Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) for consideration at the 110th session of the Human Rights Committee (10 - 28 March 2014), Geneva

KYRGYZSTAN

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Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) was established in 1998 by the Norwegian Refugee Council (NRC) and monitors conflict-induced internal displacement worldwide. The Geneva-based Centre runs an online database providing comprehensive and regularly updated information and analysis on internal displacement in more than 50 countries. Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations. All of the information contained in this submission can be found in the online IDMC database, which can be accessed at www.internal-displacement.org

1.Background to internal displacement in Kyrgyzstan

1. In June 2010, southern Kyrgyzstan was engulfed in inter-ethnic violence between Kyrgyzstan's two main ethnic groups, Kyrgyz (71.7 per cent of the population) and Uzbeks (14.3 per cent of the population). Before the security forces re-established order, both groups suffered savage killings, torture and sexual assault, widespread destruction of residential, commercial and state property and mass lootings.

2. In addition, an estimated 300,000 people fled for safety, mostly from the main city of Osh to other locations in south Kyrgyzstan. About 75,000 persons also sought refuge in neighbouring Uzbekistan. The vast majority of refugees and IDPs returned within weeks or months. In 2013, UNHCR reported that all internally displaced people (IDPs) and refugees had returned to their homes and 172,000 returned IDPs and refugees were in need of support to ensure sustainable reintegration.

3. There were multiple reasons for the June 2010 violence. These included economic hardship, burgeoning organised crime, political turmoil following the April 2010 overthrow of President Bakiev, and the poor preparedness and discipline of the security forces.

4. There has been no further large-scale violence since 2010 and tolerance. However, mistrust now runs deeper and the underlying causes of instability and displacement are still to be addressed adequately to ensure reconciliation takes hold and further violence and displacement is prevented.

5. This submission aims to inform the Human Rights Committee ahead of its upcoming examination of Kyrgyzstan's compliance with the International Covenant on Civil and Political Rights.

II. Main issues of concern and recommendations for the Government of Kyrgyzstan

Article 2.1 – Non-discrimination

6. Returned IDPs in Kyrgyzstan, including ethnic Uzbeks, are unable to enjoy their Convention rights based on their ethnicity and on the fact of having been forcibly displaced. There remains an overall failure to protect against their discrimination in relation to a number of provisions. These include treatment before the courts, treatment before the law and public participation, which are detailed further below. This prevents reconciliation and full resolution of the conflict.

Article 14 – Equal treatment before the courts

7. Attacks on the defence lawyers of Uzbek individuals accused of crimes during the 2010 violence were widespread in Osh in 2013, and reached Bishkek in 2014.[1] Happening during or immediately after court proceedings, these attacks obstruct justice and illustrate the fact that ethnic tensions still exist. Unless this pattern is broken, a risk of repeated violence and displacement remains. The achievement of durable solutions will be impossible without increasing the quality of judicial protection for all accused, whether Uzbek or Kyrgyz, and their counsel, and ensuring justice for all victims of the violence.

8. Such attacks relate to ICCPR General Comment 32 art. 14, which states: "The notion of a fair trial includes the guarantee of a fair and public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a hostile attitude from the public (…) or is exposed to other manifestations of hostility with similar effects". Accused Uzbeks are denied a fair trial as a result of attacks on their lawyers.

IDMC invites the Committee to consider the following recommendation to the Government of Kyrgyzstan in relation to Article 14:

- Ensure that the attacks of lawyers of accused Uzbeks are investigated and the perpetrators tried in a court of law, in order to alleviate ethnic tensions;
- Fully implement the recommendations of the UN Special Rapporteur on the Independence of Judges and Lawyers to:
  - ensure the full independence of judges and lawyers and enhanced respect for human rights principles (2005, para 81);
  - introduce affirmative action measures with a view to enhancing the participation of women and ethnic minorities in the judiciary at all levels (2005, para 87).

Article 25 – Participation in public affairs

9. In January 2014 a new mayor of Osh was elected amid protests organised by his opponent and predecessor. Under CCPR Art. 25, the public has the right to "take part in the conduct of public affairs", however, according to the director of a local NGO Independent Institute of Voting Technologies the two mayoral candidates were not given the opportunity to publicly present their platforms. Moreover, the candidates were registered less than a week before the election, giving the public very little time to understand both candidates' agendas. The

[1] http://www.icj.org/kyrgyz-republic-government-must-take-urgent-measures-to-end-attacks-on-lawyers/ and http://svodka.akipress.org/news:135451/

deputies to the Osh city council were also unable to submit formal questions to the candidates.[2] According to Guiding Principle 29, IDPs who have returned to their homes or places of habitual residence (..) shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels (..)[3]. Given the above-mentioned irregularities, returned IDPs were unable to participate fully in the mayoral elections. Their inability to participate is accentuated by the fact that Osh city council did not present an option for citizens and returned IDPs to present their own candidacies.

IDMC invites the Committee to consider the following recommendations to the Government of Kyrgyzstan in relation to Article 25:

- With a view to facilitating participation of IDPs in public affairs, take measures to ensure that the public can make informed voting choices during mayoral and other elections;
- Call on the new mayor of Osh to work with and help returned IDPs to ensure their outstanding displacement-related needs are met;
- Take measures to remedy the mismanagement of funds by the SDRD by publicly naming and prosecuting officials involved in corruption and mismanagement;
- Step up efforts to diffuse ethnic tensions in the south of the country by considering new measures to combat provocations and strengthen ties between ethnicities, such as public shows of support for the Uzbek minority by the central authorities in Bishkek and educational programs in local schools.

Article 26 - Equal treatment before the law

10. The issue of provision of appropriate compensation or another form of just reparation (GP 29) for violations suffered in the course of displacement remains unsolved. A government housing compensation scheme exists for people whose houses were partly or completely destroyed, as well as orphans, handicapped children and relatives of those killed and gone missing during the June 2010 events.[4] However, a proposed change to the wording of the law in 2013 narrows one of the eligibility criteria only to victims who were wounded by firearms during the 2010 events, as opposed to the previous criteria of those who suffered wounds from any type of violence during the 2010 events.

[2] http://inter.kg/sobytiya-dnya/3257-vybory-oshskogo-mera-proshli-s-grubeyshimi-narusheniyami.html
[3] UN Guiding Principles on Internal Displacement, 1998.
[4] Government Resolution Number 295 of the 22nd November 2010 "On approval of the order of priority to the provision of housing to citizens of the Kyrgyz Republic, victims of June 2010 events in Osh city, Osh and Jalal-Abad".

11. The passing of this amendment to the law would result in an arbitrary differential treatment among IDPs. This would be contrary to Guiding Principle 4 according to which the Guiding Principles are to be applied without discrimination of any kind. While Guiding Principle 4.2 allows the adoption of particular protective measures for certain categories of persons, the proposed restriction appears to be unreasonable.

12. A monetary compensation scheme also exists, wherein a monthly stipend is paid to children and parents of those killed during, as well as handicapped victims of, the events of June 2010.[5] However, the body that organized pay-outs, the SDRD of Osh and Jalalabad, was disbanded by the government in January 2013. Since then, the State Agency on Construction and Regional Development has taken over the functions of SDRD. However, it is unclear whether pay-outs are ongoing. According to Guiding Principle 29, the authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.

13. Forced displacement, its length and the degree of vulnerability of a displaced person, are considered as criteria for monetary and housing compensation. However, information available through the media indicates that compensation is only given to families of those killed during the 2010 events, or to those physically harmed as a result.[6] The government does not appear to be taking the specific vulnerability of returned IDPs and others with destroyed housing into account in the design of its compensation programmes. This is contrary to Guiding Principle 4 according to which the Guiding Principles are to be applied without discrimination of any kind among IDPs, though it does not preclude the adoption of particular protective measures for certain categories of persons, as stated in Guiding Principle 4.2.

14. Mismanagement of funds has also affected compensation paid. In the fall of 2013, mismanagement of funds at the State Directorate for Reconstruction and Development (SDRD) was uncovered[7]. These funds were supposed to be directed to victims of the events of 2010. It is unclear whether any government officials were held accountable for this corruption.

[5] Law Number 173 of 22 October 2012 "On Social Protection of Family Members of Dead or Injured Persons as a Result of the Events of April-June 2010".

[6] http://www.knews.kg/society/35293_gosudarstvo_vyiplatilo_semyam_12-i_pogibshih_a_takje_postradavshim_v_iyunskih_sobyitiyah_2010_goda_denejnyie_posobiya/

[7] http://www.knews.kg/action/44912_v_gosdirektsii_po_vosstanovleniyu_yuga_nezakonno_vyidavali_posobiya_ne_postradavshim_v_iyunskih_sobyitiyah_2010_goda/

IDMC invites the Committee to consider the following recommendations to the Government of Kyrgyzstan in relation to Article 26:

- Ensure returned IDPs are informed about current housing and monetary compensation procedures;
- Ensure housing and monetary compensation procedures take into account the specific situation of IDPs and do not discriminate among IDPs;
- Conduct a study of returned IDPs in Osh and Jalabad cities and oblasts in order to evaluate the needs that returned IDPs still have related to their displacement and design appropriate assistance to address these needs;
- Provide information on the proposed change to the housing compensation bill that narrows eligible candidates for compensation only to those who suffered injuries from firearms.