrgyz to represent an Uzbek man. Ms. Aziza Abdirasulova, the head of a Kyrgyz human rights organization Kylym-Shamy, was told that she was not “a Kyrgyz” because she came as part of a delegation to check allegations of abuse of Mr. Askarov and his Uzbek co-defendants during their trial.

The discriminatory nature of Mr. Askarov’s ethnically-motivated detention is further underpinned by the existence of widespread Kyrgyz government retaliation against ethnic Uzbeks following the violence in June 2010. Although Uzbeks were twice as likely to be victims of violent crimes in the course of these events, they made up almost 80% of those criminally charged. Ethnic slurs and taunts were common in the persecution of Uzbeks in the aftermath of the June 2010 violence. This atmosphere of discrimination against the Uzbek community, and the fact that Mr. Askarov was targeted because of his ethnicity, were further highlighted during his trial and appeal by the anti-Uzbek comments shouted by the crowd and the anti-Uzbek posters demanding the execution of the defendants that hung from the court building as well as the posters inside the court room

that had slogans saying “death to sarts”.<sup>13</sup> The Kyrgyz trial judge and court personnel completely failed to control the ethnically hostile and violent atmosphere in the courtroom. They repeatedly failed to address the anti-Uzbek verbal attacks and physical outbursts against defence counsel, and made no effort to protect the defence from these interjections and assaults. The ethnically-motivated prosecution and the lack of response to the discriminatory and hostile outbursts in the courtroom clearly violate the right to fair trial as protected by ICERD Article 5(a).

Secondly, Mr Askarov was detained because of his work as an ethnic Uzbek human rights defender gathering information on abuses during the June 2010 violence. He was arrested while he was documenting the death toll and property destruction suffered mostly by the Uzbek community after the ethnic clashes. Human Rights Watch has affirmed that Mr. Askarov’s detention and prosecution were a result of his efforts to document the failure of the police to prevent widespread violence during the ethnic conflict in 2010.<sup>14</sup> The government thus failed to provide him protection under the law as an ethnic Uzbek human rights defender in violation of ICERD Article 5(a).

Thirdly, Mr. Askarov’s detention was undertaken to facilitate interrogation and torture, and to coerce him into testifying against a number of leaders of the local Uzbek community. According to Mr. Askarov, the prosecutor Ms. Zhamila Turajanova stated that he was detained so that the police could “get what we need”, namely for him to testify against prominent ethnic Uzbeks and to provide information about their alleged involvement in distribution of weapons.<sup>15</sup>

Mr. Askarov was also denied adequate time and facilities for the preparation of his defence, and the right to communicate with counsel, and public officials (including the judge and prosecutor) made statements portraying him as guilty, violating the presumption of innocence. The trial was conducted in an atmosphere of violence and intimidation, as a result of which Mr. Askarov and his counsel were unable to present their case or have it considered on equal terms with the prosecution. In short, he was denied a fair hearing by an independent and impartial tribunal throughout the trial and appeal process. All of these denials of Mr Askarov’s rights, as an ethnic Uzbek, to a fair trial and due process violated ICERD Article 5(a).

## B. Article 5(b) and Article 6: Torture of Mr. Askarov and lack of effective remedies

ICERD Article 5(b) provides that states parties must guarantee to everyone “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution” without discrimination based on race, colour, or national or ethnic origin”.

Mr. Askarov was tortured as a result of discrimination against him as an ethnic Uzbek in the aftermath of the ethnic violence of June 2010. He was also beaten in retaliation for his work exposing abuses by the Bazar-Korgon police over many years. In the early stages of his detention, he was beaten to obtain evidence against prominent members of the Uzbek community. And later, the beatings were designed to punish him for speaking out at his trial and intimidate him into remaining silent at trial, including about the abuses inflicted upon him.

The torture and cruel, inhuman and degrading treatment of Mr Askarov violate ICERD Article 5(b) on the right to protection against violence.

Kyrgyzstan has also failed to comply with ICERD Article 6 which requires it to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination”.

The government has blatantly failed to follow the Committee’s recommendation that states parties “severely punish violence, acts of torture, cruel, inhuman or degrading treatment ...which are committed by State officials” against persons belonging to racial or ethnic groups<sup>16</sup> as no one has been held responsible for the abuses suffered by Mr. Askarov.

Furthermore, Mr. Askarov has not been provided with medical treatment or rehabilitation for the impact that the torture had on his health, despite calls by doctors from the Bazar-Korgon hospital for his urgent hospitalization. Mr. Askarov has not received any compensation. There is no avenue for Mr. Askarov to obtain redress under Kyrgyz law for the torture and other violations that he suffered because of his ethnic origin. Kyrgyzstan has failed to provide adequate compensation and rehabilitation for his torture and ill-treatment, in breach of ICERD Article 6.

## Conclusion

Mr. Askarov has been in detention since 2010 following a discriminatory legal process that did not respect international standards. He has suffered torture and ill-treatment due to his Uzbek ethnicity. The government’s response to the 2010 ethnic violence has resulted in widespread torture and discrimination against ethnic Uzbeks and a lack of accountability for abuses suffered by ethnic Uzbeks during the violence in violation of ICERD Articles 4, 5 and 6. The government must redress this impunity for ethnic based violence and ensure equal justice for all victims.

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<sup>1</sup> Communication submitted to the Human Rights Committee by the Justice Initiative and Nurbek Toktakunov on behalf of Mr. Askarov, 13 November 2012, <http://www.opensocietyfoundations.org/sites/default/files/askarov-hrc-11132012.pdf>.

<sup>2</sup> See for example Human Rights Watch, *Where is the Justice? Interethnic Violence in Southern Kyrgyzstan and its Aftermath*, 16 August 2010, available at <http://www.hrw.org/en/reports/2010/08/16/where-justice-0>; Human Rights Watch, *Distorted Justice Kyrgyzstan’s Flawed Investigations and Trials*, 8 June 2011, <http://www.hrw.org/sites/default/files/reports/kyrgyzstan0611webcover.pdf>; and Amnesty International, *Kyrgyzstan: Dereliction of Duty*, 8 June 2012, available at <http://www.amnesty.org/en/library/info/EUR58/001/2012/en>.

<sup>3</sup> The Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan (KIC) reported that of the identified corpses with signs of violence, 276 were Uzbek and 105 were Kyrgyz, yet ethnic Uzbeks were far more likely to be prosecuted for such killings: at the time of its report, 83% of those charged or accused with murder or other homicides were Uzbek and only 9.8% were Kyrgyz. In Osh, murder charges were brought against 24 Uzbek defendants

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and only 2 Kyrgyz. Please see Kyrgyzstan Inquiry Commission, “Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010”, May 2011, paras. 205-209.

<sup>4</sup> UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>. The KIC also concluded that despite the prevalence of ethnic Uzbek victims, the vast majority of the cases which were pursued were against ethnic Uzbek suspects: of the 271 persons taken into custody, 230 were Uzbeks; and 79% of the persons who were charged were ethnic Uzbek, while only 18% were Kyrgyz and 3% other, please see Kyrgyzstan Inquiry Commission, “Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010”, May 2011, paras. 206 and 208. According to the State report (CERD/C/KGZ/5-7, para. 11) 227 cases involving 412 individuals (122 Kyrgyz persons, 279 Uzbeks, and 11 persons of other ethnic origin) were considered by the courts and resulted in the conviction of 387 individuals (103 Kyrgyz persons, 273 Uzbek persons, and 11 of other ethnic origin). Forty-one cases involving 55 people were dropped.

<sup>5</sup> UN Special Rapporteur on Torture, Report on Mission to Kyrgyzstan, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 53.

<sup>6</sup> Kyrgyzstan Inquiry Commission, “Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010”, May 2011, para. 202.

<sup>7</sup> Kyrgyzstan Inquiry Commission, “Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010”, May 2011, para. 7.

<sup>8</sup> Government Response to Report of the Kyrgyzstan Independent Commission of Inquiry, available at [http://www.cmi.fi/images/stories/activities/blacksea/kic/kg\\_comments\\_english\\_final.pdf](http://www.cmi.fi/images/stories/activities/blacksea/kic/kg_comments_english_final.pdf); Radio Free Europe, “Head Of Commission On Kyrgyz Violence Declared Persona Non Grata”, 8 November 2012, available at [http://www.rferl.org/content/head\\_of\\_commission\\_on\\_kyrgyz\\_violence\\_declared\\_persona\\_non\\_grata/24205930.html](http://www.rferl.org/content/head_of_commission_on_kyrgyz_violence_declared_persona_non_grata/24205930.html).

<sup>9</sup> UN High Commissioner for Human Rights, Opening remarks at press conference, 10 July 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12338&LangID=E>; Amnesty International, *Kyrgyzstan: Dereliction of Duty*, 8 June 2012, p. 5, available at <http://195.234.175.160/en/library/info/EUR58/001/2012/en>; UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, paras. 34-36.

<sup>10</sup> UN Special Rapporteur on Torture, *Report on Mission to Kyrgyzstan*, UN Doc. A/HRC/19/61/Add.2, 21 February 2012, para. 37.

<sup>11</sup> *Makhmudzhan Ergashev v. Russia*, ECtHR, Judgment of 16 October 2012, paras. 76-77.

<sup>12</sup> Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18, pp. 98-108, para. 23.

<sup>13</sup> International Commission of Jurists, “Report on the Arrest, Detention and Trial of Azimzhan Askarov”, September 2012, para. 91 available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/09/Askarov-Report-2012-Eng-004.pdf>.

<sup>14</sup> Human Rights Watch, “Letter to Prosecutor General Ibraev urging to release Azimzhan Askarov”, 17 June 2010, available at <http://www.hrw.org/news/2010/06/17/letter-prosecutor-general-ibraev-urging-release-AzimjanAzimjan-askarov>.

<sup>15</sup> Communication submitted to the Human Rights Committee by the Justice Initiative and Nurbek Toktakunov on behalf of Mr. Askarov, 13 November 2012, <http://www.opensocietyfoundations.org/sites/default/files/askarov-hrc-11132012.pdf>, para. 303.

<sup>16</sup> Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18, pp. 98-108, para. 21.

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