



KYRGYZSTAN

# Distorted Justice

Kyrgyzstan's Flawed Investigations and Trials  
of the June 2010 Violence

HUMAN  
RIGHTS  
WATCH



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the 2010 Violence**

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Human Rights Watch  
350 Fifth Avenue, 34th floor  
New York, NY 10118-3299 USA  
Tel: +1 212 290 4700, Fax: +1 212 736 1300  
hrwnyc@hrw.org

Poststraße 4-5  
10178 Berlin, Germany  
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629  
berlin@hrw.org

Avenue des Gaulois, 7  
1040 Brussels, Belgium  
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471  
hrwbe@hrw.org

64-66 Rue de Lausanne  
1202 Geneva, Switzerland  
Tel: +41 22 738 0481, Fax: +41 22 738 1791  
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor  
London N1 9HF, UK  
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800  
hrwuk@hrw.org

27 Rue de Lisbonne  
75008 Paris, France  
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22  
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500  
Washington, DC 20009 USA  
Tel: +1 202 612 4321, Fax: +1 202 612 4333  
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



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## Kyrgyzstan’s Flawed Investigations and Trials on the 2010 Violence

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## Summary

There is only one word for what is going on here—mess. There is no rule of law. There are no authorities. Everybody does what they want. If I had been younger I would have left for Russia right away.

—Lawyer, Osh, December 7, 2010

One year after large-scale violence between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan claimed hundreds of lives and destroyed thousands of homes, Kyrgyz authorities are failing to provide justice for victims and to hold perpetrators to account. The courts have sentenced many people to lengthy prison terms, but threats, violence, and serious violations such as arbitrary arrest, torture, and ill-treatment have marred investigations and trials. The profoundly flawed investigations and trials, mainly affecting the ethnic Uzbek minority, undermine efforts to promote reconciliation and fuel tensions that might one day lead to renewed violence.

Massive inter-ethnic violence erupted in the southern city of Osh on June 10, 2010, following weeks of increasing tensions between ethnic Uzbeks and Kyrgyz. During the next four days, violence spread to other cities in the south, killing 400 people and destroying close to 2,000 houses. Horrific crimes were committed against both Uzbeks and Kyrgyz. Ethnic Uzbeks endured the majority of casualties and destroyed homes. Kyrgyz authorities failed to prevent or stop violence once it erupted, and there are strong indications that some military and police forces knowingly or unwittingly facilitated attacks on Uzbek neighborhoods.

Kyrgyz authorities have an obligation to investigate the crimes committed during the June violence and hold perpetrators accountable. They also have a duty to adhere to international human rights standards in the criminal justice process. Their failure to do so, which this report documents, is astonishing.

Torture has been a long-standing problem in Kyrgyzstan, but lawyers told Human Rights Watch that the situation worsened after the June violence. Law-enforcement officials in the south have used torture on a widespread basis in their investigations. In total, Human Rights Watch has received credible information about the use of torture and ill-treatment in 65 cases. In many of these, there is extensive evidence corroborating victim testimonies, including photos of their injuries from beatings, medical documents, and statements from



lawyers, family members, and other detainees who saw the victims while they were still in detention. There is strong evidence that at least one person died due to torture in detention.

Detainees were abused in several detention facilities in the south, including in police stations falling under the jurisdiction of the Ministry of Internal Affairs and offices of the National Security Service. The main methods of ill-treatment include prolonged, severe beatings with rubber truncheons or rifle butts, punching, and kicking. Victims also reported being tortured by suffocation with gas masks or plastic bags put on their heads; being burned with cigarettes, and being strangled with a strap. In most cases, the main purpose was to obtain confessions to solve specific crimes, but ethnic hatred seemed to have played a significant role as well.

The use of torture and ill-treatment was accompanied by numerous violations of detainees' due process rights, such as the right to representation by a lawyer of their own choosing and the right to consult with a lawyer in private.

Kyrgyz authorities have opened only one criminal investigation into allegations of use of torture and ill-treatment against people detained in relation to the June violence, which was later suspended. Despite numerous complaints and, in several cases, overwhelming evidence, Kyrgyz authorities have failed to promptly and thoroughly investigate and prosecute other incidents of torture connected to the June violence. Perpetrators of torture and ill-treatment have enjoyed virtual impunity for their crimes.

In most cases, prosecutorial authorities have refused to open criminal investigations after flawed and superficial preliminary inquiries: in several cases the authorities did not even question the victims of the alleged torture before deciding not to open investigations. In other cases, investigators and prosecutors have threatened or otherwise pressured detainees to withdraw torture complaints.

Prosecutorial authorities have also failed to act on information about the use of torture and ill-treatment presented during trials. In several, trials defendants retracted statements they made during the investigation, saying that they made them under torture. The prosecutorial authorities failed to take the initiative to examine these claims, even when the defendants presented supporting medical documents, photographic, and video material.

The prosecutorial authorities failed to investigate torture even in the one case in which a judge acquitted a defendant because his confession was extracted under torture. Despite a special decision issued by the court, requesting that the police and prosecutor's office

examine the torture claim and report back to the court, prosecutorial authorities have yet to question the victim of the alleged abuse, much less open a criminal investigation.

Judges also failed to critically assess allegations of torture, and in most cases ignored or dismissed such allegations. A common excuse for dismissing allegations, even when presented with overwhelming evidence, was that the defendants had failed to complain earlier to the prosecutorial authorities. For the most part judges dismissed lawyers' arguments that prosecutorial authorities had refused or dismissed their complaints without a proper investigation. Judges also placed undue weight on confessions—sometimes sentencing defendants to lengthy prison terms on little else—and, at least in some cases, seem to have disregarded testimony and evidence in favor of the defense.

The complete impunity for torture not only perverted justice for the June violence, it also signaled that police and national security services could torture detainees in the months that followed. Police and national security personnel also tortured and ill-treated people detained in the context of counter-terrorism and other crimes unrelated to the June violence.

The extremely hostile and violent environment in which the trials have occurred undermined defendants' fair trial rights. Audiences in trials have frequently threatened, harassed, intimidated, and even physically attacked defendants, their relatives, and lawyers and other observers before, during, and after court sessions. The hostile atmosphere has been particularly evident in high-profile trials, such as murder cases, and particularly in cases concerning the murder of policemen.

This charged atmosphere meant that lawyers were reluctant to ask witnesses for the prosecution tough questions; Uzbek witnesses were afraid to come to court to testify; and defendants and lawyers were afraid to insistently raise allegations of torture and ill-treatment. Police and soldiers who were present largely failed to intervene, although their numbers increased after a series of serious attacks in mid-October. Judges failed to use the powers at their disposal to maintain order in the courtrooms.

While most victims of the June violence were ethnic Uzbek, most detainees—almost 85 percent—were also ethnic Uzbek. Of 124 people detained on murder charges, 115 were Uzbek. Taken together with statements from victims describing law enforcement personnel's widespread use of ethnic slurs during detention, these statistics raise serious questions about ethnic bias in the investigation and prosecution of perpetrators. It is difficult to avoid the impression that throughout the investigations, prosecutions and trials, appeasing the ethnic Kyrgyz majority eclipsed the need for justice and accountability. It is also difficult to

avoid the impression that lack of effective investigations has made it easier to paint the ethnic Uzbeks as solely responsible for the June violence, and has given license to law enforcement and security bodies to target them for arbitrary arrest and ill-treatment.

A new general prosecutor, appointed in April 2011, issued orders to promptly react to all allegations of torture and similar violations, and to open investigations in order to hold all perpetrators criminally accountable. While the orders are commendable, they had not ended impunity for torture for the 2010 June violence by time of writing.

The Kyrgyz authorities should immediately enact a zero-tolerance policy for violations during detention, and promptly and objectively investigate all allegations of torture, ill-treatment and other violations of detainees' rights. The authorities should also facilitate a visit to Kyrgyzstan by the UN special rapporteur on torture. The parliament should enact laws to bring Kyrgyz legislation in line with its international law obligations to prevent and punish all incidents of torture. The Kyrgyz government should also initiate a formal review process of all cases connected to the violence in the south, and conduct new investigations and trials in all cases in which there have been serious violations.

## **Recommendations**

### **To the Government of Kyrgyzstan**

- Conduct an independent review with the participation of international legal experts of all proceedings related to the June violence. Reopen proceedings in cases in which the authorities have not properly investigated allegations of torture, or in which there have been serious violations of defendants' fair trial rights.
- Publicly acknowledge the scope and gravity of the problem of torture in Kyrgyzstan, and commit to taking all necessary steps to end the systematic practice of torture.
- Issue and widely publicize directives stating that acts of torture and other ill-treatment by law enforcement officials will not be tolerated, that reports of torture and ill-treatment will be promptly and thoroughly investigated, and that those found responsible will be held accountable.
- Direct the General Prosecutor's Office to fulfill its responsibility under Kyrgyz law to investigate, in a thorough, impartial, and timely manner, all torture allegations against law enforcement officials, regardless of rank and whether the victim or family has filed a formal complaint.
- Ensure that victims of torture or ill-treatment can receive appropriate compensation from the government in accordance with Kyrgyz law.
- Ensure that interrogations can only take place at official locations designated under Kyrgyz law and that a lawyer is always present during interrogations.
- Submit, as a matter of urgent priority, the long-overdue state reports under the UN Convention Against Torture and the International Covenant on Civil and Political Rights.
- Facilitate visits by UN special procedures mandate holders concerned by the issues covered in this report, such as the special rapporteurs on torture and on the independence of judges and lawyers, and the Working Group on Arbitrary Detention.

### **To the General Prosecutor's Office**

- Investigate promptly and impartially all allegations of torture or ill-treatment by security or law enforcement officials of any rank, and prosecute to the fullest extent of the law, in a court that meets international fair trial standards, any official found responsible for ordering, carrying out, or acquiescing to torture or ill-treatment.
- Ensure that every investigation is conducted promptly and impartially and ensure that prosecutors investigate all those responsible, including superiors.

- Ensure prompt and independent forensic medical examinations of detainees who allege that they have been subjected to torture and other abuse.
- When allegations of misconduct are made against a police officer, the unit to which s/he belongs should be immediately excluded from any role in conducting the police investigation of the incident, beyond that of providing witness statements. Authority should be immediately handed over to the prosecutor. Police teams from other stations should provide assistance as necessary.

### **To the Ministry of Internal Affairs**

- Review and change the incentive structure for investigators and police-officers to reduce the likelihood of abuse and illegal methods of investigation.
- State publicly that the Ministry of Internal Affairs deplors and will no longer tolerate the practice of torture and ill-treatment in police stations and that it will punish all those responsible.
- Immediately suspend any official under investigation for ordering, carrying out, or acquiescing to acts of torture or ill-treatment.
- Discipline or prosecute superior officers who know, or who should have known, about such acts, and failed to act to prevent and punish them.
- Inform victims and their families about the outcome of internal investigations and disciplinary measures, and make this information public to show the ministry will not tolerate abuse.
- Ensure that all detainees are held only in legally-sanctioned detention facilities, and that detainees are not held or interrogated by any other branches or parts of the Interior Ministry outside of those legally authorized to hold detainees.

### **To the Kyrgyz Parliament**

- Amend article 305-1 to bring it in line with the definition in article 1 of the Convention Against Torture, and specifically to make torture a serious crime with the appropriate maximum punishment.

### **To Kyrgyzstan's International Partners**

- Speak out publicly against the practice of torture in Kyrgyzstan, and the government's failure to take effective measures to combat it.
- Condition parts of the development aid to Kyrgyzstan on the government's taking rapid steps to address gaps in compliance with international human rights law regarding torture and ill-treatment.

- Ensure that US and EU government officials and politicians visiting Kyrgyzstan are briefed on the state of Kyrgyz compliance with international human rights law concerning torture and the government's efforts and transparency in addressing human rights violations in places of detention and are requested to raise these concerns.

## Methodology

This report is based on more than 40 interviews that two Human Rights Watch researchers conducted in southern Kyrgyzstan in October and December, 2010, as well as in subsequent follow-up phone calls. The report also relies on information collected in June, July, and August, some of which was published in the August 2010 Human Rights Watch report *Where is the Justice?*

Two Human Rights Watch researchers worked in Osh, Jalal-Abad, Kara-Suu, Bazar-Kurgan, Suzak, Alay, Kara-Kulja, and other towns in the south. We interviewed both Kyrgyz and Uzbek victims and witnesses, lawyers, human rights defenders, and community activists. Human Rights Watch also interviewed local government officials, law enforcement and military personnel, and military and civilian prosecutors.

Interviews were conducted in Russian, with translation from Kyrgyz or Uzbek where necessary. In a few cases they were done in English, with translation into Russian or Kyrgyz or Uzbek.

Human Rights Watch also reviewed photographic, video and documentary evidence provided by victims, witnesses, and others, in addition to collecting our own photographic and video material.

On several occasions in the course of our investigation, we shared preliminary findings with the highest Kyrgyz authorities, including President Roza Otunbaeva and her advisors; then-General Prosecutor Kubatbek Baibolov; and Chief Military Prosecutor Aibek Turganbaev. On February 15, 2011, we sent a letter to General Prosecutor Baibolov requesting information and detailing the concerns raised in this report. The General Prosecutor's Office responded on April 29, 2011. Information contained in the response has been included in the report and the full response is attached in the appendix.

Some of the information contained in this report has been previously publicized by Human Rights Watch in the form of news releases, letters to the government and its international interlocutors, and other statements.

Names of many witnesses in this publication were changed or withheld to ensure the safety of witnesses and their families.

This report uses the adjective “Kyrgyz” to refer both to ethnic Kyrgyz and to the authorities of Kyrgyzstan. It uses the adjective “Uzbek” to refer to ethnic Uzbek citizens of Kyrgyzstan. Osh is both the name of a province of southern Kyrgyzstan and also the name of the province’s capital city. Unless otherwise noted, Osh is used to denote the city.



## I. Background

### June 2010 Inter-Ethnic Clashes in the South

From June 10-14, 2010, ethnic violence engulfed southern Kyrgyzstan, claiming hundreds of lives and causing massive destruction of property.<sup>1</sup> To this day, the situation in the region remains volatile. Tensions are high between ethnic Kyrgyz and Uzbek communities, which remain separated by mutual mistrust and anger.

Before the summer 2010 violence, ethnic Kyrgyz and Uzbeks generally lived peacefully together in southern Kyrgyzstan, in many cases inter-marrying and living in ethnically mixed areas. While ethnic Kyrgyz constitute a clear majority—both in Kyrgyzstan as a whole and in southern Kyrgyzstan—the provinces of Osh and Jalal-Abad have a significant Uzbek minority. In some cities and districts, ethnic Uzbeks even form a majority or a near-majority, such as in the cities of Osh (49 percent), Uzgen (90 percent), and in Aravan district (59 percent).<sup>2</sup>

However, disputes over land distribution and grievances about unequal access to economic and political power have simmered beneath the surface. Traditionally, ethnic Uzbeks have been underrepresented in the public sector, but have played a significant role in the private sector. Ethnic Kyrgyz dominate in public office but have resented the relative prominence of Uzbeks in small business.<sup>3</sup> In 1990, disputes over land distribution erupted in violence between Kyrgyz and Uzbeks that killed at least 300 people.<sup>4</sup>

When a violent uprising ousted President Kurmanbek Bakiyev in April 2010, the subsequent political turmoil and jockeying for power brought these grievances to the fore. In need of political support, the interim government that took over immediately after Bakiyev's ouster appealed to the traditionally apolitical Uzbek community. Suddenly playing the role of power broker, ethnic Uzbek leaders forwarded demands for greater political power. These demands and the prospect of increased Uzbek participation in politics angered many Kyrgyz, and in

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<sup>1</sup> See Human Rights Watch, Kyrgyzstan—*Where is the Justice?: Interethnic Violence in Southern Kyrgyzstan and its Aftermath*, August 16, 2010, <http://www.hrw.org/en/reports/2010/08/16/where-justice-o>.

<sup>2</sup> According to the 1999 census, 55 percent of Uzbeks in Kyrgyzstan (366,000 people) live in Osh province and 31.9 percent (212,000 people) in Jalal-Abad province. Only 24 percent of ethnic Kyrgyz in Kyrgyzstan (751,000 people) live in Osh province and 19.4 percent in Jalal-Abad (129,000 people). V. Khaug, "Demographic Tendencies, Formation of Nations, and Interethnic Relations in Kyrgyzstan," *Demoskop Weekly*, no. 197-198, April 4-17, 2005, <http://demoscope.ru/weekly/2005/0197/analito4.php> (accessed August 3, 2010).

<sup>3</sup> See for example, Madeleine Reeves, "Getting to the Roots of Resentment in Kyrgyzstan," *Radio Free Europe/Radio Liberty*, July 4, 2010, [http://www.rferl.org/content/Getting\\_To\\_The\\_Roots\\_Of\\_Resentment\\_In\\_Kyrgyzstan/2090331.html](http://www.rferl.org/content/Getting_To_The_Roots_Of_Resentment_In_Kyrgyzstan/2090331.html) (accessed April 4, 2011).

<sup>4</sup> Kyrgyzstan Inquiry Commission, "Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010," May 3, 2011, [http://www.k-ic.org/images/stories/kic\\_report\\_english\\_final.pdf](http://www.k-ic.org/images/stories/kic_report_english_final.pdf) (accessed May 17, 2011).

late April and May the two groups became locked in a spiral of increasing tensions. Clashes in Jalal-Abad in May killed at least four people and wounded dozens of others.<sup>5</sup>

## Violence Strikes

The massive wave of violence began when a large crowd of ethnic Uzbeks gathered in the center of Osh on the evening of June 10 in response to a fight between a few Kyrgyz and Uzbek men in a nearby casino. Kyrgyz and Uzbek crowds clashed throughout the night, and the government reported several instances in which ethnic Uzbeks stopped cars and attacked ethnic Kyrgyz passengers.<sup>6</sup>

Outraged by the violence and rapidly spreading rumors of alleged Uzbek atrocities, crowds of ethnic Kyrgyz from nearby and remote villages joined the local Kyrgyz gangs and descended on Uzbek neighborhoods in Osh, Jalal-Abad, Bazar-Kurgan, and other southern towns and cities. Further clashes between ethnic Uzbek and Kyrgyz took place, causing deaths and injuries. From early morning on June 11 through June 14, the attackers looted and torched Uzbek shops and homes, killing people who remained in the neighborhoods. In some neighborhoods ethnic Uzbeks fought back from behind makeshift barricades.

Many ethnic Kyrgyz, Uzbeks, and Russians, it should be noted, saved the lives of their friends and neighbors of other ethnicities while the attacks were under way.

Satellite images of the area and statistics that local authorities collected in various neighborhoods show that several thousand buildings—the vast majority belonging to ethnic Uzbeks—were completely destroyed in Osh, Jalal-Abad, and Bazar-Kurgan in the June violence.<sup>7</sup>

According to official data, at least 426 people died during the violence in Osh and Jalal-Abad provinces. Of those, 276 were Uzbek, and 105 Kyrgyz. Forty-five bodies have not been identified. More than 1800 houses were destroyed.<sup>8</sup>

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<sup>5</sup> “Conclusion of the National Commission for the investigation of the June events in the south of Kyrgyzstan,” January 19, 2011, [http://kabar.kg/index.php?option=com\\_content&task=view&id=12823&Itemid=36](http://kabar.kg/index.php?option=com_content&task=view&id=12823&Itemid=36) (accessed April 13, 2011).

<sup>6</sup> Ibid.

<sup>7</sup> “Damage Analysis Summary for the Affected Cities of Osh, Jalal-Abad and Bazar-Kurgan , Kyrgyzstan,” UNOSAT/UNITAR, July 9, 2010, [http://unosat.web.cern.ch/unosat/asp/prod\\_free.asp?id=23](http://unosat.web.cern.ch/unosat/asp/prod_free.asp?id=23) (accessed July 30, 2010). UNOSAT is part of the UN Institute for Training and Research and produces satellite-derived mapping in support of UN agencies and the international humanitarian community. See <http://unosat.web.cern.ch/unosat/>. Human Rights Watch visits to the affected areas determined that most destroyed houses belonged to ethnic Uzbeks.

<sup>8</sup> “Conclusion of the National Commission for the investigation of the June events in the south of Kyrgyzstan,” January 19, 2011, [http://kabar.kg/index.php?option=com\\_content&task=view&id=12823&Itemid=36](http://kabar.kg/index.php?option=com_content&task=view&id=12823&Itemid=36) (accessed April 13, 2011).

On July 12, 2010, President Otunbayeva established a National Commission of Inquiry into the June violence. The commission, which published its report on January 19, 2011, drew a series of conclusions, including that leaders of the Uzbek community and the clan of recently ousted president Bakiyev had provoked the conflict. The commission also pointed to other factors as being responsible for the violence, such as a failure to adequately study and learn lessons from the 1990 violence and a failure by previous administrations to develop adequate policies for national groups and socio-economic development. The commission provided 19 recommendations to prevent more violence.<sup>9</sup> While some of the conclusions and recommendations were relevant, the report failed to adequately address several key issues, including claims of government involvement in the violence, and the systematic nature of the attacks on the Uzbek neighborhoods.

President Otunbayeva also requested that Kimmo Kiljunen, a member of the OSCE parliament, coordinate an international investigation. The Kyrgyzstan Inquiry Commission (KIC) published its report and the government's response on May 3, 2011.<sup>10</sup> The KIC found that certain attacks against Uzbek neighborhoods in Osh on June 11-13 would amount to crimes against humanity if proven beyond reasonable doubt in a court of law.<sup>11</sup> The Kyrgyz government welcomed the report but claimed that it was biased in favor of ethnic Uzbeks, and disputed that the attacks on Uzbek neighborhoods qualify as crimes against humanity.<sup>12</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Kyrgyzstan Inquiry Commission, "Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010."

<sup>11</sup> Ibid.

<sup>12</sup> Government of Kyrgyzstan, "Comments by the Government of Kyrgyzstan in Response to the Report of the Kyrgyzstan Inquiry Commission into the Events in Southern Kyrgyzstan in June 2010," May 3, 2011, [http://www.kic.org/images/stories/kg\\_comments\\_english\\_final.pdf](http://www.kic.org/images/stories/kg_comments_english_final.pdf) (accessed May 17, 2011).

## II. Kyrgyzstan's Obligations and Record on Torture and Ill-Treatment

### Kyrgyzstan's International Obligations

The ban against torture is one of the most fundamental prohibitions in international human rights law. No exceptional circumstances can justify torture. Kyrgyzstan is a party to key international treaties that ban torture under all circumstances, even during recognized states of emergency. These include the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.<sup>13</sup>

International law, in addition to prohibiting torture, obliges states to prevent, investigate, prosecute and punish acts of torture and other ill-treatment. States have an obligation to conduct an effective investigation whenever there are reasonable grounds to believe that an act of torture has been committed. They also are responsible for having effective systems in place for addressing victims' complaints, and prosecuting torturers, those who order torture, and those in positions of authority who fail to prevent or punish torture.

The obligation to prosecute persons alleged to be responsible for acts of torture includes those who are complicit, as well as to those who directly participate, in torture. This includes those in the chain of command who knew or should have known that such acts were perpetrated.<sup>14</sup> The Convention against Torture obligates a state to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."<sup>15</sup> The state must ensure that any victim of torture "obtains redress and has an enforceable right to fair and adequate compensation...."<sup>16</sup>

According to article 2(3)(a) of the ICCPR, governments have an obligation "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy." The ICCPR imposes on states the duty "[t]o ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or

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<sup>13</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.

171, entered into force March 23, 1976, acceded to by Kyrgyzstan on October 7, 1994, arts. 4, 7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), G.A. res. 39/46, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Kyrgyzstan on September 5, 1997.

<sup>14</sup> Committee against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 8.

<sup>15</sup> Convention against Torture, art. 2(i).

<sup>16</sup> *Ibid.*, art. 14.

legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."<sup>17</sup>

On April 14, 2008, Kyrgyzstan also ratified the Optional Protocol to the Convention against Torture, which stipulates that governments should facilitate regular visits to correctional institutions by international experts and create a national prevention mechanism to combat torture and cruel treatment.

## **Domestic Law and its Shortcomings**

The Constitution of the Republic of Kyrgyzstan categorically prohibits torture and “all other forms of cruel, inhuman, and degrading treatment and punishment.”<sup>18</sup> Torture is also banned by article 305-1 of the Criminal Code. However, under article 305-1, torture is a crime that only attracts a maximum punishment of five years imprisonment, rendering it a less-serious crime. This classification also means that perpetrators can be amnestied. Kyrgyzstan is failing to fulfill its obligations under international law by classifying torture as a less serious crime and providing for a relatively lenient punishment for this crime.

According to experts in Kyrgyzstan, the classification of torture as a less serious crime also means that in practice prosecutors and investigators are more likely to prosecute perpetrators under the more serious offence of “exceeding official authority in article 305.” Based on evidence, the judge has the discretion to reclassify a crime from article 305 to article 305-1 (torture), which is less serious, but not vice-versa. Prosecutors and investigators are concerned that failure to prove torture under 305-1 will in most cases lead to a re-investigation and reflect negatively on them.

The act of torture could also be prosecuted under article 325, which says that officials “may be held criminally liable for coercion to testify by means of threats, violence, or blackmailing of a person being questioned or other unlawful acts.”<sup>19</sup> An offence under article 325 attracts a maximum sentence of 12 years. In practice though, this article is rarely used.

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<sup>17</sup> ICCPR, art. 2 (3)(b). See also 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, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d). “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below.”

<sup>18</sup> Constitution of the Republic of Kyrgyzstan, art. 22.

<sup>19</sup> Criminal Code, art. 325.

## Kyrgyzstan's Record

While the present report documents torture, ill-treatment, and violations of the right to a fair trial in the specific context of the investigation into the June 2010 violence, it is important to note that these are also long-standing problems in Kyrgyzstan. According to the government's own statistics, between 2005 and 2009 Kyrgyz prosecutorial authorities received 778 complaints about the use of torture and other inhuman and cruel treatment.<sup>20</sup>

In a submission to the May 2010 United Nations Human Rights Council Universal Periodic Review (UPR), several Kyrgyz human rights organizations with extensive experience in documenting the use of torture in Kyrgyzstan stated that “the police continue to torture and mistreat people in detention with impunity.”<sup>21</sup> Golos Svobody (Voice of Freedom), a Kyrgyz nongovernmental organization (NGO), documented 237 incidents of torture in 2010.<sup>22</sup> In the same period, the General Prosecutor's Office received 97 complaints.<sup>23</sup>

The case against 32 people convicted for organizing a protest in Nookat, a town in southern Kyrgyzstan, in 2008, starkly illustrates Kyrgyzstan's torture problem.<sup>24</sup> On October 1, 2008, a group of Nookat residents protested against the authorities' refusal to allow a public celebration to mark the end of Ramadan. Riot police brought in from Osh dispersed the gathering after protesters threw stones at the municipality building.

In the following days, police arrested several dozen people. The authorities initially charged them with organizing or participating in mass unrest, and then added charges of “separatism,” “attempted overthrow of the constitutional order,” and “spreading ethnic and religious strife.” At their trial, 30 of the 32 defendants testified that they had been tortured and ill-treated, but the judge neither ordered an investigation of the allegations nor dismissed the evidence that defendants said had been obtained under torture.<sup>25</sup> The defendants received prison terms ranging from 9 to 20 years.

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<sup>20</sup> Letter from Kyrgyz General Prosecutor's Office to the Office of the High Commissioner for Human Rights Regional Office for Central Asia, February 4, 2010, published in Ekaterina Ivashchenko, “New wave of torture in Kyrgyzstan: Brutal, sophisticated, universal,” *Fergana News*, January 14, 2011, <http://www.fergananews.com/article.php?id=6864> (accessed January 31, 2011).

<sup>21</sup> Golos Svobody, Spravedlivost, and the Advocacy Center on Human Rights, Joint Submission to the UN Universal Periodic Review of Kyrgyzstan,” undated, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS4\\_GS\\_UPR\\_KG"Z\\_So8\\_2010\\_TheGolosSvobody.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS4_GS_UPR_KG) (accessed January 31, 2011).

<sup>22</sup> Ivashchenko, “New wave of torture in Kyrgyzstan: Brutal, sophisticated, universal,” *Fergana News*.

<sup>23</sup> *Ibid.*

<sup>24</sup> See for example, “Kyrgyzstan: Investigate Torture Allegations,” Human Rights Watch news release, May 13, 2009, <http://www.hrw.org/en/news/2009/05/13/kyrgyzstan-investigate-torture-allegations>.

<sup>25</sup> Monitoring Mission of the Nookat Events under the Ombudsman of the Kyrgyz Republic, *Monitoring of compliance with human rights connected with the events in Nookat on October 1, 2008*, February 24, 2009,

In February 2009 a commission established by the Kyrgyz ombudsman concluded that the police had tortured or ill-treated most of the defendants during their arrest and in pre-trial detention.<sup>26</sup> A January 2009 report by Memorial, a Russian human rights organization, documented similar violations.<sup>27</sup>

Kyrgyz human rights groups also criticized the authorities' failure to adhere to fair-trial standards and for imposing unusually harsh sentences.<sup>28</sup> The first two trial hearings were closed. According to the reports above, several lawyers complained they lacked access to court materials, and relatives were not told about the detention of family members.<sup>29</sup>

The Kyrgyz authorities also have a poor record of investigating torture and holding perpetrators accountable. In response to the 778 complaints received from 2005 through 2009, the prosecutor's office decided to not open a criminal investigation in 687 cases (almost 90 percent). Of the 91 criminal cases opened, most were opened under article 305, exceeding official authority. Only three criminal investigations were opened under article 305-1, torture.<sup>30</sup>

For 2010, the prosecutor's office refused to open criminal investigations in 71 of 97 cases in which it had received complaints about torture.<sup>31</sup> It opened criminal investigations in eleven cases, but only two under article 305-1, torture.<sup>32</sup> In one of these cases, two police officers were handed a two-year suspended sentence, which was overturned on appeal.<sup>33</sup> The other case was closed because the victims retracted their complaint.<sup>34</sup>

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[http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS3\\_UPR\\_KGZ\\_So8\\_2010\\_JointSubmission3\\_Annex2\\_R.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/JS3_UPR_KGZ_So8_2010_JointSubmission3_Annex2_R.pdf) (accessed April 13, 2011).

<sup>26</sup> Monitoring Mission of the Nookat Events under the Ombudsman of the Kyrgyz Republic, *Monitoring of compliance with human rights connected with the events in Nookat on October 1, 2008*.

<sup>27</sup> The Memorial Human Rights Center, *Kyrgyzstan: Human Rights Violations in Connection with the Case on the 'Nookat Events'*, January 27, 2009, <http://www2.memo.ru/d/804.html> (accessed April 13, 2011).

<sup>28</sup> "Human Rights Activists Consider Supreme Court Ruling Regarding Nookat Events Illegal," AKIpress, May 20, 2009, [http://www.akipress.com/\\_en\\_news.php?id=32320](http://www.akipress.com/_en_news.php?id=32320) (accessed May 17, 2011).

<sup>29</sup> In May 2009, Kyrgyzstan's Supreme Court reviewed the case and upheld the verdicts. It did not investigate the defendants' torture allegations.

<sup>30</sup> Letter from General Prosecutor's Office to the Regional Office of the Office for the High Commissioner for Human Rights, February 4, 2010, reprinted in Ivashchenko, "New wave of torture in Kyrgyzstan: Brutal, sophisticated, universal," *Ferghana News*. For a discussion of why article 305-1 is rarely used, see the Legal Framework and its Shortcomings chapter below.

<sup>31</sup> *Ibid*.

<sup>32</sup> Despite a request from a local organization, the General Prosecutor's Office has yet to clarify the status of the 15 other cases.

<sup>33</sup> Two police-officers were sentenced to two years suspended imprisonment by the Lenin district court in Bishkek for the beating of detainee. E-mail from Sardar Bagisbekov, head of *Golos Svobody*, April 14, 2011.

<sup>34</sup> The case took place in Kemin district. See for example, Ivashchenko, "New wave of torture in Kyrgyzstan: Brutal, sophisticated, universal," *Ferghana News*.

In January 2011, the Lenin district court in Bishkek began hearings in a case against five police officers accused of ill-treating two detainees in September 2009.<sup>35</sup> The hearing has been postponed several times because defendants and witnesses have failed to appear. The policemen are charged with exceeding official authority, carrying out a criminal investigation against persons they knew were innocent, illegal detention, and compulsion to give evidence.<sup>36</sup>

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<sup>35</sup> “Two victims describe how they were tortured by the police,,” *Golos Svobody*, January 11, 2011, <http://golossvobody.kloop.kg/?p=327> (accessed April 13, 2011).

<sup>36</sup> “Torture in Kyrgyzstan: Some stories,” *Fergana News*, January 14, 2011, <http://www.fergananews.com/news.php?id=16208&mode=snews> (accessed April 13, 2011).



### III. Arbitrary Arrests, Ill-treatment, and Torture

#### Immediately After June Events

According to official data, as of December 10, 2010, Kyrgyz authorities had detained 306 people suspected of involvement in the June 10-14 violence and remanded 271 of them to pre-trial custody.<sup>37</sup> In addition, law-enforcement agencies have brought an unknown number of people in for questioning or kept them in unacknowledged detention.

Human Rights Watch has collected credible evidence showing that Kyrgyz law enforcement agencies investigating the violence have engaged in widespread and serious abuses of detainee rights, such as arbitrary arrest and detention, extortion, denial of due process guarantees, torture, and ill-treatment.<sup>38</sup> There is strong evidence that at least one person died as a result of torture in detention.<sup>39</sup> These abuses are serious violations of Kyrgyzstan's obligations, described above, under the ICCPR, the Convention against Torture, and Kyrgyz criminal law banning torture.

In total Human Rights Watch has received credible information about the use of torture and ill-treatment in 65 cases. In many of these, there is extensive evidence corroborating victim testimonies. The sections below describe the general patterns of torture and ill-treatment in the context of the investigations into the June 2010 violence and the authorities' failure to investigate and hold perpetrators accountable for torture. More detailed descriptions of some of the cases are included in the appendix to this report.

Lawyers and detainees told Human Rights Watch that in many cases the torture and ill-treatment seem to have been motivated by a desire to obtain confessions to particular crimes; investigators and police operatives demanded that the detainees confess to having killed specific individuals or committed other specific criminal acts.<sup>40</sup>

An illustrative case is the investigation into the June 13 killing of a guard at Limateks, a cotton plant in Osh. During the investigation numerous people were taken to the Kara-Suu

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<sup>37</sup> "Conclusion of the National Commission for the investigation of the June events in the south of Kyrgyzstan." Presumably, the remainder were released although Human Rights Watch cannot confirm this.

<sup>38</sup> "Kyrgyzstan: Torture, Detentions Escalate Tensions," Human Rights Watch news release, July 14, 2010, <http://www.hrw.org/en/news/2010/07/13/kyrgyzstan-torture-detentions-escalate-tensions>.

<sup>39</sup> Human Rights Watch, *Where is the Justice?*

<sup>40</sup> Operatives are police officers who conduct search-and-seizure operations, surveillance, and other operational measures, but who are not allowed by law to conduct interrogations or undertake other investigative activities.

district police station, where they were severely beaten. One of the beaten detainees told Human Rights Watch after he was released:

They wanted me to confess that I killed a man. I refused, and then they wanted me to say I knew those who did. They tied my feet with a rope, hung me upside down, and beat me on the head and on the body. Then they beat me with a rubber truncheon on the soles of my feet. This lasted for about an hour. [Together with me] they also brought three other men from our neighborhood in—I heard one of them screaming as they beat him, and saw the other two, both badly beaten.<sup>41</sup>

Lawyers and victims provided Human Rights Watch with information about seven people who were detained and ill-treated in connection with the Limateks investigation. Two people were eventually sentenced to 20 and 25 years in prison for the murder of the guard. The lawyer of one of the convicted claimed that the investigator in the case had prevented her from seeing her client, and that relatives of the victim had threatened her.<sup>42</sup>

In many of the torture cases we documented, the detainees described law enforcement or security personnel expressing a significant level of ethnic bias or hatred towards them, asking, “How many Kyrgyz did you kill?” According to Farrukh Gapirov, an ethnic Uzbek whose torture is detailed below, officers started clapping and shouting “Oy, they brought Uzbeks!” when he arrived at the police station.<sup>43</sup>

The most severe torture and ill-treatment usually took place during the first hours or days of detention, when relatives and lawyers did not have access to the detainees. The main methods that police and other agents used were prolonged, severe beatings with rubber truncheons or rifle butts, punching, and kicking. Victims also reported that personnel placed gas masks or plastic bags over their heads in order to suffocate them; burned them with cigarettes; strangled them with a strap; or subjected them to electric shocks.

Police used a combination of these methods to torture Farrukh Gapirov. On June 16, 2010 police detained Gapirov at a checkpoint when they found ammunition in the car in which he was traveling. Police personnel beat Gapirov as soon as he arrived at the Osh city police

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<sup>41</sup> Human Rights Watch interview with “Mokhamajon M.” (not his real name), Osh province, July 8, 2010.

<sup>42</sup> “Eight years for participation in massive unrest,” Advocacy Center for Human Rights, September 30, 2010, [http://www.advocacy.kg/news/30\\_09\\_10\\_2.html](http://www.advocacy.kg/news/30_09_10_2.html) (accessed April 14, 2011).

<sup>43</sup> Human Rights Watch interview with Farrukh Gapirov, Osh, December 9, 2010.

station, and tortured him for five hours. He said the beating started as soon as he arrived at the station:

Several officers entered the room where we were held and started beating us without asking any questions. They forced us to hold our hands on our heads while they beat us with helmets, batons, and their weapons. Then they handcuffed our hands behind our backs and pulled them up so it hurt while they used batons to beat our legs. They beat us together for about two hours before they split us up.

Then they placed me on the floor with my back against the wall. One person stood on my legs while another beat the soles of my feet with a baton. Then they forced me to undress completely. They tied a rope to my penis and pulled it while beating it with a baton. I was not able to urinate for four to five days after that.

They also used electric shocks. First they stood me up and connected the cables to my genitals. When they gave the shock, however, I stepped back. Then they forced me to lie down on the floor while they continued to give the shocks. They also beat us with plastic bottles filled with sand and forced us to put our hands on the table, which they then beat. I could not even hold a pen after that. They had to help me to sign a document.<sup>44</sup>

Another Uzbek, detained June 28, managed to smuggle a letter to his family. In it he wrote that police had used a gas mask to torture him:

They took me to the police station. There, about 10 or 11 people, police officers and special forces, started to beat me. They asked whether I was at the Suzak Sanpa during the [June] violence.<sup>45</sup> In short, they beat me for three days, morning and night ... They were saying that they were prosecutors, lawyers and judges. For three days they tortured me using a gas mask [to cut off my air supply].<sup>46</sup>

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<sup>44</sup> Human Rights Watch interview with Farrukh Gapirov, Osh, December 9, 2010.

<sup>45</sup> According to the investigation, residents of the Suzak district blocked the Bishkek-Osh highway by a factory called Sanpa, poured fuel oil on the road to stop vehicles, and attacked drivers and passengers on June 12-13, 2010. The investigation said that 16 people were killed and two others are missing as a result.

<sup>46</sup> Handwritten letter from detainee to family, undated. On file with Human Rights Watch.

The vast majority of torture victims were young Uzbek men, although Human Rights Watch also documented the detention and abuse of elderly parents and other relatives of suspects, women, and minors as young as 14. In two cases that Human Rights Watch documented the victims were Kyrgyz.

Most of the cases of torture and ill-treatment documented by Human Rights Watch took place in police stations at the local, city, and province level, as well as at the Regional Department for Fighting Organized Crime (RUBOP) and the Financial Police. The Ministry of Internal Affairs has jurisdiction over all these institutions.

Personnel also frequently abused detainees held at National Security Service (SNB) facilities. Twenty-one-year old “Rustam,” an ethnic Uzbek whom the SNB detained in mid-July in connection with the previous month’s violence, told Human Rights Watch he was beaten almost daily during his several weeks in detention in the basement of Osh’s SNB building:

They beat us with rifle butts. They wanted to know how many Kyrgyz we had killed. There were about 50 to 60 Uzbeks in the basement. They beat us all. There were several people who beat us. Whoever wanted to [beat us] did. Sometimes they put us on the floor and poked us with red-hot nails that they had heated on a boiler plate. They forced us to stand with our hands raised and then they beat us on the back. My back still hurts.<sup>47</sup>

Rustam showed Human Rights Watch several scars on his body from the hot nails that SNB officers had used to burn his skin. The scars were still visible more than two months after the wounds were inflicted.<sup>48</sup>

Human Rights Watch did not document similar allegations of abuse in pre-trial detention centers that are under the jurisdiction of the Ministry of Justice.

## **Continued Use of Torture**

Lawyers and other observers noted that the problem of torture and ill-treatment worsened significantly after the June events, and was routine in cases involving ethnic Uzbek suspects detained on charges unrelated to the June 2010 violence. In an interview about the use of

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<sup>47</sup> Human Rights Watch interview with “Rustam,” not his real name, Osh, December 13, 2010. According to “Rustam,” there were seven cells in the SNB basement with about 15 to 20 people in each cell. There would be some turnover among the detainees, but the people who were not able to pay bribes remained for a long time.

<sup>48</sup> Human Rights Watch interview with “Rustam,” not his real name, Osh, December 13, 2010. Photographs of scars on file with Human Rights Watch.

torture in Kyrgyzstan in 2010, a human rights defender who has researched police torture in Kyrgyzstan for four years noted:

The June events [exacerbated] the situation regarding torture and completely untied the hands of the police officers and the security service. We even heard about the use of torture by the tax police.... Many are convinced that if torture is used against, for example, Uzbeks, then that is normal.<sup>49</sup>

The number of detentions, and consequently the number of torture allegations, eventually subsided to some degree. But by late November, detentions—and allegations of abuse—again increased substantially following several security operations in Osh.<sup>50</sup> Human Rights Watch interviewed three victims and close relatives of several other victims who were tortured and ill-treated in this period. All those interviewed provided details about others whom they had seen being abused in detention. Abuse in late 2010 documented by Human Rights Watch was mainly perpetrated by SNB personnel, as opposed to earlier cases in which a significant number of cases took place at police stations.

Interviewed separately, several victims provided similar accounts of their ordeal in SNB custody in late 2010. “Shavkat” (not his real name), an ethnic Uzbek, said police officers stopped his car in Osh in early December and detained him and several friends who were also in the car without explanation. After about an hour of questioning at the Osh city police station, the police took them to the SNB building across the street, and placed them in the corridor outside the SNB investigation department. Shavkat told Human Rights Watch:

They pulled the jacket over my head so I couldn’t see anything and forced me to squat. Then they started beating me. They punched and kicked me were asking about a person that I don’t know. There were several people who beat him. I was able to see only their uniformed pants because of the jacket over my head. They would beat me for five minutes. Then they would take a break before they beat me again.

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<sup>49</sup> Ivashchenko, “New wave of torture in Kyrgyzstan: Brutal, sophisticated, universal,” *Fergana News*.

<sup>50</sup> On November 29, 2010, several alleged militants were killed in a shootout in Osh. In Bishkek the next day, two police officers were injured in an explosion outside the venue where the trial against those accused of ordering and executing violence during the violent overturn of government in Kyrgyzstan on April 7, 2010. The authorities conducted several security operations in connection with these incidents.

When I got home it hurt so much that I was not able to take off my own clothes. I was lying in bed for two or three days afterwards, but I was too afraid to go to a hospital or complain about the incident.<sup>51</sup>

The SNB released Shavkat only when he told them that he was part Kyrgyz.

In a separate incident, also in early December, the SNB detained “Sherzod” (not his real name), another Uzbek, together with several friends. Sherzod told Human Rights Watch that the SNB officers placed him in the basement of the SNB building in Osh. After a couple of hours, several SNB-officers in masks came down to the basement, instructed Sherzod and his friends to face the wall, and started beating them:

They beat us for 5 to 10 minutes. Then they asked questions. They wanted to know whether we had used weapons. Then they would start beating again. There were two or three officers beating. They all wore masks. The person who asked the questions did not beat us. It all lasted for about 4 hours. They did not register us anywhere. When they released us ... they wanted us to write that we had no complaints. I didn’t, but my friends did.<sup>52</sup>

Sherzod was released the next day, through a personal contact. After his release, a doctor established that he had sustained a broken rib from the beating. Sherzod was in obvious pain when Human Rights Watch interviewed him less than two weeks after his ordeal.

The relatives of three other people detained at the SNB in November and December related similar accounts. The recently released detainees did not speak with Human Rights Watch themselves because they feared retribution for doing so.<sup>53</sup>

As of May 2011 Human Rights Watch continued to receive information about the use of torture and ill-treatment in the context of security related detentions.

## **Denial of Due Process Guarantees**

Use of torture and ill-treatment was often accompanied by other denials of due process guarantees, such as the right to a lawyer of one’s choosing and the right to private consultations with one’s lawyer, and in some cases police failed to register detentions and

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<sup>51</sup> Human Rights Watch interview, Osh, December 13, 2010.

<sup>52</sup> Human Rights Watch interview with “Sherzod,” not his real name, Osh, December 12, 2010.

<sup>53</sup> Human Rights Watch interviews, Osh, December 12 and 13, 2010.

obtain court sanctions within time limits provided in Kyrgyz law. These practices violate provisions of the Kyrgyz Criminal Procedure Code and also international human rights instruments to which Kyrgyzstan is a party.<sup>54</sup>

### *Enforced Disappearances and Incommunicado Detention*

In some cases, security officers detained people at their homes without informing relatives of the reason for their detention, or more significantly, without telling family members where they were taking the detainees.

Witnesses described how in June and July, groups of armed men in camouflage uniforms, usually driving civilian vehicles, would arrive at the neighborhood and take several (usually one to five) men away. In some cases security forces told residents they would interrogate the detainees and release them, but in most cases, they did not provide any grounds for detaining the individuals or tell the relatives where the detainees were going. Under international law, a person's arrest or detention followed by refusal to acknowledge the arrest or detention, or to provide information on the fate or whereabouts of the detained person, constitutes an enforced disappearance.

The investigation into the June violence is ostensibly being coordinated by the Interdepartmental Investigative Group set up by the General Prosecutor's Office. However, in practice, relatives, lawyers, and researchers from Human Rights Watch often found it impossible to determine who ordered or carried out the arrests, and, accordingly, which agency was later responsible for the fate of certain detainees. Officials at various facilities commonly denied to families who made inquiries, at least in the first 48 hours after the arrest of a relative, that they were holding the family's loved one, when in fact the individual was in their custody. This is particularly worrisome given that ill-treatment often takes place in the first 48 hours after arrest, while investigators (or, most often, police operatives), try to force the arrestees to confess or provide information incriminating others.

In an illustrative case, no agency admitted to having 21-year-old Farrukh Gapirov, an ethnic Uzbek, in their custody after he was detained on June 17, 2010. His father, Ravshan Gapirov wrote in an e-mail to Human Rights Watch:

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<sup>54</sup> The Kyrgyz Criminal Procedure Code contains a number of due process guarantees aimed at reducing the likelihood of abuses. These provisions include requirements to register a detention within three hours (article 95); to have a court sanction a detention within 48 hours (article 110); to provide the detainee access to of lawyer (article 40); and to allow the lawyer to be present during interrogations. (article 100).

On [June 17] I went to the city police station, the province police station, the SNB, and other police units, but I could not find Farrukh. Everywhere they replied the same: that nobody had brought Farrukh there, but that they would let me know if they did.... I first went to the city police station where I saw the deputy head. He called in police officers and the investigator.... After some time they said that they had no such person there.... Turns out that at that point they were torturing my son and I was chatting with the most senior creep.<sup>55</sup>

Farrukh Gapirov, who as noted above was later released after a court acquitted him, told Human Rights Watch that he was brought straight to the Osh City Police Department, where police officers subjected him to severe beatings and other forms of torture.<sup>56</sup> (See appendix for more details).

While lawyers and relatives usually gained access after about 48 hours to detainees held in the police stations, they told Human Rights Watch that it was much harder to establish the whereabouts of, and communicate with, detainees in SNB detention. “Rustam” told Human Rights Watch that he did not see a lawyer at all during his several weeks in detention in July 2010. In what amounted to an enforced disappearance, the SNB also denied to “Rustam’s” family that he was in their custody: it was only after two months that a guard at SNB facility confirmed to the family that “Rustam” was there.<sup>57</sup>

### *Denial of Adequate Legal Representation*

Several lawyers alleged they had been unable to meet with their clients in private. One lawyer whose client was accused of involvement in the killing of a policeman in Bazar-Kurgan told Human Rights Watch:

I was able to meet with my client twice during the investigation, but we had no meetings in private. During one of the meetings my client tried to write something [to me] on a piece of paper, but the head of the temporary holding facility, who insisted on being present, saw it and tried to take away the paper. I managed to tear it up before he took it. I understood from my client

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<sup>55</sup> E-mail from Ravshan Gapirov to Human Rights Watch, November 16, 2010. On file with Human Rights Watch.

<sup>56</sup> Human Rights Watch interview with Farrukh Gapirov, Osh, Kyrgyzstan, December 9, 2010.

<sup>57</sup> Human Rights Watch interview, Osh, December 13, 2010.



that they were beating him regularly, but he didn't want to complain about it. It would have made his case more difficult.<sup>58</sup>

One lawyer, whose client was eventually convicted of the murder of a factory guard on June 13, complained that she was unable to see her client for six days.<sup>59</sup>

Lack of proper legal representation by state-appointed lawyers was another common problem. One lawyer told Human Rights Watch:

One of the main problems is the use of "pocket lawyers." No investigator wants a normal lawyer to work on the case because a normal lawyer will break his case.... Every investigator therefore has his "pocket lawyer." This lawyer is present during the detention, during the first interrogation.... The problem is that the pocket lawyer agrees with the accusations. He does not bring forth arguments in favor of his client. He is very passive. He is just an observer. He just sits there and signs documents.<sup>60</sup>

The lawyer told Human Rights Watch that in several of his cases, "pocket lawyers" had failed to complain about the use of torture during the initial stages of the investigation. By the time the family hired a new lawyer, all the torture marks had disappeared from the victim's body and it was no longer possible to obtain medical proof of the torture.<sup>61</sup>

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<sup>58</sup> Human Rights Watch interview with lawyer, Osh, October 9, 2010. The detainee was a codefendant of Azimjan Askarov's whose case is described in detail below and in the appendix to this report.

<sup>59</sup> "Eight years for participation in massive unrest," Advocacy Center for Human Rights, September 30, 2010, [http://www.advocacy.kg/news/30\\_09\\_10\\_2.html](http://www.advocacy.kg/news/30_09_10_2.html) (accessed April 14, 2011).

<sup>60</sup> Human Rights Watch interview with lawyer, Osh, October 10, 2010.

<sup>61</sup> Ibid.

## IV. Impunity for Torture and Ill-Treatment

Despite numerous complaints and, in some cases, overwhelming evidence, Kyrgyz authorities have failed to meet their international obligation to promptly and thoroughly investigate and prosecute incidents of torture connected to the June violence. Perpetrators of torture and ill-treatment have enjoyed virtual impunity for their crimes. According to the Kyrgyz General Prosecutor's Office, the Kyrgyz authorities have opened only one criminal investigation into allegations of torture of a detainee in relation to the June violence.<sup>62</sup> The investigation was later suspended because, according to the General Prosecutor's Office, the victims were not able to identify the perpetrators.<sup>63</sup>

On July 9, 2010, following media reports about widespread use of torture and ill-treatment during investigations related to the June violence, several law-enforcement agencies issued an order "[o]n measures of ensuring observance of the law during the special operations, operative measures and investigative activities" which, among other things, called on law enforcement officials to observe the law scrupulously during investigative activities, immediately inform the general prosecutor of any violations, and, in case of violations, "raise the question of accountability of responsible officials."<sup>64</sup>

However, there is little evidence that the order has been implemented. On the contrary, Human Rights Watch research shows that prosecutorial authorities have used a variety of tactics to avoid opening criminal investigations into allegations of torture. They have, among other things, conducted inadequate and pro forma preliminary inquiries, pressured defendants to withdraw torture complaints, and refused to order medical examinations for detainees who claimed they were tortured.

In a speech to a gathering of prosecutors on February 12, 2011, President Otunbaeva blamed the prosecutor's office for fostering the widespread problems of arbitrary detention and ill-treatment in pre-trial custody. Coming just after the Supreme Court of Kyrgyzstan requested an investigation into Azimjon Asakarov's allegations of abuse while in custody at the Bazar-

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<sup>62</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011. On July 27, 2010, the Jalal-Abad province prosecutor office opened a criminal investigation into the alleged ill-treatment of Kh. Kadyrov, F. Kadyrov, and R. Gaibullayev, who were detained on two occasions in July 2010 in Jalal-Abad. The investigation was suspended on September 26, 2010.

<sup>63</sup> *Ibid.*

<sup>64</sup> "On Measures to Ensure Legality during Conduct of Special Operations, Search and Investigative Operations," General Prosecutor Office of the Republic of Kyrgyzstan, July 9, 2010, <http://www.prokuror.kg/?news/shownovelty/32> (accessed April 14, 2011).

Kurgan police holding facility (see below), her state statement also obliquely blamed the prosecutor's office for failing to prevent and stop torture. She said:

Arbitrary detentions and wrongful prosecutions take place all the time. People are in detention for months—detained by the prosecutor—and after some time they are let out again because of absence of a crime. I don't even know how to justify the suffering of these people. Maybe the prosecutor's staff should spend a couple of days or a week in detention under the conditions that we today have in places of detention? In Jalal-Abad, for example, there is no pre-trial detention facility. Place yourself in the situation of innocently detention people.... Arbitrary detention and wrongful arrest—this all speaks about your low professional level. The main reasons for acquittals are evidence that have been obtained in violations of the law and unprofessional evaluation of evidence by the investigator or the prosecutor.<sup>65</sup>

On April 12, 2011, the newly appointed acting General Prosecutor Aida Salyanova issued an order to strengthen prosecutorial control over compliance with the prohibition on torture. The order instructed prosecutors to conduct unannounced visits to places of detention and immediately react to every complaint about the use of torture or other similar violations and to open investigations to hold all perpetrators criminally accountable.<sup>66</sup>

### **Inadequate Preliminary Inquiries**

In most cases, the authorities refused to launch a criminal investigation claiming that a preliminary inquiry did not confirm the allegations of torture and ill-treatment.<sup>67</sup> For example, about 10 days after Fahridin Ashirov's lawyer filed a complaint about the beating of his client on August 4, 2010, he received a letter with the following text from the Osh City Prosecutor's Office:

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<sup>65</sup> "President Roza Otunbayeva: The Honor of the State Depends on the Professionalism and Responsibility of the Prosecutor's Institutions," February 12, 2011, [http://www.kyrgyz-el.kg/index.php?option=com\\_content&task=view&id=2136](http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=2136) (accessed April 14, 2011).

<sup>66</sup> "On strengthening prosecutorial control over compliance with constitutional guarantees on prohibition of the use of torture and other inhuman, cruel and degrading forms of treatment and punishment," General Prosecutor's Office of the Republic of Kyrgyzstan, April 12, 2011, <http://golossvobody.kloop.kg/?p=465> (accessed April 14, 2011).

<sup>67</sup> Under Kyrgyz law, a prosecutor is obliged to launch a preliminary inquiry if he or she receives information that a crime will be or has been committed. Based on the preliminary inquiry, the prosecutor decides whether to open a criminal investigation. The law states that the prosecutor must take that decision in three days, or within 10 days in exceptional cases. Code of Criminal Procedure, art. 156.

The Prosecutor's Office of the city of Osh has reviewed your statement concerning officers of the MRU of the [Ministry of Internal Affairs] of the Kyrgyz Republic.<sup>68</sup> A preliminary inquiry has established that the allegations in the statement are not confirmed, in connection with which a decision was issued on August 13, 2010, to not open a criminal investigation.<sup>69</sup>

Notably, the prosecutor's office did not explain how the preliminary inquiry had reached the conclusion that the allegations could not be confirmed.

The Osh Province Prosecutor's Office, which had also received a complaint from Ashirov's lawyer, merely forwarded the complaint to the police department that had allegedly beaten Ashirov. The prosecutor's office took no further action, which is a violation of Kyrgyz law.<sup>70</sup>

The letter from the Osh City Prosecutor's Office to Ashirov's lawyer was hardly unusual. Letters from prosecutors informing complainants and lawyers about the outcome of preliminary inquiries usually do not contain any information about what investigative measures the prosecutorial authorities have taken, making it difficult to assess whether the prosecutorial authorities have conducted an adequate inquiry.<sup>71</sup> However, a review of one of these decisions, which Human Rights Watch obtained, shows that the preliminary inquiry in that case was wholly inadequate.

When Almas Niyazov, a lawyer in Jalal-Abad, met with his client Rustam Jeenbekov on July 19, 2010, two days after he had been detained, Jeenbekov told him that he had been beaten into confessing to a number of crimes, including the theft of a car. The next day, July 20, Niyazov submitted a complaint to the Jalal-Abad Province Prosecutor's Office and requested a medical examination. The medical examination established that Jeenbekov had multiple bruises on his body and that the estimated time of the injuries was consistent with the allegations that he had been beaten following his detention.<sup>72</sup>

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<sup>68</sup> Inter-regional department under the Ministry of Internal Affairs.

<sup>69</sup> Letter from Prosecutor's Office of the city of Osh to lawyer, August 13, 2010. On file with Human Rights Watch.

<sup>70</sup> Human Rights Watch interview with lawyer, Osh, October 10, 2010. Article 12 (10) of the Law on the Procedure for Review of Complaints from Citizens states that institutions and official representatives must avoid sending complaints to other officials whose actions are the subject of the complaint. On the procedure for review of complaints from citizens, No 67 of May 4, 2007, as amended by act No 16 of February 26, 2008, art. 12, <http://www.medialawca.org/document/-1619> (accessed May 17, 2011).

<sup>71</sup> Lawyers can request a copy of the decision, but several lawyers told Human Rights Watch that they had not done so because they believed that it was useless to try to overturn the decision to not open a criminal investigation.

<sup>72</sup> Expert conclusion 823, July 30, 2010, on file with Human Rights Watch.

On July 30, the Jalal-Abad City Prosecutor's Office rejected Niyazov's request to open a criminal investigation. During the preliminary inquiry, the prosecutor questioned two police officers who denied that they had beaten Jeenbekov. The police officers claimed that Jeenbekov had resisted detention, requiring them to use force. This, they said, explained Jeenbekov's injuries. Without questioning any of the several people who witnessed the detention, the prosecutor concluded that no crime had been committed and decided not to open a criminal investigation.

Interviews with lawyers and victims show that preliminary inquiries have been grossly inadequate in other cases as well, with the prosecutorial authorities failing to conduct the most basic investigative steps. For example, the prosecutor's office decided not to open a criminal investigation into torture allegations filed by Fahridin Ashirov, described above, but never interviewed him about his allegations.<sup>73</sup>

In yet other cases, the prosecutor's office simply did not reply to lawyers who filed torture complaints even though Kyrgyz law obliges it to do so within three days, or ten if it is a complicated case.<sup>74</sup> One lawyer told Human Rights Watch:

When I first met my client in August, more than a month after he was detained, he told me that all the statements that he had given so far had been given under torture. Police officers at the MRU had kicked him, beaten him with their hands and batons, and suffocated him by placing a bag over his head. His first lawyer had not been able to speak with him in private because there were always police officers present.

I immediately wrote a complaint to the Osh Province Prosecutor's Office, and I also handed it over to the investigator. I also separately complained that they made it difficult for me to meet with my client and that they failed to notify me when he was interrogated. They even submitted the case to the court without my knowledge. [Almost two months later] I have not received an answer to either complaint.<sup>75</sup>

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<sup>73</sup> Human Rights Watch interview with lawyer, Osh, October 10, 2010.

<sup>74</sup> Criminal Procedural Code, art. 156.

<sup>75</sup> Human Rights Watch interview with lawyer, Osh, October 8, 2010.

## Pressuring Victims to Withdraw Complaints

Investigators and prosecutors have also pressured detainees to retract their complaints, or questioned them about alleged ill-treatment in the presence of alleged perpetrators, making it impossible for the detainees to speak openly about abuse. One lawyer told Human Rights Watch that when he visited his client, “Ruslan” (not his real name) at the Osh City Police Holding Facility (IVS) shortly after he had been detained, Ruslan complained he had been tortured.<sup>76</sup> The lawyer photographed marks from the beatings on his body and immediately wrote a complaint to the prosecutor’s office. The lawyer told Human Rights Watch:

The prosecutor launched a preliminary inquiry and went to the IVS pre-trial detention center. Using the carrot and stick method, [promising a harsh sentence if the client pursued his complaint and a lenient sentence if he dropped it], he pressured [Ruslan] to write a statement that he did not have any complaints. The prosecutor never replied to my complaint.<sup>77</sup>

In November, Ruslan was tried on murder charges in connection with the June violence. Ruslan and his lawyer raised the torture allegations during the trial and the lawyer handed over the photographs to the judge. The judge dismissed the allegations, however, saying that Ruslan should complain to the prosecutor if he was beaten. The prosecutor asked that the court sentence Ruslan to life in prison, which it did.

Another lawyer described several of her cases in which the investigator had promised to remove charges if her client would not complain. In one case, her client was “beaten all over,” but did not file a complaint because the prosecutor promised to drop murder charges against him, a promise he kept. The lawyer told Human Rights Watch:

His body looked like raw meat and we had a medical conclusion that described his injuries. The investigator was very clear. In front of me and my client he said he would drop the murder charge, the most serious one, if my client did not complain. In the end we did not complain and my client was charged only with participation in mass disorders.<sup>78</sup>

Another lawyer told Human Rights Watch that he requested the prosecutor to order a medical examination of his client, who was beaten in custody after his arrest on suspicion of

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<sup>76</sup> IVS is the acronym for the Russian term, *izolyatr vremennogo zaderzhania*, or “temporary holding isolator.”

<sup>77</sup> Human Rights Watch interview with “Aziz,” not his real name, Osh, October 8 and December 7, 2010.

<sup>78</sup> Human Rights Watch interview with “Gulmira,” not her real name, Osh, October 9, 2010.

illegal weapons possession. However, instead of investigating the complaint the prosecutor met with the client without informing the lawyer and forced him to write a statement saying that he had not been beaten. The lawyer asked that Human Rights Watch not mention his own name or that of his client because the trial was ongoing at time of writing, and he believes that complaining would have a negative impact on the trial's outcome.<sup>79</sup> "Such violations happen almost all the time," the lawyer told Human Rights Watch. "But nobody dares to complain about them."<sup>80</sup>

## **Failure to Act on Information and Allegations of Torture**

The authorities' obligation to investigate allegations of torture extends beyond reacting to formal complaints. Under international and Kyrgyz law, authorities can and should launch torture inquiries once they become aware, through means other than a formal complaint, of credible allegations of torture.<sup>81</sup>

This obligation is key, particularly given the intense fear of repercussions that many torture victims harbor. Victims, their lawyers, and relatives told Human Rights Watch this fear prevented them from lodging formal complaints with the authorities. Detainees feared more torture, and defendants fear that complaints will harm their chances of acquittal.

Still, dozens of defendants have testified under oath in trials related to the June events that they were beaten, tortured, ill-treated, or "pressured," a much-used euphemism for torture and ill-treatment. For example, eight of the ten defendants accused of involvement in the June 13, 2010 murder of the Kara-Suu district police chief said they confessed to the crime because of police "pressure" during the investigation.<sup>82</sup> Although a prosecutor was always present during the hearings, prosecutorial authorities did not take any action to verify these allegations.

In some cases defendants chose not to speak about torture during the first instance trial, hoping for a lenient sentence. When they instead received long prison sentences, they chose to speak out about their treatment during appeals hearings. For example, Jahangir Bazarov, who was accused of the killing of an ethnic Kyrgyz during the violence, followed the advice of his state-appointed lawyer not to complain about torture, but to confess to the killing. As a result he was sentenced to life in prison on the basis of his confession. Even though he

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<sup>79</sup> Human Rights Watch interview with lawyer, Osh, December 8, 2010.

<sup>80</sup> Ibid.

<sup>81</sup> Grounds for opening a criminal investigation can be a statement from a citizen, confession, statement from a representative of an organization, information from media, or discovery of evidence that a crime has been committed. Criminal Procedural Code, article 150.

<sup>82</sup> Judgment, criminal case 02-1-517, Osh Municipal Court, October 29, 2010.

testified in during appeals hearings that he had been forced to confess, his life-sentence was upheld without an investigation of the allegations of torture.

Prosecutorial authorities also failed to act in cases when the defense presented overwhelming evidence supporting torture allegations. For example, Farrukh Gapirov's lawyer presented overwhelming evidence during his trial that his client had been beaten, including photographs showing marks of beatings on Gapirov's body, a video-statement recorded shortly after he had been beaten, and the results of a medical examination concluding that Gapirov had marks of beating. As a result, as detailed below, the court declared the confession that Gapirov made during the investigation inadmissible and acquitted him.

In addition to the acquittal, the court issued a separate ruling instructing the police and prosecutorial authorities to take appropriate measures against the personnel responsible for the violations. The judge requested the prosecutor's office and the police to file with the court a report on their findings. Although the court set out a one month deadline, to Human Rights Watch's knowledge, at this writing the prosecutor's office did not file the report.<sup>83</sup>

Human Rights Watch is aware of only one case in which prosecutorial authorities on their own initiative have conducted a preliminary inquiry. In January 2011, the Jalal-Abad Province Prosecutor's Office conducted a preliminary inquiry into allegations of torture endured by Azimjan Askarov, a human rights defender convicted for alleged involvement in the killing of a police officer during the June disturbances in Bazar-Kurgon. The authorities launched the inquiry after the website *mk.kg* posted a lengthy video interview with Azimjan Askarov, conducted after his conviction, in which he described the torture and ill-treatment that he had endured months earlier in the Bazar-Kurgan IVS.<sup>84</sup> On January 10, 2011, the prosecutor's office concluded the preliminary inquiry with a formal determination not to open a criminal investigation into the allegations, referring to a statement Askarov made when he was still being held at the Bazar-Kurgan IVS, in which he denied any ill-treatment.<sup>85</sup>

It is unclear whether the prosecutorial authorities conducted any additional investigative measures during the preliminary inquiry.

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<sup>83</sup> According to Article 381 of the Criminal Procedure Code, subjects of special rulings are required to inform the court about measures taken in respect of the subject of the personal ruling.

<sup>84</sup> "In the search of justice. Azimjan Askarov's stories (video)," *Ferghana News*, December 13, 2010, <http://www.ferghananews.com/article.php?id=6837> (accessed May 18, 2011).

<sup>85</sup> "News," General Prosecutor's Office of the Republic of Kyrgyzstan, January 19, 2011, <http://www.prokuror.kg/?news/shownovelty/117> (accessed April 15, 2011).



## Use of Statements Extracted under Torture

International human rights law not only prohibits the use of torture to obtain information; it also prohibits the use as evidence of information obtained through torture and ill-treatment. The Convention against Torture, to which Kyrgyzstan is a party, requires states to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings."<sup>86</sup>

Kyrgyz law states that judges are obliged to examine and assess testimony, including confessions, together with other evidence in the case, which is interpreted to mean that confessions cannot be the sole basis for a conviction.<sup>87</sup> Evidence, including statements and confessions, obtained in violation of the law is inadmissible and cannot be used as evidence.<sup>88</sup>

In a number of cases, judges generally failed to critically assess allegations that defendants and their lawyers submitted stating that confessions and statements were extracted under torture and ill-treatment. To Human Rights Watch's knowledge in only one case—that of Farrukh Gapirov, described above—did a judge declare inadmissible evidence coerced under torture and order an investigation into the torture.<sup>89</sup> In all other cases that Human Rights Watch reviewed, judges either ignored the allegations completely or dismissed them without further investigation and accepted into evidence statements that defendants alleged were coerced with torture. In several cases judgments indicate that judges sentenced defendants to long prison sentences solely based on coerced confessions or circumstantial evidence.

Judges commonly justified dismissing torture allegations by pointing to the defendants' failure to complain about the torture or ill-treatment during the investigation. The judge presiding over the prosecution of Dildor Baimurzaev, for example, refused to accept a torture complaint filed by Baimurzaev's lawyer during a hearing in December, 2010, even after she explained that the Osh City Prosecutor's Office refused to accept Baimurzev's torture complaint during the investigation. She told Human Rights Watch:

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<sup>86</sup> Convention against Torture, art.15.

<sup>87</sup> Article 83 (5) of the Kyrgyz Criminal Procedure Code states: "Testimony by suspects or defendants, including confessions of their guilt, is subject to mandatory examination and evaluation."

<sup>88</sup> "Information obtained with a substantial violation of the rules hereof shall be considered inadmissible and shall not be used as evidence and shall not be used to prove any circumstances stipulated in Article 82 of this Code." Kyrgyz Criminal Procedure Code, art. 81 (3), <http://www.medialawca.org/document/-4460> (accessed February 14, 2011).

<sup>89</sup> In the case against Farrukh Gapirov, the Osh City Court declared as inadmissible Gapirov's confession during his first hours of detention after the defense presented video and photographic material as well as medical documents that supported Gapirov's allegation that he had been tortured. The court acquitted Gapirov of all charges. His acquittal was upheld by the appeal court. See appendix for details.

At the beginning of the trial [the judge] told us not to openly make motions, but I saw that [my client] had been beaten. So I handed over a motion to end the case and attached photos [showing beating marks on his body]. The judge read it and everybody became upset. The prosecutor was against it. The victims were against it. And the judge also dismissed the motion. The judge justified his decision by saying that I had not complained to anybody before. I explained to him that at that time nobody accepted my complaints. I was looking for justice in the court, but the judge dismissed the allegations.<sup>90</sup>

Baimurzaev was sentenced to four years in prison for participation in massive unrest.<sup>91</sup>

Another illustrative case is the trial for the June 13, 2010 murder of the Kara-Suu police chief. During the first instance trial at the Osh City Court in October 2010, almost all of the 10 defendants said that they had been subjected to beatings, torture, and ill-treatment during the investigation. The ruling notes that the defendants stated at trial that police had “pressured” them into giving false statements during the investigation. However, the ruling does not assess these claims or order any investigation into their veracity.

Defendants and lawyers repeated the torture allegations when the Osh Province Court heard the case on appeal in December 2010. In its ruling, the appellate court dismissed each defendant’s allegations in identically worded paragraphs, referring to the lack of complaints about the torture during the investigation and lack of evidence of police torture. Without any further examination, the Osh Province Court concluded that the defendants had invented the torture allegations to avoid responsibility for their involvement in the murder of the police chief. The lawyers for at least two of the defendants had indeed filed complaints about torture with the prosecutor’s office, and in at least one of the cases medical records kept by the pre-trial detention centers contained information about injuries inflicted during the detention (see the case of Ashirov in the appendix). However the judge ignored this.

In another case, the judge interrupted a witness when he said that the prosecutor told him what to say in order to implicate others. According to one of the defendants’ lawyers, the judge told the witness that since he had signed the testimony given during the investigation then that was the testimony that he would use.<sup>92</sup> The defendants told the judge that they had confessed during the investigation because of ill-treatment.

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<sup>90</sup> Human Rights Watch interview with “Elmira,” not her real name, Osh, December 12, 2010.

<sup>91</sup> In Osh, judgment issued in murder in Sheit-tebe village, Azattyk, December 8, 2010, <http://www.azattyk.kg/content/news/2242448.html> (accessed May 18, 2011).

<sup>92</sup> Human Rights Watch interview with lawyer, December 10, 2010.

### *Confessions Given Undue Weight*

In yet another case, a court convicted Jahangir Bazarov based on circumstantial evidence and a confession that he later said was extracted under torture.

Bazarov was initially detained because he had been using a cell phone that belonged to the murder victim. Bazarov claims that he found the cell phone and that he did not kill the man, but that his state-appointed lawyer advised him to confess to the crime to bring an end to the beatings in detention. On September 3, 2010, in one of the first convictions related to the June violence, the Kara-Suu District Court sentenced Bazarov to 23 years in prison. Even though the prosecution's case was that Bazarov committed the murder with four other Uzbeks and before many witnesses, it failed to establish the full names of the other alleged perpetrators, or produce any witnesses to the murder.

In October, an appeals court upheld the main charges, ignoring several testimonies in favor of the defense, and dismissing Bazarov's allegation that he had been beaten without ordering that the allegation be investigated. A Human Rights Watch researcher present at Bazarov's appeals hearing observed that murder victim's relatives attacked and chased away several defense witnesses.<sup>93</sup> Inside the courtroom the audience also shouted at, insulted, and attacked Bazarov's mother. Nonetheless, one witness was able to testify that Bazarov was in a different location at the time of the murder, and another witness testified that she had been with Bazarov when he found the cell phone. The appeal court's decision upholding the guilty verdict does not mention the two witness testimonies in favor of the defendant.<sup>94</sup>

The Supreme Court also upheld the verdict without ordering further investigation of the torture claims, even though Bazarov's lawyer presented photographs during the hearing showing torture marks on Bazarov's body shortly after he was detained. The prosecution had still not produced witnesses or any other evidence linking Bazarov directly to the killing.<sup>95</sup>

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<sup>93</sup> See below for more information on how attacks and threats at trial against defendants and defense witnesses undermined fair trials.

<sup>94</sup> Judgment, Osh Province Court, case AO-356/10-UD, October 12, 2010.

<sup>95</sup> Judgment, Supreme Court of the Kyrgyz Republic, No 4-1168, December 16, 2010.

## V. Violations during Trials

### Attacks on Participants in Trials

Audiences at trials frequently threatened, harassed, intimidated, and even physically attacked ethnic Uzbek defendants, their relatives, lawyers, and other observers before, during, and after court sessions. This hostile atmosphere has been particularly evident in high-profile trials, such as murder cases, and particularly in cases concerning the murder of policemen. This section describes the general pattern of these attacks and threats, the authorities' response to them, and their impact on fairness of trials. More detailed descriptions of the attacks can be found in the appendix to this report.

The threats, insults, and attacks severely undermined defendants' right to a fair trial.<sup>96</sup> Lawyers were reluctant to ask witnesses for the prosecution tough questions, Uzbek witnesses were afraid to come to court to testify, and defendants and lawyers were afraid to insistently raise allegations of torture and ill-treatment. Several attacks in mid-October were so serious that they prompted lawyers to hold a press conference during which they announced that they would discontinue their work until the authorities could guarantee their security.<sup>97</sup> Police and soldiers present largely failed to intervene, though the situation improved slightly after the mid-October press conference.

In all hearings monitored by Human Rights Watch, people in the audience—often identified as relatives of the victims—shouted threats and insults at the defendants and their lawyers while the court was in session. Often, the audience shouted that the defendants should be killed, using the derogatory Kyrgyz word for Uzbek, “Sart.”<sup>98</sup>

In one case, the court conducted an entire session while posters hung on the wall inside the courtroom by people in the audience called for the defendants to be shot.<sup>99</sup>

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<sup>96</sup> The UN Human Rights Committee has held that a hostile atmosphere and pressure created by the public in a court can be a violation of article 14 of the ICCPR, the right to a fair trial. In a 2000 communication in a case against Russia, the Human Rights Committee held: “With regard to the author’s claim that he was denied a fair trial in violation of article 14, paragraph 1, in particular because of the failure by the trial court to control the hostile atmosphere and pressure created by the public in the court room, which made it impossible for defence counsel to properly cross-examine the witnesses and present his defence, the Committee notes that the Supreme Court referred to this issue, but failed to specifically address it when it heard the author’s appeal. The Committee considers that the conduct of the trial, as described above, violated the author’s right to a fair trial within the meaning of article 14, paragraph 1.” Gridin v. Russian Federation, Communication No 770/1997, 20 July 2000, CCPR/C/69/D/770/1997, para. 8.2.

<sup>97</sup> Kyrgyzstan: Over 150 lawyers in Osh refused to defend Uzbeks because their own security concerns, *Ferghana News*, October 16, 2010, <http://enews.ferghananews.com/news.php?id=1882> (accessed May 17, 2011).

<sup>98</sup> Human Rights Watch monitored seven hearings during missions to southern Kyrgyzstan in October and December 2010.

<sup>99</sup> Human Rights Watch interview with independent observer, Bishkek, October 6, 2010.

Threats, insults and attacks were also often directed at defense lawyers. The audience shouted that ethnic Kyrgyz lawyers were traitors and ethnic Russian lawyers should go back to Russia, and cast ethnic slurs against ethnic Uzbek lawyers.

On several occasions, people in the audience also physically attacked participants in the trials. In the most severe case that Human Rights Watch documented, which took place on October 13, 2010, one defendant and three relatives of defendants had to seek medical treatment after they were attacked outside a trial venue.<sup>100</sup>

On October 14, 2010, a victim's relative punched a lawyer as she stepped down from the witness stand, and a group of women attacked the lawyer's driver outside, breaking the car window and hitting him with a stone, which caused bruises on his face.<sup>101</sup> Serious attacks during trials documented by Human Rights Watch are described in the appendix.

In most cases the attackers seem to have been aggrieved relatives of the victims. However, lawyers and other observers believe some of the attacks were organized. One lawyer said:

It is not clear whether all of them are relatives. What is clear is that somebody is informing them. There was one employer from the province prosecutor's office standing among them. Then they attacked my clients. In an attack on another lawyer, an employee of the court pointed the lawyer out to the crowd, which then attacked the lawyer.<sup>102</sup>

Lawyers, and organizations working for justice in the south or providing legal representation to defendants accused of involvement in the June violence faced threats, intimidation, and attacks also outside the courts.

In late June 2010, Tolekan Ismailova, of Bishkek-based Citizens Against Corruption, a human rights NGO providing legal aid to defendants in the south, fled the country for several months with her family after the Osh prosecutor's office accused her of spreading inaccurate information about a police operation that followed the violence. The prosecutor's office also accused Aziza Abdirasulova, the leader of Kylym Shamy, another Bishkek-based human rights NGO. A few days later Ismailova's neighbors in Bishkek reported that strangers had come to

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<sup>100</sup> See appendix. See also "Attacks During Trials Undermine Justice," Human Rights Watch news release, October 13, 2010, <http://www.hrw.org/en/news/2010/10/13/kyrgyzstan-attacks-during-trials-undermine-justice>.

<sup>101</sup> Human Rights Watch interview with lawyer and driver, Osh, October 14, 2010.

<sup>102</sup> Human Rights Watch interview with lawyer, Osh, October 9, 2010.

the neighborhood to inquire about her family and where she lived.<sup>103</sup> Abdirasulova received numerous threats. For example in August, angry residents of Bazar-Kurgan threatened to kill one of Abdirasulova's children if their mother monitored Azimjan Askarov's trial.<sup>104</sup>

On October 12, 2010, two unknown men threatened the program coordinator of Spravedlivost (Justice), based in Jalal-Abad, for providing free legal assistance to defendants in cases related to the June violence. The men identified themselves as relatives of victims in one of the cases and demanded that the lawyers “sit still” and not ask any questions or make any motions during the trial. Spravedlivost filed a complaint with the authorities about the incident. The men eventually apologized for the threats, possibly after having been contacted by law-enforcement agencies.

On October 22, a local government representative attacked an employee of the Advocacy Center for Human Rights, an NGO based in the south. According to witnesses, the representative threatened to plant ammunition in the center’s office and then report the center to the SNB. The organization decided to not pursue a complaint about the incident.<sup>105</sup>

A lawyer at another local NGO providing legal assistance to detainees told Human Rights Watch:

Police got phone numbers from our client and called us, admonishing us for providing legal aid to Uzbeks. Of course it influences our work, but what can we do. We can’t drop this work.<sup>106</sup>

### *Role of the Authorities*

Police and security personnel inside and outside courtrooms largely failed to prevent or stop the attacks. In October 2010, Human Rights Watch researchers observed on several occasions that soldiers and policemen stood by without interfering when physical assaults took place. Defendants, lawyers, and relatives told Human Rights Watch that soldiers and police had also failed to interfere during numerous trials in September.

In the period after the mid-October press conference by lawyers, described above, Human Rights Watch noticed an increase in the number of police and security personnel present

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<sup>103</sup> Human Rights Watch interviews with Abdirasulova.

<sup>104</sup> Ibid.

<sup>105</sup> Human Rights Watch interview with lawyer, October 26, 2010.

<sup>106</sup> Human Rights Watch interview with lawyer, Osh, December 7, 2010.

during trials. On several occasions personnel physically prevented the audience from attacking participants in the trials. Threats and insults continued, however, as did physical attacks, albeit less frequently.

Maintaining order in courtrooms is the responsibility of the presiding judge, who has the authority to issue reprimands, impose fines, and expel people if necessary. However, Human Rights Watch trial monitoring and interviews with lawyers and independent observers indicate that judges failed to utilize this authority. In some cases judges issued reprimands to people in the audience, but failed to take further action when these were ignored. On at least two occasions judges ordered people in the audience to leave the courtroom after repeated interruptions and threats, but when the people in question refused, the judges backed down and allowed them to stay, further undermining their authority.<sup>107</sup> Human Rights Watch does not know of a single instance in which judges forced a person to leave the courtroom or barred somebody from attending because of threatening or violent behavior.

One lawyer described a particularly violent hearing on September 2, 2010, during which relatives of the victim physically attacked the defendants and the lawyer (see the list of attacks during trial in the appendix for details):

The victim's relatives were extremely aggressive. They threw stones on the defendants' relatives, who were forced to flee. They threw a glass at the defendants and an old man hit them with his walking stick. The judge used the gavel a couple of times, but he did not intervene. He should have thrown the relatives out. But it seemed like they, the relatives, were running the process and not the judge.<sup>108</sup>

Interviews with lawyers and judges reveal that judges were afraid to take measures because they were concerned that it would further increase tensions. One lawyer, Tahir Asanov, stated during a press conference in October:

[d]uring the trials on the June riots the judges do not react on violations. Obviously, they are scared. We already several times raised this issue at the press conferences, addressed various officials, the office General Prosecutor,

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<sup>107</sup> Human Rights Watch trial monitoring, Osh, December 13, 2010 and Nookan, October 21, 2010.

<sup>108</sup> Human Rights Watch interview with lawyer, Osh, October 8, 2010.

and discussed this topic at the meeting with Roza Otunbaeva. Nothing has changed.<sup>109</sup>

A senior judge, Judge M., explained to Human Rights Watch that judges were reluctant to expel people from the courtroom due to concern it would prompt violent confrontations. He told Human Rights Watch:

If we were to expel from the courtroom victims' relatives who interrupt the proceedings by, for examples, shouting insults, then they will only start beating the police and judges and all others as well.... The only correct measure in those cases is to postpone the case.<sup>110</sup>

The judge indicated that it would be better if relatives of the defendants, in most cases Uzbek, did not attend the trials as often:

We are trying our best to make sure that relatives of the defendants don't attend the trials so often to avoid these clashes, but it doesn't depend on us—we can't prevent them from attending just as we can't prevent relatives of the victims from attending.<sup>111</sup>

The same judge went so far as to blame lawyers for provoking the conflict in the courtroom, even though in the case he cited as an example the lawyer was striving to get the court to redress the impact attacks were having on the fairness of the proceedings. He described an incident in which a lawyer stated in court that the defendants had been beaten during a break in the trial the previous day, and made a motion for the judge to enter this into the court records.<sup>112</sup> The judge claimed the beating did not happen, and said:

Sometimes lawyers just ask questions for the gallery, questions that are not related to the case.... He could have filed a written complaint and we would have examined the issue in peace and quiet. Knowing that the court was full with a hundred aggressive relatives of the victim who were ready to tear up the defendants without investigation and trial, the lawyer still stood up and

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<sup>109</sup> Kyrgyzstan: Over 150 lawyers in Osh refused to defend Uzbeks because their own security concerns, *Ferghana News*, October 16, 2010, <http://enews.ferghananews.com/news.php?id=1882> (accessed May 17, 2011).

<sup>110</sup> Human Rights Watch interview with Judge M., Osh, October 15, 2010.

<sup>111</sup> *Ibid.*

<sup>112</sup> See appendix for details about the incident, which took place at the Osh City Court on September 29.



asked such provocative questions. The lawyers also need to behave adequately.<sup>113</sup>

Prosecutorial authorities have also failed to investigate and prosecute attacks during trials. In a letter to Human Rights Watch, Deputy General Prosecutor Baktybaev wrote that the authorities had opened two criminal investigations regarding attacks on participants in criminal proceedings.<sup>114</sup> Both, he said, were suspended because the authorities could not establish the identity of the perpetrators.<sup>115</sup> Given that these attacks took place in public where there were numerous potential witnesses and several perpetrators allegedly attended court hearings and were affiliated with the victims in those cases, closing an investigation because the perpetrators were not identified lacks credibility. The more plausible implication is that the authorities have decided not to pursue criminal actions for these attacks. Such an approach only reinforces the message that those who engage in threats, harassment, and attacks during trials will enjoy impunity.

The number of investigations is very low compared to the number of threats and assaults that took place during trials (see appendix). When the threats and assaults occurred, representatives for the prosecutorial authorities were often present in the court room, but it would appear that in many cases they did not take any action.

### *Impact on Fair Trial Rights*

The threats, insults, and attacks severely undermined defendants' right to a fair trial. Judges and lawyers told Human Rights Watch that the hostile atmosphere made it difficult for lawyers to adequately defend their clients.<sup>116</sup> One lawyer described how the hostile atmosphere during a trial prevented her from asking a witness important questions:

I needed to ask one of the key prosecution witnesses a lot of questions about why he was implicating my client. I wanted to ask him whether he had been beaten into giving testimony because his testimony in court was very different from his initial one. In the end there were many questions that I did not ask [because the audience was so hostile].<sup>117</sup>

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<sup>113</sup> Human Rights Watch interview with Judge M., Osh, October 15, 2010. Because the alleged beating happened during a break during the hearing, there were no independent witnesses to the incident.

<sup>114</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

<sup>115</sup> Ibid.

<sup>116</sup> See for example, Human Rights Watch interview with Judge S., Osh, October 12, 2010, and interview with Judge B., Osh, October 13, 2010.

<sup>117</sup> Human Rights Watch interview with lawyer, Osh, October 9, 2010.

Three lawyers told Human Rights Watch separately that judges had instructed them to not ask “provocative questions” during trials so as to avoid confrontations with the victim’s relatives. The judges did not specify what they meant by “provocative.”<sup>118</sup>

The attacks meant that defense lawyers were also reluctant to call witnesses to testify. One lawyer defending an ethnic Uzbek tried on murder charges told Human Rights Watch that she had asked witnesses to provide written statements instead of testifying orally because she was afraid that they would be attacked.<sup>119</sup>

Several witnesses refused to testify or were too afraid to participate in the proceedings. Another lawyer told Human Rights Watch:

The prosecution brought 25 witnesses in support of the victims. Our witnesses were too afraid. When we tried to bring a witness, a relative of the victims chased her away. The victim’s relatives were just uncontrollable. In the end my client got the sentence that the prosecutor asked for.<sup>120</sup>

“Uktam” was detained together with his close relative who is a defendant in a murder case. Uktam told Human Rights Watch that he heard his relative’s cries when the police tortured him to confess. He had also gathered several witnesses who could provide his relative with an alibi for the time of the murder. Uktam said: “I was not in the courtroom at all during the trial. I brought five witnesses to the court, but we did not go inside. We did not dare because of the victims’ relatives who were there.”<sup>121</sup>

At least two lawyers defending ethnic Uzbek clients withdrew from cases because of threats against them or their family.<sup>122</sup>

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<sup>118</sup> Human Rights Watch interview with “Elmira,” and “Gulmira,” Osh, October 9, 2010 and Magomed, Osh, October 10, 2010. Not their real names.

<sup>119</sup> Human Rights Watch interview with “Elmira,” not her real name, Osh, October 9, 2010.

<sup>120</sup> Human Rights Watch interview with lawyer, Osh, October 8, 2010.

<sup>121</sup> Human Rights Watch interview, Osh, December 9, 2010.

<sup>122</sup> Human Rights Watch interview, Osh, October 11, 2010.

## VI. Unequal Access to Justice

There are grounds to assert that Kyrgyz authorities have disproportionately targeted ethnic Uzbeks for involvement in the June 2010 violence and have been comparatively negligent in investigating and prosecuting crimes in which the suspects are more likely to be Kyrgyz. While most victims of the June 2010 violence were ethnic Uzbek, the majority of detainees—almost 85 percent—were also ethnic Uzbek. Moreover, statements provided in this report indicate widespread use of ethnic slurs against Uzbeks during detention and failure to address ethnically motivated threats and violence during trials. Taken together, these factors raise serious questions about ethnic bias in the investigation and prosecution of perpetrators.

Describing the lack of investigations into crimes in which ethnic Uzbeks were the victims, Jenish Toroyev, the head of Advocacy Center, an established NGO based in Osh providing legal aid to victims in southern Kyrgyzstan, said:

Analyzing statements and complaints of more than 200 people who approached us we regrettably have to recognize [that there is an] ... unwillingness to investigate numerous criminal cases concerning arson and looting of houses and property of ethnic Uzbeks.<sup>123</sup>

Research conducted by Human Rights Watch and official government statistics support these allegations.<sup>124</sup> According to the National Commission of Inquiry into the June Events, as of December 10, 2010, Kyrgyz authorities had sanctioned arrest against 271 suspects, 230 of whom are ethnic Uzbek; that is, almost 85 percent of the detainees were ethnic Uzbeks. According to an April 2011 letter from Deputy General Prosecutor R. Baktybaev, 115 of 124 persons in detention on murder charges are ethnic Uzbek while only nine are ethnic Kyrgyz.<sup>125</sup>

The relatively large number of Uzbek detainees is particularly worrying considering the ethnic breakdown of victims. Also according to the commission's report, 276 Uzbeks were

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<sup>123</sup> Human Rights Watch interview with Jenish Toroyev, Osh, December 10, 2010.

<sup>124</sup> Human Rights Watch, *Where is the Justice?*, pp. 60-61.

<sup>125</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

killed during the violence compared to 105 ethnic Kyrgyz.<sup>126</sup> In addition, most of the destroyed property belonged to ethnic Uzbek.<sup>127</sup>

According to Baktybaev, the explanation for the relatively large number of Uzbeks in detention is that it was mostly ethnic Uzbeks who destroyed and looted government buildings and attacked, including killing, law enforcement officers, implying that the authorities have prioritized such cases.<sup>128</sup>

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<sup>126</sup> "Conclusion of the National Commission for the investigation of the June events in southern Kyrgyzstan," *Kabar News Agency*, January 19, 2011, [http://kabar.kg/index.php?option=com\\_content&task=view&id=12823&Itemid=1](http://kabar.kg/index.php?option=com_content&task=view&id=12823&Itemid=1) (accessed January 31, 2011).

<sup>127</sup> See Human Rights Watch, *Where is the Justice?*

<sup>128</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

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We thank the government of Kyrgyzstan for its cooperation and assistance. Human Rights Watch expresses its sincere gratitude to the many Kyrgyz human rights groups that have collaborated with us and to all who shared their stories with us. We hope that this report will contribute to ending human rights abuses in the region and will bring those responsible for abuses to justice.

## Appendix 1: Selected Cases

In most of the 65 cases documented by Human Rights Watch, victims, relatives and lawyers feared filing complaints of torture or ill-treatment because of possible repercussions. Below are selected cases in which the victims and their lawyers have chosen to complain officially about the ill-treatment.

### Farukh Gapirov

Police detained Farrukh Gapirov and Mirakhmad Makhkamov at a checkpoint close to the airport in Osh around 9:30 a.m. on June 16, 2010, after they found a box of ammunition under the seat in Makhkamov's car. Gapirov told Human Rights Watch that the police officers started beating him with their weapons at the checkpoint and continued doing so as they drove both men to the Osh City Police Department. According to Gapirov, police at the station started clapping when they arrived, shouting "Oy, they brought Uzbeks!" Initially, they were both placed in the same room. Gapirov told Human Rights Watch:

Several officers entered the room where we were held and started beating us without asking any questions. They forced us to hold our hands on our heads while they beat us with helmets, batons, and their weapons. Then they handcuffed our hands behind our backs and pulled them up so it hurt while they used batons to beat our legs. They beat us together for about two hours before they split us up.

Then they placed me on the floor with my back against the wall. One person stood on my legs while another beat the soles of my feet with a baton. Then they forced me to undress completely. They tied a rope to my penis and pulled it while beating it with a baton. I was not able to urinate for 4-5 days after that.

They also used electric shocks. First they stood me up and connected the cables to my genitals. When they gave the shock, however, I stepped back. Then they forced me to lay down on the floor while they continued to give the shocks. They also beat us with plastic bottles filled with sand and forced us to put our hands on the table, which they then beat. I could not even hold a pen after that. They had to help me to sign a document.<sup>129</sup>

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<sup>129</sup> Human Rights Watch interview with Farrukh Gapirov, Osh, December 9, 2010.

After Gapirov signed the confession, the police officers brought him to an investigator. When Gapirov told the investigator that he did not know anything about the ammunition, the investigator turned to the police officers and asked “So you couldn’t break him?” The officers then took Gapirov out again and continued to beat him. “The investigator wrote everything on the computer,” Gapirov said. “We didn’t say anything. I signed the document. Only then did they call a lawyer.”

Gapirov’s torture lasted for about five hours. In the meantime, Gapirov’s father started searching for his son. He went to several detention facilities, including the Osh City Police Department, where he was in fact being held, but everywhere officials told him they did not have Gapirov in detention. The next day the lawyer whom Gapirov’s father had hired called to say that Gapirov was being held in at the Osh City Police Department.

During a meeting on June 18, Gapirov’s lawyer photographed the bruises on his body and videotaped Gapirov making a statement about the torture he had endured. On the lawyer’s request, a doctor examined Gapirov on June 19 and concluded that marks on his body and been inflicted by beatings. Gapirov’s lawyer tried to lodge a complaint about the torture with officials at the local prosecutor’s office, but they refused to accept the submission.<sup>130</sup>

During his trial Gapirov retracted his confession, and his lawyer presented photographs, the video statement, and the forensic medical report to the court. On October 26, the Osh City Court acquitted Gapirov. In a separate decision issued the same day, the court listed a number of violations that had taken place in his case.<sup>131</sup>

- Detaining authorities did not register the detention within three hours as required by law;
- Detaining authorities did not inform the family about the detention and accusations against him within 12 hours as required by law;
- Detaining authorities did not provide Gapirov with a lawyer immediately after the detention and interrogated him without a lawyer present;

The judge also pointed out that the prosecutor had presented no evidence except the confession to prove Gapirov’s guilt. Referring to the medical documents, the photographic and video material, and Gapirov’s trial testimony, the judge concluded that “all statements were obtained illegally” and that they therefore should be excluded from the case.

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<sup>130</sup> Human Rights Watch interview with Gapirov’s lawyer, Osh, October 9, 2010.

<sup>131</sup> “Special Ruling,” Osh City Court, October 26, 2010. On file with Human Rights Watch. All information below on this ruling derives from this document.

The ruling urged the police chief and prosecutor to “study these violations, draw the appropriate conclusions, not allow this in the future, undertake corresponding measures against officers responsible for the violations.” The judge asked the prosecutor's office and the police to file a report with the court within one month. At time of writing, however, Gapirov and his lawyer have not received any information that the prosecutor's office or the police have filed a report.<sup>132</sup>

According to the General Prosecutor's Office, the Osh City Prosecutor's Office decided on February 28, 2011, not to open a criminal investigation into the allegation “because of absence of elements of crime in anybody's actions.”<sup>133</sup> According to Gapirov's father, the Kyrgyz general prosecutor later overturned the decision.<sup>134</sup>

As of May 2011, more than five months after he was acquitted, Gapirov's father told Human Rights Watch that the prosecutor's office has yet to question his son about being tortured in detention.

The prosecutor's office appealed the acquittal, but on December 16 the Osh Province Court upheld the ruling. The prosecutor's office appealed the ruling to the Supreme Court, which also upheld the acquittal on April 26, 2011.<sup>135</sup>

### **Fakhrudin Ashirov**

On June 20, 2010, police detained 21-year-old Fakhrudin Ashirov and his father, Rakhmatillo, and took them to the Osh Province Police Department. Ashirov apparently confessed to involvement in the June 13, 2010 killing of the Kara-Suu district police chief, but he subsequently retracted the confession saying that police forced him to falsely confess. Police kept Ashirov at the temporary holding facility at the police department (IVS) for almost one month before transferring him to the pre-trial detention center (SIZO).<sup>136</sup> Kyrgyz law stipulates that a detainee can be kept in the IVS for only 10 days.<sup>137</sup>

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<sup>132</sup> Human Rights Watch interview with Ravshan Gapirov, March 28, 2011.

<sup>133</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

<sup>134</sup> Human Rights Watch interview with Ravshan Gapirov, May 23, 2011.

<sup>135</sup> Ibid.

<sup>136</sup> SIZO is the acronym for slyedsvennyi izolyatr, or pre-trial detention facility.

<sup>137</sup> Law on procedure and conditions of detention on remand of persons detained on suspicion and indictment of having committed crimes, October 3, 2002, [http://www.ksh.kg/index.php?option=com\\_content&view=article&id=68:2010-05-23-08-52-15&catid=40:2010-02-08-07-54-38&Itemid=64](http://www.ksh.kg/index.php?option=com_content&view=article&id=68:2010-05-23-08-52-15&catid=40:2010-02-08-07-54-38&Itemid=64) (accessed May 18, 2011), art. 9.



On August 4, police officers from the Department for the Fight against Organized Crime (UBOP) signed Ashirov out of the Osh pre-trial detention center (SIZO) on the instruction of the Osh Province Prosecutor's Office. Later that day, after Ashirov returned to the SIZO, he told his lawyer that the UBOP police officers had first taken him to an office on the first floor of the police station where they beat him in the stomach and on the head. They then took him to Nariman village, the murder site, where they beat him and forced him to sign documents. Ashirov told his lawyer that he did not know what documents he had signed. In a report about the incident, Ashirov's lawyer wrote that when he saw Ashirov later that day he observed bruises and scratches on Ashirov's back, a bruise under one of his eyes and red bruises under his lips.<sup>138</sup> The injuries Ashirov sustained that day are recorded in Ashirov's medical file at the SIZO.<sup>139</sup>

Ashirov's lawyer submitted complaints to the Osh City Prosecutor's Office the same day and to the Osh Province Prosecutor's Office the next. Despite the lawyer's swift reaction and the SIZO medical records establishing that Ashirov had sustained injuries while in the custody of UBOP police officers, neither prosecutor's office opened a criminal investigation. The Osh province prosecutor merely forwarded the complaint to UBOP—the police division that had beaten Ashirov and was the subject of the complaint—in clear violation of Kyrgyz law and took no further action.<sup>140</sup> On August 13 the Osh city prosecutor informed Ashirov and his lawyer that the allegations had not been confirmed and that it would not launch a criminal investigation. It is unclear what, if any, investigative measures the city prosecutor's office undertook.<sup>141</sup>

At trial, Ashirov and all his nine of his codefendants pleaded not guilty and declared that they had been forced to confess to the crimes. The judgment cites the men as saying that they had been “under pressure” from the police, a euphemism that usually refers to beatings or other forms of torture.<sup>142</sup>

During a break in a trial hearing held on September 29, 2010, several uniformed officers from the Ministry of Internal Affairs entered the defendants' cage in the courtroom, and beat them for about 20 minutes. The officers threatened to kill the men if they told anyone about the beatings. The defendants did not say anything about the incident when the hearing

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<sup>138</sup> Report by Ashirov's lawyer, August 5, 2010, on file with Human Rights Watch.

<sup>139</sup> Excerpt of the medical records of the Osh pre-trial detention center.

<sup>140</sup> Human Rights Watch interview with lawyer, Osh, October 10, 2010.

<sup>141</sup> Ibid.

<sup>142</sup> Judgment, criminal case 02-1-517, Kara-Suu District Court, October 29, 2010.

resumed after the break, but several called their relatives and lawyers after they returned to the detention facility at the end of the day.<sup>143</sup>

During the next day's hearing, when one of the defense lawyers demanded an investigation into the beatings, relatives of the murdered police chief started shouting insults and attacked him, punching him several times. When the lawyer fled the courtroom, relatives attacked him again outside. Courtroom officials and police standing outside were slow to intervene or did not intervene at all.<sup>144</sup>

During the investigation, three of Ashirov's co-defendants testified that they had seen Ashirov hit the police officer on the head with a plank. Although all three defendants retracted their testimonies and alleged that they had been forced or beaten into implicating Ashirov, the prosecution was able to have the false confessions admitted as evidence.<sup>145</sup>

In addition, Ashirov's lawyer requested permission from the court to call on six people who would testify that at the time of the murder Ashirov was taking refuge from the violence in a village on the border with Uzbekistan. The judge rejected the request.<sup>146</sup>

The court ignored the defendants' allegations that they had been beaten and forced to implicate themselves and each other. While the judgment states that the defendants testified that they had confessed "under pressure," it contains no comment or evaluation of these claims, nor does it indicate whether any steps would be taken to assess them. It also makes no mention of the alibi Ashirov gave in court.<sup>147</sup>

On October 29, the Kara-Suu district court sentenced Ashirov to life in prison and confiscation of his property.<sup>148</sup>

During appeal hearings by the Osh Province Court almost all the defendants and their lawyers complained that the police had used torture to obtain confessions. In almost identical language, however, the court dismissed each defendant's, including Ashirov's, torture allegation without further examination, referring to the lack of evidence and absence

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<sup>143</sup> Human Rights Watch interview with lawyer, Osh, October 10, 2010.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Judgment, criminal case 02-1-517, Kara-Suu District Court, October 29, 2010.

<sup>148</sup> Of the ten defendants, five were sentenced to life in prison while the others received prison sentences from four to twenty-five years. Judgment, criminal case 02-1-517, Kara-Suu District Court, October 29, 2010.

of previous complaints to the relevant authorities. The judge ignored the complaints that Ashirov's lawyer submitted following the August 4, 2010 beating and the recording of physical injuries in the SIZO medical records. The judge also ignored the complaints filed by the lawyer for one of the other defendants, Mirzakhid Saliev, with the prosecutor that his client had been beaten during the investigation.<sup>149</sup>

The appeals court reduced Ashirov's sentence to 25 years in prison,<sup>150</sup> which the Supreme Court upheld on May 12, 2011.<sup>151</sup>

### **Rustam Jeenbekov**

On July 17, police in Jalal-Abad detained 26-year-old Rustam Jeenbekov, an ethnic Kyrgyz, on suspicion of involvement in murder and car theft during the violence. They brought him to the temporary holding facility (IVS) at the Jalal-Abad City Police Department. Jeenbekov's lawyer, Almaz Niyazov, arrived at the police station just a few hours later, met with the investigator, and provided him with documentation that he was Jeenbekov's lawyer.

Two days later, when Niyazov met with his client in court, when the arrest sanction hearing was to take place, he noticed that something was wrong. Niyazov told Human Rights Watch:

Jeenbekov was [depressed]. He did not answer me. He seemed to be afraid of me. Finally he said that 10 to 12 police officers had beaten him and he described the beating in detail. He said that they had used a gas mask to cut off his air supply, they forced him to eat chili peppers, and beat him with plastic bottles filled with sand.<sup>152</sup>

The next day, July 20, Niyazov submitted a complaint to the Jalal-Abad Province Prosecutor's Office and requested a medical examination. The medical examination established that Jeenbekov had multiple bruises on his body and that the estimated time of the injuries was consistent with the allegations that he had been beaten following his detention.<sup>153</sup>

However, the following day, the police transferred Jeenbekov to Tash-Kumy, a small town 100 kilometers outside Jalal-Abad. The police gave no explanation for the transfer. "They

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<sup>149</sup> Judgment, criminal case 02-1-517, Osh Province Court, December 27, 2010.

<sup>150</sup> Ibid.

<sup>151</sup> Human Rights Watch interview with lawyer, May 23, 2011.

<sup>152</sup> Human Rights Watch interview with Almaz Niyazov, Jalal-Abad, December 11, 2010.

<sup>153</sup> Expert conclusion 823, July 30, 2010, on file with Human Rights Watch.

only did that to make it more difficult for me to see him,” Niyazov told Human Rights Watch.<sup>154</sup>

Niyazov appealed the lawfulness of the arrest. Because Jeenbekov was held in Tash-Kumu the appeal hearing took place only on July 27. At the hearing, the prosecutor produced a confession that Jeenbekov had written during interrogation on July 18. The investigator had conducted the interrogation without informing Niyazov, even though Niyazov had told the investigator the day before that he was his lawyer. Instead, of summoning him, the investigator invited another lawyer to sign the alleged confession documents.<sup>155</sup>

On July 30, the Jalal-Abad city prosecutor’s office replied that it had decided to not open a criminal investigation into the allegations of abuse.<sup>156</sup> The prosecutor’s office did not provide an explanation for how Jeenbekov sustained his injuries.

In an April 2011 letter to Human Rights Watch, Deputy General Prosecutor Baktybaev claimed that three police officers had testified during the preliminary examination of the allegations that Jeenbekov had resisted detention and that they had to respond with force, which resulted in his injuries. Baktybaev further wrote: “R. Jeenbekov himself was not questioned on the indicated circumstances because he had earlier been questioned as a suspect on the indicated circumstances, during which it was not referred to the use of torture against him.”<sup>157</sup>

### **Azimjan Askarov**

On June 15, 2010, police in the southern town of Bazar-Kurgan detained Azimjan Askarov, a human rights defender who has worked extensively on documenting prison conditions and police treatment of detainees, accusing him of “organizing mass disturbances” and “inciting interethnic hatred,” which led to the killing of a police officer on June 13, 2010.

The police brought Askarov to the temporary holding facility (IVS) in Bazar-Kurgan District Police Department, where they kept him in the custody of close colleagues of the killed policeman. Although Kyrgyz law stipulates that a detainee should be transferred to a pre-trial detention center under the jurisdiction of the Ministry of Justice within 10 days of his arrest, the authorities kept him at the police station for more than a month.

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<sup>154</sup> Human Rights Watch interview with Almaz Niyazov, Jalal-Abad, December 11, 2010.

<sup>155</sup> Ibid.

<sup>156</sup> Letter from Jalal-Abad prosecutor office to lawyer, July 30, 2010.

<sup>157</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

At the police station, Askarov was at the mercy of the bereaved colleagues of the killed policeman. When Human Rights Watch arrived at the police station on June 20, officers on duty were incensed by Human Rights Watch's concerns about Askarov. One of them said, "You may believe he is clean and innocent, but we know that he is a piece of shit." Another officer added that Askarov should be promptly executed.<sup>158</sup> Police officers could freely enter his cell, and for several days the police and prosecutorial authorities prevented Askarov from meeting with counsel of his own choosing.

On June 20 police finally allowed Askarov to meet with a lawyer provided by a local human rights organization, but several police officers refused to leave the room during the meeting.<sup>159</sup> When the lawyer went back to see Askarov two days later, the deputy prosecutor of Bazar-Kurgon, Jamilya Turazhanova, was present during the entire meeting, despite the lawyer's request for a private conversation with his client.<sup>160</sup> The police continued to obstruct Askarov's meetings with his lawyer. In a video interview recorded in December, 2010, after Askarov was transferred to a prison in Bishkek, Askarov said:

It was only when they transferred me to the police station in Jalal-Abad that I was able to meet in peace with my lawyer. For more than a month while I was in Bazar-Kurgan, I talked to him openly for maybe 10 minutes.<sup>161</sup>

While the presence of the police prevented Askarov from talking freely, Askarov showed his lawyer bruises on his left side and lower back, which the lawyer photographed.<sup>162</sup> In the December video interview, Askarov recounted in detail what happened to him at the police station:

They beat me continually for three days. In the investigator's office two police officers stood next me and demanded: 'If you don't want to write about weapons, then you will say that you were on the bridge [where the murder

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<sup>158</sup> Human Rights Watch interview with police officers, Bazar-Kurgan, June 20, 2010.

<sup>159</sup> The police and prosecutor only allowed the lawyer to see Askarov after an intervention by two Human Rights Watch researchers on the ground. The officers refused to leave despite several requests from a Human Rights Watch researcher who was present during the meeting.

<sup>160</sup> Human Rights Watch interview with lawyer, June 23, 2010.

<sup>161</sup> "In the search of justice. Azimjan Askarov's stories (video)," *Ferghana News*, December 13, 2010, <http://www.ferghananews.com/article.php?id=6837> (accessed May 18, 2011).

<sup>162</sup> Photo of Askarov taken by Nurbek Toktakunov, June 22, 2010, on file with Human Rights Watch. Published on <http://www.hrw.org/en/news/2010/06/23/kyrgyzstan-ensure-safety-due-process-detained-activist>.

took place].<sup>163</sup> Every time I refused they beat me on my kidneys from both sides at the same time. [It felt like] my lungs would jump out.<sup>163</sup>

Upon seeing the bruises on Askarov's body in June, his lawyer immediately submitted a motion for a medical examination of Askarov, but the deputy prosecutor rejected the motion, saying an examination had already been conducted. She refused to provide the lawyer with a copy of the medical report.<sup>164</sup> According to information subsequently released, the medical examination had concluded that Askarov had sustained injuries since his detention.<sup>165</sup>

During the next few days, Askarov gave a detailed explanation of how he had been beaten to a representative of the Kyrgyz ombudsman's office, and his lawyer filed a complaint with the Jalal-Abad province prosecutor's office, requesting that it open a criminal investigation on the use of torture.

Five police officers and the head of the temporary detention facility visited Askarov in his cell around 2 a.m. one night in June, not long after Askarov's lawyer filed the torture complaint. They warned Askarov that they would "deal with him" if he failed to withdraw the complaint. As a result of these threats, Askarov withdrew the complaint. When Askarov's lawyer tried to see his client one of the subsequent days, relatives of the killed policeman physically attacked him just outside the police station. Police officers standing nearby did not intervene, and Askarov's lawyer was forced to leave without meeting with his client. On June 28, the Jalal-Abad prosecutor's office decided to not open a criminal investigation.

After a news website published the December video interview with Askarov, the Jalal-Abad province prosecutor office apparently launched a new preliminary inquiry into the allegations that Askarov had been beaten. It is unclear whether the prosecutorial authorities undertook any additional investigative measures during this inquiry. A statement posted on the website of the General Prosecutor's Office refers only to information collected when Askarov was still in detention in the Bazar Kurgan police station, and claims that Askarov had been beaten by another detainee held at the same police station.<sup>166</sup> On January 10, the authorities again decided to not open a criminal investigation.

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<sup>163</sup> "In the search of justice. Azimjan Askarov's stories (video)," *Fergananews*, December 13, 2010, <http://www.fergananews.com/article.php?id=6837> (accessed May 18, 2011).

<sup>164</sup> Human Rights Watch interview with lawyer, June 23, 2010.

<sup>165</sup> "News," General Prosecutor of the Republic of Kyrgyzstan, January 19, 2011, <http://www.prokuror.kg/?news/shownovelty/117> (accessed April 15, 2011).

<sup>166</sup> "News," General Prosecutor of the Republic of Kyrgyzstan, January 19, 2011, <http://www.prokuror.kg/?news/shownovelty/117> (accessed April 15, 2011).

In a letter to Human Rights Watch on April 29, 2011, Deputy General Prosecutor Baktybaev wrote that the authorities had decided to not open a criminal investigation because they had determined that Askarov had been beaten by another detainee and that he had written in a June 25 statement that the police had not beaten him.<sup>167</sup> On June 25, Askarov was still in the custody of the Bazar-Kurgan police. Baktybaev did not mention the video testimony that Askarov gave later, even though the authorities conducted an additional preliminary investigation when the video footage was made public.

As described below, the trial against Askarov and his seven co-defendants was marred by threats, insults and physical attacks from the start.

Despite the attacks, the judge rejected defense motions to change the trial venue. He rejected a defense motion to move the defendants to a different detention facility, saying he had no jurisdiction to do so. The judge threatened to have the defense lawyers stripped of their licenses if they fail to appear at the next hearing.

During the second day of hearings, Askarov and other defendants had bruises under their eyes, but they denied that they had been beaten.<sup>168</sup>

On September 15, the Bazar-Kurgan District Court sentenced Askarov and four of his co-defendants to life in prison, two others to 20 years, and one to nine years.

The defendants were also attacked during an appeal hearing.<sup>169</sup> Two people who observed the hearing on November 4 told Human Rights Watch that when the eight defendants were led out of the court, some of them were holding their heads, as if in pain, and one had blood on his face, indicating that they might have been beaten after the hearing and before they left the courthouse.<sup>170</sup>

As police officers led the defendants to a vehicle, the people standing outside said the officers kicked and hit at least one defendant in the back. The police then transported the defendants to the Bazar-Kurgan district police station. Lawyers for the defendants immediately informed the Bazar-Kurgan prosecutor's office of the suspected assault and

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<sup>167</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

<sup>168</sup> Human Rights Watch interview, Bishkek, October 6, 2010.

<sup>169</sup> See also, "Kyrgyzstan: New Assault in Violence-Ridden Court Case," Human Rights Watch news release, November 9, 2010, <http://www.hrw.org/en/news/2010/11/09/kyrgyzstan-new-assault-violence-ridden-court-case>.

<sup>170</sup> Human Rights Watch interview with lawyers, November 5, 2010.

asked the prosecutor's office to arrange for medical examinations of the defendants when they arrived at the station. It is unclear whether medical examinations took place.

Relatives of the murdered police officer also threatened to kill at least one of the lawyers during a break in the appeal proceedings, people who witnessed the episode said.<sup>171</sup> A judge later ordered one of the relatives to leave the courtroom because of interruptions, but she refused and was allowed to remain until the end of the hearing.

An appeal launched by the defendants' lawyers was pending before the Supreme Court at time of writing.<sup>172</sup>

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<sup>171</sup> Ibid.

<sup>172</sup> On January 31, 2011, the US embassy in Bishkek issued a statement expressing concern about the fairness of the Supreme Court hearing since several individuals, including police-officers, were allowed to make statements while the court rejected a motion to allow Askarov to testify. "U.S. Embassy Concerned About Fairness of Askarov Supreme Court Hearing," US Embassy in Bishkek, January 31, 2011, [http://bishkek.usembassy.gov/pr\\_01\\_31\\_11.html](http://bishkek.usembassy.gov/pr_01_31_11.html) (accessed February 9, 2011).



## **Appendix 2: Attacks during Trial**

Human Rights Watch witnessed several of the incidents first hand. Below are summaries of some of the most serious attacks documented by Human Rights Watch.

### **September 2: Bazar-Kurgan District Court (Case against Askarov et al.)**

On September 2, the trial related to the June 12, 2010 killing of the Bazar-Kurgan police chief started. The case was heard by the Bazar-Kurgan District Court, but was convened in Nookan because of security concerns. Victims' relatives insulted, threatened, and shouted at the defense lawyers and the defendants while the prosecutor was reading the indictment. Some relatives became physically violent and punched the defense lawyers. While the judge called for respect for order in the courtroom, he did not warn or discipline abusive spectators.

At the end of the hearing, just after the judge left the room, one of the relatives threw a glass at the cage which, as is common in Central Asian countries, held the defendants. The glass shattered in front of one of the defense lawyers. During recess, on the street outside the courtroom, the victims' relatives also threw stones at the defendants' relatives and physically assaulted them. Many police were present, but they took no action.

According to independent observers, there were many police officers in the courtroom, in uniform and plain clothes. Guards allowed victims' relatives into the courtroom, but not the defendants' relatives, citing lack of space.

Despite the attacks, the judge rejected motions from the lawyers to order a change of trial venue. He also said that he did not have jurisdiction to move the defendants to a different detention facility. The judge threatened to have the defense lawyers stripped of their licenses if they fail to appear at the next hearing.<sup>173</sup>

### **September 29 and 30: Osh City Court (Case against Tashirov et al.)**

During the lunch break on September 29 in the trial on the killing of the Kara-Suu district police chief, uniformed officers in red berets from the Ministry of Internal Affairs and relatives of the victims beat the defendants for about 20 minutes after the judge and defendants left the courtroom. The servicemen and the relatives were apparently upset that

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<sup>173</sup> See "Kyrgyzstan: Ensure Safety, Fair Trial for Rights Defender," Human Rights Watch news release, September 3, 2010, <http://www.hrw.org/en/news/2010/09/01/kyrgyzstan-ensure-safety-fair-trial-rights-defender>.

the defendants had not confessed to the crime during the morning session, and they threatened that the defendants would not get out of there alive.

The defendants did not report the incident when the court reconvened, but they recounted the incident by telephone to relatives later that night. During hearings the next day the defendants stated to the court that they had indeed been beaten. When Tahir Asanov, one of the lawyers, asked the judge to enter the defendants' statement into the record and asked the prosecutor's office to launch a criminal investigation, the relatives of the killed police chief became outraged. Asanov told Human Rights Watch:

The crowd just exploded. The soldiers tried to stop them. I had to leave the room, but the women ran after me. When the soldiers stopped me at the entrance, the women caught up with me, grabbed me, and started to hit me. Eventually I managed to flee.<sup>174</sup>

#### **October 11: Osh City Court (Case against Mamajanov and Azmiov)**

On October 11, Human Rights Watch was present when the judge presiding over a murder trial was forced to suspend a hearing after relatives of the victim started shouting and tried to attack the defendants, who had declared themselves only partially guilty. Immediately afterwards, relatives of the victim hit the mother of one of the defendants and pulled her hair on the court's premises. Several police officers were there but did not intervene.<sup>175</sup>

#### **October 12: Osh Province Court (Case against Bazarov)**

On October 12, Human Rights Watch was present at a murder appeals hearing against Jahangir Bazarov at the Osh Province Court, a case in which Bazarov was accused of killing and ethnic Kyrgyz man, based on circumstantial evidence and a confession that had allegedly been extracted under torture. At the appeals hearing the victim's relatives kicked a defense witness, shouted at and hit relatives of the defendant during a recess, and clashed with the defendants' relatives in the hallway immediately after the trial. Three policemen present during the hearing did nothing to intervene, and there were no guards in the hallway or waiting room. One court employee told Human Rights Watch that there had been guards there before the country's parliamentary election on October 10, but that the guards had since been removed.<sup>176</sup>

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<sup>174</sup> Human Rights Watch interview with Tahir Asanov, Osh, October 10, 2010.

<sup>175</sup> Human Rights Watch trial monitoring, Osh, October 11, 2011. See also "Kyrgyzstan inter-ethnic violence enters courts," Al-Jazeera, October 20, 2010, <http://www.youtube.com/watch?v=gqf6SztIXpc> (accessed April 14, 2011).

<sup>176</sup> Human Rights Watch interview with court employee, Osh, October 12, 2010.

### **October 13: Osh City Court (Case against Kasymov et al.)**

On October 13, about 20 men and two women were waiting outside the military compound where the trial concerning the murder of two ethnic Kyrgyz traffic policeman was supposed to start. As 50-year-old Sukhbatullo Nizamkhojaev, one of the defendants, approached, the crowd ran toward him, punched and kicked him, and continued to beat him after he fell to the ground. Two policemen standing close by did not intervene. The beating stopped only when Nizamkhojaev's lawyer called for help from three soldiers staffing the entrance to the compound. A Human Rights Watch researcher present witnessed the incident. The lawyer took Nizamkhojaev to the hospital, where he was diagnosed with two broken ribs.<sup>177</sup>

Shortly thereafter, the crowd attacked three relatives of another defendant as they prepared to enter the compound to observe the trial. The three, in their 50s and 60s, sustained various injuries including concussions, a broken rib, and numerous bruises and wounds and had to seek medical help.<sup>178</sup> The crowd also punched a foreign journalist in the face and pushed an international observer who had arrived to follow the trial.

The Osh city police opened a criminal investigation into the assault. The investigation was later suspended because of a failure to identify the perpetrators.

### **October 14: Osh City Court (Case against Saliev et al.)**

On October 14, the Osh City Court was hearing a case against five defendants accused of murder. A Human Rights Watch researcher who monitored the trial in the morning observed dozens of policemen and soldiers in uniform in the courtroom. The atmosphere was hostile, with people in the audience, mostly relatives of the victim, shouting insults and regularly interrupting the proceedings.

Lawyers told Human Rights Watch that after the Human Rights Watch representative had left, a female relative of the victim punched a lawyer for one of the defendants in the face when she left the witness stand. Despite the large number of police present, the courtroom erupted in chaos, and the hearing had to be postponed.<sup>179</sup> Defense lawyers had to escape through a backdoor and hid in a nearby house until Human Rights Watch and a police officer came to escort them out.

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<sup>177</sup> Human Rights Watch interview with doctor, Osh, October 14, 2010.

<sup>178</sup> Ibid.

<sup>179</sup> Human Rights Watch interview with three lawyers, Osh, October 14, 2010.

In the meantime, a group of women attacked one of the lawyer's drivers who was sitting outside in a car marked with the name of the lawyer's office. Both the lawyer and the driver had to seek medical attention from injuries they sustained during the attacks.<sup>180</sup>

The lawyers filed complaints with the Osh city police, which opened a criminal investigation into the attack four days later. An incident summary provided by the General Prosecutor's Office provides a markedly different version of the incident compared with information provided by the lawyers. It claims that the incident was provoked by a defense lawyer who allegedly called on his colleagues to leave the court. According to the summary, "as a result of the disrespectful actions of the lawyer K. Joroyev in relation to the other participants of the process, an argument took place between the lawyers and relatives of the killed present in the courtroom, which turned into an assault in relation to the lawyers N. Suyunbayeva and D. Turdumatova representing the interests of the defendants."<sup>181</sup>

The investigation was later suspended because of a failure to identify the perpetrators.<sup>182</sup>

#### **November 4: Jalal-Abad Province Court (Case against Askarov et al.)**

On November 4, the Jalal-Abad Province Court was in session to hear the appeal of the individuals convicted of killing the Bazar-Kurgan police officer. Shortly after that day's hearing ended, several of the defendants were beaten, apparently in the courtroom. Two people who observed the trial, and who were told to leave the court before the defendants, told Human Rights Watch that when the eight defendants were led out of the courthouse, some were holding their heads, as if in pain, and one had blood on his face, indicating that they might have been beaten after the hearing and before they left the courthouse.<sup>183</sup>

As police officers led the defendants to a vehicle, people standing outside saw that officers kicked and hit at least one of the defendants in the back.<sup>184</sup> The police then transported the defendants to the Bazar-Kurgan district police station. Lawyers for the defendants immediately informed the Bazar-Kurgan prosecutor's office of the suspected assault and asked the prosecutor's office to arrange for medical examinations of the defendants when they arrived at the station. It is unclear whether medical examinations took place.

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<sup>180</sup> Human Rights Watch interview with lawyer and driver, Osh, October 14, 2010.

<sup>181</sup> Letter from R. Baktybayev, deputy general prosecutor, to Human Rights Watch, April 29, 2011.

<sup>182</sup> Ibid.

<sup>183</sup> Human Rights Watch interview, November 5, 2010.

<sup>184</sup> Ibid.

Witnesses also told Human Rights Watch that relatives of the murdered police officer also threatened to kill at least one of the lawyers during a break in the appeal proceedings.<sup>185</sup> A judge later ordered one of the relatives to leave the courtroom because of interruptions, but she refused and was allowed to remain until the end of the hearing.<sup>186</sup>

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<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300; 917-591-345  
Email: hrwnyc@hrw.org

HUMAN  
RIGHTS  
WATCH

www.hrw.org

## Appendix 3: Correspondence between Human Rights Watch and the Government of Kyrgyzstan

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Giorgi Gogia, *Researcher*  
Amanda McRae, *Researcher*  
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### *Human Rights Watch Letter to the General Prosecutor of the Republic of Kyrgyzstan, April 12, 2011*

April 12, 2011

Prosecutor General of the Republic of Kyrgyzstan  
Pr. Erkindik 39  
Bishkek, Kyrgyzstan

*Via Fax: +996 (312) 66-30-67*

Dear Ms. Salyanova,

I am writing on behalf of Human Rights Watch to solicit information and your views concerning investigations and trials connected to the 2010 June violence in southern Kyrgyzstan. As you know, Human rights Watch is an independent non-government organization dedicated to defending and protecting human rights worldwide. We documented extensively the inter-ethnic violence in southern Kyrgyzstan and have appreciated the frank exchange of views and information with you and your office on this and related issues.

In October and December 2010 we conducted additional research in Kyrgyzstan on the investigations and trials following the June violence. In the course of this research we documented disturbing allegations of continued use of torture, lack of effective investigation into allegations of torture, use of evidence extracted under torture and apparent ethnic bias in the investigation and prosecution. The seriousness of the allegations and the strength of the evidence we have gathered have convinced us that it is necessary to publish these findings in a report. Our main findings and questions are attached.

As we are committed to producing material that is well-informed, accurate and objective, we undertake to accurately reflect your response in our work.

We initially submitted the attached document to General Prosecutor Baibolov on February 15, asking for a response by March 15. We have yet to receive a reply, however. Taking into consideration Baibolov's resignation and your appointment to

the post, we undertake to reflect in our report any information that you provide by May 1, 2011.

Sincerely,



Rachel Denber  
Acting Executive Director  
Europe and Central Asia Division

### Preliminary findings

#### **Investigation into allegations of torture, arbitrary arrest and denial of due process guarantees:**

In several cases we documented there is overwhelming evidence that detainees were subjected to torture and ill-treatment while in custody. Nonetheless, prosecutorial authorities have routinely refused to launch criminal investigations into these allegations. In the sole case in which a defendant was acquitted because the judge held that the main evidence – his confession – was extracted under torture, prosecutorial authorities did not launch a criminal investigation into the use of torture. Instead they appealed the acquittal.

1. How many complaints regarding the use of torture, arbitrary arrest and denial of due process guarantees has your office received in connection with cases connected to the June events?
2. How many internal inquiries were launched based on such complaints?
3. How many criminal investigations has your office launched into allegations of use of torture, arbitrary arrest and denial of due process guarantees in connection with the June events?
4. How many of these have led to prosecution of the perpetrators?

Below are summaries of some of the cases that we have documented and questions related to those cases:

#### **Torture of Farukh Gapirov:**

In September Farukh Gapirov was tried for murder. During a trial hearing on September 14, 2010, Gapirov and his co-defendant, Mirakhmad Makhkamov, both testified that officers at the Osh city police station had subjected them to severe beating and other forms of torture to force them to confess to planning to kill ethnic Kyrgyz. In the judgment, the judge wrote the following account of Gapirov's testimony:

“According to F. Gapirov: Three big men beat me at the police. Another one beat me on the head with a baton. Afterwards yet another entered and said “if you write what we say we will release you. If not, we will continue to beat you.” At this point another big guy entered and hit me on the kidneys. I was

afraid and wrote what they wanted me to write. The statements I gave during the start of the investigation are not true. The statements that I have given during the trial are true.”

During the trial, Gapirov’s lawyers presented several pieces of evidence to support the allegations.

- Seven photographs of Gapirov taken by his lawyer during a meeting on June 18, 2010, two days after his detention. The photographs show that Gapirov has several bruises on his body. Gapirov alleges these stemmed from the beating.
- A 4-minute video -clip, recorded by Gapirov’s lawyer on June 18, in which Gapirov explains how he had been beaten and torture.
- The conclusion of a medical examination conducted on June 19, in which it was established that that there were beating marks on Gapirov’s body.

As a result, the judge acquitted Gapirov on October 26, 2010, and issued an order to the prosecutor’s office to investigate the allegation of torture. In a judgment of October 26, 2010, the judge writes that “the Court has concluded that the investigative authorities took statements from F. Gapirov in an illegal manner.”<sup>187</sup>

However, more than one month after he was acquitted, Gapirov told Human Rights Watch that the prosecutor’s office had not yet questioned him about the treatment that he received while in detention.

5. Has the prosecutor’s office conducted an investigation into the allegations of the use of torture in Gapirov’s case in accordance with the Osh city court instruction of October 26, 2010? What was the outcome?
6. Has the prosecutor’s office ever questioned Gapirov about the allegations of use of torture?
7. What other measures did the prosecutor’s office take to verify the allegations made during the trial against Gapirov?

### **Torture of Rustam Jeenbekov**

On July 20, the lawyer of Rustam Jeenbekov, an ethnic Kyrgyz accused of murdering of two ethnic Uzbeks in Jalal-Abad province, submitted a written complaint to the Jalal-Abad city prosecutor’s office claiming that his client had been beaten in detention and forced to confess. On July 21, a medical examination established that there were multiple bruises on Jeenbekov’s body.

On July 30, 2010, the Jalal-Abad city prosecutor’s office issued a decision, following a preliminary inquiry to not open a criminal investigation into the allegations, saying that they had not been confirmed.

8. What investigative measures did the prosecutorial authorities undertake to verify the allegations in the context of the preliminary inquiry? Whom, if anyone, did prosecutorial authorities interview regarding the allegations? Did the prosecutorial authorities question Jeenbekov about the allegation of torture?
9. How did the preliminary investigation explain the injuries confirmed by the medical examination?

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<sup>187</sup> Judgment of October 26, 2010, para. 8, page 1.



### **Case of nine accused of murder of the head of Kara-Suu district police:**

During the trial against nine defendants accused of murdering the head of the Kara-Suu district police on June 13, 2010, all defendants except two testified that the confessions that they signed during the investigation were false and that they had signed them because they had been “under pressure” from the police, usually a euphemism for beatings and torture. One of the defendants, Fakhriddin Ashirov, was held in the temporary detention center (IVS) for 30 days, even though by law detainees can only be kept in the IVS for 10 days.

10. What measures did the prosecutor’s office take to verify these allegations? Has your office launched criminal investigations into these allegations?
11. Has your office investigated why Ashirov was kept for 30 days in the IVS in violation of Kyrgyz law?

On August 4, 2010, police officers collected Ashirov from the pre-trial detention center (SIZO) to conduct further investigative measures. According to health records kept by the SIZO, Ashirov had several bruises on his body when he was returned later that same day. His lawyer immediately filed a complaint with the Osh city prosecutor’s office. On August 13, 2010, the Osh city prosecutor’s office replied that the allegations had not been confirmed and that it had decided to not open a criminal investigation.

12. What investigative steps did your office take to verify the allegations that Ashirov had been beaten when he was taken out of the SIZO on August 4, 2010? How did the preliminary examination explain the injuries recorded in the SIZO health journal? Was a forensic medical exam ordered for Ashirov after this incident? If not, why?
13. Did your office question Ashirov about the allegations? What other witnesses did your office question?

### **Ill-treatment of Azimjan Askarov:**

In September 15, the Bazar-Kurgan District Court found Askarov and seven co-defendants guilty of a series of charges, including involvement in the murder of a policeman. Askarov’s lawyers and other organizations have repeatedly voiced concern and allegations about information that Askarov and his co-defendants were ill-treated in custody. Askarov was also prevented on several occasions from meeting with his lawyer in private. On June 17, 2010, Human Rights Watch sent a letter to then Prosecutor General Baitemir Ibraev, drawing his attention to allegations that Askarov had been beaten in custody and his lack of access to a lawyer of his choice.

According to a statement published on the website of the General Prosecutor’s office on January 19, 2011, prosecutorial authorities conducted a preliminary inquiry into the allegations, but concluded, based on Askarov’s own testimony, that he had been beaten by other inmates. However, after Askarov was transferred to Bishkek so that he was no longer in the custody of close colleagues of the killed policeman he retracted that statement. In a lengthy interview posted on the website Ferghana.ru, Askarov describes in detail how he was beaten in the Bazar-Kurgan district police-station.<sup>188</sup>

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<sup>188</sup> See <http://www.ferghananews.com/article.php?id=6837>.

14. Given this new information, what measures have been taken to investigate the allegation that Askarov was not beaten by other detainees, but that he was beaten by police officers belonging to the Bazar-Kurgan district police station?
15. What measures were taken at the time to make sure that Askarov could give testimony about the alleged abuse without fearing repercussions from the Bazar-Kurgan police?

**Allegations of ethnic bias:**

Statistics recently published by the National Commission of Inquiry into the June events give cause for concern that criminal investigations into the June events and prosecution alleged perpetrators are marred by ethnic bias. As of December 10, 2010, Kyrgyz authorities had sanctioned the arrest of 271 suspects, 230 of whom are ethnic Uzbek. The relatively large number of Uzbek detainees is anomalous considering the ethnic breakdown of victims. Also according to the Commission's report, 276 Uzbeks were killed during the violence compared to 105 ethnic Kyrgyz. In addition, most of the destroyed property belonged to ethnic Uzbeks.

16. What explains the larger number of ethnic Uzbeks in detention, relative to the number of non-ethnic Uzbeks in detention and the ethnic breakdown of the victims?
17. Are there cases in which ethnic Uzbeks are charged in relation to crimes against ethnic Uzbeks?
18. What measures has your office taken to ensure that all crimes are investigated objectively without consideration to the ethnicity either of the victim or the perpetrator?
19. Has the majority of criminal cases related to the June events been launched at this point, and have the majority of suspects been charged?

**Investigations regarding threats and attacks during trials:**

Lawyers, defendants, relatives of defendants, and independent observers recounted to us numerous incidents of threats and attacks against ethnic Uzbek participants in trials concerning the June events. Our researchers witnessed threats and attacks first-hand when they observed trials in the districts of Osh and Jalal-Abad in October and December. The threats and attacks demonstrate a fundamental lack of security during the trials. Also, it is reasonable to question whether it possible for trials held in such circumstances to be considered fair.

On at least two occasions, victims of such attacks filed complaints with the authorities. On October 13, at least four people had to seek medical treatment as a result of injuries sustained during attacks in Osh, outside a military base where a trial was about to start. The next day, on October 14, at least two people, were attacked at the same location. The victims, one of whom was a defense lawyer, had to seek medical treatment as a result of injuries sustained during the attack.

20. Has your office launched criminal investigations into the two attacks mentioned above? If so what was the outcome?
21. Has your office taken measures regarding other attacks that have been reported? What was the outcome in these cases? Has the prosecutorial authorities sought to prosecute any of the perpetrators?
22. During many of these threats and attacks a representative from prosecutorial authorities was present in the courtroom as the prosecutor in the ongoing criminal case. What obligations

- and instructions do prosecutors have to report and take action against people who issue threats against and attempt to physically attack participants in trials?
23. How many times and in what cases have prosecutors reported or taken action with regards to threats and attacks during trials?

**Continued use of torture:**

In December we documented several cases of recent arbitrary arrests and ill-treatment, particularly by the National Security Service (SNB). We interviewed separately two victims and a close relative of a third victim who had been subjected to severe beatings in the SNB building in Osh in November and December. The detainees were beaten either in the corridor outside the investigative department or in the basement in the SNB building. The perpetrators either wore masks or forced the detainees to cover their eyes with jackets or their hats to prevent them from identifying the perpetrators. The victims we interviewed were too afraid of repercussions to complain about their treatment to the authorities.

24. Has your office received complaints about recent arbitrary arrests and ill-treatment, particularly by the SNB?
25. What measures have prosecutorial authorities undertaken to prevent the use of torture and ill-treatment in police-stations and other places, such as the SNB?

*Reply from the Office of the General Prosecutor of the Republic of Kyrgyzstan,  
April 29, 2011*

Кыргыз Республикасынын  
Бириккен Улуттар Уюмундагы  
Туруктуу Өкүлдүгү



Permanent Mission of the  
Kyrgyz Republic to the  
United Nations

866 United Nations Plaza, Suite 477, New York, NY 10017, Tel.: (212) 486-4214, Fax: (212) 486-52-59  
E-mail: [Kyrgyzstan@un.int](mailto:Kyrgyzstan@un.int)

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The Permanent Mission of the Kyrgyz Republic to the United Nations presents its compliments to Human Rights Watch and has the honour to forward herewith a letter signed by the First Deputy Prosecutor General of the Kyrgyz Republic and addressed to the Acting Executive Director of the Europe and Central Asia Division of HRW Ms. Rachel Denber. The letter contains information concerning the criminal cases and lawsuits related to the ethnic clashes in southern Kyrgyzstan, in June 2010.

The Permanent Mission of the Kyrgyz Republic avails itself of this opportunity to renew to Human Rights Watch the assurances of its highest consideration.

Enclosed: as stated above.



New York, 11 May 2011

Human Rights Watch  
New York

КЫРГЫЗ РЕСПУБЛИКАСЫНЫН  
БАШКЫ ПРОКУРАТУРАСЫ

ГЕНЕРАЛЬНАЯ ПРОКУРАТУРА  
КЫРГЫЗСКОЙ РЕСПУБЛИКИ

720300 Бишкек шаары. Эркиндик бул. 39  
тел.(996-312) 300-126 факс 300-237

720300 г. Бишкек, бул. Эркиндик 39  
тел.(996-312) 300-126 факс 300-237

от 29/04/11 № 6-7-11

На № \_\_\_\_\_ от \_\_\_\_\_

**И.о. директора Хьюман Райте Вотч  
по Европе и Центральной Азии  
Рейчел Денбер**

**Уважаемая Рейчел Денбер,**

За 2010 год органами прокуратуры Жалал-Абадской, Ошской областей и г.Ош зарегистрировано 14 жалоб и заявлений о применении пыток, незаконном задержании, аресте, нарушениях процессуальных прав лиц, касательно июньских межнациональных столкновений. Соответственно по всем вышеуказанным 14 заявлениям и обращениям проведены проверки, по результатам которых: отказано в возбуждении уголовного дела по - 13 обращениям (из них: по Жалал-Абадской области - 5; Ошской области - 4; г.Ош - 4). По 1 обращению возбуждено уголовное дело прокуратурой Жалал-Абадской области.

За 1 квартал 2011 года данной категории жалоб не зарегистрировано.

**Относительно доводов о применении недозволённых методов следствия  
в отношении Х.Кадырова**

01.07.10г. в прокуратуру Жалал-Абадской области обратилась председатель правозащитной организации «Справедливость» Гриценко В. о незаконных действиях сотрудников милиции и применении насилия в отношении жителей г.Жалал-Абад братьев \* Кадыровых, которые обратились в указанную организацию с заявлением.

Установлено, что примерно в 18.00 часов 12.06.2010г. в районе Университета дружбы народов г.Жалал-Абад произошло столкновение неустановленных лиц узбекской и кыргызской национальности в количестве примерно 2000 человек с обеих сторон, сопряженное с перестрелкой из огнестрельного оружия и поджогами жилых домов.

В результате межнациональных столкновений погибло 9 человек и 53 получили телесные повреждения различной степени тяжести, в том числе с огнестрельными ранениями.

13.06.10г. по данным фактам возбуждено уголовное дело по признакам преступлений, предусмотренных ст.ст. 97 ч.2 п.п. 1.5.15.16. 104 ч.3 п.1. 299 ч.2 п.п. 1.3. 241 4.3.233 ч.4.1.2.3. 28.295 УК КР.

14.07.10г. в 18.00 часов в УВД Жалал-Абадской области по подозрению в совершении этих преступлений были задержаны Х.Кадыров, Ф.Кадыров и Р.Гайбуллаев, которые были отпущены домой 17.07.2010г.

19.07.10г. в порядке ст. 94 УПК КР вновь были задержаны Р.Гайбуллаев, Х.Кадыров и Ф.Кадыров, которым предъявлено обвинение в совершении пр.пр.ст.ст. 233 ч.2, 299 ч.2 п.1 УК КР. судом избрана мера пресечения в виде заключения под стражу.

26.07.10г. по результатам проверки заявления Х.Кадырова прокуратурой Жалал-Абадской области возбуждено уголовное дело по факту превышения сотрудниками УВД области служебных полномочий и незаконного задержания Кадырова и др. с 14 по 17

июля 2010 года по признакам преступлений, предусмотренных ст.ст. 305 ч.2 п.3. 324 ч.1 УКР.

26.09.2010г. прокуратурой области следствие по данному уголовному делу приостановлено на основании ст. 221 ч.1 п.3 УПК КР. в связи с неустановлением лица, подлежащего привлечению в качестве обвиняемого, так как потерпевшие Кадыровы не смогли опознать кого-либо из лиц, их задержавших и избивавших.

**Относительно доводов о незаконном привлечении к уголовной ответственности и применении пыток в отношении Ф.Гапирова**

Так 16.06.10г. примерно в 10.00 часов на блок-посту «Аэропортская-круговая» г.Ош сотрудниками ВВ МВД КР остановлена автомашина марки «Хундай Акцент», под управлением Махкамова Мирохмата Нематовича и Гапирова Фаруха Равшановича. При досмотре автомашины обнаружен и изъят кейс черного цвета, внутри которого находились две пачки патронов общим количеством 32 шт. от пистолета ПМ 9мм.

16.06.2010г. по данному факту ГСУ МВД КР возбуждено уголовное дело по признакам преступления, предусмотренного ст.241 ч.1 УК КР.

В тот же день по подозрению в совершении данного преступления задержаны М.Махкамов и Ф.Гапиров. которые были водворены в ИВС УВД г.Ош. В последствии. 17.06.2010г. Ошским городским судом в отношении них была избрана мера пресечения в виде заключения под стражу.

14.08,2010г. Ф.Гапирову и М.Махкамову предъявлены обвинения в совершении пр.пр.ст.ст.233 ч.ч.1.2 и 241 ч.1.4 УК КР и 16.08.2010г. уголовное дело направлено в Ошский городской суд, где приговором от 26.10.2010г. М.Махкамов осужден к 4 годам лишения свободы, а Ф.Гапиров оправдан за недоказанное гюо его вины.

На данный приговор прокуратурой г.Ош внесено кассационное представление, однако определением Ошского областного суда от 16.12.2010г., приговор Ошского городского суда оставлен в силе.

На определение Ошского областного суда от 12.01.2011г. прокуратурой г.Ош внесено надзорное представление в Верховный суд КР. которое находится на стадии рассмотрения. Что касается того, что в оправдательном приговоре суда по отношению Ф.Гапирова указано, на применение к нему недозволённых методов дознания при его задержании, то по данному факту 28.02.11г. прокуратурой г.Ош принято решение об отказе в возбуждении уголовного дела за отсутствием в чьих-либо действиях состава преступления. Кроме того, дальнейшая проверка доводов Ф.Гапирова в анстоящий момент является нецелесообразной до вынесения окончательного решения Верховным судом Кыргызской Республики по вышеуказанному уголовному делу.

**Относительно доводов о применения пыток в отношении Р.Жээнбекова  
(указан как Р.Джинбеков)**

20 июля 2010 года в прокуратуру г.Жалал-Абад поступила жалоба адвоката А.Ниязова и его подзащитного Р.Жээнбекова о применении пыток в отношении последнего, по результатам проверки установлено следующее.

17 июня 2010 года прокуратурой Жалал-Абадской области возбуждено уголовное дело по признакам преступления, предусмотренного ст.97 ч.2 п.1.14 УК КР по факту обнаружения трупов А.Боронбаева, Абдуллаева Ш. и Ташматова Х. с признаками насильственной смерти.

18 июля 2010 года по подозрению в совершении данных преступлений был задержан Жээнбеков Рустам, и ему предъявлено обвинение в совершении указанных преступлений.

19 июля 2010 года в отношении Жээнбекова Р. Жатал-Абадским городским судом избрана мера пресечения в виде заключения под стражу.

В ходе допроса Жээнбеков Р. дал признательные показания о совершении совместно с другими неизвестными ему лицами вышеуказанных убийств.

Свои показания Жээнбеков Р.А. дал добровольно, при допросе в качестве подозреваемого участвовал адвокат и после этого полностью подтвердил свои показания при воспроизведении обстоятельств и события преступления.

26 июля 2010 года по уголовному делу предъявлены обвинения Алжанову Ч. по ст.ст. 97 ч.2, п.п.6,9,15,16; 233 ч.2 и 299 ч.2 п.п.1,3 УК КР, Мамазакирову М. и Мамарасулову Т. по ст.ст. 233 ч.2 и 299 ч.2 п. 1.3 УК КР, Жээнбекову Р. по ст.ст. 299 ч.2 п.1.3; 233 ч.2; 97 ч.2 п.6,9,10,15 16; 97 ч.2 п.6,9,10,15 16; 172,4.3 УК КР.

По результатам следствия данное уголовное дело направлено в Жалал-Абадский городской суд, где приговором от 19 ноября 2010 года Алжанов Ч. осужден к 20 годам лишения свободы. Мамазакиров М. и Мамарасулов Т. осуждены к 6 годам лишения свободы, с применением ст. 63 УК КР к 3 годам условно, Жээнбеков Р. осужден к 25 годам лишения свободы.

Прокуратурой города Жалал-Абад по обращениям адвоката Ниязова А. о применении пыток и насилия в отношении его подзащитного Жээнбекова Р. 21 июля 2010 года назначена и проведена судебно-медицинская экспертиза, по заключению которой на теле у Жээнбекова Р. обнаружены легкие телесные повреждения, не повлекшие за собой кратковременного расстройства здоровья.

В ходе проверки были опрошены сотрудники милиции, задержавшие Р.Жээнбекова - Н.Мамажанов, Н.Калдаров и А.Досов, которые подтвердили, что при задержании им оказано активное физическое сопротивление и к нему в соответствии со ст. 14 Закона Кыргызской Республики «Об органах внутренних дел Кыргызской Республики» были применены меры физического воздействия в виде боевых приемов самбо. Сам Жээнбеков Р. не был опрошен по указанным обстоятельствам, т.к. по уголовному делу ранее он был допрошен в качестве обвиняемого по указанным обстоятельствам, где о применении к нему пыток им не указывалось.

Таким образом, телесные повреждения, обнаруженные у Р.Жээнбекова были причинены сотрудниками милиции при его задержании и признаны правомерными.

30 июля 2010 года по результатам проверки обращения адвоката Ниязова А. прокуратурой города Жалал-Абад отказано в возбуждении уголовного дела на основании ст.28 ч.1 п.2 УПК КР, за отсутствием в чьих-либо действиях состава преступления. Прокуратурой области данное решение признано обоснованным.

Данное решение об отказе в возбуждении уголовного дела адвокатом Ниязовым А. и его подзащитным Жээнбековым Р. в суде не обжаловалось.

#### **По уголовному делу об убийстве начальника ОВД Кара-Суйского района.**

14 июня 2010 года по данному факту прокуратурой Ошской области возбуждено уголовное дело по признакам преступлений, предусмотренных ст.ст.97 ч.2 п.1,4,6,9,15,16, и ст.340 УК КР.

22 июня 2010 года по подозрению в совершении указанного преступления был задержан житель Кара-Суйского района Аширов Фахридин. и ему предъявлено обвинение в совершении данного преступления.

23.06.2010г. постановлением Ошского городского суда в отношении него избрана мера пресечения в виде заключения под стражу в СИЗО-5 г.Ош. Лишь 17.07.2010г. Ф.Аширов был этапирован в СИЗО-5 г.Ош. Это обусловлено объективными причинами, связанными с перелимитом СИЗО-5 г.Ош, сложившейся сложной общественно-политической напряженностью и оперативной обстановкой в г.Ош, а также наличием большого риска с вероятной возможностью совершения самосуда со стороны родственников погибших и значительной части граждан кыргызской национальности, реальной угрозой нападения на конвой на автодороге Ош-Карасуу. В связи с этим, проверка позднего этапирования обвиняемых в СИЗО-5 г.Ош прокуратурой области не проводилась.

1 сентября 2010 года по результатам следствия, наряду с другими 9 участниками, Ф.Аширову предъявлено обвинение в совершении вышеуказанных преступлений.

6 сентября 2010 года следствие по этому делу окончено производством с направлением дела в Кара-Суйский районный суд, где приговором от 19 октября 2010 года А.Таширов, М.Солиев, Ф.Аширов, Х.Талипов и Ш.Абдулложанов осуждены к пожизненному лишению свободы с конфискацией имущества, Б.Джураев осужден к 25 годам лишения свободы с конфискацией имущества, А.Азимов осужден к 8 годам лишения свободы, У.Расулов осужден к 5 годам лишения свободы, а Д.Ахроров направлен на принудительное лечение.

10 ноября 2010 года указанный приговор Кара-Суйского районного суда со стороны А.Таширова и других, обжаловано в судебную коллегия по уголовным делам и делам об административных правонарушениях Ошского областного суда, где 27 декабря 2010 года приговор Кара-Суйского районного суда от 19 октября 2010 года оставлен в силе.

В ходе проверки доводов Ф.Аширова об его избитии, заявленных им в ходе судебного разбирательства, прокуратурой области было незамедлительное проведено его медицинское освидетельствование, однако у него каких-либо телесных повреждений не обнаружено, о чем было составлено судебно-медицинское заключение. В связи с чем, по данному факту прокуратурой Ошской области отказано в возбуждении уголовного дела, за события преступления.

#### **Относительно уголовного дела по обвинению Азимжана Аскарова.**

24 июня 2010 года в прокуратуру Жалал-Абадской области обратился адвокат Н.Токтакунов с заявлением о том, что сотрудниками милиции в отношении его подзащитного Аскарва Азимжана применялись пытки и насилие.

Установлено, что 13 июня 2010 года примерно 08.00 часов в связи со сложившейся сложной обстановкой и межнациональными столкновениями в г.Ош, на мосту с.Базар-Коргон, расположенного на автодороге «Ош-Бишкек» собрались лица узбекской национальности, примерно 400-500 человек, которые вооружившись огнестрельным оружием, железными прутьями, деревянными палками, ножами перекрыли автодорогу «Ош-Бишкек», а затем организовали массовые беспорядки.

На место происшествия выехала оперативно-следственная группа ОВД Базар-Коргонского района, при пресечении сотрудниками милиции преступных действий, 7 сотрудникам милиции причинены телесные повреждения различной степени тяжести с нанесением множественных ножевых ранений участковому инспектору ОВД района М.Сулайманову, в результате чего он скончался.

13 июня 2010 года по этому факту прокуратурой Базар-Коргонского района возбуждено уголовное дело по признакам преступлений, предусмотренного ст.ст. 97 ч.2 П.4.6.9.10.15Л6. 299 ч.2 п.1.3. 233 ч.1,2,3, 340 УК КР.

16 июня 2010 года по подозрению в совершении данного преступления задержаны и водворены в ИВС ОВД Базар-Коргонского района Аскарва Азимжан и Мирзалимов Шукуржан.

С момента задержания А.Аскарва был обеспечен защитником П.Мырзакуловым, а 17 июня 2010 года в качестве его защитника по делу также принял участие адвокат А.Абылакимов.

17 июня 2010 года А.Аскарва и Ш.Мирзалимову предъявлены обвинения в совершении пр.пр. ст.ст. 233 ч.2.3. 299 ч.2 п. 1.3 УК КР и по ходатайству следствия Базар-Коргонским районным судом обоим избрана мера пресечения в виде заключения под стражу.

17 июня 2010 года в отношении А.Аскарва прокуратурой района была назначена судебно-медицинская экспертиза, согласно заключению от 24 июня 2010 года на теле А.Аскарва обнаружены легкие телесные повреждения, не повлекшие за собой кратковременного расстройства здоровья.

В ходе проверки установлено, А.Аскарва был водворен в административную камеру, где находились также М.Махмуджанов и Ш.Мирзалимов.



Затем, находящийся в камере М.Махмуджанов стал обвинять А.Аскарова в противоправных действиях (из-за чего сгорел его дом и погибло много людей), при этом он ударил А.Аскаророва рукой в область головы, в результате чего, последний ударился спиной о бетон и получил телесные повреждения.

В ходе проверки 25 июня А.Аскарров обратился с собственноручным заявлением в прокуратуру области с просьбой не привлекать М.Махмуджанова к уголовной ответственности, так как в отношении него каких-либо претензий не имеет.

Также А.Аскарров в своем заявлении указал, что сотрудники милиции его не избивали, кроме того, от прохождения повторной судебно-медицинской экспертизы он категорически отказался.

В связи с чем, 29 июня 2010 года прокуратурой Жалал-Абадской области в отношении М.Махмуджанова отказано в возбуждении уголовного дела за отсутствием в его действиях состава преступления и отсутствием жалобы А.Аскаророва, с одновременным отказом в возбуждении уголовного дела касательно доводов защитника Н.Токтакунова о применении пыток, за отсутствием события преступления.

Приговором Базар-Коргонского районного суда от 15 сентября 2010 года, А.Аскарров осужден по инкриминируемым ему деяниям к пожизненному лишению свободы. Приговором апелляционной инстанции Жалал-Абадского областного суда от 10 ноября 2010 года, приговор районного суда от 15 сентября 2010 года оставлен в силе.

#### **По доводам о привлечении к уголовной ответственности и заключения под стражу лишь лиц, узбекской национальности.**

В ходе июньских событий с 10 июня 2010 года по настоящее время правоохранительными органами области всего в порядке ст.94 УПК КР по подозрению в совершении преступлений задержаны 132 лица, 124 из которых заключены под стражу, в отношении 8 лиц избрана мера пресечения, не связанная с заключением под стражу.

Из числа заключенных под стражу, 115 лиц узбекской национальности, 9 лиц кыргызской национальности.

Такое преобладание лиц узбекской национальности, объясняется тем, что в ходе массовых беспорядков преимущественно лицами узбекской национальности уничтожены и разграблены государственные здания, либо совершены покушения, вплоть до убийства сотрудников правоохранительных органов.

С 10 по 14 июня 2010 года, в разгар массовых беспорядков, лица узбекской национальности, вооружившись огнестрельным или иным холодным оружием, перегородили все отходы из города, построив искусственные баррикады. Тем самым, провоцируя межнациональные столкновения.

#### **По вопросам о том, имеются ли случаи, когда узбеки проходят обвиняемыми по делам о преступлениях против той же национальности.**

Правоохранительными органами расследовано 2 уголовных дела данной категории.

1) 16 июня 2010 года прокуратурой Ошской области возбуждено уголовное дело по факту убийства водителя Ошской государственной администрации М.Сатыбалдиева (по национальности узбек) 11 июня 2010 года в селе Фуркат Кара-суйского района.

По данному делу 18 января 2011 года объявлен в розыск житель села Фуркат Кара-Суйского района Н.Самиев (по национальности узбек).

18 января 2011 года следствие по уголовному делу приостановлено производством на основании ст.221 ч.1 п.1 УПК Кыргызской Республики, в связи с розыском обвиняемого.

2) 15.06.2010г. примерно в 10.30 часов по ул.Г.Айтиева г.Ош обнаружен труп неизвестного мужчины, примерно 40-45 лет, с признаками насильственной смерти. Позже труп опознан как Хабибуллаев Рахматуло Абдухамидович, 1967 г.р., по национальности узбек.

По данному факту в этот же день прокуратурой г.Ош возбуждено уголовное дело по признакам преступления, предусмотренного ст.97 ч.2 п. 10 УК КР.

В ходе расследования данного уголовного дела по подозрению в совершении данного преступления задержана Маматова Танзиля. по национальности узбечка.

С учетом добытых доказательств Т.Маматовой предъявлено обвинение по ст. 97 ч.2 п. 10 УК КР и уголовное дело направлено в суд. где приговором Ошского городского суда она признана виновной и осуждена к 8 годам лишения свободы с отбыванием наказания в колонии усиленного режима.

**По фактам посягательств в отношении лиц узбекской национальности, имеющих отношение к судебным процессам.**

30 сентября 2010 года на Интернет сайте информационного агентства «24.kg» опубликована статья о нарушении закона при рассмотрении уголовных дел судами, где подсудимые, проходящие по делам об Ошских событиях якобы подвергаются избиениям со стороны родственников потерпевших и конвоя, сопровождающего подсудимых.

В частности в статье указаны факты избиения подсудимых Г.Садыкжанова, Д.Хайдарова, А.Таширова, У.Расулова, Б.Джураева, Ф.Аширова, М.Солиева, А.Азимова, Х.Талипова, Д.Ахрарова, Э.Кочкарлова и Ш.Абдуллажанова со стороны родственников потерпевших.

Несмотря на отсутствие заявлений со стороны указанных лиц, их защитников либо родственников, прокуратурой Ошской области и города Ош на основании Интернет публикации проведена проверка о факте избиения.

По результатам проверки установлено, что 12 июня 2010 года, во время массовых беспорядков на почве межнациональной розни, неизвестные лица в Кара-Суйском районе убили местного жителя А.Сейтова и завладели его автомашиной.

По данному факту 18 июня 2010 года прокуратурой города Ош возбуждено уголовное дело по признакам преступления, предусмотренного ст.97 ч.2 п.9 УК КР.

26 июня 2010 года по подозрению в совершении указанного преступления задержаны жители Кара-Суйского района Д.Хайдаров, Г.Садыкжанов, Б.Сабилов, Х.Саипов и Ш.Кочкоров.

28 июня 2010 года постановлением Ошского городского суда в отношении них избрана мера пресечения в виде заключения под стражу.

8 августа 2010 года всем вышеуказанным лицам предъявлены обвинения в совершении преступлений, предусмотренных ст.ст. 97 ч.2п.9. 172 ч.3. 233 ч1. УК КР.

9 августа 2010 года уголовное дело производством окончено и направлено в Кара-Суйский районный суд.

С момента задержания и в ходе судебного разбирательства указанные лица находились под стражей в СИЗО-5 г.Ош.

По данным информационного агентства «24.kg», подсудимые Г.Садыкжанов и Д.Хайдаров. 15 сентября 2010 года в ходе судебного разбирательства в Кара-Суйском районе были якобы избиты со стороны родственников потерпевшего.

Однако установлено, что на 15 сентября 2010 года по данному уголовному делу судебное заседание не назначалось и подсудимые Г.Садыкжанов и Д.Хайдаров в этот день из здания СИЗО-5 не этапировались.

Со слов опрошенных подсудимых Г.Садыкжанова и Д.Хайдарова 15 сентября 2010 года, примерно в 10.00 часов, их избивали родственники потерпевших и закидывали камнями во дворе Кара-Суйского районного суда, однако точные имена или приметы лиц, которые якобы их избивали и закидывали камнями, не смогли показать.

1 октября 2010 года прокуратурой области назначена судебно-медицинская экспертиза в отношении Г.Садыкжанова и Д.Хайдарова. где эксперты Ошского областного бюро судебно-медицинской экспертизы в присутствии начальника медицинской части провели экспертизу в помещении медицинской части СИЗО-5 г.Ош, согласно заключению экспертов на теле подсудимых Г.Садыкжанова и Д.Хайдарова каких-либо телесных повреждений не установлено.

Кроме того в ходе судебного заседания установлено, что подсудимые Г.Садыкжанов и Д.Хайдаров не обращались с заявлением в медицинскую часть либо администрацию СИЗО-5 г.Ош об избииении и получении телесных повреждений.

4 октября 2010 года Верховный суд Кыргызской Республики официально опроверг заявления директора правозащитного центра «Граждане против коррупции» Т.Исмаиловой и активистов «Коалиции за демократию и гражданское общество» о том, что 15 сентября 2010 года в Кара-Суйском районном суде в присутствии сотрудников милиции, судьи П.Байбосунова и 20 судебных исполнителей избивали подсудимых Г.Садыкжанова и Д.Хайдарова.

**О фактах посягательств на адвокатов задержанных, оскорблений и угроз в их адрес, имеющих отношение к судебным процессам по делам июньских событий.**

1) 14 июня 2010 года во время известных трагических событий, при исполнении служебных обязанностей пропали без вести 2 сотрудников ДПС ОБДД УВД г.Ош Б.Айдаров и Б.Байкишиев. Впоследствии их трупы 2 июля 2010 года были обнаружены в подвальном помещении недостроенного дома, в захороненном виде, с многочисленными колото-резанными ранами.

По данному факту 18 июня 2010 года межведомственной следственно-оперативной бригадой по г.Ош возбуждено уголовное дело по признакам преступлений, предусмотренных ст.ст.341 ч.2, 123 ч.2 п.п.1.2.7 и 125 ч.2 п.п.1.2 и ч.3 УК КР.

18 августа 2010 года уголовное дело по обвинению Н.Касимова, С.Умарова, Ж.Джураева, Х.Раимжанова, Дж.Маткаримова и С.Низамходжаева в совершении преступлений, предусмотренных ст.233 ч.1, 2, ст. 123 ч.2 п. 1,2, ст.97 ч.2 п.1, 6, 9, 11, 14, 15, ст.340, ст. 172 ч.3 и ст. 174 ч.1 УК КР было окончено производством и направлено в Ошский городской суд.

Судом рассмотрение данного уголовного дела было назначено на 13.10.10г. к 14:00 часам.

13.10.10г. приблизительно в 14:00 часов для принятия участия в судебном заседании, вместе со своими близкими родственниками, пришел обвиняемый С.Низамходжаев, находящийся под подпиской о невыезде. В это время, родственники погибших сотрудников ДПС ОБДД УВД в количестве 35-40 человек, подойдя к С.Низамходжаеву, возле ворот войсковой части № 703 ВВ МВД КР, расположенного в г.Ош, неожиданно стали избивать последнего и его родственников. Находившаяся там же защитник Д.Турдиева стала разнимать их, однако родственники потерпевшего начали и ее избивать, из-за чего она была вынуждена отойти в сторону. Не останавливаясь на этом, родственники потерпевшего с угрозами подбежали к защитнику Т.Томиной, представляющей интересы обвиняемого Н.Касимова, и стали толкать ее из стороны в сторону, шипать за локоть, в результате чего Т.Томина также была вынуждена отойти в сторону.

Кроме того, установлено, что указанные лица, останавливаясь, из хулиганских побуждений избили М.Касимова, разбили заднее и боковые стекла автомашины марки «Дэу-Нубира», принадлежащего И.Исамидинову, тем самым причинив последнему значительный материальный ущерб.

Примерно в 15:30 часов после получения сообщения о данном инциденте из территориальной больницы г.Ош на прием к прокурору города были приглашены адвокаты КЖ-1 г.Ош Т.Томина и ЮК-2 г.Ош Д.Турдиева. Во время беседы указанные лица отказались от прохождения судебно-медицинского освидетельствования. Несмотря на это, с обеих адвокатов были истребованы заявления и отобраны подробные объяснительные по существу произошедшего инцидента, с назначением судебно-медицинский экспертиз, копии которых вручены заявителям под роспись. В тот же день материалы по заявлениям Т.Томиной и Д.Турдиевой направлены в УВД г.Ош для проведения проверки и принятия решения в соответствии с требованиями уголовно-процессуального закона.

защитника К.Жорова по отношению к другим участникам процесса, между адвокатами и присутствующими в зале родственниками погибших произошла ссора, перешедшая в рукоприкладство в отношении защитников Н.Суйунбаевой и Д.Турдуматовой, защищающих интересы подсудимых.

Не останавливаясь на этом, сторонники пострадавшей стороны там же избили водителя К.Кадырова, вызванного по телефону защитником Д.Турдуматовой, разбили лобовое и боковые стекла служебной автомашины коллегии адвокатов марки «Хонда Одиссей», тем самым причинив значительный материальный ущерб.

По данному факту 18.10.10г. СО УВД г.Ош возбуждено уголовное дело по признакам преступления, предусмотренного ст.234 ч.2 п.п. 1,4, ч.3 п.2 УК КР.

По вышеизложенным фактам органами прокуратуры даны письменные указания о принятии неотложных мер по выявлению и установлению причастных лиц с привлечением их к уголовной ответственности.

По результатам следствия, эти уголовные дела СО УВД г.Ош производством приостановлены, за неустановлением лиц, подлежащих привлечению в качестве обвиняемых.

В органы прокуратуры Жалал-Абадской и Ошской областей и г.Ош жалобы на действия сотрудников ГКНБ КР по поводу незаконного ареста и о применении ими недозволенных методов следствия, до настоящего времени не поступали.

Кроме того, 12 апреля Генеральным прокурором издано распоряжение об усилении прокурорского надзора за соблюдением прав и свобод человека. Главным требованием распоряжения является незамедлительное реагирование на каждый случай поступления информации о применении пыток и других бесчеловечных, жестоких или унижающих достоинство видов обращения со стороны сотрудников правоохранительных органов. При подтверждении информации безотлагательно должны быть решены вопросы о привлечении всех виновных лиц к установленной законом ответственности; по каждому незаконному отказу в возбуждении, приостановлении либо прекращению уголовных дел по указанной категории ставится вопрос об ответственности должностных лиц.

Генеральной прокуратуре дано поручение обеспечить объективное и беспристрастное расследование уголовных дел, независимо от этнической принадлежности обвиняемых, исключения направления в суд уголовных дел, где обвинение строится лишь на основе собственного признания подсудимых. Проводится проверка всех приостановленных и прекращенных уголовных дел, а также материалов об отказе в возбуждении уголовных дел, находящихся в производстве следственно-оперативных групп на предмет законности принятых решений с анализом, насколько полно и качественно были использованы правовые инструменты для привлечения виновных лиц к уголовной ответственности. Следственно-оперативные группы усилены наиболее квалифицированными сотрудниками, при этом одним из главных условий их эффективной работы определено тесное взаимодействие с правозащитными организациями.

С уважением,

f

Первый заместитель  
Генерального прокурора республики

f/f(Λ~)

Р. Бактыбаев

Исп: управления организационного  
обеспечения и взаимодействия со СМИ  
(0312)66-54-10)

## Unofficial Translation

To Rachel Denber  
Deputy Director of the Europe and Central Asia Division  
Human Rights Watch

Dear Ms. Denber,

In 2010, the Prosecutor Offices of the Jalal-Abad and Osh provinces and of Osh city registered 14 complaints and applications regarding torture, illegal detainment, arrest, and the violation of an individual's right to due process in connection with the June interethnic conflict. Preliminary inquiries were opened into the aforementioned 14 complaints. The results of the investigations were the following: refusal to open a criminal case – **13** applications (of those: **5** were from Jalal-Abad province; **4** were from the Osh province; **4** from the city of Osh). The Prosecutor's Office of the Jalal-Abad Province opened a criminal investigation into **1** complaint.

No complaints were registered in the first quarter of 2011.

### **Regarding accusations of the use of improper investigative procedures against Kh. Kadyrov**

On July 1, 2010, V.O. Gritsenko, a representative of the human rights organization "Spravedlivost" ("Justice"), contacted the Prosecutor's Office of the Jalal-Abad Province regarding the illegal activities and use of violence by law enforcement agents against the Kadyrov brothers, residents of the city of Jalal-Abad who submitted their complaint to "Spravedlivost."

It has been determined that around 18:00 on June 12, 2010 an interethnic clash involving about 2,000 unidentified ethnic Kyrgyz and ethnic Uzbek broke out near the People's Friendship University in the city of Jalal-Abad. The clash included shooting from firearms and the burning of homes.

Nine people died as a result of the interethnic clash, and 53 people were injured in varying degrees, including with gunshot wounds.

On June 13, 2010 a criminal case was opened into the purported crimes, stipulated under Article 97, Section 2, part 1, 5, 15, 16, 104; Section 3, part 1; Article 299, Section 2, part 1, 3, 241; Section 3, 233, parts 1, 2,3, 28, 298 of the Criminal Code of the Republic of Kyrgyzstan.

On July 14, 2010 around 18:00, the Jalal-Abad province police detained Kh Kadyrov, F Kadyrov, and P. Gaibullaev on suspicion of committing these crimes. They were released on July 17, 2010.

On July 19, 2010, in accordance with Article 94 of the Criminal Procedural Code of the Republic of Kyrgyzstan, R. Gaibullaev, Kh Kadyrov, and F. Kadyrov were again detained and charged with committing crimes under Article 233, Section 2; Article 299, Section 2, part 1 of the Criminal Code of the Republic Kyrgyzstan. The court ordered that the men be placed in pretrial detention.

On July 26, 2010 as a result of the inquiry into Kh. Kadyrov's official complaint to the Prosecutor's Office of the Jalal-Abad Province, a criminal investigation was opened into law enforcement officials using excessive force and detaining Kadyrov and the others illegally from June 14-17, 2010 for

under Article 305, Section 2, part 3; Article 324, Section 1 of the Criminal Code of the Republic of Kyrgyzstan.

On September 26, 2010, investigation into this criminal case was suspended on the basis of Article 221, Section 1, part 3 of the Criminal Procedural Code, in connection with the failure to identify the perpetrator; the Kadyrov victims could not identify any of the persons who had detained and beaten them.

#### **Regarding accusations of the illegal prosecution and torture of F. Gapirov**

At about 10:00 a.m. on June 16, 2010, Osh law enforcement officials at the "Aeroportskaya-krugovaya" checkpoint stopped a Hyundai Accent driven by Mirohmat Nematovich Makhkamov and Farukh Ravshanovich Gapirov. While searching the car, the officials found and confiscated a black case, containing two packs of ammunition (totaling 32 pieces) for a PM 9mm pistol.

On June 16, 2010, using the given information, the Main Investigative Division of the Ministry of Internal Affairs of the Republic of Kyrgyzstan opened a criminal case under Article 241, Section 1 of the Criminal Code of the Republic of Kyrgyzstan.

On the same day, M. Makhkamov and F. Gapirov were detained on suspicion of committing the crime and were placed in a temporary detainment facility in Osh. On June 17, 2010 the Osh City Court ordered that they be placed in pretrial detention as a preventative measure.

On August 14, 2010, F. Gapirov and M. Makhkamov were charged with committing crimes under Article 233, Section 1, 2, and Article 241, Section 1, 4 of the Criminal Code. On August 16, 2010, the criminal case was referred to the Osh City Court, which issued a verdict sentencing M. Makhkamov to 4 years imprisonment. F. Gapirov was acquitted because of a lack of evidence.

The Prosecutor's Office of Osh City appealed the verdict, but the Osh Province Court upheld the Osh City Court's decision on December 16, 2010.

The Prosecutor's Office of Osh City brought the Osh Province Court's ruling before the Supreme Court of Kyrgyzstan on January 12, 2011. The Supreme Court case is currently under consideration. Concerning the fact it was indicated in the court's acquittal of A. Gapirov that unlawful interrogation methods were used during his detention the Prosecutor's Office of Osh City decided on February 29, 2011, not to open a criminal case due to a lack of evidence. Additionally, further investigation into F. Gapirov's allegations is inadvisable before the Supreme Court of the Kyrgyz Republic issues a final decision on the aforementioned criminal case.

#### **Grounds against the use of torture against R. JJeembekov**

**(written as R. Dzhinbekov)**

On July 20, 2010, the Prosecutor's Office of Jalal-Abad City received a complaint from the lawyer A. Niyazov and his defendant R. Jeembekov regarding the torture of his client. The results of the investigation are the following:

On June 17, 2010 the Prosecutor's Office of Jalal-Abad City opened a criminal case under Article 97, Section 2, Part 1, 14 of the Criminal Code of the Kyrgyz Republic after finding the bodies of A. Boronbaev, Sh. Abdullaev, and Kh. Tashmatov bearing signs of a violent death.

On July 18, 2010, Rustam JJeembekov was detained and charged with committing these crimes.

On July 19, 2010 the Jalal-Abad City Court ordered that R. Jeembekov be placed in pre-trial detention as a precautionary measure.

During the interrogation, R. Jeembekov confessed to committing the aforementioned murders together with several strangers.

R.A. Jeenbekov gave his testimony voluntarily. During the questioning of the suspect, the lawyer was present, and afterward fully supported his testimony by reconstructing the scene and circumstances of the crime.

On July 26, 2010 Ch. Alzhanov was charged under Article 97, Section 2, part 6, 9, 15, 16; Article 233, Section 2, part 1,3 of the Criminal Code. M. Mamazakirov and T. Mamarasulov were charged under Article 233, Section 2 and Article 299, Section 2, part 1,3 of the Criminal Code. R. Jeenbekov was charged under Article 299, Section 2, part 1,3; Article 233, Section 2; Article 97, Section 2, part 6,9,10,15 16; Article 172, Section 3 of the Criminal Code of the Republic of Kyrgyzstan.

The results of the investigation into the given crimes were sent to the Jalal-Abad City Court, where the November 19, 2010 verdict was issued. Ch. Alzhenov received 20 years in prison; M. Mamazakirov and T. Mamarasulov were sentenced to 6 years imprisonment with 3 years of probation under Article 63 of the Criminal Code. R. Jeenbekov was sentenced to 25 years imprisonment.

Following A. Niyazov's complaint to the Prosecutor's Office of Jalal-Abad City of the use of torture and violence against his client, R. Jeenbekov, a forensic-medical evaluation was ordered and conducted. The evaluation found minor injuries on R. Jeenbekov's body, which did not even have any short-term health consequences.

During the examination, N. Mamazhanov, N. Kalidarov, and A. Dosov, and members of the police who detained R. Jeenbekov, were questioned. They stated that during his detainment, Jeenbekov actively resisted physically and, in accordance with Article 14 of the law of Republic of Kyrgyzstan "Regarding agencies of the Ministry of Internal Affairs of the Republic of Kyrgyzstan," they used physical measures in the form of physical sambo [non-armed self-defense]. R. Jeenbekov himself was not questioned because he was questioned earlier as a suspect in a criminal case, where the use of torture was not pointed out.

Consequently, R. Jeenbekov's injuries were inflicted by members of the police during his detainment and are recognized as having been lawful.

On July 30, 2010, as a result of the investigation into A. Niyazov's complaint to the Prosecutor's Office of Jalal-Abad City, a criminal case was rejected on the basis of Article 28, Section 1, part 2 of the Criminal Procedural Code of the Republic of Kyrgyzstan due to a lack of evidence of a crime. The Province Prosecutor recognized the decision as having been justified.

A. Niyazov and the defendant R. Jeenbekov did not complain to the court regarding the decision to refuse to open a criminal case.

#### **Regarding the criminal case relating to the murder of the head of the Kara-Suu District Police Division**

On June 14, 2010 the Osh province prosecutor opened a criminal case on suspicion of a above crime under Article 97, Section 2, part.1,4,6,9,15,16, and Article 340 of the Criminal Code of the Republic of Kyrgyzstan.

On June 22, 2010, Fakhridin Ashirov, a resident of Kara-Suu district, was arrested and charged with committing the above crime.

On June 23, 2010, the Osh City Court issued a decision to place him in a pretrial detention center (SIZO-5) in Osh.

On July 17, 2010 F. Ashirov was conveyed to the pretrial detention center (SIZO-5) in Osh. This was based on objective reasons, connected with overcrowding of SIZO-5 in Osh, the existing challenging socio-political tensions and the atmosphere in the city of Osh, the great risk and likely possibility of vigilante justice by relatives of the dead and a significant portion of citizens with Kyrgyz nationality, and

the real threat of attack on convoys on the Osh-Kara-Suu highway. In connection with this, the investigation into the late prison transfer to SIZO-5 was not conducted by the Osh province prosecutor.

On September 1, 2010, F. Ashirov, along with 9 other participants, was convicted of committing the aforementioned crime.

On September 6, 2010, the investigation of this case was concluded by sending the case to the Kara-Suu District Court, where a verdict on October 19, 2010 sentenced A. Tashrov, M. Soliev, F. Shipov, Kh. Talipov, and Sh. Abdullozhanov to life imprisonment including the confiscation of their property. B. Dzhuraev was sentenced to 25 years imprisonment including confiscation of his property. A. Azimov was sentenced to 8 years imprisonment; U. Rasulov was sentenced to 5 years imprisonment; and D. Akhrovov was sent for forced confinement.

On November 10, 2010 the Kara-Suu District Court's decision was contested by A Tashirov and others, and was submitted to a judicial board on criminal cases and administrative offenses of the Osh Province Court, where the Kara-Suu District Court's October 19, 2010 decision was upheld on December 27, 2010.

During the judicial proceedings F. Ashirov claimed that he had been beaten. The Prosecutor's Office ordered a prompt medical evaluation, but did not find any sort of injuries of the sort described in the forensic medical report. In connection with these findings, the Osh province prosecutor did not open a criminal case into the alleged crimes.

#### **Regarding the criminal case against Azimjan Askarov.**

On June 24, 2010 the lawyer N. Taktakunov submitted a complaint to the Jalal-Abad province prosecutor stating that members of the police had used torture and violence against the human rights activist Azimlan Askarov.

It has been established that at around 0800 on June 13, 2010 in connection with the worsening situation and interethnic conflict in the city of Osh, a group of about 400-500 ethnic Uzbeks gathered on a bridge from Bazar-Kurgan that is located on the "Osh-Bishkek" highway. The group was armed with firearms, iron bars, wooden sticks, and knives, blocked the "Osh-Bishkek" highway, and organized mass disturbances.

An investigative unit from the Bazar-Kurgan District police force arrived at the scene. While the police were stopping the criminal activities, 7 members of the police force received injuries of varying degrees of severity; one local police inspector was stabbed multiple times, and died as a result of his injuries.

On June 13, 2010 the Bazar-Kurgan district prosecutor opened a criminal case on the grounds of a crime under Article 97, Section 2, part 4,6,9,10,15,16; Article 299, Section 2, part 1,3; Article 233, Section 1,2,3; Article 340 of the Criminal Code of the Republic of Kyrgyzstan.

On June 16, 2010 Azimjan Askarov was detained and placed in a pretrial detainment facility of the Bazar-Kurgan district police on suspicion of having committed the above crime.

From the moment of his detainment, A. Askarov was provided with a lawyer, P. Mirzakulov, and on June 17, 2010 A. Abilakimov also started working in the capacity of his lawyer.

On June 17, 2010 A. Askarov and Sh. Mirzalimov were charged with committing crimes under Article 233, Section 2,3; Article 299, Section 2, part 1,3 of the Criminal Code of the Republic of Kyrgyzstan and, at the request of the Bazar-Kurgan District Court, both men were placed in detention as a precautionary measure.



On June 17, 2010 the district prosecutor ordered a forensic medical evaluation of A. Askarov. According to the conclusions from June 24, 2010, A. Askarov had minor injuries that did not present short-term health problems.

During the inquiry, A. Askarov was placed in an administrative holding cell where M. Makhmudzhanov and Sh. Mirzalimov were also being held.

Then, while they were both in the cell, M. Makhmudzhanov began to blame A. Askarov for wrongdoing (that he had burned down his house and killed many people), and he hit A. Askarov in the head with his hand, which resulted in Askarov receiving an injury from hitting his spine on the concrete.

During the June 25 inquiry, A. Askarov brought a personal petition to the district prosecutor requesting that M. Makhmudzhanov not be brought to court because he did not have any sort of grievance against him.

Likewise, A. Askarov stated in his petition that members of the police force had not beaten him. Additionally, he categorically refused to have the forensic medical evaluation repeated.

In connection with this, on June 29, 2010, the Jalal-Abad district prosecutor did not open a criminal case against M. Makhmudzhanov because of lack of evidence, the absence of a complaint from A. Askarov, and at the same time did not open a criminal case into the lawyer N. Toktakunov regarding allegations of torture because of a lack of evidence.

The Bazar-Kurgan District Court decision on September 15, 2010 sentenced A. Askarov to life imprisonment for incriminating criminal acts. The Jalal-Abad Province Court November 10, 2010 decision on the appeal upheld the District Court's September 15, 2010 decision.

#### **Regarding the allegations of targeting Uzbek nationals for crimes and detention**

During the June events from June 10, 2010 to the present time, the law enforcement agencies of the province, in accordance with Article 94 of the Criminal Procedural Code of the Republic of Kyrgyzstan have detained a total of 132 people on suspicion of committing crimes, 124 of whom were held in detention, 8 people were held as a preventative measure, not connected with detention.

Of the total number of people who were held in detention, 115 were ethnic Uzbeks and 9 were ethnic Kyrgyz.

Such a predominance of ethnic Uzbeks can be explained by the fact that during the mass disturbances, it was mostly ethnic Uzbeks who destroyed and ransacked government buildings, or attempted murder, to the point where they killed a law enforcement official.

From June 10-14, 2010 at the height of the mass disturbances Uzbek nationals armed with firearms or any type of weapon blocked all exits from the city by building barricades, thus provoking the inter-ethnic conflict.

#### **Regarding the question about whether there are instances where Uzbeks were accused of committing crimes against other Uzbeks.**

Law enforcement agencies investigated two criminal cases of the given category.

1) On June 16, 2010 the Osh Province Prosecutor opened a criminal case into the murder of M. Satibaldiev (an ethnic Uzbek), who was a driver for the Osh Public Administration. The murder occurred on June 11, 2010 in the village of Furkat in the Kara-Suu District.

N. Samiev, (an ethnic Uzbek) and resident of the village of Furkat in the Kara-Suu District, was put on the wanted list on January 18, 2011 for this crime.

On January 18, 2011 the investigation into this criminal case was suspended based on Article 221, Section 1, part 1 of the Procedural Code of the Republic of Kyrgyzstan, in connection with the search of the suspect.

2) On June 15, 2010 around 10:30 the body of an unidentified man, around 40-45 years old, was found showing signs of a violent death on G. Aitiev Street in Osh. Later, the body was identified as Rakhmatulo Abdukhmidovich, born in 1967 and an ethnic Uzbek.

The same day, the Prosecutor's Office of Osh City opened a criminal case under Article 97, Section 2, part 10 of the Criminal Code of the Republic of Kyrgyzstan.

Tanzila Mamatova, an ethnic Uzbek, was detained during the investigation into this criminal case. With the evidence that was uncovered, T. Mamtova was charged under Article 97, Section 2, part 10 of the Criminal Code of the Republic of Kyrgyzstan. The case was taken to court, where the Osh City Court found her guilty and sentenced her to 8 years imprisonment in a maximum security prison.

**Regarding the facts of violations against ethnic Uzbeks,  
which are relevant to litigation.**

On September 30, 2010 the news agency "24.kg" published an article on its website about violations of the law that took place during court proceedings, where defendants on their way to court regarding the Osh events were allegedly beaten by relatives of victims and by the convoy accompanying the defendants.

In particular, the article stated that the defendants G. Sadikzhanov, D. Khaidarov, A. Tashirov, U. Rasulov, B. Dzhuraev, F. Ashirov, M. Soliev, A. Azimov, Kh. Talipov, D. Akhrarov, E. Kochkorov, and Sh. Abdullazhanov were beaten by relatives of the victims.

Despite the absence of complaints from the defendants, their lawyers, or their relatives, the Osh District Prosecutor and Prosecutor's Office of Osh City opened an investigation into the facts of the beatings based on the internet article.

The result of the investigation showed that on June 12, 2010, during the time of the mass disturbances stemming from interethnic discord, an unidentified person in the Kara-Su District killed local resident A. Seitov and stole his car.

The Prosecutor's Office of Osh City opened a criminal case on June 18, 2010 under Article 97, Section 2, part 9 of the Criminal Code of the Republic of Kyrgyzstan.

On June 26, 2010 Kara-Suu District residents D. Khaidarov, G. Sadikzhanov, B. Sabirov, Kh. Saipov, and Sh. Kochkorov were detained on suspicion of having committed this crime.

On June 28, 2010 an Osh City Court ruling ordered that the men be placed in pretrial detention as a precautionary measure.

On August 8, 2010 all of the aforementioned people were charged with committing the crime under Article 97, Section 2, part 9, Article 172, Section 3; Article 233, Section 1 of the Criminal Code of the Republic of Kyrgyzstan.

On August 9, 2010, the criminal investigation was concluded and the case was passed on to the Kara-Suu District Court.

From the moment of their detention and throughout the judicial proceedings, the aforementioned people were held in detention in the pretrial detention facility (SIZO-5) in Osh.

According to the information from the "24.kg" news agency, the defendants G. Sadikzhanov and D. Kaidarov were allegedly beaten relatives of the victims on September 15, 2010 on their way to the trial.

However, it has been established that on September 15, 2010, the aforementioned trial had not yet started and the defendants G. Sadikzhanov and D. Khaidarov were not transferred from the detention facility that day.

According to the testimony of the defendants G. Sadikzhanov and D. Khadarov, on September 15, 2010 around 10:00 they were beaten by the victims' relatives, who threw stones at the door of the Kara-Suu District Court. However, they were not able to provide the exact names or identities of those who allegedly beat and threw stones at them.

On October 1, 2010 the province prosecutor ordered a forensic medical evaluation of G. Sadikzhanov and D. Khaidarov. Experts from the Osh Province Bureau of Forensic-Medical Expertise, in the presence of the head of the medical section, conducted the evaluation in the detention facility (SIZO-5) in Osh. The experts did not find any sort of injuries on the bodies of G. Sadikzhanov and D. Khadarov.

Additionally, during the judicial proceedings it was established that the defendants G. Sadikzhanov and D. Khaidarov did submit complaints about beatings or injuries to the medical division or to administration of the detention facility (SIZO-5) in Osh.

On October 4, 2010 the Supreme Court of the Republic of Kyrgyzstan officially reviewed the complaint from T. Ismailova, the director of the human rights organization "Citizens against Corruptions," and activists from the "Coalition for Democracy and Civil Society," regarding the presence of law enforcement officials, Judge P. Baibosunov, and 20 bailiffs at the Kara-Suu District Court on September 15, 2010 when defendants G. Sadikzhanov and D. Khaidarov were beaten.

**Regarding the facts of attacks on defendants' lawyers, harassment and threats at their homes, in relation to judicial proceedings related to the June violence.**

1) On June 14, 2010 during the well-known tragic events of that time, two traffic policemen on duty from Street Patrol Service of the Road Safety Division of the Osh City Ministry of Internal Affairs went missing, without any news of their whereabouts. The bodies of the two missing traffic officers, B. Aidarov and B. Baykishiev, were found on July 2, 2011 buried in the basement of an unfinished building. The bodies had sustained multiple stab wounds.

An interagency operational investigative team in the city of Osh opened a criminal investigation into the events on June 18, 2010 based on signs of possible criminal activities related to Articles 341, Section 2; Article 123, Section 2, part 1,2,7; and Article 125, Section 2, part 1,2 and Section 3 of the Criminal Code of the Republic of Kyrgyzstan.

On August 18, 2010, N. Kasymova, S. Umarova, J. Dzhuraev, H. Raimzhanova, D. Matkarimova, and S. Nizamkhodzhaev were accused of committing crimes under Article 233, Section 1, 2; Article 123, Section 2, part 1,2; Article 97, Section 2, part 1, 6, 9, 11, 14, 15; Article 340; Article 172, Section 3; and Article 174, Section 1 of the Criminal Code of the Republic of Kyrgyzstan; the criminal investigation was concluded and the case was passed on to the Osh City Court.

The criminal case was scheduled to be brought before the court on October 13, 2010 at 2 p.m.

On October 13, 2010, at approximately 2 p.m. the defendant S. Nizamkhodzhaev, who was under restrictions for travel, and close relatives arrived at the court hearing. At the same time, approximately 35-40 relatives of the victims approached the defendant (S. Nizamkhodzhaev) as he was standing near the gates of the military unit № 703 in the city of Osh, and they began to beat the defendant and his family. The defense attorney present, D. Turdieva, attempted to separate the groups, at which point the relatives and family members of the victim began to retaliate and assault her in response. Turdieva was forced to move aside. Not stopping at this, the relatives of the victims also approached and threatened defense attorney T.

Tomina and the lawyer representing the accused N. Kasymova, pushing her from side to side and pinching her elbow, at which point T. Tomina was also forced to stand aside.

The group then proceeded to beat Ms. Kasymova and smash both the rear and side windows of a Daewoo Nubira owned by I. Isamidinov, causing significant damage to the vehicle.

After being notified of the event by a local hospital, at approximately 3:30 p.m., the City Prosecutor Office summoned T. Tomina, a lawyer from Osh Legal Consultation 1, and D. Turdieva, a lawyer from Osh Legal Consultation 2. During the conversation, they refused to undergo medical examination but were nevertheless required to give statements on details related to the event and were referred for medical examination, copies of which were given to the applicants upon receipt. On the same day, documents related to the lawyers' statements were sent to the Osh City Ministry of Internal Affairs for their verification and to make a decision in accordance with the requirements of the Criminal Procedural Code.

The results of the verification process of the Osh City CO УВД led to the opening a criminal case on the grounds of sufficient evidence according to the Article 234, Section 2, part 1,4 of the Criminal Code of the Republic of Kyrgyzstan.

2) On October 14, 2010 at 2 p.m., during the hearing for a criminal case (Judge R. B. Kozhomkulov) of defendants T. Amanova, E. Rustamova, I. Talipova and B. Amanova—accused in the murder of A. Turusbekova and S. Ermekebaeva—another incident occurred.

On October 14, 2010 at 2 p.m. as the court proceedings began in this case, after a witness for the victim S. Ermekebaev, T. Almanbetova began to testify, the counsel for the defendant B. Amanova, K. Zhoroiev, showing contempt towards the court and telling colleagues present at the hearing to leave the courtroom, provoked conflict in the courtroom. As a result of the counsel's disrespectful actions, lawyers present in the courtroom and relatives of the deceased began to argue, leading to the physical assault of defense attorneys N. Suyynabaev and D. Turdumatova.

The incident did not end there. Supporters for the victim (the aggrieved party) then beat K. Kadyrov, the driver called by defense attorney D. Turdumatova, broke the windshield and side windows of the company car, a Honda Odyssey, of the lawyer's Bar Association, thereby causing significant damage to the vehicle.

An investigation into the incident on October 18, 2010, was launched by the Osh City Ministry of Internal Affairs, in accordance with evidence pointing to a crime, under Article 234, Section 2, part 1,4; Section 3, part 2 of the Criminal Code of the Republic of Kyrgyzstan.

Based on this information, written instructions were given by the prosecutor's office on taking urgent measures to establish the identity of those involved and bring them to justice.

As a result of the investigation, the criminal cases were suspended by the CO UVD of Osh for failure to identify possible suspects.

At the time, no complaints have received against the prosecuting authorities of Jalal-Abad province, Osh province, and the city of Osh regarding the actions of members of the Government Committee on National Security for unlawful arrest and the use of unlawful methods of investigation.

In addition, on April 12, the prosecutor general issued an order to increase the prosecutor's powers to oversee and supervise human rights and freedoms. The order demands immediate response to incidences where information is received on torture perpetrated by law enforcement officers and other inhuman, cruel or debasing actions. Upon confirmation of this information, all questions of bringing perpetrators to statutory responsibility without delay will be decided. As a result of the investigation, the Osh City Division of the Ministry of Internal Affairs opened a criminal case on October 15, 2010 in accordance with

the indicators of a crime under Article 234, Section 2, part 1, 4, of the Criminal Code of the Republic of Kyrgyzstan.

Once the information has been confirmed, the questions relating to bringing the perpetrators to justice should be decided quickly; for each illegal refusal to initiate proceedings, suspension or termination of criminal cases of the above categories raises a question about the accountability of the people responsible.

The prosecutor general has given orders to ensure objective and impartial investigations of criminal cases, independent of the ethnicity of the defendants, with the exception of the criminal case being taken to court, where the defendants build their case on their confessions under investigation. An investigation is being conducted into all suspended and terminated criminal cases, and likewise, into all materials relating to the refusal to open criminal cases, which are currently in the investigative-operational group for determining the legality of the case with analysis because the extent to which a complete and high-quality investigation was used by the law enforcement agencies for holding perpetrators accountable. The investigative-operational group has been strengthened with more qualified employees, and is one of the main conditions is their effective work and close cooperation with the law enforcement agencies.

Respectfully,

R. Baktybaev  
First Deputy Prosecutor General  
of the Republic

## Distorted Justice

### Kyrgyzstan's Flawed Investigations and Trials of the June 2010 Violence

During four days in June 2010, ethnic Uzbeks and Kyrgyz clashed in the southern Kyrgyz provinces of Osh and Jalal-Abad, killing more than 400 and destroying close to 2,000 houses. Horrific crimes were committed against people of both ethnicities.

This report, based on more than 40 interviews with defendants, lawyers, and representatives of the authorities, as well as examinations of investigative and court documents, examines the authorities' administration of justice following the violence.

Kyrgyz courts have sentenced many people to lengthy prison terms for alleged crimes committed during the violence. But the investigations and trials have been marred by threats, violence, and serious violations such as arbitrary arrest and unlawful detention, torture, and ill-treatment. Prosecutors have largely ignored or dismissed allegations and evidence of these violations, and courts have relied heavily on statements extracted under torture to convict defendants. These violations mainly affected ethnic Uzbeks, even though the Uzbek minority constituted the majority of victims from the violence, sustaining most of the casualties and destroyed homes.

The profoundly flawed investigations and trials undermine efforts to promote reconciliation and fuel tensions that could lead to renewed violence.

*Distorted Justice* calls on the Kyrgyz authorities to immediately enact a zero-tolerance policy for human rights violations during detention, and promptly and objectively investigate all allegations of torture, ill-treatment, and other violations of detainees' rights. The Kyrgyz government should also initiate a formal review process of all cases connected to the violence in the south, and conduct new investigations and trials in all cases in which there have been serious violations.

*A prosecutor reads statements during the trial of five ethnic Uzbek men accused of killing an ethnic Kyrgyz man during the June 2010 violence in southwest Kyrgyzstan, October 7, 2010.*

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