



KYRGYZSTAN: DERELICTION OF DUTY

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INTERNATIONAL**



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1. INTRODUCTION

Two years ago in June 2010 four days of violence between ethnic Kyrgyz and ethnic Uzbeks in Osh and Jalal-Abad left hundreds dead, thousands injured and hundreds of thousands displaced. While serious crimes were committed by members of both ethnic groups, the majority of the damage, injuries and deaths were suffered by ethnic Uzbeks. The latter has since been confirmed on numerous occasions by officially released figures. Nevertheless, the authorities have persisted in their refusal to publicly acknowledge this as fact.

Despite laudable initiatives taken by the authorities in the last two years – often in the face of considerable internal opposition – they have failed in their duty to fairly and effectively investigate the June 2010 violence and its aftermath and provide justice for the thousands of victims of the serious crimes and human rights violations. These initiatives have included the government and former president mandating and facilitating an independent international commission of inquiry and issuing an invitation to the UN Special Rapporteur on torture as well as the General Prosecutor acknowledging the widespread nature of torture and introducing new safeguards.

In May 2011 the authorities also rejected the findings of the International Commission of Inquiry into the June 2010 violence, - the Kyrgyzstan Inquiry Commission (KIC) -, that there was strong evidence that crimes against humanity had been committed against ethnic Uzbeks in the city of Osh during the violence. Instead they argued that crimes against humanity had been committed against ethnic Kyrgyz. To date - a full twelve months later - no investigations and prosecutions of any crimes against humanity have been initiated. The authorities appear equally unwilling or unable to order and follow through impartial and thorough investigations into allegations of collusion, complicity or participation of security forces in the commission of human rights abuses during the violence and its aftermath.

The destroyed and damaged houses in the mahallas (neighbourhoods with traditional low-rise brick homes) may be slowly being rebuilt and Uzbek traders returning to ply their goods in the bazaars alongside their fellow Kyrgyz traders, but inter-ethnic relations remain volatile.

While arbitrary arrests of mainly ethnic Uzbeks appear to have become less frequent over the last 12 months, reports persist of serious human rights violations committed against Uzbeks in relation to ongoing investigations into the June 2010 violence and its aftermath, including torture and other ill-treatment in detention, forced confessions and unfair trials. In his February 2012 report on his visit to Kyrgyzstan the Special Rapporteur on torture expressed his concerns that “serious human rights violations in the context of [these] investigations have continued unabated in recent months”.¹

Despite several official directives from the General Prosecutor’s Office to investigate every single report of torture, prosecutors have regularly failed to thoroughly and impartially investigate such allegations and bring those suspected to be responsible to justice. The Special Rapporteur on torture found that “[t]he efforts made by the interim Government to investigate and punish the abuses that resulted from the events of June 2010 have proved to be largely ineffective”.²

Over the last 12 months lawyers defending ethnic Uzbeks have continued to be threatened and physically attacked, including in the courtroom. Courts of all instances, including the Supreme Court, have routinely failed to exclude evidence reportedly obtained under torture.

All of the above, including the unrelenting official endorsement of an ethnically-biased account of key events have further compounded the sense of impunity among perpetrators and injustice among victims over the last twelve months and are continuing to undermine the confidence and trust of all Kyrgyzstanis in their state's commitment to its duty of care towards all its citizens].

2. CRIMES AGAINST HUMANITY

The KIC published its findings in May 2011. It concluded that serious human right violations had taken place during and immediately after the violence. There was strong evidence of widespread, systematic and co-ordinated violent acts against ethnic Uzbeks in the southern city of Osh that would amount to crimes against humanity if proved beyond reasonable doubt in court. The report concluded that the torture of detainees in connection with the violence had been "almost universal".

The authorities, including the government and parliament, accepted the KIC's findings that torture and other ill-treatment had taken place but categorically rejected that crimes against humanity had been committed, and in turn accused the KIC of ethnic bias and flawed methodology. They did not accept the majority of its recommendations and did not make the KIC's report widely available and easily accessible to the public. The report was also not translated into Uzbek and Kyrgyz. Both of these factors contributed to biased and selective interpretations of the report and fuelled further distrust and alarm.

COMPLICITY OF SECURITY FORCES

Two years on the exact role of the Kyrgyzstani security forces, including the military and law enforcement agencies, which are predominantly ethnic Kyrgyz, in the different phases of the June violence is still unclear. Independent local observers have persistently maintained that alongside the spontaneous eruption of violence, some of the crimes against ethnic Uzbeks, particularly in the city of Osh, were carefully orchestrated. They have alleged that military personnel participated in some of the violence, that some local government officials distributed weapons to ethnic Kyrgyz gangs and that soldiers and law enforcement officials frequently failed to intervene to prevent attacks against ethnic Uzbeks. The KIC's report corroborated these claims. However, the vast majority of criminal cases opened by both military and civilian prosecution authorities against military and law enforcement-officers to date have been for crimes such as abandoning their arms and not fulfilling their duties and obligations and not for human rights violations against civilians caught up in the June events, in accordance with their qualification under international law.

Amnesty International is increasingly concerned that the Kyrgyzstani investigative authorities are either unwilling or unable to investigate allegations of collusion or complicity of security

forces in the commission of human rights violations against civilians.

SPECIALIST UNITS

A key recommendation put forward in June 2011 by Amnesty International has been to create specialist inter-agency units within the police, the General Prosecutor's Office and the judiciary to deal with crimes and human rights violations committed during and after the June 2010 violence, including crimes against humanity. Appointments to these units should be ethnically and gender balanced.

In discussions with Amnesty International in June and July 2011 Kyrgyzstani authorities proffered a broadly positive response to this recommendation, however, no steps have been taken in this direction.

Amnesty International is fully aware of the resources required and realises the difficulty in finding and allocating enough resources, most especially experienced personnel to investigate these thousands of cases. However, given the many glaring failures, flaws, violations and ethnic bias in the criminal investigations, prosecutions and trials over the last two years and the continued reluctance by law enforcement officials to address these issues, it is becoming ever more essential that a system of independent, unbiased investigations is set in place as soon as possible. Amnesty International was repeatedly told whilst in Kyrgyzstan in June 2011 and again in April 2012 that several hundreds of cases in which Uzbeks were killed, raped and disappeared have yet to be investigated.

The international community should support the Kyrgyzstani effort and provide technical and financial assistance as well as support with training and mentoring. However, the decision to establish such units must come from within Kyrgyzstan and it has to be a national effort, not a system imposed from outside. If implemented properly these units could play an important part in institution-building and be of long-term benefit to the justice system, providing an example of best practice for thorough and impartial investigations which could be replicated throughout the country.

RAPE AND SEXUAL VIOLENCE

In the two years since the June 2010 events there has been little progress in investigating credible reports of rape and sexual violence during the violence and its aftermath. The prosecutors of Osh City and Region told Amnesty International in April 2012 that altogether only eight reports of rapes had been officially recorded. Some prosecutions were pending because the alleged perpetrators had not been identified or apprehended. Human rights organizations have documented dozens of cases of rape and other sexual violence of both Uzbek and Kyrgyz women and girls. There were also isolated cases of boys and men being raped. The rapes were accompanied by verbal ethnic abuse and severe physical violence. The KIC reported that the commission had "corroborated around twenty rapes and other incidents of sexual violence", but that they believed "the true figure to be considerably higher".³ Some human rights organizations told Amnesty International that they had reported dozens of rape cases to the police but that they had refused to register them officially and consequently they were not recorded as reports of crimes and no investigations were conducted into these allegations.

3. TORTURE AND OTHER ILL-TREATMENT

Despite the acknowledgment by a number of officials that torture and other ill-treatment in detention continues to be a problem and despite repeated efforts, including issuing decrees and instructions, by the former President and the new Prosecutor General to stop the routine use of beatings and other ill-treatment in order to extract confessions, there appears to be little commitment at regional and local levels to effectively and decisively address and prevent these serious human rights violations. The KIC concluded that “[t]here is a consistent and reliable body of material which tends to show that acts of torture were committed in detention centres by the authorities of Kyrgyzstan in the aftermath of the June events. Of particular concern to the KIC is that such acts of torture are ongoing and that the response of the authorities to allegations of torture has been grossly inadequate.”⁴ Eight months later the Special Rapporteur on torture noted in his report that incidents of torture and other ill-treatment “continued to be widespread throughout 2011”. He also noted that in contrast to the actions taken and statements made by the current and former Presidents and the Prosecutor General, he had not heard of any instructions “communicated by the responsible officials of the Ministry of the Interior to condemn torture and ill-treatment or to declare unambiguously that torture and ill-treatment by police officers would not be tolerated”.⁵

While human rights monitors report fewer arbitrary arrests, nevertheless, two years on from the June violence, torture and other ill-treatment, including beatings, by law enforcement officers unfortunately appear to continue to be routine: in the street during apprehension, during house searches, during transfer to detention centres, during initial interrogation, and in pre-charge detention facilities. There are serious concerns that while investigating crimes police officers have continued to target Uzbeks and Uzbek neighbourhoods, threatening to charge them with serious crimes, such as murder, in relation to the June violence in order to extort money from them. Those who have returned from seasonal work in Russia or Kazakhstan or families who have relatives working outside the country are particularly vulnerable to arbitrary detention, intimidation and extortion since they are assumed to have ready access to money and foreign currency. Human rights monitors are concerned that ethnic Uzbeks will continue to be under threat of being prosecuted for complicity in the June 2010 events as the status of limitation for this crime – mass disorder – will be in force for another five years. Relatives continue to be reluctant to submit complaints to police and prosecutors about torture and other ill-treatment of Uzbek detainees and of intimidation and extortion, for fear of further reprisals.

Prosecutors have invariably failed to promptly, thoroughly and impartially investigate the allegations and bring those responsible to justice. In April 2012 the Osh City Prosecutor told Amnesty International that “[m]ost times cases of torture are not substantiated. For instance, shortly after the June events, the wives of some detained suspects claimed that their husbands were tortured by having needles inserted under their finger and toe nails. We went to see them in the temporary detention centre (IVS) and videotaped those men, who all were in good health and denied having been tortured. Naturally, no criminal cases were initiated

based on those women's reports". He continued to explain that since January 2012 five decisions by the Osh City Prosecutor's Office not to open investigations into allegations of torture had been sent to the Prosecutor General's Office for review. In all five cases the Prosecutor General's Office confirmed the decisions, "hence, no torture, as you can see".

USMANZHAN KHALMIRZAEV

Usmanzhan Kholmiraev, an ethnic Uzbek Russian citizen, died on 9 August 2011, reportedly as a result of torture, two days after he was arbitrarily detained in the village of Bazar-Korgon by plain-clothes police officers and taken to the local police station. He told his wife a gas mask had been put over his face and he had been beaten. When he collapsed, one of the officers reportedly knelt him in the chest two or three times until he lost consciousness. The police threatened that if he did not pay them US\$6,000, they would charge him with violent crimes in relation to the June 2010 violence. He was eventually released four hours later after his family gave the officers US\$680. He was hospitalized the next morning and died of his injuries a day later. His wife said that he had told her that the officers were responsible for his injuries. His wife and her lawyer, who were present at his autopsy, reported that the forensic examination found that he had died of internal haemorrhaging. Following an official request from the Russian consulate on 10 August, the prosecutor of Jalal-Abad opened a criminal case against four police officers with several charges, including torture. Ten months later the case is still pending.

4. UNFAIR TRIALS, FORCED CONFESSIONS AND INTIMIDATION OF LAWYERS

Trials, including appeal hearings at all levels up to the Supreme Court, have continued to fall short of international standards. There was no presumption of innocence and the judiciary has continued to be under enormous political pressure to convict those identified as alleged perpetrators in the officially-endorsed and ethnically-biased narratives of the June violence. Judges have often appeared unwilling or unable to follow the numerous recommendations on guaranteeing fair trial rights made by the KIC, other IGOs such as the UN, OSCE and EU, and international NGOs. This may be due to a large extent to the failure of the state authorities to exercise due diligence and guarantee judicial independence by providing a secure environment in which judges could act independently and fairly without outside interference, including from the state, and without fear of reprisals and fear for their own safety. Allegations of forced confessions are, as a rule, not excluded as evidence and are rarely sent for further investigation, including at appeal hearings. Defence witnesses are not interviewed and lawyers continue to be threatened and physically attacked, including inside the court room.

The Special Rapporteur on torture confirmed in his report that he had heard “testimonies according to which in trials relating to the violence of June 2010, judges and prosecutors repeatedly failed to act on information of torture or ill-treatment supplied by defendants or their lawyers”. He went on to cite the 20 December 2011 decision by the Supreme Court to turn down the appeal by prominent human rights defender and prisoner of conscience Azimzhan Askarov and to confirm his life sentence, as an “example of the highest judicial body’s failure to act on allegations of torture and ill-treatment.”⁶ In its response the government accused the Special Rapporteur on torture of being one-sided and stated that the Prosecutor General’s Office had conducted a thorough investigation into all the allegations of torture and forced confessions of Azimzhan Askarov and his co-defendants and had found no compelling evidence to substantiate these claims.

According to information given to Amnesty International by the Osh City Prosecutor in April 2012 out of 105 cases against 121 defendants in relation to the June violence, which have gone to trial, only two resulted in acquittals. One of those acquitted was Farrukh Gapirov, an ethnic Uzbek and the 23-year-old son of human rights defender Ravshan Gapirov. He was released from the court room after the appeal court found his conviction for attempted murder and participation in mass disorder unsafe. His conviction had been based on his confession, which had been obtained under torture. However, no criminal investigation against the police officers responsible for his torture has been initiated.

By contrast in May 2012, the Jalal-Abad Regional Court quashed the convictions of four ethnic Kyrgyz men charged with the murder of two Uzbeks during the June violence. Two of them had been sentenced to 25 and 20 years in prison in November 2010. Both had alleged that they had been tortured in detention. The others had received suspended sentences of three years. The first appeal court reversed the decision of the lower court to convict the four men, sent the case for additional investigation and released them on bail. In May 2012, three of the defendants were fully acquitted and the one, who had been convicted of murder and sentenced to 25 years by the court of first instance, was granted a conditional release. This was the first and, to date, the only known conviction of ethnic Kyrgyz for the murder of ethnic Uzbeks in the course of the June violence.

USMANZHAN KHALMIRZAEV

In September 2011 ahead of the start of the trial of four police officers charged with torture in the case of Usmanzhan Khalmirzaev, relatives and supporters of the accused held a series of, sometimes violent, public protests, blocking at one point the main road between Jalal-Abad and Bishkek. They intimidated witnesses for the prosecution, the family and lawyer of Usmanzhan Khalmirzaev outside the court and inside the court-room, and put pressure on the judge to find the accused not guilty. For security reasons the trial was moved to Chui Region, 500 km away from Jalal-Abad. Nevertheless key witnesses were threatened with violence and some changed their testimony in favour of the accused. Several felt compelled to leave the country fearing for their family’s safety. In March 2012 the judge returned the case to Jalal-Abad Regional Court for further investigation and released two of the accused police officers on bail. No investigations were initiated into the actions of the relatives and supporters of the accused, despite complaints by the widow of Usmanzhan Khalmirzaev and her lawyers.

TATIANA TOMINA

At the beginning of August 2011, independent lawyer Tatiana Tomina, an ethnic Russian who has regularly taken on ethnic Uzbek clients, was assaulted by four ethnic Kyrgyz women as she was leaving Osh City Court. One of the women hit her with a bag and the others then beat, kicked and punched her. They also shouted abuse at her. Court employees and police officers, who witnessed the assault did not intervene to protect Tatiana Tomina or stop the women. Before leaving the court building the women threw stones at the lawyer and threatened her with more violence. The same group of women was witnessed by a human rights monitor shouting abuse at Tatiana Tomina later that day at the Osh pre-trial detention facility, where she was attending a hearing for another ethnic Uzbek client charged with a crime unrelated to the June 2010 violence. Police officers present did little to stop the women. In February 2012 Tatiana Tomina was again assaulted in the court-room by relatives of the victim while she was defending an Uzbek client. She was verbally abused and had her documents torn to pieces.

5. IMPUNITY

Impunity for law enforcement officers who have perpetrated torture and other ill-treatment has long been a serious problem in Kyrgyzstan, especially at the local and regional levels. Since the June 2010 violence this has become ever more apparent but despite a number of positive initiatives and concrete measures in 2011 by the former President and the current Prosecutor General on the prohibition of torture, regrettably only a handful of prosecutions for torture or other ill-treatment in police custody appear to have taken place. According to information provided by the Prosecutor General's Office criminal investigations were opened into 44 allegations of torture in 2011. 17 per cent of these cases proceeded to prosecution. There have been no convictions for torture under Article 305-1 of the criminal code, a fact confirmed by human rights monitors, including the UN Office of the High Commissioner for Human Rights in Central Asia.⁷ However, in 2011 five police officers were convicted of abuse of power in relation to allegations of torture. They were given suspended sentences. Given the admissions by the Prosecutor General and the current and former Presidents that torture and other ill-treatment is widespread the extremely low number of prosecutions of security officers for torture and the absence of any convictions for torture casts doubt on the commitment of the authorities to seriously and effectively redress these crimes and human rights violations.

In 2011 the Prosecutor General issued three directives on the prohibition and prevention of torture. The first directive in April required all reports and complaints of torture to be immediately investigated and all places of detention to be inspected regularly and without notice. Prosecutors can now visit police detention facilities at any hour of the day and without any preliminary notification. In August she issued a second decree strengthening prosecutorial oversight of prosecutorial negligence in cases of torture and other ill-treatment but human rights monitors have expressed concerns that local and regional prosecution offices are not actively implementing these new powers of oversight. In September she issued detailed instructions on the methodology of investigating torture.

In cooperation with the OSCE, human rights organizations and the Ombudsperson's Office

agreed to set up independent detention monitoring groups throughout the country with the right of unimpeded access to all detention facilities, especially IVSs under the Ministry of Internal Affairs. In May 2011, the Osh Regional Prosecutor's office signed a Memorandum of partnership with local NGOs called "Partnership in the name of the rule of law". Within the framework of this memorandum, NGOs and prosecutors can jointly visit IVSs and regular meetings of NGOs with the prosecutors take place. The Osh Regional Prosecutor told Amnesty International in April 2012 that as a result of these partnership agreements and the April 2011 decree by the Prosecutor General, there have been "positive changes in the detention conditions of the inspected facilities". However, he also said that no cases of torture had been documented during these inspections. During April-December 2011, 41 monitoring visits with NGOs to IVSs of Osh region took place, as a result, prosecutors issued three rulings regarding unsatisfactory conditions of detention; two allegations of torture did not result in criminal proceedings as no compelling evidence that a crime had taken place could be found. From January to March 2012, prosecutors made 10 more weekly unannounced visits (without NGOs) but no complaints of torture were registered.

Despite all these positive initiatives, aimed more at the prevention of torture than the investigation of past allegations of torture and other ill-treatment - investigators and prosecutors have so far failed to investigate and prosecute the vast majority of crimes committed during and immediately after the June 2010 violence as well as in the 24 months since, most notably the killings of and violence against ethnic Uzbeks.

DILMURAT KHAIDAROV

Dilmurat Khaidarov, an ethnic Uzbek professional lawyer, was charged with organizing and participating in mass disorders and taking part in the murder of an ethnic Kyrgyz tax inspector and two ethnic Kyrgyz military officers in the Uzbek village of Nariman of Osh Region during the June 2010 violence. He was tortured by police officers for three days after his detention on 27 June 2010 in order to extract a confession. Police officers reportedly beat him with rubber truncheons on different parts of his body including on the head and fingers, smothered him with a plastic bag, and inserted paper clips under his finger nails. His detention was not officially registered and the torture took place in offices at the Osh Regional Department for Internal Affairs. Dilmurat Khaidarov refused to sign a confession. Bruises and other signs of torture were documented by medical personnel at the IVS he was transferred to after the torture and again later by medical staff at the pre-trial detention centre no. 5 in Osh. Dilmurat Khaidarov and his lawyer have written numerous times to the prosecutor's offices in Osh city and Osh region, as well as to the Prosecutor General about the torture he was subjected to. However, to date, no investigations into these allegations have taken place. Instead his case has been sent for further investigation five times by courts of different instances, including the Supreme Court, for lack of compelling evidence against him. Numerous witnesses have come forward to testify that Dilmurat Khaidarov protected ethnic Kyrgyz inhabitants of his *mahalla* and that he did not use violence, but their testimonies have not been taken into account. He remains in pre-trial detention.

6. CONCLUSION

All the positive and broadly laudable measures taken by the Kyrgyzstani authorities in the last twelve months to address and change the routine and widespread use of torture and other ill-treatment by security forces should not detract from the fact that they have failed in their duty to fairly and effectively investigate the June 2010 violence and its aftermath and provide justice for the thousands of victims of the serious crimes and human rights violations committed with impunity. Most of the initiatives, such as the directives by the General Prosecutor and memoranda between NGOs and security forces, have been aimed at the prevention of torture and the monitoring of closed places of detention, where torture most often occurs. They have not, however, been directed towards the investigation and prosecution of past allegations of torture. Investigators and prosecutors have so far failed to investigate and prosecute the vast majority of crimes committed during and immediately after the June 2010 violence as well as in the 24 months since, most notably the killings of and violence against ethnic Uzbeks. Allegations of collusion or complicity of security forces in the commission of human rights violations against civilians during the June events and dozens of reports of rape and other sexual violence have equally not been addressed. Given all of the above and the many violations and ethnic bias in the criminal investigations, prosecutions and trials over the last two years and the continued reluctance of the authorities to address crimes against humanity, it is becoming ever more essential that a system of specialist independent, unbiased investigations is set in place as soon as possible to provide justice and combat impunity.

7. RECOMMENDATIONS

To the Kyrgyzstani authorities:

In particular to the President, Parliament, the General Prosecutor and the Minister of Justice:

- Reconsider seriously the creation of separate dedicated units of investigators, prosecutors and judges to deal with crimes and human rights violations committed during and in the aftermath of the June 2010 events. As crimes against humanity have no statute of limitations, care and time should be taken to set up the most professional, effective and independent system to address all the violations thoroughly and without prejudice. The units should be based in Bishkek, appointments should be ethnically and gender balanced.
- Carry out an independent review of all cases opened into crimes committed during the June 2010 events that have resulted in convictions, without prejudice to any outstanding right of appeal, in order to identify possible procedural violations, violations of fair trial guarantees and the use of torture and other ill-treatment.

To Parliament and the President:

- Ratify the Rome Statute of the International Criminal Court and amend the Criminal Code of Kyrgyzstan. Genocide, crimes against humanity and war crimes should be made

criminal under national law, regardless of the date of their commission.

To the General Prosecutor:

- Investigate and prosecute crimes against humanity and other crimes under international law committed during the June 2010 violence.

To the Minister of Internal Affairs:

- Join the President and the Prosecutor General in publicly condemning the use of torture and other ill-treatment and issue instructions to all law enforcement officers under his Ministry's command to confirm in no uncertain terms that the prohibition of torture is absolute in international law and that torture and other ill-treatment will no longer be tolerated.

To the international community

- To re-affirm their commitment to zero-tolerance of crimes under international law, including crimes against humanity, and to encourage the Kyrgyzstani authorities to investigate and prosecute crimes against humanity and other crimes under international law committed during the June 2010 violence.

In particular the European Union, EU institutions and member states, the USA, and the OSCE:

- To provide funding and training and technical assistance to these dedicated units of investigators, prosecutors and judges in order to ensure that they can function independently and most efficiently and deliver justice without prejudice.

In particular the UN High Commissioner for Human Rights and the OSCE:

- To provide assistance and advice to the Kyrgyzstani authorities in setting up and carrying out an independent review of all cases that have resulted in convictions, without prejudice to any outstanding right of appeal, in order to identify possible procedural violations, violations of fair trial guarantees and the use of torture and other ill-treatment;
- To continue providing assistance and funding to joint civil society and government initiatives on monitoring places of detention, especially temporary detention facilities under the Ministry of Internal Affairs.

END NOTES

¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, Addendum, Mission to Kyrgyzstan, 21 February 2012, A/HRC/19/61/Add.2, para 55.

² A/HRC/19/61/Add.2, para 55.

³ Kyrgyzstan Inquiry Commission, Report of the Independent Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010, http://www.k-ic.org/images/stories/kic_report_english_final.pdf, p.217

⁴ http://www.k-ic.org/images/stories/kic_report_english_final.pdf, p iii

⁵ A/HRC/19/61/Add.2, para 55.

⁶ A/HRC/19/61/Add.2, para 55.

⁷ Press conference by Renate Frech, head of UN OHCHR mission in Osh on 24 May 2010, <http://www.fergananews.com/news.php?id=18756&mode=snews>



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