



27 July 2010
AI Index: EUR 58/009/2010

Kyrgyzstan: Recommendations for an effective investigation into human rights violations and abuses committed during the June violence and its aftermath

On 17 June 2010, Amnesty International called for an international inquiry to investigate the human rights violations and abuses committed during the June violence in Kyrgyzstan and its aftermath.

The violence which devastated large parts of the south of Kyrgyzstan started on 10 June and rapidly escalated into large-scale arson, looting and violent attacks, including killings and sexual violence, on mainly Uzbek-populated districts in Osh, Jalal-Abad and surrounding towns and villages. While most of the victims appear to be Uzbek there are also reports of armed Uzbek gangs attacking Kyrgyz people. During the violence and in the following days, an estimated 400,000 Uzbek and Kyrgyz people were forced to flee their homes.

Amnesty International is concerned that the Kyrgyzstani authorities lack both the independence of investigative institutions and the expertise to carry out prompt, effective, independent and impartial investigations into the June violence.

Since the interim government claimed to have regained control of the situation in the southern regions of Osh and Jalal-Abad, allegations have been mounting that Kyrgyzstani security forces, which are predominantly ethnic Kyrgyz, may have failed to intervene to prevent violence or colluded in human rights abuses. Reports that during the violence armoured personnel carriers and men in military uniforms forcibly entered barricaded Uzbek villages and neighbourhoods and of security forces failing to stop the escalating violence appear to be substantiated by video material and consistent eyewitness accounts.

Amnesty International has also received credible reports that in the aftermath of the violence in June human rights defenders, journalists and other civil society actors who have documented or are trying to document the events are being targeted by the authorities in an attempt to confiscate their material and obstruct their work.

In the days following the violence and since then, the Kyrgyzstani authorities detained hundreds of people on allegations of having organized or participated in the June violence. Amnesty International is concerned that in this respect the authorities appear to be disproportionately targeting the ethnic Uzbek community, particularly in Osh, where many have reportedly been arbitrarily detained. Moreover, there are widespread reports that detainees are being subjected to torture and other ill-treatment in order to extract confessions, that they are denied medical care and access to their lawyers, and that families are being intimidated and, in some cases, made to pay large sums of money to ensure their relatives' release. There have also been reports of deaths in custody.

As a party to the International Covenant on Civil and Political Rights (ICCPR), Kyrgyzstan is required to ensure that allegations of human rights violations are promptly, independently, impartially and thoroughly investigated. The UN Human Rights Committee has made it clear that the failure to effectively investigate an alleged human rights violation could, in and of itself, give rise to a breach of the right to an effective remedy (Article 2(3) of the ICCPR).

In the light of concerns about the investigative procedures carried out by the Kyrgyzstani authorities, about the confiscation of documentation and other evidence, and the need for special investigative expertise, including forensic, Amnesty International believes that only an international commission of inquiry would be able to carry out a prompt, independent and effective investigation which would be considered impartial by all affected groups.

Amnesty International therefore urges the international community to ensure the establishment of an effective international commission of inquiry into the June violence in Kyrgyzstan and its aftermath. Most urgently, there is a need for international experts to engage without delay to secure and preserve evidence, which is key to effective investigations.

Furthermore, Amnesty International calls on the Kyrgyzstani interim government to initiate the establishment of an international commission of inquiry, which should include the elements set out below. These principles are equally applicable for investigations undertaken at the national level.

In particular, the organization recommends full respect for the following principles of an effective, independent and impartial investigation into the violence during June 2010 and in its aftermath.

1. A commission of inquiry to investigate the human rights violations and abuses committed during the June violence and in the subsequent investigations by the authorities should be part of a broader, long term, comprehensive action plan to uphold the right of victims to obtain truth, justice and reparations. Such an action plan should also include human rights-compliant prosecutions, mechanisms to ensure reparation, vetting, and legislative, institutional and other reforms. A commission of inquiry to investigate these violations is not and should not be considered as a substitute for criminal investigations and judicial processes which meet international human rights standards to establish individual criminal responsibility.
2. The commission of inquiry must, in carrying out its functions, respect, protect and promote human rights. In particular, it should:
 - clarify, as far as possible, the facts about the human rights violations it investigates;
 - make available the information it obtains to the relevant authorities, victims and others as appropriate for use in criminal and civil judicial proceedings; and
 - formulate effective recommendations for the establishment of judicial and non-judicial measures of accountability and the granting of full reparations to victims and their families, including measures to strengthen the national justice system.

Competence, independence and impartiality

3. Members of the commission of inquiry should be selected on the basis of their competence in human rights and other relevant fields, such as forensic pathology, crime scene investigation, etc.
4. Members of the commission of inquiry should be independent of any institution, agency or person who may be the subject of, or otherwise be involved in, the investigation.
5. Members of the commission of inquiry should be chosen for their recognized impartiality and for their personal integrity.
6. The composition of the commission of inquiry should reflect a fair balance of women and men and, where relevant, pluralism in the society.

Mandate, powers and resources

7. The mandate of the commission of inquiry should cover the range of human rights violations and abuses that occurred during the June violence and its aftermath, including but not limited to crimes under national and international law.
8. In particular, the commission of inquiry should investigate cases of violations and abuses committed by all sides involved (including state agents and non-state actors) as well as violations of international humanitarian law, where applicable. Its investigation should establish

whether law enforcement officials colluded or in any way were complicit in human rights violations during the June violence and its aftermath and, where relevant, establish responsibility of superior officers for crimes committed by subordinate officials under their effective authority and control. It should also seek to identify any systematic patterns in human rights violations.

9. The investigation should include an analysis of all physical and documentary evidence and statements from witnesses. The investigation should seek to establish the number of people that were killed or wounded as a result of the violence, as well as their identities, and should seek to ascertain the fate and whereabouts of individuals who remain missing.
10. As part of its work, the commission of inquiry should identify the suspected perpetrators of human rights violations and gather information indicating individual criminal responsibility. It should forward such information (on a confidential basis) to the relevant prosecution authorities for further investigation, with a view to ensuring that those who are criminally responsible for human rights violations are brought to justice.
11. The commission of inquiry should be mandated with the powers and authority to gather all information it considers relevant, including the power to compel the production of information and the attendance of officials and other persons as and when necessary. It should have freedom of movement and be granted free access to all relevant places.
12. The commission of inquiry should be guaranteed the material, personnel and financial resources it needs to effectively carry out its mandate.
13. The commission for inquiry should be guaranteed the full co-operation of the Kyrgyzstani government and authorities. It should have the power to require the authorities to suspend from active duty during the investigation any official suspected of responsibility for human rights violations.
14. The commission of inquiry should not have any power to recommend amnesties or similar measures of impunity with respect to human rights violations and abuses.

Consultation with civil society and the public

15. All interested parties, including national and international civil society organizations, victims, human rights defenders and persons belonging to minorities and vulnerable groups should be given an effective opportunity to contribute to discussions on the commission's establishment, mandate and powers, the selection of its members, and its functioning.
16. In collecting information, the commission of inquiry should seek the cooperation of the widest possible range of sectors of society, paying special attention to information and testimonies provided by victims and their families, national and international human rights organizations. It should pursue all available sources of information, including: statements from victims, witnesses and alleged perpetrators; material evidence from sources such as government records, medical records or reports, and police investigation files; court files; media reports; and information of NGOs, human rights defenders, lawyers, and families of victims.

Respect, protection and promotion of the rights of victims and their families

17. The commission of inquiry should ensure that, in all aspects of its work, victims and others providing information and assistance to the inquiry are treated with respect for their dignity and with humanity. Particular care should be taken to ensure that victims are not re-traumatized as a result of their participation in the process.
18. The commission of inquiry must ensure that participants in the investigation, witnesses, victims and their respective families, are protected from reprisals, including violence, threats, arbitrary detention and other forms of intimidation. This may require the establishment of a comprehensive, long-term and effective victim and witness protection programme.

19. The commission of inquiry should take special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony.

A fair procedure

20. The procedures of the commission of inquiry should be fair. In particular, the commission should:

- exclude granting any form of immunity for human rights violations and abuses;
- ensure that witnesses, alleged perpetrators, or others who may be implicated have the right to legal counsel and a right to reply;
- respect the right of suspected perpetrators to be presumed innocent.

21. The suspension of officials suspected of responsibility for human rights violations should be without prejudice to the outcome of the investigation, to their careers of the officers concerned or to any eventual judgment regarding their suspected involvement.

Public information; final report and recommendations

22. Throughout its operations the commission of inquiry should regularly disseminate information about its work, through a range of media, languages and formats to ensure the information is accessible to all interested sections of the public.

23. The scope, methods and results of the commission's investigation and its recommendations should be officially proclaimed, published and widely disseminated without undue delay, including by means of a written report describing its findings in detail.

24. In addition to measures of restitution, rehabilitation, compensation and satisfaction, any investigative body should recommend a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, such as reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education. Recommendations for reparation should never be seen as a substitute for bringing perpetrators of crimes under international law to justice or preclude victims from also seeking compensation through the courts.

25. As a matter of principle, all aspects of the work of the commission of inquiry should be made public. So far as possible, the media and public should be given access to the proceedings and to the information on which the body bases its findings. However, confidentiality may be required to protect the rights of individual victims and witnesses and the rights of suspected perpetrators.