



**Analysis of the Draft Law of the Kyrgyz Republic
“On Freedom of Religion and Religious Organizations”**

Prepared by the
Advisory Panel of Experts on Freedom of Religion and Belief
Of the OSCE/ODIHR
March 30, 2001

EXECUTIVE SUMMARY

Authorities in the Kyrgyz Republic, in response to understandable concerns about terrorism and other illegal activities committed by groups that call themselves religious organizations, have prepared a draft bill entitled "On Freedom of Conscience and Religious Organizations." This Draft Bill, if enacted in its current form, would repeal the current "Law on Freedom of Religion and Religious Organizations" that was adopted on 16 December 1991. The Draft Bill may be submitted to the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic as early as April 2001. The Organization for Security and Co-operation in Europe, through its Office for Democratic Institutions and Human Rights, requested its Advisory Panel of Experts on Freedom of Religion or Belief to prepare an analysis of the Draft Bill and to offer its technical assistance to officials in the Kyrgyz Republic.

The Kyrgyz Republic has an admirable record of ratifying the major international human rights covenants and has also agreed to adhere to the commitments of the Organization for Security and Co-operation in Europe, of which it is now a participating state. The

Constitution of the Kyrgyz Republic also contains important human rights protections. These covenants, commitments, and Constitution require that all legislation adopted in the Kyrgyz Republic comply fully with its human rights obligations. The current law on religion, adopted in 1991, generally complies with human rights standards.

The Advisory Panel recognizes that the Kyrgyz authorities have legitimate security concerns, and finds that some important provisions of the Draft Bill comply fully (and perhaps even exceed), international and constitutional requirements. However, the Advisory Panel also believes that there are a number of very important provisions of the Draft Bill that do not comply with the standards to which the Kyrgyz Republic has committed itself. Some of these provisions can be brought into conformity with international standards by revising the language of the Draft Bill. Other provisions, however, appear to be of a more serious and controversial nature. The Panel finds that the Draft Bill could be improved substantially by a more careful use of language and by a more focused effort to differentiate clearly between genuinely criminal activities on the one hand, and legitimate religious and belief activities that are strongly protected by international human rights standards on the other. The Advisory Panel understands the seriousness of the circumstances in the Kyrgyz Republic, but believes that, by making changes to the Draft Bill, these legitimate interests can be achieved without violating its OSCE commitments and other obligations to protect human rights.

As currently framed, the proposed legislation appears to be inconsistent with The Kyrgyz Republic's OSCE and related human rights commitments in that it:

- categorizes and prohibits groups on the basis of their beliefs, rather than on their having committed illegal actions;
- contains vague and excessively broad provisions which would impermissibly limit the religious freedom of individuals and groups seeking to practice their religion in legitimate ways and would allow abuse of official discretion;
- imposes limitations on manifestations of religious belief that are not permitted by limitations clauses in international instruments binding on The Kyrgyz Republic;
- authorizes impermissible intrusion in religious affairs;
- interferes with rights to engage in religious education and guide the upbringing of children;
- violates both freedom of expression and freedom of religion by imposing impermissible limitations on dissemination of religious literature;
- prohibiting and punishing missionary activity that has not received permission of the authorized public body; and

- requiring registration of religious organizations as a condition for engaging in religious activity.

The legislation also has a variety of technical problems. In particular, the provisions describing record-keeping registration, registration, and the various forms of religious association contemplated by the law, should be revised to preclude inappropriate intervention in religious affairs and to facilitate administration of the registration system.

The Advisory Panel expresses its warm appreciation to the Kyrgyz officials who have met with Panel members to discuss the Draft Bill and it hopes to work with the authorities in the future.

I. INTRODUCTION

The Organization for Security and Co-operation in Europe (OSCE), through its Office for Democratic Institutions and Human Rights, requested its Advisory Panel of Experts on Freedom of Religion and Belief to prepare an advisory opinion on a draft bill entitled “On Freedom of Conscience and Religious Organizations” that has been prepared for possible introduction to the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic (hereinafter Draft Bill).¹ The Draft Bill proposes, among other provisions, to repeal the current Kyrgyz law “On Freedom of Religion and Religious Organizations”.²

The Advisory Panel includes several scholars and experts from diverse geographical, political, legal, and religious backgrounds who make recommendations on matters concerning issues related to freedom of religion and belief. The Panel is familiar with the broad range of laws that exist among OSCE's 55 participating States. In March 2001, members of the Panel met with a number of officials and private individuals in Bishkek and participated in a public roundtable discussion on the Draft Bill. Several Kyrgyz officials received the Panel members courteously and the Panel wishes to express its deep appreciation for the candid and informative exchange of views about conditions in the Kyrgyz Republic.

Currently in the Kyrgyz Republic the active law on religion is the Law of the Republic of Kyrgyzstan adopted on 16 December 1991, which is for the most part congruent with international standards and does not create any particular problems from the point of view of rights and freedoms of believers and religious associations. Subsequent directives and acts have been promulgated by the President that contain a series of limiting provisions giving rise to additional registration requirements for religious organizations, missions, foreign citizens in The Kyrgyz Republic on government commissioned assignments having to do with religion, and limitations on educational

¹ The Draft Bill upon which this analysis is based is attached as Appendix 1 to this document. It was made available to the OSCE Mission in Bishkek in March 2001 and appears to be the most recent version

² Gazette of the Supreme Council of the Republic of Kyrgyzstan, 1991, No 22, page 667. See Draft Bill, Art. 30.4.

activities.³ The proposed legislation that is the subject of this analysis would add further restrictions.

The panel understands that the Kyrgyz Republic has a number of legitimate concerns about terrorism and other illegal activities that may be committed by groups that operate under the guise of religious associations. Although the Panel does not question the legitimacy of states taking reasonable actions to curb criminal activities by individuals and groups, it is the Panel's belief that the Draft Bill could be improved substantially by using language more carefully and by differentiating clearly between genuinely criminal activities and legitimate religious and belief activities that are strongly protected by international human rights standards.

This Report has involved a significant amount of work in language translation as well as comparative legal analysis. Parts of this Report were originally drafted in Russian, and parts in English. The Panel understands how important nuances and technical aspects can be lost in work of this type. We hope that Kyrgyz officials will understand that the Panel has made its best effort to provide helpful assistance and there may be some inadvertent errors that arise from the difficult tasks of translating and of understanding the intricacies of foreign legal systems. We very much look forward to being able to work with Kyrgyz authorities and resolving any difficulties or questions that might arise, and will be happy to be of assistance on an ongoing basis.

Section II of this analysis presents an overview and summary of what the Panel believes to be the major issues that pertain to several provisions of the Draft Bill. These issues are set forth according to the following seven basic categories:

1. Positive aspects of the Draft Bill and the legislative process;
2. The need for state security;
3. Compliance with international human rights standards, including freedom of religion and belief;
4. "Limitations clauses" that are consistent with international law and the Constitution;
5. Definitions and Terminology;
6. Clarity in the "prohibitions"; and
7. The roles and responsibilities of public authorities.

Section III undertakes an article-by-article analysis. In both sections II and III, the Panel provides recommendations of two basic types: (1) substantive recommendations, which contemplate relatively fundamental changes to the essence of the Draft Bill, and (2) technical recommendations, which for the most part contemplate logistical or mechanical

³ See for example the temporary provision concerning record-keeping registration of religious organizations in the Kyrgyz Republic, the temporary provision concerning record-keeping registration of missions of foreign religious organizations and of foreign citizens in the Kyrgyz Republic for the purpose of carrying on religious activity and the temporary provision concerning religious education. All of these provisions were established by decree of the President of the Kyrgyz Republic, 14 November 1996.

changes to the Draft Bill, but which in some instances may contemplate substantive changes as well.

Section IV takes a slightly different analytical approach by identifying six recurring “key” problems with the Draft Bill and analyzing selected provisions in context of these key problems.

Section V sets forth relevant international norms to which the Kyrgyz Republic has certain obligations to uphold, and describes how the Draft Bill falls short of these norms.

Appendix 1 is a copy of the Draft Bill, and Appendix 2 identifies OSCE commitments in the field of freedom of religion and belief.

II. OVERVIEW

1. Positive aspects of the Draft Bill and the legislative process

There are a number of important provisions of the Draft Bill that not only meet international standards but also provide heightened protections for religious freedom that are appropriate in the Kyrgyz context. Particularly relevant in this regard are the Preamble, Article 2, Article 3.4 (non-discrimination), Article 4.4 (promotion of tolerance), Article 22 (religious rites and ceremonies), and Article 24 (charitable activities of religious organizations). The promotion of tolerance is, for example, an important commitment made by OSCE participating States and any steps made by the Kyrgyz Republic to promote tolerance are to be warmly welcomed.⁴ The Kyrgyz Republic indeed has a deserved reputation for its commitment to tolerance for a wide range of religious beliefs.

The Panel of Experts commends Deputy Alisher Sabirov and government officials for holding a roundtable discussion on the Draft Bill on March 15, 2001. As is always the case in such discussions, people with different interests, perspectives, and backgrounds will disagree on both large and small issues in proposed legislation. By openly discussing the issues, the Kyrgyz Republic is demonstrating its commitment to democracy and the rule of law. It is to be hoped that there will be future discussions as the Draft Bill is further revised.

2. The need for state security

The Kyrgyz Republic, like all modern states, has an important and legitimate interest in protecting the state and its peoples from violence, terrorism, and criminal conspiracy. States may legitimately enact laws to prohibit crimes against people and the state. However, such laws must carefully target identifiable criminal activities and should not be used to suppress legitimate speech or to prohibit protected religious conduct and

⁴ See Vienna Concluding Document 16.2 and the Copenhagen Document art. 40.3.

beliefs, particularly where the prohibitory language is vague and could contribute to arbitrary enforcement. The challenge for all states is to protect their vital security interests without infringing on the human rights of their citizens.

It is our understanding that the Kyrgyz Republic is concerned about two principal dangers to its security: *first*, violent actions by individuals and groups, many of whom are foreign nationals (*e.g.*, Dzuma Namangani), and *second*, groups that do not necessarily advocate violence, but which distribute literature calling for an abolition of the constitutional order and the creation of a new theocratic state (*e.g.*, *Hizb-ut-Tahrir-al-Islami*). It appears that the Draft Bill attempts to deal with these issues principally in Articles 3.7, 4.5, 4.7, 5.6, 11, 23.5, 27, 28, and 29.

The challenge for the Kyrgyz Republic is to respond to these two issues of serious concern in a way that is consistent with its own Constitution and with its international human rights obligations. It is also important to remember the important social fact that suppression of the activities of moderates tends to make them more extreme rather than more compliant. The radicalization this can cause might turn out to be a much more severe risk than the actual risk posed by existing problematic groups. Thus the Kyrgyz Republic should be very careful in not overreacting to serious, but limited, threats and should always seek to enforce the law with justice, moderation, and with respect for human rights.

3. Compliance with international human rights standards, including freedom of religion and belief

The Kyrgyz Republic has an admirable record of signing and ratifying the major international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR) (including the optional First Protocol), the Convention on the Elimination of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). The Kyrgyz Republic also is a participating state in the Organization for Security and Co-operation in Europe (OSCE), and has therefore agreed that OSCE's human rights standards are "political commitments" that it should seek to implement.⁵

Several provisions of the Kyrgyz Constitution ratify and incorporate international law and international human rights standards into Kyrgyz law. Article 16.1 provides that "the

⁵ The Kyrgyz Republic became a member of the OSCE on 30 January 1992, signed the Helsinki Final Act on 8 July 1992, and signed the Charter of Paris on 3 June 1994. OSCE commitments do not constitute formal legal commitments in the same way that formal treaty obligations such as the other multilateral treaties referred to above. They are nonetheless understood by the parties to be politically binding. See Arie Bloed, *Two Decades of the CSCE Process: From Confrontation to Co-operation: An Introduction*, in THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: ANALYSIS AND BASIC DOCUMENTS, 1972-1993 (Arie Bloed, ed., Dordrecht: Martinus Nijhoff, 1993).

basic rights and freedoms of the person are recognized and guaranteed in accordance with generally recognized principles and norms of international law and with inter-state treaties and agreements about human rights that have been ratified by the Kyrgyz Republic.” Article 9.4 provides that the state strives toward “compliance with generally recognized principles of international law.” Article 12.1 provides that ratified international treaties and conventions “are a component of and have direct force in the legislation of the Kyrgyz Republic.” Further, the Constitution recognizes that even those who are non-Kyrgyz citizens “enjoy the rights and freedoms of citizens” in accordance with “international treaties and agreements.” (Art. 14.2)

The 1991 religion law affirmed the importance of international human rights standards.⁶ The first sentence of the law states: “This Law is based on principles contained in international treaties and pacts, as well as in the Universal Declaration of Human Rights and Fundamental Freedoms” (Preamble). Similarly, Article 23 of the 1991 Law provides: “If rules other than those contained in legislation of the Kyrgyz Republic on religious freedom and religious organizations are established in an international treaty to which the Kyrgyz Republic is a party, the rules of the international treaty are applied.”

The Draft Bill does not contain a provision referring to controlling international law.⁷

Substantive recommendation: in order for the Draft Bill to be consistent with the Constitution and international law, it should acknowledge that it must be interpreted consistently with international law.

Technical recommendation: amend the Draft Bill by including a provision acknowledging the role of international law. Such an amendment might be inserted either in the Preface, in Article 2 as a new section 3, or as a separate article similar to Article 23 of the 1991 Law.

4. “Limitations clauses” that are consistent with international law and the Constitution

In international human rights law, and in the constitutions of many states, rights typically are identified in what may be called “guarantee clauses.” After identifying the right, the international treaty or a constitution will identify the specific conditions upon which the right identified in the guarantee clause may legitimately be limited by a state. This second type of clause is called a “limitations clause.” The guarantee clause is important because it identifies an essential right held by human beings (such as freedom of religion and belief). Similarly, the limitations clause is important because, while it acknowledges

⁶ The 1991 Religion Law was adopted prior to the current Constitution (1993).

⁷ It is our understanding that at least one previous draft bill did contain such a provision in Article 2.2.

that there are some situations in which a state may have legitimate reasons for limiting the exercise of the right, it defines the grounds for limitation precisely so that they will not intrude unnecessarily on fundamental rights. Thus both clauses are vital to protection of human rights and the demarcation of legitimate state action.

Article 18 of the ICCPR, ratified by the Kyrgyz Republic in 1994, contains examples of guarantee clauses (sections 1, 2, and 4 below), and of a limitations clause (section 3 below).

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion that would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁸

With respect to limitations clauses for the freedom of religion and belief in international law, section 3 above is the most important. Other important instruments pertaining to limitations clauses for the Kyrgyz Republic are contained in two OSCE documents⁹ and

⁸ ICCPR, Article 18 (emphasis added).

⁹ The two important discussions of limitations clauses are in the Concluding Document of the Vienna meeting in 1989 and the Copenhagen meeting in 1990. The key language from the two documents is as follows:

The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

Concluding Document of Vienna (1989) [The Third Follow-up Meeting of the Conference on Security and Co-operation in Europe, 19 January 1989] (“Vienna Concluding Document”), Art. 17.

The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those

the Kyrgyz Constitution. The Constitution identifies the only grounds upon which the Republic may interfere with recognized rights, including the right to freedom of religion and belief as follows:

Restrictions on the exercise of rights and freedoms shall be allowed by the Constitution and laws of the Kyrgyz Republic only for the purposes of guaranteeing rights and freedoms of other persons, and providing public safety and constitutional order. In such cases, the essence of constitutional rights and freedoms shall not be affected.¹⁰

There are four important points to be derived from these limitations clauses coming from the ICCPR, the OSCE commitments, and the Constitution.

First, limitations on freedom of religion and belief may only be imposed on “manifestations” of religion. Limitations on the “freedom to have or adopt a religion or belief” are not permitted except insofar as they are outwardly manifested.

*Second, with respect to manifestations of religion or belief, limitations can be made by the state **only** for purposes that are **specifically** identified.*¹¹

Third, the limitations should be construed narrowly and should be proportionate to the aim pursued. Although the purposes legitimating constraints on freedom of religion or belief may appear to be broad (e.g., “protecting public order”), they should be construed narrowly and be used only to accomplish specific and limited aims. If the state pursues the legitimate interest of protecting public safety by combating violent terrorism, it may not do so by also preventing the legitimate and peaceful practice of religion. Significantly, under Article 4 of the ICCPR, even a declared public emergency does not justify derogating from the right to freedom of religion or belief. Only where narrower and imminent threats to the specific legitimating purposes of “public safety, order,

which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Conference on Security and Co-operation in Europe: Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990) [Second Conference on the Human Dimension of the CSCE 1990] (“Copenhagen Document”), Art. 24.

¹⁰ Constitution, Art. 17.2.

¹¹ The Constitution identifies three: (a) guaranteeing the rights and freedoms of others, (b) protecting public safety, and (c) protecting the constitutional order. The ICCPR identifies five: (a) protecting public safety, (b) protecting public order, (c) protecting health, (d) protecting morals, or (e) protecting the fundamental rights and freedoms of others.

health, or morals or the fundamental rights and freedoms of others” are demonstrably present are limitations that encroach on freedom of religion or belief allowed.

Fourth, the limitations should not have the effect of undermining the right that is guaranteed.

The Draft Bill currently contains three limitations clauses: Article 1.2, Article 3.3, and Article 12.1.

Substantive recommendation: amend the limitations clause of the Draft Bill so that it does not conflict with international law or the Constitution.

Technical recommendation: amend the Draft Bill to contain only one limitations clause.

Technical recommendation: use the text of the limitations clause of the ICCPR, Article 18.3 (see above).

5. Definitions and Terminology

It is generally advisable to provide clear definitions of important and controversial terms in legislation. The Expert Panel understands that in Central Asian countries and in the former Soviet Union terms in statutes have often been left undefined. Nevertheless, we believe that clear definitions not only help to avoid honest misunderstandings about the purpose and scope of a law, but they also help prevent the misuse of the law's legitimate purposes by governmental or prosecutorial figures and they provide a clear basis for appeal when any such misuses in fact occur. Moreover, care should be taken to avoid using terms that tend to reinforce stereotypical or disparaging and discriminatory treatment of religious groups.

Technical suggestion: it would be useful to have one article, near the beginning of the Draft Bill, that defines all of the important terms. The definitions should be as clear and specific as possible and the terms should be used consistently throughout.

Technical recommendation: the following terms are among those that should either be deleted, defined together in an introductory article, or be defined clearly and precisely the first time that they are used in the text of the Draft Bill:

- “extremism”
- “totalitarian”
- “destructive sects”

Technical recommendation: the following terms should be defined together in an introductory article, or be defined clearly and precisely the first time they are used in the text of the Draft Bill:

- “public authorities for religious issues”,¹²
- “public bodies that register religious organizations”,¹³
- “record-keeping registration”
- “organization”
- “group”
- “association”
- “in co-ordination with public authorities” (Article 28)

While we understand that a major objective of the law is to deal with very real hazards posed by what is loosely referred to as “religious extremism,” care must be taken to avoid seeking to impose sanctions for the holding of beliefs. Punishing “extremism” per se could be construed to allow punishing mere beliefs. It is only the “manifestations” of those beliefs that can be permissibly regulated pursuant to the limitations clauses. Needless to say, every state criminalizes such manifestations when they involve violence or other material threats to legitimate constitutional and legal order. But this regulation can be done in a way that imposes sanctions on prohibited conduct, rather than on the mere holding of beliefs. There should at least be some overt act designed to promote prohibited conduct before the state should intervene. We recommend either that the term “extremism” be deleted and replaced with provisions that more adequately address the extreme actions that are objectionable, or at a minimum, that the term “extremism” be retained, but that it be carefully defined so that it applies only to actions (“manifestations of religion”) that may permissibly be limited under applicable limitations clauses.

On a related front, we recommend that terms such as “totalitarian” or “destructive sects” be deleted from the law. These terms are inherently vague and are almost inevitably applied in excessively broad ways to the detriment of many smaller, less known, but legitimate, peaceful and law-abiding groups. The Advisory Panel, along with other international authorities, has gone on record in the past discouraging the use of terms such as “sect” since its use is almost inherently discriminatory. The concerns raised by genuinely dangerous or destructive groups can be better dealt with as a matter of legislative drafting by focusing on wrongful activities of groups or their individual members who may be legitimately restricted as provided by the limitations clauses of the Kyrgyz Constitution and international instruments. Moreover, the problematic features of those groups that constitute genuine problems can be adequately addressed with whatever legislative solution is decided upon in connection with the activities of extreme groups, as discussed above.

¹² If the “relevant authorities” is the State Commission on Religious Affairs, this should be stated. *See* also II.G below.

¹³ If the “relevant authorities” is the State Commission on Religious Affairs, this should be stated. *See* also II.G below.

Articles 6, 11, and 12 identify several different types of religious entity, including “religious organizations,” “religious groups and communes,” “religious associations,” “religious institutions,” “missions,” “branches,” “foreign religious organizations,” “religious educational institutions,” etc.

Technical recommendation: the Draft Bill should define each type of religious entity that is governed by the Draft Bill and identify all relevant legal characteristics of each type. The terms should thereafter be used consistently throughout the Draft Bill.

The current provisions need additional refinement to avoid creating a scheme of partially overlapping types of entities that could be confusing as a matter of administration. The problems are largely technical problems that are unlikely to be controversial, but need to be addressed to avoid a variety of unintended technical problems and administrative confusion later on. The Advisory Panel of Experts has substantial experience in this area, and could help develop refined categories that would better meet the objectives of the legislation.¹⁴

6. Clarity in the “prohibitions”

There are a number of activities that are “prohibited” or “not permitted” in the Draft Bill. See, for example, Articles 3.6, 3.7, 3.8, 4.5, 4.7, 11.2, and 11.9. Article 27 provides that violations of the Draft Bill may involve “criminal, administrative, and other responsibility” under the law. None of these articles explains, however, whether any legal consequences result from violations of the prohibitions. There is a range of possible meanings of these “prohibitions,” including: (a) that the action is inadvisable and is discouraged by the law but is without any legal consequences; (b) the action is a legal nullity having no effect; (c) the action is a violation of administrative law and the

¹⁴ In drafting provisions in this area, it is important to remember that different religious organizations have, often as a matter of doctrinal belief, very different organizational structures. The definitions should not be structured in ways that presuppose a certain type of structure. For example, while some well-known groups have a hierarchical structure with a centralized administration, many other groups tend to be structured on the local level (*e.g.*, congregations or mosques), and may or may not have formal institutional connections with other groups. What is even more significant for the Kyrgyz context, Muslim groups may also have differing views about how they believe their respective religious communities should be organized. In general, some religious organizations may prefer to organize their affairs using a national level legal entity that can create sub-entities to reflect congregational or other organizational divisions. Others may prefer simply to create legal entities at the local level. Still others may wish to have a structure that is fundamentally based on local entities but to create also a separate entity associating several local entities. The legislation should make clear that religious associations have broad discretion as a matter of religious freedom and religious autonomy, to choose the institutional structures that best comport with their own theology, customs and practices. The state may have an interest in being aware of which groups are in existence, and who it may look to for leadership from a particular group, but it should not structure the registration rules in ways that prevent religious communities from organizing their affairs in accordance with their beliefs.

perpetrator may be fined by an administrative court, or (d) the action is a violation of criminal law and the perpetrator may be convicted by a criminal court. It is very important that the prohibitions and the role and authority of the government in enforcing the prohibitions be explained. Because the constitutional and international limitations clauses authorizing such restrictions require proportionality, there must in general be higher levels of justification and a closer relationship between the objective and the limitation as sanctions become more punitive.

Substantive and technical recommendation: all “prohibitions” in the Draft Bill should be identified as being a matter falling under the purview of the Civil Code. It would not be advisable to consider the types of prohibitions included in the Draft Bill as being subject to the Criminal Code.

7. The roles and responsibilities of public authorities.

There are a number of references to state authorities who have responsibility for administering and enforcing the Draft Bill. (*See, e.g.*, Articles 6, 10, 11, 15, 16, 17, 23, 28, and 29.) But with only one exception, in Article 29, the state authorities are not identified -- thereby leaving a statutory uncertainty as to responsibilities. The Experts Panel understands that it is common in legislation of this type not to identify with particularity the various state offices that may have responsibility for enforcing the provisions of the legislation. The Experts Panel nevertheless suggests that there may be some merit in identifying the various responsibilities of state offices in order to clarify the situation both for governmental officials and for the public.

Technical recommendation: consider identifying with greater specificity the state offices responsible for administering and enforcing the different provisions of the Draft Bill.

It also might be helpful to specify the statutory responsibilities for the State Commission on Religious Affairs.

Technical recommendation: consider amending the Draft Bill to identify the State Commission on Religious Affairs and to specify the statutory responsibilities, relevant legal guidelines governing exercise of discretion, applicable procedures and rights of appeal with respect to that Commission.

III. ARTICLE-BY-ARTICLE ANALYSIS

Preamble

As was discussed above, the Preamble is particularly admirable.

Chapter I: Articles 1-5.

Article 1

Section 2 contains one of the three limitations clauses in the Draft Bill.¹⁵ The limitations clause correctly stated that restrictions may be imposed only if they are “necessary.”

Two of the grounds specified in the provision are inconsistent with international law and the Kyrgyz Constitution: “national security” and “national unity.” Whereas “national security” does constitute a ground for limiting the exercise of some other freedoms, it is not a recognized ground for limiting freedom of religion or belief. Limitations must be based exclusively on the narrower grounds of “public safety,” order, health, or morals or the fundamental rights and freedoms of others,” as emphasized above. “National unity” is not recognized as a basis for limiting freedom of religion or belief. Moreover, “national unity,” although a very important concept, is capable of being used in a way that violates human rights norms. For example, if a country contains a population of one dominant ethnic or religious group, activities of ethnic and religious minorities to preserve their languages or religious ceremonies could be considered as being contrary to “national unity.” But the international instruments would not allow discrimination on these grounds.

It is also generally recognized that limitations on freedoms must not only be “necessary,” but “proportionate” to the ends that are to be achieved. That is, there must be a pressing social need for the objective in question, and if a more narrowly tailored or less burdensome method of pursuing the objective is feasible, that should be preferred.

Substantive recommendation: amend Article 1.2, in order to be consistent with the Constitution and international law, by deleting the terms “national security” and “national unity.”

Substantive recommendation: amend Article 1.2 by adding after the word “required”: “and be proportionate to the ends.”

Technical recommendation: delete all but one of the three limitations clauses in the Draft Bill.¹⁶

¹⁵ See discussion above at II.D.

¹⁶ The other two are at Articles 3.3 and 12.1.

Article 2

Article 2 is an admirable provision of the Draft Bill.

Technical recommendation: amend Article 2 by adding a provision along the lines of article 23 of the 1991 Religion Law ensuring that the Draft Bill should be interpreted consistently with international law ratified by the Kyrgyz Republic.¹⁷

Article 3

Several sections of Article 3 comply fully with international norms, including sections 1, 2, and 4.

Section 3 is the second of the Draft Bill's three limitations clauses.¹⁸ Some of its terms are inconsistent with constitutional and international norms.

Substantive and technical recommendation: delete Article 3.3 and rely on a general limitations clause as described above.

The first sentence of section 5 is admirable. The second sentence of section 5 appears to deny the right of conscientious objectors to military service to perform alternative service. It is our understanding that conscientious objectors are now permitted to perform alternative service in the Kyrgyz Republic and that the Draft Bill would terminate this practice. Neither international law nor the Constitution requires that states provide conscientious objector status, and the Kyrgyz Republic may lawfully enact this provision. However, the clear direction in international standards is to move towards permitting conscientious objectors to perform alternative service.¹⁹ In general, the state should be willing to accommodate conscientious beliefs to the extent refusing to do so is not necessary to further one or more of the legitimating aims spelled out in the limitation

¹⁷ See II.C above.

¹⁸ See discussion above at II.D. and at Article 1.

¹⁹ This is clearly the recommendation of the U.N. Human Rights Committee, the body officially charged with interpreting the ICCPR. In paragraph 11 of its General Comment No. 22 (48) adopted on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), the Human Rights Committee states: "The Covenant does not explicitly refer to a right of conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service." Article 18.1 of the Copenhagen Document notes that the OSCE participating States recognize that the U.N. Human Rights Commission has recognized the right to conscientious objection to military service.

clauses of international instruments and the Kyrgyz constitution. Note that exempting individuals with distinctive beliefs may be an appropriate way to achieve such accommodation.

Substantive recommendation: although states are not obligated to provide alternative service for conscientious objectors to military service, most democracies in the world do so and it is recommended that the Kyrgyz Republic do so as well.

The third sentence of section 5 appears to provide that trained clergy who are ordained into “holy orders” may be exempted from military service provided that they perform alternative service. The Draft Bill is unclear as to the standards for training or holy orders. Regardless of the standards, however, the law appears to discriminate among religious groups by providing benefits to some religions that may be unavailable to others. This provision appears to conflict with non-discrimination provisions of international law, as well as the Constitution, other provisions of the Draft Bill (including Article 3.4), and perhaps even to Article 14 of the Criminal Procedure Code.

Substantive recommendation: amend Article 3.5 (sentence 3) by deleting the clergy eligibility requirements of having a religious education and “holy orders.” It should be sufficient to grant the right to alternative service to all of those recognized as clergy within different faith traditions. Other requirements that do not discriminate among religions could be added if the Jogorku Kenesh so desires.

Sections 6, 7, and 8 all contain “prohibitions.” However, the Draft Bill does not identify any legal consequences that follow from such these prohibitions -- meaning that their purpose and effect is unclear. If these are designed to be criminal offences or offences for which people may be fined, the specific nature of the offence should be defined clearly.

In principle, section 6 is acceptable, provided that the term “compulsion” is construed in a neutral way, and does not extend to contexts that involve anything more than attempts to persuade. While we are certainly sympathetic to respecting the rights of parents to raise their children, we note that the Convention on the Rights of the Child protects the religious freedom of mature minors. Article 14.2 of CRC provides: “State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right [to freedom of religion or belief] *in a manner consistent with the evolving capacities of the child.*” It would seem unfair to penalize a group if a mature minor seeks out the group voluntarily. On the other hand, use of genuine compulsion or fraud to interfere with the rights of the child or the child’s parents may be regulated.

Section 7 appears to prohibit offending the feelings of religious believers. Although the sentiment behind such a prohibition is admirable, the enforcement of such a law is unworkable and such a law would be capable of abuse by governmental authorities. The difficulty is that minority groups will be reluctant to invoke this provision, for fear of greater social retaliation. Dominant groups can exploit this type of provision to curtail legitimate speech rights of members of smaller groups. Many countries have such provisions and they cannot be said to violate international standards, but we suggest dropping the provision because it is not likely to be effective.

Substantive recommendation: delete Article 3.7.

Section 8 appears to prohibit propaganda and dissemination of beliefs by groups that are “extremist,” “totalitarian,” or that are “destructive sects capable of causing damage to the foundations of the constitutional order.”²⁰ Similar terms are used in Article 5.6 and Article 7. There are three problems with this prohibition. *First*, these terms are undefined and are, therefore, susceptible of overly broad and inconsistent application. (See II.E above.) *Second*, there is a lack of clarity on the meaning of the “prohibition.” (See II.F above.) *Third*, the terms appear to target the *dissemination of beliefs* rather than target *violence or other destructive actions*.

Substantive and technical recommendation: amend Article 3.8 by either: (a) deleting one or more of the terms used to describe the types of belief and substituting the types of actions that should be prohibited (e.g., using weapons or explosives, threatening people or the government with violent actions, etc.), or (b) defining carefully the terms “extremist,” “totalitarian,” or “destructive sects” in such a way as to guarantee that they identify illegal activities rather than unpopular beliefs.

As noted above, even if the term “extremist” is to be retained, we recommend that it be very carefully defined so as to address only conduct that comes within the scope of international limitations clauses, and that in any event, vague and discriminatory terminology such as “totalitarian or destructive sects” be avoided. Alternative (a) is preferable, because it is less likely to reinforce stereotypes that all smaller or less known religious groups are “dangerous sects.” Experience elsewhere has suggested that use of such terminology does not contribute to creation of a culture of tolerance and tends to lead to discriminatory treatment of legitimate, law-abiding religious associations.

Article 4

²⁰ It is important that the Jogorku Kenesh understand that these terms are pejorative terms that are generally used to disparage unpopular religions and groups. These terms are not recognized in international law, or even in domestic law of most states, but are terms designed to disparage others.

Sections 1-4 of Article 4 are consistent with international law, although section 2 is somewhat vague and might be clarified.

Section 5 is problematic in two respects. While separation of church and state is clearly permissible, legislation with respect to the relationship of religion to political parties is sensitive and will need to be approached very carefully. Similarly, the requirement of registration of foreign nationals engaged in missionary activity raises questions for freedom of expression and religion, particularly if such rules are used to obstruct legitimate efforts at religious persuasion and sharing of different religious views. A reasonable requirement (essentially a “notice to the government” requirement) that provided state officials with information about foreign missionaries, their whereabouts, and how to contact them, would probably not be problematic if it is not used to constrain legitimate expressive activity.

Section 6 is perhaps a little vague, but appears well intended in principle.

Sections 7 and 8 are unclear.

Substantive and technical recommendation: article 4.7 and 4.8 should be rewritten carefully in conformity with the recommendation for article 3.8 above.

Section 8 appears to give registration authorities the power to grant or deny registration to groups on the basis of their financial status. If this is the intent of the legislation, the granting of such power seems excessive, given that other state offices (*e.g.*, tax offices) already have such powers and it is unnecessary to provide it to others.

Substantive recommendation: amend article 4.8 to remove the authority of any registration body to approve or disapprove of registration on the basis of a financial review.

Article 5

The subject matter of Article 5 corresponds to Article 6 of the 1991 Law.

Sections 1 and 2 are consistent with international law.

Section 3 is unclear as to whether a child is permitted to receive a religious education concurrently with state-sponsored basic education (for example at the end of a school day), or whether the child is permitted to receive religious education only after having fully completed his or her basic education (such as after having graduated from school).

Substantive and technical recommendation: amend Article 5.3 to ensure that children are able to obtain religious education concurrently with state education.

Section 4 appears to be unobjectionable, assuming that that the purpose is to provide for parental consent to before their children attain majority rather than after attaining majority.

Section 5 is unclear. Whereas it would be appropriate for the state to license teachers who are providing basic education for students or for religious education subject to state certification, the state should not license all teaching of religion.

Substantive and technical recommendation: amend Article 5.5 to ensure that out-of-school religious education can be provided without requiring state authorization.

Technical amendment: to the extent teaching credentials are required for religious teachers, Article 5.5 could be improved by specifying both the state agencies and the specific requirements. Moreover, it should be made clear that the role of the state in requiring such certification does not extend to assessing whether the teacher is religiously qualified to provide the teaching in question or to evaluate the religious beliefs being taught.

For section 6, see II.E and Article 3.8 above. The provision as currently drafted is overbroad and is inconsistent with international human rights instruments.

Chapter II: Articles 6-17

A number of provisions in Chapter II are unclear, making it difficult to understand with certainty the different categories of religious entities, the relevant state officials, and the exact procedures to be followed. All of Chapter II would be improved by a careful rewriting.

Technical recommendation: amend Chapter II by carefully and systematically identifying the legal characteristics of the different types of religious entity and the procedures for obtaining state recognition. It would be particularly valuable for members of the Jogorku Kenesh to meet with experts to draft technical language to ensure that the purpose and intent of the law is fully satisfied.

A systematic rewriting of Chapter II should:

First, identify with specificity each type of entity that is subject to regulation by this law;

Second, identify the rights and responsibilities of each type of entity;

Third, identify the registration requirements (if any) for each type of entity;

Fourth, identify the criteria the state officials must use in reviewing registration requirements and the necessity of providing a reasoned decision within a reasonable amount of time; and

Fifth, provide an appeal mechanism for an entity that is denied registration.

Finally, as explained above, it may be helpful for the Draft Bill to identify which state officials are responsible for reviewing registration requirements.

Article 6

See II.E. above (definitions)

If there is a difference among the types of group, they should be described specifically. If there is no difference, only one term should be used.

Technical recommendation: amend Articles 6 and 11 by defining the important terms.

Technical recommendation: amend Articles 6 and 11 by describing the rights, privileges, and responsibilities of the different types of religious entities. For example, if “religious organizations” have legal personality, it should be stated explicitly.

Substantive recommendation: amend Article 6 and 11 by including a provision that acknowledges that it is lawful for groups of people to meet together for religious purposes, although these groups do not necessarily have any legal standing until they comply with state registration procedures.

Article 7

For Article 7, see II.E and Article 3.8 above.

Articles 8 and 9

The by-law requirements of Article 8 are for the most part acceptable. However, the Draft Bill does not specify who is responsible for reviewing the by-laws on behalf of the state. It would be helpful to provide additional clarification of this issue either here or in the Civil Code. Further, financial issues are generally regarded as the private affairs of religious organizations, and, in the absence of evidence of fraud or other malfeasance, should not be subject to state scrutiny. On the other hand, constraints on political funding may be appropriate. As a result, this is another area that needs to be addressed with sensitivity to avoid impermissible interference with religious practice. Moreover, it needs to be made very clear that state review is restricted to formal review, and not to a substantive review of the group's doctrines or its beliefs about the organization of its affairs. For the most part, the information requested (assuming reasonable administration of the registration process), is not objectionable. There is some overlap between Articles 8 and 9 with Articles 11 and 12.

Technical recommendation: all registration requirements should be placed together in order to avoid confusion on the part of registrants and government officials.

Article 10

Article 10 could be improved by rewriting. The key issue here is achieving a responsible balance between secular education requirements and the right of parents and their children to arrange private educational programmes that they prefer in furtherance of their religious beliefs.

Articles 11 and 12 “Record-keeping registration.”

Articles 11 and 12 contain some of the most problematic parts of the Draft Bill. The most significant differences between the Draft Bill and the 1991 Law are the new provisions pertaining to “record-keeping registration” requirements (which were first introduced by Presidential Decree in 1996). *See, e.g.*, Article 6.5, Article 11, and Article 12. “Record-keeping registration” appears to be a term devised to address a “lower” level of registration that in effect merely requires the religious group to give the state notice of its existence. To the extent that this is correct, non-burdensome notice procedures that did not give the state the right to prohibit religious activities (except in the limited cases where the conduct came within limitation clauses of international instruments) would be acceptable. However, the provision as currently drafted is somewhat unclear. This lack of clarity in turn would be likely to cause substantial problems when administered by local officials prone to read the legislation (whether justifiably or unjustifiably) as authorizing them to obstruct religious practice. Substantial clarification and technical improvement of these provisions is needed. Although most of the requirements for record-keeping registration are unobjectionable and are consistent with international standards, there are some potentially serious problems that are inconsistent with international human rights standards. *The Draft Bill appears to give the government not only the legitimate authority to regulate the legal status of some*

religious entities, but it also appears to give the government an unacceptable amount of authority to interfere with internationally protected rights of freedom of religion and belief.

The following are the major problems with the record-keeping provisions of the Draft Bill:

First, definitions need to be provided. (See II.E above.)

Second, Article 11.2 of the Draft Bill introduces the concept of “unregistered activities” as opposed to unregistered groups. To the extent that the government is given authority to determine which activities must be registered, the Draft Bill is far too vague and the provision conflicts with international law (as well as with Article 3.6 of the Draft Bill).

Substantive and technical recommendation: delete Article 11.2.

Third, Article 11.11-14 introduces the concept of “record-keeping registration” of foreign citizens. Prior to this point, record-keeping requirements have been described as requirements for groups, not as a requirement for persons. By changing the concept, the law creates confusion.

Technical recommendation: amend Article 11.11-12 by deleting the confusing language suggesting that persons (rather than groups) have record-keeping registration requirements. Even then it would seem inappropriate to establish a discriminatory regime based on religious beliefs, as opposed to factors and characteristics that can be described in neutral, secular terms.

Substantive recommendation: to the extent that the Kyrgyz Republic seeks to regulate activities of foreign citizens, it should do so through laws related to immigration and the issuance of visas rather than by regulating religious groups.

Substantive recommendation: amend Article 11.13 by providing that groups are responsible for the acts of individuals only to the extent that they support or assist the commission of illegal activities of individuals.

Fourth, Article 12.1 contains the third limitations clause in the Draft Bill. See II.D.

Technical recommendation: delete all but one of the three limitations clauses in the Draft Bill.²¹

²¹ The other two are at Articles 1.2 and 3.3.

Fifth, Articles 12.2-3 are appropriate guidelines to include in legislation, though they could be improved slightly.

Technical recommendation: amend Article 12.2 by adding that a decision must be made within a specified time (e.g., within one month of the time submitted).

Technical recommendation: amend Article 12.3 by clarifying the procedure for disputing the denial of a registration.

Article 13

Article 13 is generally acceptable, but would benefit from greater clarity.

Article 14

Article 14 is generally acceptable.

Substantive and technical recommendation: amend Article 14 by emphasizing that government officials may not terminate a religious organization for a minor or technical defect, but only for a serious violation of law. The law should require that officials work with a religious organization to correct technical defects before taking more drastic action.

Articles 15, 16, and 17

Articles 15, 16, and 17 are generally acceptable, so long as they are applied in reasonable ways and are not allowed to intervene inappropriately in religious affairs of the various religious communities and groups that exist in the Kyrgyz Republic. It is important that the body vested with “consultative and expert and information powers” not be allowed to evaluate the substantive beliefs of religious groups, to second guess the beliefs and administrative practices of the community, and in general, should not be allowed to intervene in what should legitimately constitute the religious group’s own religious affairs. Moreover, great care should be taken to assure that the body operates in a neutral and objective way, and does not promulgate information that is one-sided or would tend to disparage legitimate religious groups. It should not be allowed to become a vehicle for passing on information received without giving a right of reply, or for spreading disparaging information about religious groups. Procedures should be implemented to assure that this body administers its affairs in a way that is consistent with freedom of religion for all. Appeal procedures from the determinations of this body should be made clear, and when the body is required to process applications, time limits should be

established that assure that determinations and approvals (or denials) are made in reasonable amounts of time.

Technical recommendation: combine Articles 15, 16, and 17.

Substantive and technical recommendation: amend Article 16 by adding a provision noting that government officials cannot restrict religious activity in violation of the limitations clause. (see II.D)

Chapter III: Articles 18-21

Article 18

Article 18 is acceptable to the extent that it simply states the affirmative right of religious organizations to acquire property. It is important to remember that very specific OSCE commitments apply in the financial area. Specifically, Principle 16d of the Vienna Concluding Document (1989) provides that religious communities have the right to “solicit and receive voluntary financial and other contributions.” There is no indication that this is restricted to donations from within the country. So long as Article 18(2) is not intended to cut off external funding, the provision is acceptable. It should also be clear that religious organizations may set up “for profit” organizations, but such organizations shall be subject to normal taxation rules. Article 20 appears to address this issue, but may need to be clarified and refined.

Technical suggestion: the term “noncommercial” should not be used to prevent religious organizations from selling copies of literature or objects of religious worship

Substantive recommendation: the Jogorku Kanesh should seriously consider permitting religious organizations to operate commercial entities at least on a limited basis.

Article 19

Article 19 is acceptable.

Article 20

Article 20 is generally acceptable.

Substantive recommendation: the Jogorku Kanesh should seriously consider permitting religious

organizations to operate commercial entities at least on a limited basis.

Article 21

Article 21 is acceptable. However, various technical refinements can easily be envisioned. For example, while the second paragraph is obviously well intended, it may have the effect of making it impossible for a religious organization to borrow funds to build a worship facility, because lenders would want enforceable security. If the religious organization in question no longer exists, it might make more sense to allow the state to donate the property to a humanitarian programme than to a religious group with different beliefs. This would likely be more in line with the intent of the original donors to the now defunct religious organization. The provision also needs to be reconciled with Article 11, paragraph 6, clause 2 relating to leaving “architectural, cultural, [and] historical” property in the country. These are largely technical considerations.

Chapter IV: Articles 22-24

Article 22

As mentioned above, Article 22 is an admirable portion of the Draft Bill. Note, of course, that freedom of religion or belief extends beyond the matters of religious worship described in this article to other matters as well; that is, it includes the right to “manifest [a person’s] religion or belief in worship, observance, practice and teaching.” ICCPR, Article 18(1). It needs to be clear that nothing in the law suggests that freedom of religion or belief is limited to the matters discussed in Article 22.

Article 23

Article 23 is fully acceptable, except for sections 2, 3, and 5.

Section 2 provides that *only* religious organizations may publish and disseminate religious literature. This would mean that a bookstore or newspaper would be prohibited from selling or quoting the Qu’ran or the Bible.

Substantive and technical recommendation: delete Article 2.3.

Sections 3 and 5 refer to laws and authorities that may restrict distribution of literature. It is of course acceptable for a state to restrict the distribution of certain types of information (*e.g.*, pornography or advocacy of violent insurrection). Any restrictions, however, must not prevent or impede the distribution of information that is protected under international human rights law, including information about religious beliefs and legitimate political expression. Human rights instruments also discourage “prior restraints” on the distribution of information. “Prior restraint” is where governments

attempt to decide in advance whether information may be distributed and whether people must apply to the government for permits before distributing literature.

Substantive and technical recommendation: amend Article 23 to provide that the government may not restrict the distribution of information that is protected by the Constitution and human rights law and that the government may not make prior restraints on the distribution of religious and legitimate political information.

Article 24

As mentioned above, Article 22 is an admirable portion of the Draft Bill.

Chapter V: Articles 25-27

Article 25

Article 25 is acceptable.

Article 26

Article 26 is acceptable. It may be worth noting, however, that much of the work of many religious organizations is done by volunteers, and that volunteers are obviously not subject to the normal legal regime established by the state's labour laws. This is extremely important, because most religious organizations accomplish much good through volunteer efforts, and they could not undertake such efforts if they had to do everything through compensated employment contracts.

Article 27

Article 27 provides that violation of the Draft Bill may entail criminal, administrative, or other liability under the laws of the Kyrgyz Republic. Most state laws do not provide for criminal liability for violations of religion laws, although there are some that do. It is generally preferable to have criminal offences identified with specificity in the Criminal Code and to describe the offences by reference to the type of harm at issue, such as causing death or bodily harm, theft of property, etc. It is also helpful to be realistic and practical about how government officials who violate religious freedom principles may be held accountable.

Substantive recommendation: the Jogorku Kenesh should consider deleting references to the criminal law in the Draft Bill.

Chapter VI: Articles 28-30

Article 28

It is permissible for the Kyrgyz Republic to impose regulations and restrictions on the activities of non-residents, provided that those restrictions do not violate the Constitution or international human rights commitments. There are several provisions within Article 28 that could be read to impose restrictions that violate the Constitution or human rights commitments by stating that certain activities are permitted “in co-ordination with public authorities.” The problem is how public authorities would administer these provisions. So long as they are attempting to facilitate religious activity, as by facilitating efforts of individual citizens to participate in the Hajj, this is perfectly acceptable. On the other hand, if the co-ordination extends to denying the right to engage in religious activity, this would typically involve an impermissible intervention in religious affairs. Article 28 could be brought into compliance with international commitments by making a number of small amendments.

Substantive and technical recommendation: amend Article 28 by either deleting “in co-ordination with public authorities” or by defining it in such a way as to preclude public authorities from violating international human rights standards or from failing to assist in legitimate religious activities.

Article 28.4, like Article 11.13 above, provides that groups may be responsible for the actions of individuals.

Substantive recommendation: amend Article 28.4 by providing that groups are responsible for the acts of individuals only to the extent that they support or assist the commission of illegal activities of individuals.

Article 28.5 can be read to prohibit any visitor to the Kyrgyz Republic from engaging in any religious activity unless the sole reason for his or her coming was to engage in religious activity. Thus a foreign ambassador or a businessman who attends Friday prayers could be found to be in violation of the law. Article 3.2 of the proposed legislation clearly recognizes that freedom of religion or belief is a human right, not dependent on citizenship status. It is inconsistent to deny foreigners lawfully present in the Kyrgyz Republic the right to exercise their religious beliefs by engaging in religious activity.

Substantive and technical recommendation: delete Article 28.5.

Article 28.6 is questionable, and it would be preferable to delete it.

Article 28.7 appears to impose an unnecessary prohibition on legitimate religious activity and appears, in spirit, to contradict Article 4.2. It is also inconsistent with Principle 16d of the Vienna Concluding Document, which provides that participating States in the OSCE shall “respect the right of religious communities to . . . select, appoint and replace their personnel in accordance with their respective requirements and standards” It can be imagined, for example, that the Orthodox Church may wish to have a Russian Bishop or a Sufi mosque might wish to have an Uzbek imam. Of course, if a religious group wants to appoint a leader known to be a terrorist, the individual could be excluded from the country on those non-religious grounds. It would be preferable to have such matters regulated by a neutral manner in the immigration and visa laws rather than have a separate rule preventing religious leaders from coming to the Kyrgyz Republic. It is important to stress, however, that the state should seek to comply with its commitments to respect the right of religious groups to select their own personnel—even foreign personnel—if there are not independent grounds for excluding individuals involved.

Substantive recommendation: delete Article 28.8.

Article 29

See II.F and II.G above.

Article 29.1 implies, though it does not specifically state, that any violation of the Draft Bill might be considered to be a criminal offence. To the extent that the violation of any provision of the Draft Bill is a criminal offence, the offence should be identified with specificity in the Criminal Code. It is advisable to have as few criminal sanctions, as opposed to administrative sanctions, as possible in a law regulating religious activity. Criminal law should generally be reserved for criminal offences to persons or property.

Substantive and technical recommendation: either delete Article 29.1 or amend it by identifying the specific provisions of the law that the Prosecutor's Office is responsible for enforcing.

Article 30

Article 30 is acceptable, although section 3 could be improved by providing a date by which necessary changes should be made and establish a procedure for assisting religious organizations in complying with the Draft Bill. The deadline should be reasonable, and should not be applied in a draconian way. It is important that retroactive provisions be avoided here. For example, care should be taken to assure that groups that have

registered and acquired property are not suddenly dispossessed by operation of new registration criteria. Thought should be given to protecting vested rights.

Technical recommendation: amend Article 30.3 by adding a deadline and establishing a procedure for religious organizations to bring their by-laws and other constituent instruments into conformity with the law.

IV. ANALYSIS OF KEY ISSUES

It goes without saying that the Draft Bill under consideration has certain positive aspects. It maintains equality of citizens without regard to their views or relationships concerning religion and equality of religions, established on basic principles of co-operation between the government and religious organizations, and grants various rights to individuals and their religious associations, permitting them to satisfy their religious needs, and formulates other provisions that answer for international standards in the area of religious freedoms.

However, the purpose of this analysis is to highlight the provisions in the Draft Bill that contradict international norms, legislation, and commitments of the Kyrgyz Republic.

Key issues in the legislation requiring analysis are:

1. Aiming to limit convictions of believers and their organizations as opposed to criminal activity;
2. Violating the principle of separation of religion and government as set forth in article 8 of the 1993 Constitution of the Kyrgyz Republic and of the principle that government intervention with the activities of religious organizations is disallowed;
3. Increasing the difficulty and complexity of registration procedures (relative to the procedures required under the current law);
4. Failing to account for specific religious organizations' differences and using terminology that is characteristic of one form of religion but not characteristic for others;
5. Limiting the rights associated with freedom of religious education; and
6. Drafting of ambiguous provisions and unclear wording, including inherent contradictions between certain provisions.

These key problems emerge in some of the most controversial provisions, which are listed below:

1. Prohibition of propaganda and dissemination of religious materials having extremist or totalitarian character or from destructive sects using vague or undefined terms.
2. Requirement of government permission for activity
3. Control exercised by the registering body over the financial activity of religious organizations;
4. Requirement of permission of by government body for publication of religious literature;
5. Holding or participating in meetings of the religious organization outside the borders of the country requires permission of a government body, including for purposes of holding religious forums in The Kyrgyz Republic and for purposes of cross-border education;
6. The registration process requires difficult procedures, the goal of which is to give the government the power to permit or not permit the existence of a religious organization.
7. Infraction of the principle of equal rights of believers, and absence of an accounting of special nature of religious organizations, for example, in the matter of granting the right of alternative (non-military) service.
8. Religious education of children is prohibited until children have received their general education;

Licensing of religious educational organizations which offer only religious, not secular, education.

What follows in this Section IV is an analysis of the above nine selected controversial provisions (among others), which reflect the six key problems listed at the beginning of this section. It includes explanations of how each controversial provision constitutes an infraction of one or more of The Kyrgyz Republic's international human rights commitments, as well in many cases, of its own constitution. Recommendations of how these problems may be solved have been made in the earlier article-by-article analysis. Section V describes the relevant international norms and how the Draft Bill falls short of these standards.

1. Aiming to limit religious activity of individuals and their associations on the basis of their belief and convictions, rather than on the basis of criminal actions committed by them

Paragraph 8 of article 3 of the Draft Bill states that it is not permitted to spread propaganda and to disseminate religious trends of an extremist nature as well as totalitarian, destructive sects capable of causing damage to the foundations of the constitutional order, morality, health and legal interests of the person and citizen, the defensive capacity of the country and national security of the state (in the text of the Draft Bill it is not altogether clear how to define totalitarian and destructive sects; we assume that idea of the law is to disallow dissemination of religious trends of an extremist nature as well as teachings of totalitarian, destructive sects).

Article 7 establishes that the activity of organizations, if not exercised earlier as a religion may be sanctioned if they pertain to totalitarian, destructive and other religious sects of an extremist nature.

It is obvious that the government desires not to allow the spread of religious extremism and the activities of socially dangerous organizations. However, in accordance with the Draft Bill, it is not clear who will determine and on what basis religious groups will be labeled totalitarian and destructive sects, and which religious trends will be deemed extremist. This will provide a basis for arbitrary application of the prohibition.

Paragraph 8 of article 3, limiting the freedom of the dissemination of religious ideas, violates a broad range of international rights acts, for example, the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Declaration on the Elimination of all Forms of Intolerance and Discrimination on the Basis of Religion and Belief (1981), which together with many other international covenants, conventions, promises, and agreements guarantee the right to follow one's convictions without interference, receive and disseminate information and ideas of any kind despite government boundaries.

The mere presence and dissemination of extreme religious beliefs—or absolute religious beliefs that may be considered by others as extreme—cannot form a basis for their interdiction. When the dissemination of these beliefs results in actions that infringe the law, the state can and should deal with them using criminal, administrative, or civil measures.

Under Article 7, the activities of groups—even those that have not committed a crime—are automatically considered suspect and are not permitted.

Article 7 does not comply with the Helsinki Final Act of 1975, which establishes that “the participating governments will recognize and respect freedom of the individual to profess, individually or together with others, a religion or faith, acting in agreement with the dictates of personal conscience.”²² This provision applies to all religious groups, including religious sects. The International Covenant on Civil and Political Rights guarantees “freedom, manifest either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice, and teaching,”²³ an official interpretation was given by the UN Human Rights Committee, in which it was established that freedom of religion and belief “is not limited in application to traditional religions or religions and belief systems with formally established and uniform characteristic features and rites, or those that are similar to the characteristic features and rites of traditional religions.”²⁴

²² Conference on Security and Cooperation in Europe: Final Act, Article 7, Section 1 (A) (Helsinki Final Act of 1975).

²³ International Covenant on Civil and Political Rights, Article 18.

²⁴ International Covenant on Civil and Political Rights, General Comment No. 22 (48th Session of the U.N. General Assembly).

Article 7 of the proposed law also violates the Charter of Paris of 1990, which in particular establishes that “without discrimination, every individual has the right to freedom of thought, conscience, and religion or belief, freedom of expression, freedom of association and peaceful assembly.”²⁵ The Charter does not limit this right with such qualifiers as extremist, totalitarian, traditional, or otherwise.

Finally, according to the 1981 Declaration on Elimination of All Forms of Intolerance and Discrimination on the Basis of Religion and Belief, no one should be exposed to discrimination on the basis of religion or belief from any government, establishment, group of people, or individual. Intolerance and discrimination are understood in the Declaration to be “any distinction, exclusion, restriction, or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment of exercise of human rights and fundamental freedoms on an equal basis.”²⁶

The 1993 Constitution of the Kyrgyz Republic also established that no one can be exposed to any discrimination or infringement of rights or freedom based on origin, gender, race, nationality, language, creed, political or religious belief, or on any other conditions or circumstances of an individual or public character.²⁷

2. Infringement of the principle of separation of religion and state, and wrongful intervention by the state and its representatives in the affairs of religious organizations

Article 4 Paragraph 1 of the proposed law states that religions and cults are separate from the government of the Kyrgyz Republic, and Paragraph 2 of this same article establishes that the state may not interfere with the activities of duly registered religious organizations, if such activities are not contrary to the laws of the Kyrgyz Republic. This provision essentially restates the principle of separation of religion and state under Article 8(3) of the Kyrgyz Constitution.

However, in the text of the Draft Bill there exist a multitude of examples of infringement on the provisions of Article 4.

2.1. According to Item 8, Article 4, governmental agencies that register religious organizations exercise control over the financial-economic activity of the religious organizations.

Control of the financial-economic activity of religious organizations, as with the activities of any other organization in the country, can be carried out in

²⁵ Paris Charter for the New Europe. See the complete text at www.osce.org/docs/english/1990-1999/summits/pais90e.htm.

²⁶ Declaration on the Elimination of All Forms of Intolerance and Discrimination on the Basis of Religion or Belief, 1981, Article 2.

²⁷ See Item 3, Article 15 of the Constitution of the Kyrgyz Republic, 1993.

accordance with the legislation of several governmental agencies: tax, customs, and currency agencies, and so forth. Granting such power to agencies that register religious organizations is unreasonable and can result in unjustified intervention in the activity of religious organizations, and gross infringement of their rights. It should be noted that such control is not governed under the proposed law by any procedural framework.

2.2. Article 28 Paragraph 1 establishes that religious observing citizens and religious organizations have the right, as a group or individually, to establish and support international communication, including travel abroad for pilgrimage or participation in assemblies and other religious activities, by *permission* of a government agency.

Article 28 Paragraph 3 directs that international religious forums can be held by religious organizations with the *permission* of the government agency responsible for religious affairs.

As currently drafted, the provisions of Article 28 on co-ordination and permission conflict with several international legal acts. Thus, according to the provisions of the Helsinki Act of 1975, the participating governments confirmed that religious cults, establishments, and organizations, along with their representatives, can implement contacts and meetings and can exchange information.²⁸

According to the Vienna Concluding Document of 1989, governments are to permit religious adherents and religious cults and their representatives, on a group or individual basis, to establish and support direct personal contacts and dialogue with each other in their own and other countries, specifically by means of travel, pilgrimage, and participation in assemblies and other religious activities.²⁹

2.3. In accordance with Article 23 Paragraph 5, religious organizations can import and publish literature—printed or audio-video materials—with the *agreement* from the governmental agency for religious affairs.

Requiring government agreement again contradicts international declarations. For example, according to the Vienna Concluding Document of 1989, governments will:

- Respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;

²⁸ Helsinki Final Act of 1975.

²⁹ Vienna Concluding Document, 1989, paragraph 32.

- Allow religious faiths, institutions and organizations to produce and import and disseminate religious publications and materials. .³⁰

2.4. In accordance with Item 2, Article 28, religious organizations can send citizens abroad for training in ecclesiastical educational institutions, and accept for these purposes foreign citizens, with the *permission* of the government agency of religious affairs, the Ministry of Education, Science, and Culture, and the Ministry of National Security.

The right to freedom of thought, conscience, and religion, secured in various legal declarations, includes the right to religious education and training. The attempt by the government to prevent this right is surprising. Still more surprising is the fact that citizens must receive permission from three government agencies.

In accordance with the Vienna Concluding Document of 1989, governments will respect “the right of everyone to give and receive religious education in the language of his choice, individually or in association with others”;; governments will also “allow the training of religious personnel in appropriate institutions.”.³¹ Moreover, use of such permission violates the right of citizens to receive an education, which is also secured by several international legal declarations.³²

2.5. Article 28 Paragraph 4 establishes that religious organizations have the right to invite foreign citizens for purposes of professional employment, including religious proselytizing activity, with the permission of the government agency on religious affairs and the Ministry of National Security.

According to the Vienna Concluding Document of 1989, governments are obligated to respect the right of religious associations to “select, appoint, and replace their personnel in accordance with their respective requirements and standards.”³³

Moreover, Article 18(4) of the International Covenant on Civil and Political Rights, and the General Comment No. 22 (passed in the 48th session) determine that freedom “to manifest one’s religion or belief in worship, observance, practice and teaching,” includes the right of religious organizations to have “freedom to choose their own religious leaders.”³⁴

Many of the provisions considered above violate the 1981 Declaration on Elimination of All Forms of Intolerance and Discrimination on the Basis of Religion and Belief, which

³⁰ Vienna Concluding Document, 1989, Paragraphs 16.9, 16.10.

³¹ Vienna Concluding Document, 1989, Paragraphs 16.5, 16.6.

³² See, for example, Article 13 of the International Covenant on Economic, Social, and Cultural Rights, 1966.

³³ Vienna Concluding Document, 1989, Paragraph 16.4.

³⁴ U.N. Human Rights Committee, General Comment No. 22(48), Paragraph 4 (July 20, 1993), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993)

states that the right to freedom of thought, conscience, religion, or belief includes the right:

- To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- To write, issue, and disseminate relevant publications in these areas;
- To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.³⁵

The rights and freedoms proclaimed in the Declaration should be represented in national legislation, in order to allow each individual to exercise such rights and freedoms in practice.³⁶

In their current form, the provisions identified above are not only in contradiction to international legal declarations, but, if implemented, they would also reduce the separation of religions and cults from the state to a mere formality. The government, in the form of its agencies, would be granted excessive discretion to interfere in the activity of religious organizations and to exhibit intolerance in relation to different groups of religious adherents. Moreover, as currently proposed, the law fails to provide clear standards for denying permissions, nor does it set forth the necessary related procedures.

3. Problems associated with the increasing complexity of registration of religious organizations

Under the draft law, the registration of religious organizations becomes a difficult and at times an incomprehensible process. An analysis of the appropriate Articles of the draft law shows that the registration process is seen not as a process providing for a certain jurisprudential, organizational and substantive status, but as a requirement to obtain permission from the government for the existence of a certain religious organization.

The draft law establishes a two-step process of registration. The first step is a record-keeping registration, which is accomplished by a governmental department of religious affairs. The second step is a governmental registration of the religious organization as a legal entity, which is accomplished by the Ministry of Justice. The law establishes the responsibility for the record-keeping registration. The responsibility for governmental registration with the Ministry of Justice, is apparently not foreseen in the draft law, although from the meaning of various articles about the law, such a responsibility is assumed.

³⁵ Declaration on Elimination of All Forms of Intolerance and Discrimination on the Basis of Religion and Belief, 1981, Article 6.

³⁶ Ibid., Article 7.

Religious groups and associations (i.e., religious organizations, that by the nature of the law can exist without governmental registration in the Ministry of Justice, although still required to perform the record-keeping registration with a governmental department for religious affairs) can only be created by religious organizations registered in such a manner. The creation of such groups and associations by citizens is not addressed.

Although the precise meaning of the law is unclear, record-keeping registration may be a sort of barrier geared to cut off those religious groups which the government considers undesirable. The governmental registration which takes place after the record-keeping registration will not present any particular problems. Sufficient testimony of this is the fact that in the law the greater part of the articles are dedicated namely to the record-keeping registration.

Significantly, the majority of countries in the OSCE do not require registration of religious organizations and do not provide sanctions against religious organizations in the absence of such registration. Not one of the countries outside of the former Soviet block has established such requirements or sanctions for the failure to register. Although some countries in the former socialist bloc have retained such requirements, the majority of them understand the problematic character of such requirements and refuse to enforce them.

The list of problematic and controversial questions about the process of registration described in the draft law includes the following:

- the lack of grounds for arranging for the record-keeping registration of religious groups and associations created by religious organizations;
- the lack of an explanation of the grounds on which a local religious organizations may be rejected in the record-keeping registration process;
- the lack of direction for the duration of conducting the record-keeping registration;
- the absolute requirement for listing the place of work and the position held by the founder; the education and previous place of employment of those working in the mission;
- unclear definition of a religious group or association and unclear terms, such as “lengthening of times for registration”;
- the necessity to show records of the list of those authorized to preach, proof of the financial resources for the creation of a religious educational institution, etc.

The aforementioned problems and others not mentioned, as well as the ambiguity and internal incoherence of the list of registration requirements present great opportunities for the government to act arbitrarily and thus turn the registration process into a very difficult and problematic affair.

By themselves, the registration requirements will not violate the international human rights acts regulating the freedom of religion as long as they are applied indiscriminately and do not become overburdensome. In accordance with Paragraph 16.3 of the Vienna

Concluding Document of 1989, governments are obligated to grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries. As suggested during the article-by-article analysis, many of these issues are technical problems that can be solved through more precise drafting.

4. Failure to account for differing organizational structures of different faith traditions and the use of terminology characteristic for some religious formulations and not for others

The list of proposals of the draft law do not take into account the special characteristics of various religious institutions, which could lead to serious violations of human rights and freedoms of believers and their organizations.

1. In accordance with Article 3, Paragraph 5, at the request of religious organizations, clergy having a clerical callings and proof of seminary training have the right to change their military service--that is, to choose an alternative, non-combatative service.

For some of the religious organizations, however, a formal clergy might be uncharacteristic, as may be the presence of a spiritual office for those who compose a religious organization. In some religious organizations by far not all clergy of a cult have proof of their religious education. In this way, the circle of those who have the right to change their military service according to their religious convictions is seriously limited, resulting in inequality among believers.

Besides this, the Document from the Copenhagen Meeting of 1990 notes that the United Nations Commission on Human Rights has recognized the right of every person to have conscientious objections to military service.³⁷ Significantly, the language here talks about everyone and not only about chosen believers.

2. In Article 5 Paragraph 5, it is established that persons who are preaching religious beliefs must have a special ecclesiastical education and official permission from the central departments of that religion of which they are a part.

For some religious organizations, including religious educational organizations, the lack of a religious centre or other governing structures may be the norm, and accordingly it may not always be possible to find the directing organs of a certain religion.

Besides this, the paragraph in question would result in an unfounded intrusion into the workings of a religious organization, whose right it is to “select, appoint and replace” personnel according to its needs and standards, in accordance with Principle 16.4 of the Vienna Concluding Document.

³⁷ Copenhagen Concluding Document, Paragraph 18.1.

3. Article 28 Paragraph 8 establishes the rule that persons not having citizenship of the Kyrgyz Republic do not have the right to be leaders of a religious organization or to lead a religious organization.

This standard, first of all, injects the government into the internal affairs of a religious organization in violation of international obligations. The right to select, appoint, and replace the personnel and leaders of a religion is recognized by various international human rights acts, which recognize that autonomy of religious organizations is vital to religious freedom.

Secondly, this standard does not take into account the fact that some religious organizations have governing centres abroad and, for this reason, may send persons who are not citizens of The Kyrgyz Republic into the country for religious service.

4. The text of the draft law frequently uses definitions and terminology characteristic for certain religions but not for others: for example clergy having holy orders (Art. 3.5).

5. Limitations and problems in the sphere of religious education

A line of articles of the draft law contains limitations in the sphere of religious education.

1. In accordance with Article 5 Paragraph 3, organized teaching to children of religious beliefs is allowed only after receiving the required general education.

Such a provision is in opposition to human rights for religious education which were established both in the Vienna Concluding Document³⁸ as well as in the International Covenant for Economic, Social, and Cultural Rights, in accordance with which “the State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”³⁹

Although later on the draft law says that teaching children religious beliefs can take place in accordance with established norms at an appropriate time, the discrepancies in the various articles could conceivably be construed to forbid parents to teach their children religious beliefs.

³⁸ Vienna Concluding Document Paragraph 16.

³⁹ ICESCR, Article 13, Paragraph 3.

2. In accordance with Article 10 Paragraph 4, educational institutions that have a programme for both academic and religious education must go through a registration process in accordance with existing law and to receive a license from the appropriate governmental departments.

The law does not specify which department can issue the licenses to religious educational institutions. Such a licensing procedure would be understandable in countries where the system for religious education is included in the government's educational system. In a country that has announced the principle of separation of church and state and the separation of the government's educational system from religious education, such a licensing requirement is unacceptable. The state has a legitimate interest in supervising secular education, but normally has no direct interest in supervising religious education.

6. Problems of vagueness in certain principles, internal discrepancies, the location of various jurisprudential norms

The problems of vagueness do not allow one in some situations to clarify the position of the draft law. Furthermore, the problems can be of a substantive as well as a technical nature.

For example, it would be more proper to talk not about the separation of church and state (Article 1), but about the separation of religious organizations from the state.

It is not clear what the draft law means by financial activities (point 3, article 18), and why such activities can only be carried out in the same manner as the manufacturing and agricultural sectors (Article 20, Paragraph 1)-through public funds and noncommercial institutions.

In Article 14, Paragraph 2, the draft law speaks about gross violations of the law without explaining what such gross violations are.

In Article 24, which talks about charitable activities, suddenly appears language about the right to create forms of mass communication.

In Article 4, Paragraph 7, various parts of the proposition are not in agreement with each other.

In Article 6, Paragraph 3, the functions of the local organs of power are not defined.

V. THE KYRGYZ REPUBLIC'S INTERNATIONAL HUMAN RIGHTS COMMITMENTS

The Kyrgyz Republic is a member state of the OSCE, and has, as such, committed itself to honouring the OSCE commitments that were reached by common consensus among all of the participating States.⁴⁰ The Kyrgyz Republic also signed a entire series of international covenants, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Helsinki Final Act of 1975 and also the Charter of Paris of 1990.⁴¹ All of the documents listed above contain broad commitments relating to freedom of conscience and belief as well as many other commitments relating to the area of human rights. Having become a member state of the OSCE and having signed certain agreements, The Kyrgyz Republic has reaffirmed its commitments in the area of human rights.⁴²

The Kyrgyz Republic is also a member of the United Nations and is thus bound by the UN Charter⁴³ and other commitments concerning freedom of conscience and belief set forth in such fundamental declarations of the UN General Assembly as the Universal Declaration of Human Rights (UDHR) and the Un Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.⁴⁴ By virtue of its membership in the OSCE, The Kyrgyz Republic should consider itself bound to the series of CSCE/OSCE declarations on freedom of religion as set forth in the 1983 Madrid Concluding Document, the 1989 Vienna Concluding Document, the 1990 Copenhagen Human Dimension Document, the Charter of Paris and the 1994 Budapest Concluding Document.

The Draft Bill at hand does not contain references to international legal acts and covenants of The Kyrgyz Republic as a member of the UN and the OSCE; however, this does not excuse wilful ignorance of these covenants and responsibilities. Moreover, article 12 of the Constitution of the Kyrgyz Republic states that inter-state treaties ratified by the Kyrgyz Republic and other norms of international law are a component of and have direct force in the legislation of the Kyrgyz Republic. This provision once again reinforces the maintain certain standards in the area of freedom of conscience, religion and belief.

Article 15 of the Constitution of The Kyrgyz Republic states that the basic rights and freedoms of individuals belong to everyone from birth. They are recognized as absolute and inalienable, and are protected by law and the courts from any and all encroachment,

⁴⁰ Kyrgyzstan joined the OSCE on 30 January 1992 (www.osce.org).

⁴¹ See: www.osce.org/general/participating_states/partstat.htm.

⁴² The Helsinki Final Act of 1975, the foundational OSCE commitment, states in part:

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.

Helsinki Final Act, Art. VII, para. 8.

⁴³ Kazakhstan joined the UN on March 2, 1992 (www.un.org/overview/unmember.html).

⁴⁴ UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. For a full text see http://www.unhcr.ch/html/menu3/b/d_intole.htm.

including, as we suppose, from encroachment by the government. This constitutional provision has considerable import as it implies that the government cannot limit or even seriously regulate the religious rights and freedoms because they are inalienable and not granted to individuals by the government.

To the list of such constitutional rights can be added the right to freedom of faith of spiritual and religious freedom, including the freedom of expression and dissemination of thoughts, ideas, and opinions.⁴⁵

A summary of key OSCE Commitments related to freedom of religion and belief is included as Appendix II to this document. This summary is not an exhaustive list of all relevant OSCE commitments, among other things because it does not include a variety of commitments concerning non-discrimination, freedom of expression and freedom of association which overlap with and reinforce commitments dealing with freedom of religion or belief. Appendix 1 contains a copy of the text of the Draft Bill.

A more complete analysis of the implications of freedom of religion and belief for laws dealing with religious associations has been prepared under the auspices of the OSCE/ODIHR in a booklet entitled, “Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities.” This is available on the OSCE/ODIHR web site in both English and Russian.⁴⁶

VI. CONCLUSION

The Draft Bill under consideration contains clear expressions of limiting character and has as its purpose not the creation of conditions for realization of religious rights and freedoms but rather the strengthening of government control over individuals and their religious associations and the limitation of religious rights and freedoms. Further, the necessity of acceptance of such a limiting law cannot be justified by the necessity of defensive action against Islamic or other religious extremist movements, since the government already has sufficient means and resources to deal with such issues. The application of many of the provisions of the Draft Bill could cause serious problems for law abiding religious organizations by way of direct prohibitions, unclear formulations of law, ambiguous procedures and the opportunities of government entities and their authorized representatives to review and decide so many different types of questions.

If the Draft Bill is adopted it will not positively impact the current conditions pertaining to religion. Rather quite the opposite, it will lead to tension, worsen the international image of The Kyrgyz Republic, and signify infraction of its international commitments.

We recommend that more work be committed to the Draft Bill with the goal of bringing it into compliance with international human rights standards and the Constitution of the

⁴⁵ Const. of the Republic of Kyrgyzstan, art. 16(2).

⁴⁶ www.osce.org/odihr/docs/i4_index.htm

Kyrgyz Republic, and also with the goal of improving the composition of the law, removing internal inconsistencies and increasing the clarity of the various provisions.

APPENDIX I

Draft

LAW OF THE KYRGYZ REPUBLIC

On Freedom of Religion and Religious Organizations

The Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic,

predicating on the right of each resident to freedom of conscience and freedom of religion, equality under the law regardless of any relation to religion and beliefs as established in the Constitution of the Kyrgyz Republic,

respecting the role of various religions in the secular state,

wishing to be promotive of mutual understanding, tolerance and respect of freedom of religion,

hereby approves the present Law of the Kyrgyz Republic.

Chapter I. BASIC PROVISIONS

Article 1. Propositions of the Law

1. The present Law shall specify rights of citizens of the Kyrgyz Republic to freedom of religion and regulate legal relations of the state with religious organizations.
2. Freedom to have religious or atheistic beliefs and to take actions serving this purpose shall be subject to only those restrictions which are required for safeguarding national security, national unity, and public order, life, health and morality, as well as rights and freedom of other citizens.

Article 2. Laws that Guarantee Freedom of Religion and Activity of Religious Organizations in the Kyrgyz Republic

1. Freedom of religion and the activity of religious organizations in the Kyrgyz Republic shall be guaranteed by the Constitution of the Kyrgyz Republic, the Civil Code of the Kyrgyz Republic, the present Law and other bills of the Kyrgyz Republic resulting therefrom

2. Nothing in the legislation respecting religion and religious organizations should be interpreted in the sense of denial or derogation of rights of a person and citizen to religion as guaranteed in the Constitution of the Kyrgyz Republic.

Article 3. The right of Citizens of the Kyrgyz Republic to Freedom of Religion

1. Citizens of the Kyrgyz Republic shall be free to exercise any or no religion.
2. Foreign nationals and stateless persons residing in the territory of the Kyrgyz Republic shall enjoy the right to freedom of religion *pari passu* with the citizens of the Kyrgyz Republic and be responsible for violation of the legislation respecting religion and religious organizations as established in the laws of the Kyrgyz Republic.
3. The right of the person and citizen to freedom of religion may be restricted inasmuch as it is required to safeguard the foundations of the constitutional order, morality, health, rights and legal interests of the person and citizen, and to ensure national defence and security.
4. Institution of preferences, restrictions or other forms of discrimination subject to the relation to religion shall be inadmissible.
5. Citizens of the Kyrgyz Republic shall be equal under the law in all of the areas of civil, political, economic, social, and cultural life regardless of their relation to religion and their religious background. Citizens of the Kyrgyz Republic shall be shall not be exempt from soldiering on the ground of their beliefs and religion.

At requests of religious organizations, clergymen in holy orders and with certificates of clerical education may enjoy the right in compliance with the legislation of the Kyrgyz Republic to substitution of an alternative (military training for civilians) service for a military service.

6. Nobody could be subject to compulsion in determination of his relation to religion, the profession or refusal of the profession of religion, attendance or abstention from a church service, other religious rites and ceremonies, activities of religious organizations, as well as towards the religious training. Entanglement in religious organizations, as well as the religious training of citizens under age and without consent of their parents or persons in lieu of parents shall be prohibited.
7. Disturbance of freedom of religion including obstruction coupled with deliberate scandal with citizens in connection with their relation to religion shall be prohibited and prosecuted pursuant to the legislation of the Kyrgyz Republic.
8. Propaganda and dissemination of religious trends of an extremist nature as well as totalitarian, destructive sects capable of causing damage to the foundations of the constitutional order, morality, health and legal interests of the person and citizen, the

defensive capacity of the country and national security of the state, is not permitted in the Kyrgyz Republic.

Article 4. State and Religion

1. Religions, all of the cults shall be separated in the Kyrgyz Republic from the state.
2. The state shall not interfere with the activity of religious organizations registered as established by law provided it does not contradict the legislation of the Kyrgyz Republic, nor should the religious organizations interfere with the activity of the state.
3. The state shall not finance the activity of religious organizations and the activity to propagandise atheism. Institution of any preferences or restriction of one religion with respect to another religion shall not be permitted.
4. The state shall contribute to the establishment of relations of tolerance and mutual respect between followers of various religions, as well as between citizens practicing or not practicing religion.
5. Religious organizations shall not be involved in the activity of political parties and shall not give financial aid to political parties. The establishment and the activity of religious parties, their subsidiaries, sections and branches, the missionary activity of foreign nationals not registered as established by laws in the Kyrgyz Republic shall be prohibited.
6. Religious organizations shall be licensed to participate in public life as well as pari passu with public associations to use the mass media in accordance with the laws of the Kyrgyz Republic.
7. The use of religion for anti-national purposes, for achieving political goals, for propaganda of hostility and violence, for drive and propaganda of membership in religious organizations not registered as established by the present Law, as well as preaching of these beliefs in public institutions and companies, public transport, public places, apartments, private houses of citizens and in the streets, dissemination of literature and other religious items designated to entangle citizens in these organizations shall not be permitted.
8. Public bodies that register religious organizations exert control as established by laws over the financial and economic activity of religious organizations. Foreign financial resources, contributions, property shall be registered as established by laws in accounting documents of religious organizations.
9. Religious organizations shall not be entitled to interfere and canvass during referenda and elections, field their representatives as candidates for government elections.

Article 5. Religion and the public system of education

1. The public system of education in the Kyrgyz Republic shall be separated from religion.
2. Access to various types and levels of public education shall be given to citizens regardless of their relation to religion.
3. Should a study of subjects of secondary (full) education be not envisaged in the training programme of a clerical institution, organized religious training of children shall be permitted only after they get established basic general education. Religious training of children at religious organizations failing to give any such opportunity may be arranged subject to the norms as established in the present Law as off-hour training.
4. On their full age, religious training of children substituting for basic general education shall be permitted by consent of parents or persons, substituting for them, in writing.
5. Persons teaching religious beliefs should have special clerical education and an official permit of their central clerical department as well as a license of relevant agencies.
6. Teaching of a religious doctrine leading to a lack of national unity, manifestation of religious fanaticism and extremism shall not be permitted.

CHAPTER II. RELIGIOUS ORGANIZATIONS

Article 6. Religious organizations

1. A voluntary alliance of citizens of the Kyrgyz Republic uniting on the basis of communion of interests to satisfy spiritual or other nonmaterial needs and registered as established in the present Law shall be recognized as a religious organization. Religious organizations shall be non-commercial organizations.
2. Religious organizations registered as established in the present Law shall enjoy the right to establish their own religious groups and communes.
3. Religious organizations shall inform public authorities for religious issues, local authorities of the establishment of religious groups and communes and register them as established in the present Law.
4. Upon registration with relevant public authorities, religious organizations, groups and communes may engage in their activity.
5. Religious groups and communes that are not legal entities may engage in their activity after record-keeping registration with public authorities for religious issues.

6. Based on the identity of religions, religious canons, religious organizations shall be entitled to establish religious associations subject to registration as established in the present Law.

Article 7. Recognition of religious organizations within the territory of the Kyrgyz Republic

The activity of organizations of religions not exercised earlier in the Kyrgyz Republic may be sanctioned as established by laws, should their official status be that of a religious organization as well as should they act in compliance with their by-laws, which do not contradict the legislative requirements and do not pertain to totalitarian, destructive sects and other religious sects of an extremist nature.

Article 8. By-laws of a religious organization

The religious organization shall act based on the by-laws, which are approved by its founders and should comply with the requirements of the civil legislation of the Kyrgyz Republic.

The by-laws of the religious organization shall comprise the following information:

- the title, location, type of the religious organization, religion;
- the goals, objectives and basic forms of its activity;
- the foundation and termination procedure;
- the structure of the organization, its regulatory bodies, the formation procedure and their terms of reference;
- the sources of mobilizing resources and other assets of the organization;
- the procedure for forming the fund for disposal of assets, financial resources, and the economic activity;
- the procedure for introducing amendments and addenda in the by-laws;
- the procedure for disposal of property in case of termination of its activity;
- other information relating to the particularity of the activity of the given religious organization.

Article 9. Religious regulatory bodies

Religious regulatory bodies shall act on the basis of the by-laws (standing orders) that do not contradict the requirements of the legislation of the Kyrgyz Republic.

The present Law and other legislative acts shall govern relations of the state with religious regulatory bodies.

Article 10. Religious educational institutions

1. In compliance with their by-laws, religious organization shall be entitled to establish religious educational institutions.

2. Religious educational institutions shall be registered as established in the present Law. Religious educational institutions whose programme in addition to clerical education is designed to provide secular education as well shall be bound to get an additional license in a central public educational regulatory agency in compliance with the legislation of the Kyrgyz Republic.

3. Educational institutions whose programme in addition to secular education is designed to provide clerical education as well shall be bound to register in compliance with the present Law and get an additional license in relevant public agencies.

4. Training of foreign of citizens at religious educational institutions of the Kyrgyz Republic shall be provided by agreement with public authorities of the country of residence.

Article 11. Record-keeping Registration

1. Religious organizations and their associations (unions, societies), religious institutions (mosques, churches, temples, prayer houses and others), missions, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, as well as religious educational institutions, shall be subject to compulsory record-keeping registration with public authorities for religious issues.

2. Unregistered activities of religious organizations and their associations, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, religious educational institutions, as well as the functioning of religious institutions shall be prohibited.

3. Record-keeping registration of religious organizations and their associations, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, religious educational institutions, as well as religious institutions shall serve as the basis for registration with the Ministry of Justice of the Kyrgyz Republic to get the status of a legal entity.

4. An application with by-laws, minutes of a founders' meeting (conference, congress, etc.) and a list of initiators to form a religious organization or association shall be submitted for record-keeping registration of religious organizations.

5. The list of initiators should include:

- last and first names, date of birth, address of permanent residence, place of work and position, signatures of not less than 10 adult citizens of the Kyrgyz Republic (in case of formation of a religious organization) or a decision of not less than two religious organizations registered as established in the present Law on a procedure for establishing religious organizations;

- full title and a legal address of a religious organization and its governing agency certified by a seal of the religious organization (in case of formation of a religious association).

6. The following documents should be submitted for placing a mission, branch, and permanent mission of a foreign religious organization:

- an application of a relevant foreign religious organization with by-laws of the foreign religious organization certified by a signature of a chief and a seal of a foreign religious organization;

- basic provisions of by-laws of a mission should correspond to by-laws of a foreign religious organization and not contradict the legislation of the Kyrgyz Republic; it should be indicated in the by-laws that in reorganization and liquidation of the mission its property of an architectural, cultural, historical value should remain in the territory of the Kyrgyz Republic;

- copies of a document on registration of the foreign religious organization in the country of residence;

- copies of the by-laws certified by official agencies in the place of registration of the mission, branch, or permanent mission;

- information on the staff of the mission, branch, or permanent mission (last name, first name, date of birth, address of permanent residence, place of work and temporary residence in the Kyrgyz Republic, education, and previous place of work).

7. The following documents should be submitted for placing religious educational institutions:

- an application of founders with by-laws of a foreign religious organization; in case of formation of an educational institution of an officially registered religious organization or mission, with the by-laws being certified by the above founders;

- it should be indicated in the by-laws that in reorganization and liquidation of the religious organization its property of an architectural, cultural, historical value should remain in the territory of the Kyrgyz Republic;

- minutes of a founders' meeting (should the founders be individuals) or an order on the establishment of the educational institution (should the founders be legal entities);

- full programme of training in case of formation of an educational institution by an officially registered religious organization or mission and the programme should be approved by the above organizations;

- confirmation of the availability of financial resources, conclusions of relevant agencies on the availability of educational premises and their applicability with respect to the educational process;

- information on professional skills of teachers.

8. A Certificate of record-keeping registration shall be issued based on results of record-keeping. Religious organizations and their associations, religious institutions, missions, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, religious educational institutions shall enjoy the right to engage in their activities on the date of issuance of the Certificate of record-keeping registration with public authorities for religious issues.

9. The Certificate of record-keeping registration might be revoked and the religious activity prohibited by the agency that conducted record-keeping registration should the activity of the religious organization and its associations, religious institutions, missions, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic or the religious educational institution not comply with the legislation of the Kyrgyz Republic, pose a threat to national and public security, social stability, inter-ethnic and inter-confessional consensus, health, and morality of the population.

10. Record-keeping registration of religious institutions shall be conducted according to applications of religious organizations they belong to.

11. Foreign citizens arriving in the Kyrgyz Republic to engage in the religious activity shall be subject to compulsory record-keeping registration.

12. For record-keeping registration of a foreign citizen arriving in the Kyrgyz Republic to engage in the religious activity, an application of an organization that invited him shall be submitted including information on his last, first, middle names, his citizenship, a registration number of his passport, and a period and purpose of his stay in the Kyrgyz Republic. Based on registration results, the foreign citizen shall be issued the Certificate of record-keeping registration.

13. The organization that invited the foreign citizen shall bear responsibility for his activity in the territory of the Kyrgyz Republic.

14. Foreign citizens arriving in the Kyrgyz Republic for the purpose of the religious activity shall enjoy the right to conduct their activity on the date of issuance of the Certificate of record-keeping registration and within a period as indicated in the Certificate.

Article 12. Refusal of Record-keeping Registration

1. Religious organizations and their associations, religious institutions, missions, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, religious educational institutions, as well as foreign citizens arriving in the Kyrgyz Republic to engage in the religious activity might be denied a request for record-keeping registration should their activity not comply with the legislation of the Kyrgyz Republic, pose a threat to national security, national unity, social stability, interethnic and inter-confessional consensus, public order, health and morality of the population.

2. Refusal of record-keeping registration of religious organizations and their associations, religious institutions, missions, branches, permanent missions of foreign religious organizations functioning in the territory of the Kyrgyz Republic, religious educational institutions shall be given in writing.

3. Refusal of record-keeping registration might be disputed judicially.

Article 13. Termination of the Activity of Religious Organizations

1. Refusal of registration of the religious organization as a legal entity might be given only in case of non-conformity of its by-laws (provisions) with the requirements of the present Law and other legislative acts of the Kyrgyz Republic.

2. Decision on refusal of registration of the religious organization and the religious society shall be sent to an applicant in writing.

3. Should there be unbiased refusal or protraction of registration of the religious organization a legal action might be taken in court.

Article 14. Termination of the Activity of Religious Organizations

1. The activity of the religious organization as a legal entity might be terminated through its liquidation or reorganization.

2. The religious organization might be liquidated:

- should there be a decision of a general meeting of its members or an agency of the religious organization in commission through by-laws (provisions);

- should there be a conclusion of law on invalidity of registration of the religious organization due to inexpungible contravention of laws in the course of its formation;

- should there be a legal decision with respect to the legally prohibited activity or repeated or gross contravention of laws, or regular involvement in the activity contradicting goals of by-laws as well as in other cases as envisaged in the legislation of the Kyrgyz Republic.

Article 15. Public Agency for Religious Issues and its Terms of Reference

Public authorities for religious issues shall engage in the activity to ensure execution by citizens, religious organizations, public authorities and local self-governments of the present Law and other legislative acts of the Kyrgyz Republic relating to religious organizations.

Article 16. Functions of the Public Authorities for Religious Issues

1. Public authorities for religious issues shall be vested with consultative and expert and information powers and other executive functions as provided by the present Law.

2. Public authorities for religious issues shall be entitled:

- to conduct a state policy with regard to religions and religious organizations;
- to develop and implement projects and programmes aimed at strengthening spiritual and moral principles of the society, preventing conflicts and establishing relations of mutual tolerance between the followers of various religions;
- to co-ordinate efforts of public authorities and religious organizations aimed at maintaining stability in the society and achieving inter-religious tolerance;
- to promote relations of religious organizations with public authorities;
- to render required assistance in solving organizational, social, and other issues,
- to conduct record-keeping registration of religious groups and societies, which are engaged in their activity without formation of a legal entity;
- to co-operate with religious organizations, co-ordinate the activity of ministries, departments, local state administrations and self-governments on issues of implementing measures aimed at meeting the needs and requirements of citizens of the Kyrgyz Republic;

- to draft legislative acts of the Kyrgyz Republic, give official expert conclusions on draft legal normative acts on religious issues;

- to give recommendations, consultations and official expert conclusions should there be a need and within their terms of reference on requests of public and judicial authorities;

- to establish Councils, co-ordinated agencies and other units involving specialists, representatives of religious confessions, the public and scientists;

- to form a bank of data on religious organizations, keep and publish a Register of religious organizations, and publish information materials;

- to issue internal acts, orders, instructions for performing tasks and functions as envisaged in the present Law.

Article 17. Regulations on the Public Authorities for Religious Issues

Public authorities for religious issues shall arrange its activity based on the regulations approved by the Government of the Kyrgyz Republic.

CHAPTER III. PROPERTY STATUS OF RELIGIOUS ORGANIZATIONS

Article 18. Right of Property of Religious Organizations

1. Any movable and immovable property essential for ensuring its activity except for certain types of assets, which in compliance with the law could not be in its ownership, shall be owned by religious organizations.

2. Religious organizations shall enjoy the right of property with respect to assets purchased or formed from internal resources, donated (bequeathed) by citizens, public organizations or passed by the state into the ownership, as well as purchased based on other legal grounds.

3. Religious organizations shall enjoy the right to request voluntary and other contributions and conduct its own activity exclusively through public funds and noncommercial institutions they established.

4. The property right of religious organizations shall be safeguarded by law.

Article 19. Use of Property Owned by the State, Citizens and Organizations

1. Religious organizations registered as established by laws shall enjoy the right to use for their own needs buildings and property owned and passed by the state, public organizations, or citizens to religious organizations as established by laws.

2. The procedure for possessing and using the land by religious organizations shall be regulated by the legislation of the Kyrgyz Republic.

Article 20. Production and Economic Activity of Religious Organizations

Religious organizations shall not enjoy rights of an economic entity. Religious organizations shall be entitled to establish various public noncommercial organizations and conduct their operating and economic activity through these institutions and funds.

Profit from the production and economic activity and other income of enterprises of religious organizations shall be taxable pursuant to the legislation of the Kyrgyz Republic.

Article 21. Disposal of Property of Religious Organizations that Terminated their Activity

1. The issue of property of a religious organization that terminated its activity in the absence of an assignee shall be settled in accordance with its by-laws, while property passed to it in temporary ownership shall be passed to its former owners as established in the legislation of the Kyrgyz Republic.

2. Recourse according to claims of a creditor might not be taken upon property of a cultic nature that belongs to religious organizations.

3. Should the procedure for settling the issue of property after liquidation of the religious organization be not indicated in its by-laws and should there be no assignee, such property shall be passed to the state that is entitled to pass it freely or on other terms to another religious organization.

CHAPTER IV. RIGHTS OF RELIGIOUS ORGANIZATIONS AND CITIZENS RELATING TO FREEDOM OF RELIGION

Article 22. Religious Rites and Ceremonies

1. Religious organizations shall have the right to establish and maintain available places specially designated for the church service, religious meetings, or religious worship (pilgrimage).

2. The church service, other religious rites and ceremonies shall be freely conducted in ceremonial buildings and constructions as well as in the territories belonging thereto, in places of pilgrimage, in institutions and enterprises of religious organizations, in churchyards, as well as in private premises.

3. Religious organizations shall enjoy the right to conduct religious rites in medical and preventive institutions and hospitals, children's houses, nursing homes for old people and invalids, institutions of penal jurisdiction in the form of confinement, on requests of

citizens residing there, in premises specially allocated by their administration for these purposes. Religious rites in detention facilities shall be performed subject to requirements of the procedural criminal law of the Kyrgyz Republic.

4. Taking into account requirements of military regulations, the command authority of military units shall not oppose the involvement of servicemen in a religious service, other religious rites and ceremonies.

5. In other cases, a public church service, other religious rites and ceremonies shall be performed in accordance with the procedure as established for conducting meetings, processions and demonstrations.

Article 23. Religious Literature and Religious Items

1. Citizens and religious organizations shall have the right to purchase and use religious literature for choice as well as other religious items and materials.

2. Religious organizations shall enjoy the exclusive right to publish and disseminate religious literature pursuant to the Law of the Kyrgyz Republic “On Mass Media”.

3. Religious organizations shall be entitled in compliance with the legislation of the Kyrgyz Republic to produce, purchase, export, import, and disseminate religious items, literature, published, audio, and video materials and other religious items, as well as enjoy the right of establishing organizations publishing religious literature.

4. Literature, published, audio, and video materials produced by religious organizations should have patent marking with an official full title of the given religious organization.

5. Literature, published, audio, and video materials of a religious nature should be imported and produced by religious organizations of the republic in co-ordination with the public authorities for religious issues.

Article 24. Charitable Activity of Religious Organizations

1. Religious organizations shall have the right to engage in a charitable activity both directly and by establishing charitable organizations.

2. To achieve goals and objectives under its by-laws, religious organizations shall enjoy the right as established in the legislation of the Kyrgyz Republic to institute and develop its own mass media.

3. The state might render assistance and support of the charitable activity of religious organizations as well as might help in the implementation of cultural and educational programmes and measures of public importance.

CHAPTER V. LABOR RELATIONS IN RELIGIOUS ORGANIZATIONS

Article 25. Labor Rights of Citizens Employed in Religious Organizations

1. In hiring citizens and during validity of a labor contract, as well as in dismissing employees, religious organizations shall be governed by the Labor Code of the Kyrgyz Republic.
2. Citizens working at a religious organization shall not be prohibited to be members of trade unions.
3. Income of citizens including the clergy shall be taxed in accordance with the procedure as established for workers and employees of public enterprises, institutions and organizations. The same procedure shall be envisaged with respect to deductions of contributions to the fund of social insurance and social security.

Article 26. Social Security and Social Insurance of Citizens Working at Religious Organizations

Citizens working at religious organizations including the clergy shall be subject to social security, social insurance, and retirement policy in compliance with the legislation of the Kyrgyz Republic.

Article 27. Responsibility for Contravention of the Legislation on Freedom of Religion and Religious Organizations

Contravention of the legislation of the Kyrgyz Republic on freedom of religion and religious organizations shall entail criminal, administrative, and other responsibility under the legislation of the Kyrgyz Republic.

CHAPTER VI. INTERNATIONAL RELATIONS AND CONTACTS

Article 28. International Relations of Religious Citizens and Religious Organizations

1. In co-ordination with the public authorities for religious issues, religious citizens and religious organizations shall have the right to establish and maintain international relations on a group or individual basis including trips abroad for pilgrimage, participation in meetings and other religious measures.
2. In co-ordination with the public authorities for religious issues, the Ministry of Education, Science, and Culture of the Kyrgyz Republic, and the Ministry of National Security of the Kyrgyz Republic, religious organizations might send citizens abroad for training at clerical educational institutions and receive for these purposes foreign citizens.

3. Religious organizations shall hold international forums in the territory of the Kyrgyz Republic upon authorization of the public authorities for religious issues.
4. Religious organizations shall be entitled to invite foreign citizens for the purposes of the professional activity, including homiletic, religious activities in these organizations in co-ordination with the public authorities for religious issues and the Ministry of National Security of the Kyrgyz Republic.
5. The inviting party shall bear full responsibility for the activity of arriving foreign citizens.
6. Foreign citizens arriving in the Kyrgyz Republic for the purposes of other activities shall be prohibited to engage in the religious activity.
7. Foreign citizens arriving in the Kyrgyz Republic for the purposes of the religious activity shall be bound to have invitations of religious organizations.
8. Persons without citizenship of the Kyrgyz Republic shall not be entitled to act as leaders of religious organizations and head religious associations.

Article 29. Exercise of supervision and control

1. Supervision over execution of the legislation of the Kyrgyz Republic on freedom of religion and religious organizations shall be exercised by the prosecutor's office of the Kyrgyz Republic.
2. The agency that registered a religious organization shall exert control over observance of its by-laws with respect to its goals and procedure of its activity.

Article 30. Final Provisions

1. To effect the present Law on the date of its promulgation.
2. The Government of the Kyrgyz Republic should bring its decisions in compliance with the present Law.
3. By-laws and other constituent instruments of religious organizations established prior to the enforcement of the present Law should be brought in compliance with the present Law. By-laws and other constituent instruments of religious organizations shall be effective until they are brought in compliance with the present Law only in that part which does not contradict the present Law.
4. To acknowledge the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” (Gazette of the Supreme Council of the Republic of Kyrgyzstan, 1991, No 22, page 667) as having become invalid.

President of the Kyrgyz Republic

Appendix II

OSCE COMMITMENTS ON FREEDOM OF THOUGHT, CONSCIENCE, RELIGION, AND BELIEF (22 March 1999)

Helsinki Final Act (1975)

Basket I Section VII Respect for human rights and fundamental freedoms, including the freedom of thought, conscience and religion or belief

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

Basket III Section 1d Travel for Personal or Professional Reasons

[The participating States] confirm that religious faiths, institutions and organizations, practicing within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

Madrid Concluding Document (1983)

Questions Relating to Security in Europe -- Principles

The participating States reaffirm that they will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favorably consider application by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.

Human Contacts Section

They will further implement the relevant provisions of the Final Act, so that religious faiths, institutions, organizations, and their representatives can, in the field of their activity, develop contacts and meetings among themselves and exchange information.

Vienna Concluding Document (1989)

Questions Related to Security in Europe -- Principles

(11) They confirm that they will respect human rights and fundamental freedom, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

(16) In order to ensure the freedom of the individual to profess and practice religion or belief, the participating State will, *inter alia*,

(16.1) --take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) --foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) --grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in the respective countries;

(16.4) --respect the right of these religious communities to

establish and maintain freely accessible places of worship or assembly,

organize themselves according to their own hierarchical and institutional structure,

select, appoint and replace their personnel in accordance with their respective requirements and

standards as well as with any freely accepted arrangement between them and their States,

solicit and receive voluntary financial and other contributions.

- (16.5) --engage in consultation with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;
- (16.6) --respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;
- (16.7) --in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;
- (16.8) --allow the training of religious personnel in appropriate institutions;
- (16.9) --respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;
- (16.10) --allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;
- (16.11) --favorably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia*, through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

Copenhagen Concluding Document (1990)

(9.1) [The participating States reaffirm that] everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

(9.4) [The participating States reaffirm that] everyone will have the right to freedom of thought, conscience, and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

Budapest Summit Declaration (1994)

Chapter VIII.(27) Reaffirming their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non_believers, they expressed their concern about the exploitation of religion for aggressive nationalistic ends.

**Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights
Al.Ujazdowskie 19,
00-557 Warsaw, Poland
Tel.: +48-22-520 06 00,
Fax: +48-22-520 06 05,
<http://www.osce.org/odihr>**