



**Analysis of the February 2002 Draft Law of the Kyrgyz Republic
“On Freedom of Religion and Belief and on Religious Organizations (Congregations)”**

Prepared by the
Advisory Panel of Experts on Freedom of Religion and Belief
Of the OSCE/ODIHR
7 March 2002

Executive Summary

In February, 2002, Kyrgyz officials requested the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion and Belief to review a draft bill entitled “On Freedom of Religion and Belief and on Religious Organizations (Congregations)” for the third reading of the parliament (hereafter “February 2002 draft” or “draft bill”). The Advisory Panel welcomes this opportunity and is pleased to submit this analysis for the consideration of the Jogorku Kenesh (parliament).

This is the second analysis conducted by the Advisory Panel regarding draft Kyrgyz religion bills during the past year. The first analysis examined an earlier draft bill “On Freedom of Religion and Religious Organizations.” The Advisory Panel submitted its first review on 30 March 2001 hereafter “first OSCE review”). The Advisory Panel believes that the February 2002 draft shows numerous improvements over the earlier bill and it appears that a conscientious effort was made to adopt many of the Panel’s recommendations. The Panel would also wish to compliment Kyrgyz officials for conducting roundtables and public discussions on the two draft bills. The issue of freedom of religion and belief is a fundamental human right and it is very appropriate that the legislative process is open for public review.

The first OSCE review submitted by the Advisory Panel was quite lengthy. Rather than repeat many of the provisions that were included in the first review, and rather than reciting the references to law, this analysis will assume that the reader is familiar with the first review – particularly the important background and summary information contained in the first twelve pages of that review. Accordingly, the first OSCE review is incorporated by reference here. The

Advisory Panel also repeats the observation made in the first review that the current Kyrgyz law on religion generally complies with international standards.

There are several provisions of the February 2002 bill that are particularly admirable, including references to international human rights standards, promotion of tolerance, and recognition of rights or religious autonomy. These provisions are among the best in any OSCE participating state. There are, however, a number of provisions that could be improved and there are a few significant problems that should be corrected. The most serious issues include the following:

1. The bill is quite lengthy and includes some inconsistencies that should be eliminated by a careful and technical review of the bill's terminology, definitions, and consistency with other parts of Kyrgyz law.
2. Although impressive improvements have been made with regard to the registration process, some significant problems remain pertaining to the process and to the status of groups that are not registered.
3. Although impressive improvements also have been made with regard to educational issues, some potentially significant infringements on educational freedom remain.
4. There are some potentially significant infringements on freedom of expression.

There are, in addition, other miscellaneous provisions, including the use of the criminal law to enforce the new legislation that ideally should be corrected. In some cases the problems can be easily resolved; in others a change in direction is strongly recommended.

This analysis does not purport to address all issues raised in the February 2002 draft. It does, however, attempt to highlight some of the most important provisions. To the extent that Kyrgyz officials wish for additional comments, and with additional time, the Advisory Panel would welcome the opportunity to supplement this analysis.

I. Positive Features of the February 2002 Bill

The Advisory Panel is pleased to note that there have been significant improvements in the February 2002 bill that take into account international standards. The Advisory Panel is particularly pleased to note that the draft bill includes strong statements regarding both constitutional rights in the Kyrgyz Republic and international human rights norms (articles 1, 2, and 4). There are other commendable provisions, including religious autonomy (article 6.3), the promotion of tolerance (article 6.5), a new section on definitions, and clarification and simplification of the registration process. Article 16 provides for conscientious objection to military service, which is not required under international law but is the emerging view. The draft bill also makes significant progress in focusing on prohibiting illegal *activities* rather than criminalizing certain *beliefs*. With only a few minor exceptions, the draft bill eschews pejorative language. These are noteworthy improvements and the drafters of the bill are to be commended for their serious efforts to bring the bill into conformity with international standards.

II. Potential Problems of the Revised Bill

As is always the case with legislation, and particularly with a draft bill that is newly written, some problems remain.

A. Length, internal consistency, and definitions

Length and draftsmanship. Perhaps the most obvious characteristic of the February 2002 draft is its length. The draft consists of 45 separate articles. Although the length of a law is not a problem *per se*, it appears here that there are many provisions that are unnecessary, redundant, or perhaps even contradictory. It almost reads as if there were two different texts that were forced together. As a technical drafting matter, it would be helpful to shorten the draft and to reduce the possibilities of confusion or inconsistency. Although the February 2002 bill eliminates much of the confusion from the prior bill about registration of religious organizations, it nevertheless includes almost 20 different articles that pertain, directly or indirectly to the different types of religious entity (18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 35, 36, 37, 38, 39, and 42). There are at least six different articles that pertain to religious education (12, 13, 14, 15, 25, and 28). It is hoped that the bill might be further refined and shortened.

All of the provisions of the draft bill should be reviewed technically and carefully to ensure internal consistency and compliance with Kyrgyz law.

Technical recommendation 1: shorten and clarify the draft bill.

“Policy statements” with potentially serious problems. Several provisions in the draft bill appear to be general statements of policy that either have no legal consequence or they are worded in such a way as to be unclear as to whether they are creating rights or, in some important ways, restricting rights, including articles 3, 7, 8, 10, 11, and, perhaps, 9. In order to avoid confusion about the difference between *the law* and *general statements* about religion, it would preferable either to eliminate these articles or place them in a section that states explicitly that the provisions do not have legal consequence. Some definitions in article 3 also appear to be policy statements rather than technical definitions.¹

Technical and substantive recommendation 2: eliminate provisions of the Draft Bill that appear to have no legal consequence or are vague statements of public policy.

Vagueness. There are several provisions of the draft bill that are quite vague and are capable of being interpreted in a way that could significantly undermine the protected rights of freedom of religion and belief. For example, article 9 includes language promoting both “separation” of religion and the state and calling for “cooperation” between religion and the state – which seem to be inconsistent.² Because there are several provisions of the draft law that could be

¹ See technical recommendation 6 below.

² As another example, article 20.3 provides that “The religious organization should annually inform the respective organs of government of continuation of its activity providing the data on as entered in the state register of legal entities.” This provision could be interpreted to be something like a modest recordkeeping requirement, or it could be used by officials to impose burdensome requirements on religious organizations as a way to disband them. To avoid any ambiguity, a sentence should be added stating, “So long as this notice of continuance is received in a

interpreted in more than one way, it would be useful either to provide careful language such as the foregoing in all cases.

Technical and substantive recommendation 3: add a new article 1.4 that provides: “this law shall be interpreted by officials of the Kyrgyz Republic and by its courts so as to provide full protection for the freedom religion and belief as provided in Article 1. No provision of this bill should be interpreted in a technical manner to restrict the exercise of fundamental rights.”

Definitions. The first review recommended including definitions, which are now provided in article 3. It appears that the definitions are in a draft stage and are likely to be further refined.³ Many of the definitions contain significant problems from the perspective of international norms, and it is assumed that they will be further clarified and improved. Accordingly, only a few brief suggestions will be made at this point. The Advisory Panel would be willing to provide additional recommendations as the process of revision continues.

Technical and substantive recommendation 4: revise and clarify definitions in article 3.

Some of the terms in article 3 might be understood as pejorative terms to denigrate some religious beliefs. Rather than using pejorative terms such as “sect” and “cult,” it would be preferable to use neutral terms such as “registered religious organization” and “non-registered religious organization.”

Technical recommendation 5: avoid using any potentially pejorative terms in the definitions.

Some of the definitions appear to be descriptive statements of policy rather than technical definitions. (See article 3 paragraph [7] for example).

Technical recommendation 6: do not include statements of policy in article 3.

Articles 26 and 30.4 identify numerous types of (undefined) religious entities. It is not clear why they need to be identified and whether the list performs a legal function.

Technical recommendation 7: delete references to all types of religious entity that are not specifically defined in the law and for which there is no legal purpose for identifying them.

Use of “bullet points”. Several of the articles (such as 4.2, 6.2, 7, 8, 9, etc) contain “bullet points”. It would be helpful for lawyers and those who must interpret the law to enumerate these points.

Technical recommendation 8: enumerate “bullet points”.

timely manner, with updated information as to addresses, names of officers, and the like, the existence of the entity shall automatically continue.”

³ There appears to be a typographical mistake where “ethnic” appears rather than “ethic.”

B. Religious organizations and registration

The February 2002 draft eliminates much of the confusion that existed in the first draft bill on the issue of registration of religious organizations. The new draft simplifies the process of registration, establishes clearer guidelines, and provides for a process of appeal in the case of a denial of registration. Nevertheless, there are some problems and ambiguities in the February 2002 draft that could be corrected easily in order to bring it into internal consistency with articles 2.1 and 4. The Advisory Panel proposes a number of recommendations of both a technical and substantive nature.

Logically, it would seem that the current Chapter V should precede current chapter IV. Inversion of the order might eliminate some confusion.

Technical recommendation 9: reverse the order of Chapters IV and V.

Chapter V provides for the registration of entities and articles with the state. Article 26.1 provides that the “territorial institution of justice” shall be responsible for registering religious organizations.

Technical recommendation 10: to the extent that there might be any misunderstanding about the name, role, or location of the “territorial institution of justice” identified in article 26.1, it should be clarified.

Article 22 is unclear, as it is difficult to understand the type of permission (or sanction) that the law demands.

Technical and substantive recommendation 11: clarify or delete article 22.

There is some lack of clarity in Chapter V articles 26-31 and it is hoped that the legislators will clarify these provisions. For example, articles 27-30 do not specifically identify the agency responsible for registering the entities named in those articles, though it might be assumed that the “territorial institution of justice,” identified in article 26, is intended to be responsible for all registrations in Chapter V. Some religious organizations are organized hierarchically and it might make greater sense for them simply to register once at the national level, and have the right (if this is thought necessary) to notify authorities at the local levels. Similarly, article 30.2 establishes time limits for some registrations, but it is not clear whether articles 30.2 and 30.3 apply to all registrations in Chapter V.

Technical recommendation 12: create a new article [before current article 26] that establishes common registration procedures and procedures for forms of registration under current articles 26-30. The new article should contain the provisions in current article 26.1 and article 30.2.

There are provisions within articles 26-30 that identify the materials that an applicant for registration must submit. With one exception, the submission requirements are unobjectionable. However, article 26.2 [point 5] vaguely requires information pertaining to the beliefs and practices of the organization. While the state may have a legitimate interest in receiving some such information for identification purposes, it is important that this information does not become the basis for the critical evaluation of the *religious beliefs* of the organization or become

a burdensome requirement that can be used to deny registrations. As was mentioned previously with regard to article 20.3, the state may have a reasonable basis for obtaining limited degrees of information, but this should not be used as grounds for harassing an organization or undermining its members' freedom of religion and belief. Accordingly, some additional clarifying language could be added to article 31 that will permit the state to obtain the basic information needed but will prevent abuse of the registration process.

Substantive recommendation 13: a new section should be added to article 31 that states: “The purpose of the application process is to provide the state with basic information about an organization and is not intended to authorize substantive review of religious beliefs themselves. State officials should remain neutral in their posture toward religions and the law should not be applied in an arbitrary manner or given a burdensome interpretation so as to delay or prevent registration. Officials should assist applicant organizations to comply with registration requirements rather than obstruct registration. The written grounds for refusal of an application, article 30.2, must derive solely from failure to comply with the specified registration requirements.”

There is some ambiguity in article 30.3 as to the consequences if the registering body does *not* complete the registration within 30 days.

Technical and substantive recommendation 14: the draft bill should clarify the consequence if the state registering body does not act on the application after 30 days. Article 30.2 (and other provisions if necessary) should be amended to provide that the registration is automatically provided if the state fails to act within the allotted time and the fact of registration shall be noted in any public register of religious organizations.

Article 29 provides for the registration of “religious objects.” The purpose of this article is unclear and could perhaps create confusion about the necessity of registering objects. Requiring religious organizations to list their property holdings, particularly if this includes movable as well as immovable property, imposes unnecessary burdens on religious organizations, and it is not clear why the state should be entitled to require such detailed information from religious organizations.

Technical and substantive recommendation 15: delete article 29.

Perhaps the most troublesome question in the entire bill is the status of an unregistered group. Under international law, and in accordance with the laws of most states, registration may grant a group the status of “legal personality” (or “juridical personality”). Similarly, other states grant registered groups tax-exempt status and allow individual financial contributions to the organization to be tax deductible. The state has a range of choices of benefits that it legitimately may give to registered groups, provided that the benefits are provided in a non-discriminatory way.

However, regardless of whether an association registers with the state, its members are entitled to exercise all of the rights guaranteed under the international standards of freedom of religion and belief. The state *may not* make the exercise of these fundamental rights contingent on registration. Thus, the state *may not* make a religious or belief group illegal by failing to register it. Of course, if a group is engaged in activities that violate the criminal law (such as murder,

kidnapping, theft, or assault), the group or its members, depending on the evidence, may be prosecuted by the state for the violation of the criminal law. But the state *may not* make the exercise of fundamental rights illegal by failing to register a group. A troublesome example where this is either not recognized or is unclear in the draft bill is article 21.2. Similarly, article 19.2 suggests that it is impermissible to promote a religion that has not been registered in the Kyrgyz Republic, a provision that also conflicts with international norms.

Technical and substantive recommendation 16: the bill should eliminate all provisions that suggest the exercise of the rights of the freedom of religion and belief are contingent upon the state's registering of the organization, including, for example, articles 19.2 and 21.2. In order to avoid any misinterpretation, it would be helpful to include a provision stating that "the full exercise of the rights of religion and belief are not contingent on state recognition of the religious organization."

Technical recommendation 17: although not required by international law, it may be of value for the bill to identify clearly and specifically benefits that will come to a religious group upon recognition by the state, including such possibilities as legal personality, tax-exempt status, tax-deductibility of contributions, military-service exemptions for religious officials, etc.

Article 45.3 provides guidance for existing religious organizations (congregations) to come into conformity with the new law. Because it may reasonably be presumed that existing recognized religious are in conformity with the law, some additional language could be added that will simplify the process and prevent the Kyrgyz Republic from incurring the expense of an entire process or re-registration.

Technical and substantive recommendation 18: add to article 45.3 the following language: "The state presumes that religious groups currently registered shall continued to be registered under this new law, but that they should submit any additional documentation necessary to come into conformity with the law. They shall continue to be registered until such time as they receive timely notification of substantial non-compliance with this law and are given a full opportunity to submit documentation to satisfy the reasonable requirements of this law."

C. Education

The February 2002 draft bill contains several sections pertaining to education, including articles 12, 13, 14, 15, 25, and 28. The new draft bill eliminates almost all of the problems related to education that were identified in the first OSCE review. With two exceptions, the new bill appears to comply with international standards.

The potentially most troublesome provisions related to education are articles 14.5 and 25.3. Article 14.5 provides that: "The persons teaching religious convictions should have special clerical education and an official permit of their central clerical department they are assigned to." Although the state has a legitimate interest in insuring the quality of education generally and establishing appropriate accreditation standards for schools, it is not clear that the state should interfere with the qualifications of those who are providing voluntary or optional education in religious matters. It may be that some religions do not have, for example, "central clerical departments" or otherwise provide for "official permits." To the extent this provision is simply

noting that a religion may self-regulate those who teach for the religion, the provision would seem to be unnecessary.

Technical and substantive recommendation 19: delete article 14.5 and add to article 12.2: “This system shall respect the right of religious organizations to structure religious education in accordance with their own beliefs as to doctrine and with respect for the religious groups selection of qualified personnel.”

Article 25.3 provides that: “The religious educational institutions shall be bound to get permission for the right to engage in religious teaching in the respective organ of government and be registered in compliance with the present Law.” The state certainly has a legitimate interest in insuring that students have an appropriate education in secular matters and the state may have some legitimate interest in overseeing religious educational institutions. However, the state’s interest in controlling the content of “*religious teaching*” in religious educational institutions should be carefully circumscribed. While the state may take reasonable steps to ensure that students are not being incited to commit violence or to engage in genuinely illegal activities, the state should avoid, to the greatest extent possible, interfering in matters that are purely religious or theological. Accordingly, if the parliament believes that article 25.3 should be included in the bill, it is important to include additional language that restricts the scope of the government’s power to control religious educational institutions with regard to their religious teachings.

Substantive recommendation 20: either delete article 25.3 or add new language providing that: “Nevertheless, the state should not prevent or interfere with religious teachings provided that such teachings do not violate the criminal law of the Kyrgyz Republic.”

The title of article 15 appears to be inconsistent with the content of article 15.

Technical recommendation 21: amend the title of article 15 to suggest that it pertains to education about the subject of religion and not education to promote a particular religion.

D. Distribution of literature and missionary activity

One of the most vexing issues for many countries is the presence of missionaries who seek to persuade people to join a new religion. On the one hand missionaries, like all people, have a fundamental *right to express* themselves, to distribute literature, and to attempt to persuade people to adopt their ideas, whether political, philosophical, religious, or economic. In addition, people also have *the right to hear* the message of missionaries or others if they wish. But many societies and cultures find it offensive that some people attempt to convince others to change their religion. It is true that just as people have the right to express their opinions, other people also have the right not to be bothered in their homes or other places if they do not wish to hear the message. The antagonism that some people feel for missionaries may be compounded if the missionaries engage in activities that are disrespectful toward other religions or that appear to induce people to join their religion by offering economic inducements. The state has a difficult role to play in balancing their competing rights. On the one hand it must protect the right of people to express their opinions and for people to hear those opinions; on the other it has the duty to protect those who do not want to listen to another’s message. While the state may protect

individuals who are unwilling to hear a message, it must not prevent free expression. Thus the state may not prohibit a person's general right to expression, but it may protect a person from unwanted personal intrusions.

There are some provisions in articles 19 and 43 of the draft bill that appear unnecessarily to infringe on expression.

Article 19.5 prohibits distribution of religious literature except in certain identified places. This provision is overbroad and runs afoul not only of freedom of religion and belief, but freedom of expression as well. To the extent that the state wishes to protect people who do not want to receive literature, it can do so in a much less restrictive way. For example, the state might enact legislation prohibiting the distribution of literature at homes where the residents post a notice that they do not wish to receive literature. The state also may prohibit abusive attempts to distribute literature such as actions that repeatedly press a person to accept literature or listen to a message after the person has made it clear that he or she does not wish to be bothered.

Substantive recommendation 22: delete article 19.4.

Article 19.6 provides that: "The religious organizations (congregations) shall enjoy the exclusive right to produce items of the religious cult in accordance with the procedure as established in the legislation of the Kyrgyz Republic." The purpose of this provision is not entirely clear. To the extent that it seeks to protect copyrights, there would seem to be better means under copyright law. To the extent that it seeks to control the distribution of books such as the Koran, the Bible, Sutras, or other religious works, or the *versions* of book that may be distributed, it appears to be an impermissible infringement on freedom of expression and freedom of religion and belief.

Substantive recommendation 23: delete article 19.5.

Article 19.4 provides that: "Religious literature, printed, audio- and video materials should be imported and produced by the religious organizations of the republic in coordination with the respective organs of government." This provision is written in such a vague way that it gives the government almost unlimited power to prevent the importation of literature that is protected by internationally human rights norms, regardless of the nature of the literature. This is an impermissible prior restraint.

Technical and substantive recommendation 24: delete or amend article 19.6.

Article 37.4 prohibits using material inducements to convert people to a different religion. While such provisions are permissible under international law, it is important that they not be used as a pretext for preventing genuine humanitarian aid by religious groups or to harass religious groups. Accordingly, some clarifying language should be added.

(See also Substantive recommendation 16 above regarding article 19.2.)

Technical recommendation 25: add to article 37.4 the following language: "Nevertheless, this provision should not be used to obstruct legitimate humanitarian aid by religious entities nor should it be used as a pretext for obstructing such activities as providing meals or fellowship activities."

The purpose of Article 43 is unclear. To the extent that it is restating other Kyrgyz law, it is unnecessary. To the extent it is creating a new law, it is not clear what the purpose is.

Technical recommendation 26: amend or delete article 43.

E. Miscellaneous provisions

Limitations clauses.⁴ The first OSCE review noted that there were several limitations clauses in the original draft and recommended that the number of limitations clauses be reduced to one and that it follow international standards. For the most part, this was accomplished by article 1.3 of the February 2002 bill. However, at least one provision of the new bill is inconsistent with article 1.3: that of article 10.2 [point 5]. It would be helpful to make a slight amendment to the current article 1.3 and delete the inconsistent provision.

Technical and substantive recommendation 27: delete article 10.2 [point 5] and amend 1.3 to read (addition in italics): “Freedom to have religious or atheistic convictions and to take actions serving this purpose shall be subject to only those restrictions, which are *prescribed by law and are necessary*⁵ for safeguarding rights and freedom of other citizens, social security, and for protecting the constitutional order.”

Use of the criminal law. One of the troubling aspects of the February 2002 bill is the provisions that call for its possible enforcement through the criminal law. See, for example, articles 40 and 41. It is extremely rare in OSCE countries to enforce matters such as the civil registration of religious organizations through the criminal law. This conveys the impression that religious issues border on the criminal, rather than that freedom of religion or belief is a fundamental right for all human beings.

Substantive recommendation 28: either remove references to the criminal law in articles 40 and 41 or identify clearly and explicitly the issues that genuinely raises issues of criminal activity (such as committing violence against persons, property, or the state).

Inciting enmity. There are several provisions in the draft bill that prohibit inciting “enmity” on the basis of religion and belief or offending the “feelings” of believers. (See articles 5.2, 6.2 [point 4], 17.5, 19.2.) A state may permissibly prohibit actions or words that in fact provoke violence or persecution. However, a state must be careful not to use such powers to interfere with legitimate speech where people are permitted to disagree about religion and beliefs. Whereas it may be permissible to restrict speech that uses harsh or insulting rhetoric to defame another religion, the law should not be used to suppress claims about religion. So, for example, the law should not be used against a Muslim who says that “there is no god but Allah” (on the grounds that it incites enmity against polytheistic Hindus), nor should it be used to prevent a member of the Orthodox Church from saying that “Jesus Christ was the only son of God

⁴ For a discussion of the term “limitations clause,” see first OSCE review p 7.

⁵ The inserted language is taken from the ICCPR, art. 18.3.

eternally begotten of the Father, born of the Virgin Mary” (even though a Muslim might be offended by such words).

Substantive recommendation 29: to the extent that articles 2, 6.2 [point 4], and 19.2 are preserved, additional qualifying language should be added. For example, article 3 might include the following language: “‘provoking enmity’ shall mean using words or gestures to provoke violence or abusive behavior against others based on their religion or belief. ‘Provoking enmity’ shall not be understood to include using statements regarding religious beliefs that are designed to express beliefs, disbelief, criticism of beliefs, or to engage in discussion about religious matters.”

Religious political parties. Article 6.2 and 6.6 prohibit the formation of political parties based upon religious identity or affiliation. The parliament should understand that these are controversial provisions, but that there is no dispositive international law on this subject. Reasonable people might disagree about whether these provisions unnecessarily infringe on freedom of expression and other rights protected by international standards. The Advisory Panel does not offer a recommendation on this issue, but it respectfully suggests that the Jogorku Kanesh carefully consider whether this provision is necessary or how it may wish to ensure that it does not unduly restrict rights of expression and association.

Military. Article 16.4 provides for the respect of religious beliefs of servicemen and precludes propagation of religious beliefs by those in a position of authority. The draft bill presumably did not intend to interfere with the ability of chaplains or clergy in the military to perform their religious functions. A slight amendment will solve any possible misunderstanding.

Technical and substantive recommendation 30: add a new final sentence to article 16.4 that reads: “Nevertheless this law shall not be understood to prohibit military chaplains from performing their religious functions.”

As was noted above, the draft bill includes provisions supporting the right of conscientious objection to military service in certain circumstances. This is a very positive contribution to the law and is fully in accordance with developing international standards. The draft bill, however, unduly restricts the right to certain religions. A small amendment could improve the bill.

Substantive recommendation 31: amend article 16.5 to read: “Persons whose religion or beliefs does not allow using weapons and military service shall have the right under the Law of the Kyrgyz Republic “On Alternative Service” to replacement of their military service by cadet corps alternative service. Exemption from military service on this grounds shall be provided only to those for whom this belief is sincere.”

Mass media. Article 17 pertains to religion and the mass media. While article 17.1 appears to provide for certain freedoms of religious groups, article 17.2 appears to require the media to propagate state policy. While the media cannot act in such a way as to violate legitimate state law (for example, the media cannot incite violence), the media should not be obligated to “promote” official policy.

Substantive recommendation 32: delete article 17.2.

Religious holidays. Many states identify religious holidays as state holidays in ways similar to article 18.6. It would, however, improve the law to provide that the state and employers should attempt to accommodate religious holidays for other religions as appropriate.

Technical recommendation 33: amend article 18.6 to provide that the state should attempt to accommodate other religious holidays on a basis equal to those already recognized.

Exemption from laws of general applicability. Article 5.3 provides that: “Nobody could on grounds of the religious convictions evade from fulfillment of the statutory duties. The replacement of one responsibility by another on grounds of the convictions shall be admissible only in cases, as established in the legislation of the Kyrgyz Republic.” While it is clear why this provision might be included, the Jogorku Kanesh might choose to consider language that would provide greater flexibility. For example, some countries have health laws that require slaughtering of animals to be conducted in a way consistent with rules of hygiene, but nevertheless provide for an exemption for the ritual slaughter of animals by Muslims and Jews in a manner that conforms to their religious requirements. Providing additional flexibility in the law might serve the public interest of both the state and devout religious believers whose conscience might otherwise preclude them from complying with the law. This clearly is a difficult area, as not all religious practices can be permitted. Nevertheless, if the new bill were to permit reasonable accommodations for religious practices, it would help ensure that the bill will be consistent with international standards that permit only limitations that are strictly necessary to further legitimate and important state interests.

Substantive recommendation 34: the parliament may wish to establish guidelines in important circumstances that would allow for exemptions, in certain circumstances, to laws that otherwise apply to the entire population.

Labour rights. Article 39 provides some guidance relative to the rights of persons working for religious organization. This area of the law is very difficult, as the legislator must be careful to preserve both the state interest in protecting workers but also to protect rights of religious autonomy. It would be prudent to include some language to address this issue.

Technical recommendation 35: add a new section to article 39 that provides: “Religious organizations and other organizations they form for religious functions may give preferences in hiring and in other aspects of their employment to practicing members of their own faith.”

Rights of all persons. There appears to be some ambiguity in article 1.2 regarding whether *all* persons are entitled to protections of religious freedom or whether only *Kyrgyz* citizens are so entitled. The wording should be made unambiguous, in accordance with international standards, so that these rights apply to *all persons*.

Technical and substantive recommendation 36: clarify the language in article 1.2 to ensure that all persons are guaranteed the rights identified in article 1. ⁶

Conclusion

The Advisory Panel again extends its appreciation to Kyrgyz officials for the opportunity to provide this analysis and notes with satisfaction the significant improvements to the February 2002 draft bill. It should be remembered that this analysis identifies some of the most important points and does not claim to be a complete analysis of the draft bill. The Advisory Panel is willing to provide additional comments in the future if that would be of assistance.

⁶ If the word "and" is removed from the Russian version and therefore the also the translation into English it makes more sense, as it protects the human rights of all citizens of Kyrgyzstan. Art. 5.4. later suggests that the same rules apply to foreigners and stateless persons.