

“Human Rights are Believer’s Rights”

**Freedom of Religion:  
On the Implementation of the Rights of Believers in  
Kyrgyzstan**

Bishkek 2015

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### **Freedom of Religion: On the Implementation of the Rights of Believers in Kyrgyzstan /**

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The publication includes the alternative reports for the public organizations for 2014 and 2015 on fulfilling obligations of the Kyrgyz Republic under UN international treaties and conclusion observations. The publication is addressed to religious and human rights organizations, as well as a wide range of readers interested in the situation of human rights and the freedom of religion.

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## Foreword

Public organizations are entitled to submit its alternative reports for consideration of the UN bodies in addition to the State Parties reports. In 2014 – 2015 the public organizations submitted the alternative reports on the following topics: racial discrimination, civil and political rights, rights of the child, economic, social and cultural rights. In January 2015 the Kyrgyz Republic report was examined under Universal Periodic Review (UPR) procedure. As a result the UN bodies adopt observations aimed to ensure better implementation of human rights obligations. This publication includes the reports on the freedom of religion and concluding observations.

2013 to 2015 included the period of submissions of the state party reports of the Kyrgyz Republic under number of the core human rights treaties: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2013)<sup>1</sup>, International Convention on the Elimination of All Forms of Racial Discrimination (2013)<sup>2</sup>, International Covenant on Civil and Political Rights (2014)<sup>3</sup>, Convention on the Rights of the Child (2014)<sup>4</sup>, Convention on Elimination of All Forms of Discrimination against Women (2014)<sup>5</sup>. There was the 2<sup>nd</sup> cycle of the report under the Universal Periodic Review (UPR). The examination of the report on implementation of the UN Covenant on Economic, Social and Cultural Rights was arranged for June 2015. The periods of submissions depends on a treaty and varies between two and five years.

The concluding observations play important role to assist the state parties in better implementation of the international human rights treaties. During the further examination the UN bodies consider the progress of implementation of the previous recommendations.

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<sup>1</sup> See text at <http://www.un.org/documents/ga/res/39/a39r046.htm>.

<sup>2</sup> See text at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>3</sup> See text at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>4</sup> See text at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>5</sup> See text at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

# Alternative Report from the Open Viewpoint Public Foundation on the Kyrgyz Republic's Implementation of Provisions of the International Covenant on Civil and Political Rights Related to Freedom of Thought, Conscience, and Religion

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## Summary

This report has been prepared by the **Open Viewpoint Public Foundation**. Individuals involved in preparation of the report include: **Dmitry Kabak**, president of the *Open Viewpoint* and member of the *OSCE ODIHR Advisory Council on Freedom of Religion or Belief*; **Giulshaiyr Abdirasulova** of the *Open Viewpoint*, and **Galina Kolodzinskaia**, executive director of the *Interfaith Council Public Association*. Preparation of this report was made possible by support of the *Interfaith Council* and the *Norwegian Helsinki Committee*. Materials used in the report were drawn from Open Viewpoint documents collected in studies conducted in 2009<sup>6</sup>, 2011<sup>7</sup> and 2013<sup>8</sup> with the support of the *OSCE Center in Bishkek*. The *Kylym Shamy Public Foundation* provided information for this report.

This report covers issues of the provision of civil and political rights according to religious or professed beliefs. The source of violations of KR law are drawn from “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic” passed in 2008, which prevents full the exercise of freedom of religion and freedoms for religious organizations in the Kyrgyz republic. This law has not been brought into compliance with the constitution of the Kyrgyz Republic which was passed by referendum on 27 June, 2010.

Key Findings: the expression of freedom of thought, conscience, and religion has become complicated for both individuals and groups in the Kyrgyz Republic. The private worship or personal choice of religion is characterized negatively. Basic problems in the exercise of religious rights and freedoms relate to the procedures of registration with state authorities, the lack of a principle of equality, and cases of discrimination on religious grounds. From 2006 to the present a number of legal initiatives have worsened the guarantees of freedom of religion and the activities of religious organizations.

The current Kyrgyz Republic law “On Freedom of Religion and Religious Organizations in the KR” prevents the full realization of freedom of religion and the activities of religious organizations in the KR and should be brought into accordance with the constitution of the KR and the KR’s international obligations as laid out in the International Covenant on Civil and Political Rights (ICCPR). These obligations are also associated to the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, social, and Cultural Rights (ICESCR).

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<sup>6</sup> Victims of Torture in Kyrgyzstan: Monitoring materials of human rights violations from alleged involvement in extremism, 2010, [http://prava.kloop.kg/files/2010/11/2010\\_03\\_20-Victims-of-turture-human-rights-monitoring-on-accusations-of-extremism\\_ru.pdf](http://prava.kloop.kg/files/2010/11/2010_03_20-Victims-of-turture-human-rights-monitoring-on-accusations-of-extremism_ru.pdf) The English version of the “Monitoring of compliance with human rights related to the events in Nookat on October 1, 2008” is available in [archive](#). The project was supported by the Open Society Foundations Human Rights and Governance Grants Program.

<sup>7</sup> See Freedom of Religion and Belief in the Kyrgyz Republic: Overview of the Legislation and Practice, Open Viewpoint Public Foundation, 2011, <http://www.osce.org/bishkek/93786>.

<sup>8</sup> See Freedom of Religion or Belief in the Kyrgyz Republic: an overview, Open Viewpoint Public Foundation, 2013, <http://www.osce.org/odihr/105764>.

## 1. Freedom of Thought, Conscience and Religion (Article 18)

1.1. This report examines guarantees provided by article 18 of the ICCPR which in part recognizes the right to **freedom of thought, conscience and religion** for every person (as well as the **principle of non-discrimination**, regardless of different circumstances, including **age, nationality, membership in a group** –religious organizations, professing certain beliefs), **the freedom to have or adopt a religion or belief** (limiting free choice, restricting missionary activities, and prohibiting proselytizing), the failure to guarantee the freedom practice **alone** or **with others**, (both without registration or the formation of an official legal entity), in **a public or private capacity** (literature, performing *religious rites*, and determination of specific locations) in **worship** (church services), completing **religious** (matrimony, baptism) and **ritual ceremonies** (circumcision, funerals) and **instruction** (religious education and spiritual upbringing). The contents of the obligations of the ICCPR are considered in light of the obligations listed in several articles in the Covenant.

## 2. Overview of Religious Organizations in the Kyrgyz Republic

2.1. Almost immediately after the Kyrgyz Republic declared independence in 1991, the country passed the first law “On Freedom of Religion and Religious Organizations”, as a result of which religious organizations were able to openly declare their existence, obtain legal status, and legalize their activities. Since 1993, the majority of religious organizations have been legally registered with the Ministry of Justice. On 4 March, 1996, order № 45 by the President of the KR “On the Structure and Composition of the Government of the Kyrgyz Republic” created the State Commission on Religious Affairs<sup>9</sup>, which took on responsibility for the registration of religious organizations and associations. In 1997, all previously registered organizations were re-registered with the state authority of religious affairs. Thus, registration of religious organizations occurs in two stages: registration with the SCRA, which then becomes a condition for registration as a legal entity with judicial bodies of the Kyrgyz Republic.

2.2. The question of reviewing legislation relating to religion was raised in 2002 when a bill was proposed to significantly tighten the procedure of registering with the state body for religious affairs of the KR. However, the bill was not passed. In 2007 the chairman of the State Agency for Religious Affairs, Kanybek Osmonaliev (currently a deputy in Jogorku Kenesh Parliament), again proposed a tightening of the law “On Freedom of Religion and Religious Organizations in the KR”. In 2008, a new edition of this law was passed, many provisions of which contradict the KR’s international obligations, creating direct and indirect obstacles to the establishment and activity of religious organizations as well as the practice of freedom of religion for every person on the territory of the Kyrgyz republic. Despite a negative assessment of the bill by international and local experts (see the Opinion of the Venice commission and the OSCE ODIHR Advisory Council in particular)<sup>10</sup> as well as numerous complaints by religious organizations, the bill was signed into law by the president of the KR on 31 December 2008.

2.3. Prior to the adoption of the law “On Freedom of Religion and Religious organizations in the KR” in 2008, the total number of registered religious organizations was 2252 (Note: in fact, registration data include both the legal entities and buildings belonging to religious communities). Of these, 1870 were Islamic, 46 were Russian Orthodox parishes, 316 were Protestant communities, 4 were Catholic churches, 1 was a Jewish community, 12 registered Baha’i communities, and 2 associated with new religious movements (NRM). Since the law was passed in 2008 up until 2011, only 135 Sunni/Hanafi mosques and 3 Russian Orthodox parishes

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<sup>9</sup> Throughout its history as a government body, the Commission on Religious Affairs has changed its name several times (commission/agency) as well as the department it is ultimately responsible to (the president or to the government). Currently it is under the president of the KR.

<sup>10</sup> See the Joint Opinion on Freedom of Conscience and Religious Organizations in Kyrgyz Republic by The Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief Adopted by the Venice Commission at its 76th Plenary Session, (Venice, 17-18 October 2008) CDL-AD(2008)032, <http://legislationline.org/documents/id/15360>.

have been able to register. According to information announced at parliamentary hearings on 5 March 2013, the total number of religious organizations and sites of religious importance throughout the country is 2393. However, organizations and sites remain that have been unable to complete registration or have not been able to begin registration at all.

2.4. Corruption and the bureaucratization of legal norms seriously interfere with the observance of freedom of religion and the activities of religious organizations in the Kyrgyz Republic. Law-abiding religious organizations created and acting in accordance with the law face difficulties from authorities' on-going "fight against extremism and terrorism."

### **3. Measures to Ensure Compliance with the ICCPR and Consequences related with Membership or Participation by the KR in Other Regional Treaties or Organizations**

3.1. Due to worldwide campaigns to fight terrorism and extremism and the Kyrgyz Republic's participation in them, religious organizations and religious individuals are suffering though they are not pursuing illegal objectives while in the territory of that country State party.

3.2. Making decisions in the SCO and CSTO framework implies acceptance of regulations and programs within the Kyrgyz Republic directed against terrorism and extremism, as well as special operations including those connected to physical harm of individuals as part of the fight against extremism and terrorism.

3.3. Decisions by regional interstate organizations such as the SCO and CSTO in recognizing extremist organizations automatically ban the activities of those organizations. For example, based on the SCO and CSTO list of terrorist organizations, on 24 October 2012 number organizations were all recognized as terrorist organizations within the Kyrgyz Republic<sup>11</sup>. It is necessary to highlight the contradicting perception regarding the *Tablighi Jamaat*.

### **4. Chronology of Legislative Initiatives Related to Freedom of Religion in the KR**

4.1. As previously noted, the first law "On Freedom of Religion and Religious Organizations" was adopted in 1991 and provided freedom for religious organizations. On 14 November 1996 a presidential order "On Measures for Realizing Rights of Citizens of the Kyrgyz Republic for Freedom of Conscience and Religion" was passed in which the state guaranteed opportunities for religious organizations.

4.2. In 2002, attempts were made to strengthen legislation regulation of the religious sphere but these measures found no support and were rejected. Despite the presence of 32 different religious movements in the Kyrgyz Republic, on 6 May 2006 the State Policy Concept was adopted by government decree which emphasized the role of two religions - *Hanafi Mazkhab Islam* and *Russian Orthodox Church (ROC)*. In addition, the concept was approved by the Spiritual Administration of Muslims of Kyrgyzstan (SAMK) and the Russian Orthodox Church along with law enforcement agencies. Chapter 4 of the State Policy Concept emphasizes the special importance and role of the above-mentioned organizations in state-religious relations, which does not correspond with the actual history of the registration of all religious organizations in the Kyrgyz republic in accordance with the laws enacted since independence. All of the above constitutes a violation of the obligations of the Kyrgyz Republic under the International Covenant on Civil and Political Rights (ICCPR), specifically part 1 of article 2, and article 26.

4.3. From 2007-2008, The State Agency for Religious Affairs, headed by *Kanybek Osmonaliev*, initiated a bill "On Freedom of Religion and Religious Organizations in the Kyrgyz Republic" which imposed several

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<sup>11</sup> Information from the Kylum Shamy Public Fund and The International Federation for Human Rights (FIDH), "Shanghai Organization Cooperation: Fertile Ground For Human Rights Violations" 2012, <http://www.fidh.org/IMG/pdf/scoantiterro583ru.pdf>, and the Informational Bulletin of the CSTO 18.12.2013, [http://www.odkb-csto.org/obzor-pressy/detail.php?ELEMENT\\_ID=3140](http://www.odkb-csto.org/obzor-pressy/detail.php?ELEMENT_ID=3140).

restrictions: restrictions on missionary activity and proselytism; the creation of obstructions for the registration of religious organizations, the establishment of a requirement for 200 founding members in each new religious organization, a prohibition of religious activity without proper registration; despite a unitary state structure, imposed restrictions on religious organizations by administrative-territorial units; a limit to the period of time for which missionaries would be allowed on KR territory—not more than 3 years; prohibition of the involvement of children in religious organizations without specifying the special status of parents and legal representatives in relation to the child; and prohibition of the distribution of religious literature outside of designated areas (stores and buildings of religious communities), which further jeopardizes the use of religious literature in private. Despite numerous comments about this law from international experts and religious organizations, on 31 December 2008 KR President *Kurmanbek Bakiev* signed the bill into law.

4.4. The law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic” directly or indirectly violates the following: The right to recognition everywhere as a person before the law (art. 16 of the ICCPR), the right to freedom of thought, conscience, and religion (part 1 of art. 18); the right to hold opinions without interference and the right to freedom of expression (parts 1 and 2, art.19); the principle of equality before the law and entitlement to equal protection before the law; the prohibition of discrimination by law (art. 26); the right of religious minorities to enjoy all rights and freedoms along with other members of the community (art. 27 ICCPR); and the recognition of the rights and freedoms of all people including foreigners and stateless persons.

4.5. The constitution of the Kyrgyz Republic, passed by referendum on 27 June 2010, presented a full list of human rights and freedoms and defined them, guaranteeing rights to all individuals located within the jurisdiction of the Kyrgyz Republic. Paragraph 3 of article 6 states that “...provisions of international agreements on human rights are directly applicable and take precedence over provisions of other international agreements” as well as stating that “...norms of international law are a fundamental part of the legal system of the Kyrgyz Republic.”

4.6. During discussion of the draft of the 2010 KR constitution at the constitutional conference that year, attempts were made to remove the section of the 2010 KR constitution that defined the country as a “secular state” but this initiative was not supported, although the secularist margin was very little.

4.7. In an effort to bring legislation in accordance with the constitution from 30 August 2010, with the support of the UN Development Programme and the Regional Directorate of the OHCHR in the Kyrgyz Republic and the participation of experts from the KR Ministry of Justice Working Group, local experts, and members of the Advisory Council of the OSCE ODIHR on International Religious Freedom, a law was drafted entitled “On Freedom of Religion and Religious Organizations.” In May of 2011 the bill was referred to the KR Ministry of Justice, which in turn referred it to the government, however the bill was not delivered to the Jogorku Kenesh (Parliament) for review. Currently in effect is that law which was passed in 2008 which is not in accordance with the 2010 KR Constitution and international agreements on human rights which have been ratified by the Kyrgyz Republic.

4.8. In March of 2012, Jogorku Kenesh deputy *Tursunbai Bakir Uulu* proposed amendments to the law “On Freedom of Religion and Religious Organizations in the KR” dating from 2008. These amendments proposed to invest in the SCRA the authority to conduct investigations into religious literature for the presence of extremist, fundamentalist, or separatist ideas from religious organizations—the SAMK and the ROC. In other words, even in the presence of religious diversity there was an attempt to shift powers of the state body to the two so-called “traditional” religions. However, SCRA director *Abdilatif Zhumabaev* and a variety of religious organizations opposed the initiative, and on May 31 2012 returned amendments to be re-worked by the consensus panel. This panel made adjustments, according to which authority for conducting investigations lies with the SCRA, State Committee for National Security, and Internal Affairs Ministry. Amendments were



approved by the president on 7 December 2012, though no religious organizations were invited to discuss the changes.

4.9. In the autumn of 2012, the SCRA proposed amendments to the 2008 KR law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic” which significantly expanded the authority of the state body in religious affairs of the KR and especially emphasized the role of the SAMK and ROC in state-religion relations that violated both the neutrality of the state as well as the principle of separation of state and religion<sup>12</sup>. The proposed SCRA amendments were rejected by the parliament of the Kyrgyz Republic.

4.10. In the spring of 2013, parliamentary deputy *Kanybek Osmanaliev* and parliament speaker *Asilbek Zheenbekov* proposed a bill entitled “On Religious Education and Religious Educational Institutions in the KR”. This bill contains provisions under which the state will set standards for religious education for religious organizations. This is an interference in the faith and internal affairs of religious communities, which violates the secular character of the state. An attempt to pass the bill was first made by *Kanybek Osmanaliev* in 2009 when he was chairman of the State Agency for Religious Affairs. The bill underwent examination by the OSCE ODIHR and was evaluated as not in accordance with the Kyrgyz Republic’s human rights obligations. Currently the bill is under review in the Jogorku Kenesh and in February 2014 will have its second reading.

4.11. From 2012-2013 the KR Ministry of Justice, and then the Government of the KR twice attempted to amend the Code on Administrative Offences (CoAO). These amendments included provisions imposing administrative sanctions in the form of heavy fines for conducting missionary activity, independent choice of religious affiliation (proselytism), carrying out religious activities without registration with the SCRA, and involving children in religious communities. Thus, the amendments actually banned a number of activities related to the realization of religious freedom and established responsibility (articles 395, 395-1, 395-2 of the Administrative Code of the Kyrgyz Republic<sup>13</sup>). Despite the fact that these amendments were rejected twice before, the danger exists that they may be initiated at any time since their development and promotion comes from the State Committee on National Security, which has no right to legislative initiatives.

4.12. On 20 December 2012, the SCRA director signed order №116 “On the Form and Terms of Religious Organizations Reporting on Their Activities”. This order was only published on 19 March 2013, despite the fact that according to provisions of the order the deadline for religious organizations to report fell on 1 March. According to the requirements of order №116, each organization must report on all of its activities carried out within the territory of the Kyrgyz Republic, the appointment of officers including their passport information, on the agenda of each meeting of each religious community, on foreign trips conducted by religious leaders, on financial transactions including donations, on visiting foreign missionaries, and on publication or import of religious literature and materials.<sup>14</sup>

4.13. Religious leaders of Islamic, Orthodox, Protestant, Jewish, and Buddhist faiths sent a joint appeal to the director of the SCRA to request a cancellation of this order, as a number of provisions contained therein constitute interference in the internal affairs of religious organizations. However, order №116 was not repealed and all religious organizations that did not report appropriately received their first warning from the SCRA. According to article 27 of the law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic” from 2008, after the second warning the activities of a religious organization may be suspended by the courts. Order №116 expands the powers of the SCRA which are provided by law in terms of religious organizations reporting to the state and creates a risk of elimination of a number of religious organizations following 1 March 2014.

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<sup>12</sup> The draft law was earlier available at <http://www.gov.kg/?p=11937>, there is another document presented at the moment.

<sup>13</sup> The bill was approved by order № 527 of the Government of the Kyrgyz Republic. In the document the Government indicates that the developer of the bill was the Ministry of Justice of the KR.

<sup>14</sup> See individual communications to the Special Rapporteur on the Freedom of Religion or Belief, sent in 2013 from the Interfaith Council and Open Viewpoint Public Foundation.

## 5. The Principle of Non-discrimination (article 2)

5.1. The discriminatory approach by authorities can be found in the provisions of the 2008 law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic”. For example, article 3 of the law uses the term “sect”, which is not legal and is negatively perceived in society. Previously shown on the official website of the SCRA was a list of so-called “totalitarian and destructive organizations” which included: The Unification Church of Sun Myung Moon, The International Society for Krishna Consciousness, The Church of Jesus Christ of Latter-Day Saints (Mormons), Sri Chinmoy Dolnara Hannong, Gong Aurobindo Ghosh, the White Brotherhood, and Satanists.<sup>15</sup> These actions by the SCRA violated the presumption of innocence, and the assignment of organizations as totalitarian and destructive does not ensure due investigation and judgment.

5.2. Another example of violation of the neutrality of and equal treatment by the state is support by the SCRA and the KR Ministry of Education and Science of the textbook “Non-Traditional Religions and Their Possible Perspectives of Development in the Kyrgyz Republic”<sup>16</sup> (authors: *Nina Galkina* and *Vladimir Shkolnyi*), issued by the Unity public fund to support entrepreneurship of small and medium business which is headed by *Oleg Sernetskii*. The text is replete with discrimination and value judgments when addressing certain religious communities, calling them “sects” and describing them as “totalitarian and destructive”. These evaluations are not based off of judicial decisions which would prove illegal acts or crimes had been committed. These labels are assigned to religious minorities and supported by the authorities responsible for ensuring that the provisions of the constitution of the KR and the rights of believers are upheld.

5.3. The terms “traditional” and “non-traditional” religions are widely used by government authorities and referred to in the text of official documents. For example, in chapters 4 and 5 of the Concept for State Policy in the Religious Sphere the state recognizes “traditional” religious only as Hanafi Islam and Orthodox Christianity; all others are considered “non-traditional” and partially limited in their rights. For example, conducting missionary activities in prison facilities is only allowed for members of “traditional” faiths. In addition, missionary activities of different faiths are evaluated differently by state authorities. “Da’waat”, conducted by muslim missionaries, is regarded as a positive phenomenon, whereas the conduct of missionary activity by any other religious organization in the Kyrgyz Republic is regarded negatively and will face obstacles at the local level of government.

5.4. A striking example of violation of the neutrality of and equal treatment by the state are rulings № 8 and №9 dating from 2 April 2013 by the Bishkek City Council, which were passed in accordance with the law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic”. In that case, the council agreed to a list of Russian Orthodox Church civic leaders but rejected lists of Protestant, Catholic, and Jewish religious group leaders, which then prevented them from receiving the proper document required for re-registration.

5.5. One of the provisions of SCRA order №116 “On the Form and Terms of Religious Organizations Reporting on Their Activities” requires religious organizations to provide information on the religious leaders of their communities. In this way, the state does not allow for diversity in different forms of religious organizations such as the *Baha’i faith*, which, according to their belief, has no religious leader and therefore cannot fulfill the requirements of the order, and may eventually serve as a pretext for the group’s elimination.

5.6. Some politicians such as parliamentary deputy *Tursunbai Bakir Uulu*, have on behalf of their parties publicly used discriminatory rhetoric against so-called “non-traditional” religious organizations and openly called for religious intolerance and the closure of small religious communities, labeling them as “sects”.<sup>17</sup> In this type of situation, authorities fail to take any measures in response to that type of statement, although the clear presence of hate speech requires an assessment of the presence of religious intolerance, punishment for which is provided under article 299 of the KR Criminal Code.

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<sup>15</sup> From the response of the State Commission for Religious Affairs to Open Viewpoint №02-16/604 as of 2 August 2011.

<sup>16</sup>The second was published in 2013, the first published in 2006. It is possible that this edition was the source of the list presenting so called “totalitarian and destructive sects” which is used by the State Commission on Religious Affairs.

<sup>17</sup> See meeting of T. Bakir Uulu with journalists on 13 February 2012, <http://www.knews.kg/society/10848>.

5.7. After the change in power of April 2010, an organized crime group (OCG) began to operate in the Chui Oblast which robbed protestant and orthodox parishes. In one series of robberies a security guard from one protestant parish was killed, who was also a member of a group of Christian Seventh Day Adventists. Despite numerous appeals by Christian organizations over several months, authorities failed to take effective measures to find or apprehend the perpetrators. Following the publication of articles about the robberies in the Bishkek Newspaper “Vechirniy Bishkek”, which has a national following, the case was brought under the control of the President of the Kyrgyz Republic and the criminals were caught within 3 days. As it turned out, the criminal group had used the stolen funds to purchase a Lexus automobile with a value of \$40,000. Despite the fact that police would have been able to recover all stolen funds to the robbed religious organizations, only Orthodox, and not Protestant parishes were reimbursed.

5.8. The lack of effective measures to prevent discrimination in the Kyrgyz Republic was also noted in the alternative report to the Committee on the Elimination of All Forms of Racial Discrimination, as well as in the concluding observations of the Committee in 2013 from 1 March 2013 (Code CERD/C/KGZ/CO/5-7). The constitution of the Kyrgyz Republic, adopted by referendum on 27 June, 2010, declares the prohibition of discrimination on any grounds, however these provisions are not provided for in the corresponding provisions of the law.

## **6. Taking Necessary Protective Measures (article 2)**

6.1. Vested in the state and its agencies is the obligation to protect from violence and investigate wrongdoing, as well as provide for the possibility of peaceful coexistence between different religious organizations. On 11 April 2012 in the village of Akkiya of the Naryn oblast, an event was scheduled to present students with gifts from the “Zhakshylyk” charity fund. The school director invited representatives of the charity to conduct this event in the school. The local imam, upon finding out about the charity event, brought Islamic missionaries (Dawatists) native from other areas (Osh Oblast) and these people then attacked representatives of the charity. The imam publicly called on the school director to accept Islam and threatened charity volunteers M. Kasymalieva and N. Sydykova with violence if they would not renounce Christianity. In the presence of children, a crowd destroyed the car which had brought the gifts and the Dawatists threw stones at the car and volunteers, preventing the event to take place. Law enforcement authorities and the prosecutor’s office did not conduct an effective investigation and guilty parties suffered only minor punishment; ultimately victims who suffered damage to themselves or property have not been compensated.<sup>18</sup>

6.2. Forced reburial in the village of Tyup, Issyk Kul Oblast. In April of 2011, residents of the Bostery Aiyl Okmotu (local municipality), together with a local imam, began pressuring and threatening to exhume and remove the body of a follower of Yisa Mashayak (Kyrgyz Protestants). As a result, the body was reburied, although the person had lived within the Bostery municipality. The head of the Bostery Aiyl Okmotu did not take any measures to designate space in the cemetery for the burial of adherents to other faiths. Petitions by Yisa Mashayak followers for land for burial in the Issyk Kul Oblast have not been answered.<sup>19</sup>

6.3. Forced reburial in the village of Kulanak, Naryn Oblast. On 18 May, 2008 in the village of Kulanak in the Naryn oblast, the 14 year old son of Alymbek Isakov, a member of the church of Evangelical Christian-Baptists, died. On 19 May 2008, during burial in an area specially designated by the village administration, representatives of the local mosque, together with the imam shouted threats forbidding the burial. Alymbek Isakov and other members of the Church of Evangelical Christian-Baptists addressed the authorities to resolve the situation. On 21 May, 2007, the head of the district administration Ishenbek Medetov, prosecutor Kanibek

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<sup>18</sup> Information from an interview with Zholdoshkul Abdrazakov and Sagynbek Ryskeldiev of the Church of Evangelical Christians, city of Naryn.

<sup>19</sup> Information from written statement of Kh.B. Baimbetov, response of the prosecutor of the Issyk-Atinsk Raion, Defense and Law Enforcement Department of the oblast administration.

Kalbaev, and as police chief Makhabat Zhumaev arrived in the village and stated that before the body could be buried at Akkyya pass, Alymbek Isakov must renounce Christianity and accept Islam. On the night of 21 May 2008, a police patrol armed with batons drove Alymbek Isakov's family from their home, along with other believers, broke down the door of the room where the body of the deceased lay, and took it away to an unknown location. On 22 May 2013, Isakov and other believers located the body of his deceased son buried in a hole 70 centimeters deep at Akkyya pass in the form it was taken that night by the police. Alymbek Isakov was then forced to re-dig a grave for his son's burial according to tradition.<sup>20</sup>

6.4. Coercion of a Resident of Uzgen by a Group of Individuals to Pray Under Threat of Violence. On 3 June, 2013, a group of people beat 44 year old Zhanybek Tashtankulov, a resident of the Myrza Aki village in the Uzgen raion of the Osh Oblast. The reason for the beating were Tashtankulov's atheist views. The beating took place in the street outside his house and continued into the mosque located in front of his home. Tashtankulov's mother Meerbuu Tashtankulova and sister Aisuluu Tashtankulova tried to intervene and were also beaten. Mosque-goers did not like that Zhanybek did not attend mosque and did not perform daily prayers. The attackers had tried repeatedly to persuade Tashtankulov, becoming increasingly aggressive. They increasingly threatened him to "Either do the daily prayers, or sell your house and don't live here with your family." The day following the incident, 4 June 2013, Zh. Tashtankulov and his mother underwent medical treatment for several days. On 7 August 2014, attorney Asel Akmatbekova announced that the assistant to the prosecutor of the Uzgen Raion Nurlan Abdyrazakov had threatened her, and that the prosecutor's office was not interested in charging all of the attackers in the beating.<sup>21</sup>

## **7. Torture and Mistreatment in the City of Nookat (article 7)**

7.1. Beating in the city of Nookat on 1 October 2008, extortion during the investigation and trial proceedings. 1 October 2008 was a holiday in the Kyrgyz Republic because of the religious celebration for Orozo Ait (Eid al Fitr). In the south of the country gala lunches are usually held by residents with the support of local authorities. In that year, a local akim of the rayon refused to hold a celebration, then allowed the celebration to be held at the stadium, which was closed and surrounded by police units. Residents went to the akimiat for clarification. The Akim demanded that all residents disperse within 30 minutes or force would be used. Participants demanded a celebration for a holiday that is observed nationwide. After 30 minutes, the police and special forces (SWAT) began to forcibly clear the area in front of the akimat using tear gas and stun grenades. Residents responded, the situation deteriorated into a riot, and the akimat building was damaged.

7.2. The police started beating detainees in the Nookat police department, and further beatings continued during the transfer of people to a temporary detention facility in the city of Osh. Especially brutal torture was applied in the detention facility of the State Committee for National Security of the city of Osh (this department is responsible for the investigation into the overthrow of constitutional order and incitement of religious and ethnic hatred or discord). As a result of torture, one detainee was paralyzed.

7.3. Authorities blamed the clash between police and citizens on the Hizb Ut-Tahrir party, a group recognized to be prohibited in the Kyrgyz Republic. Many individuals located on the square in front of the akimat, as well as other individuals, fell under the investigation of law enforcement, and ultimately suffered mistreatment or torture. Fair trial standards were ignored by police (charged with maintaining public order), national security who investigating the alleged involvement of Hizb ut-Tahrir, and the prosecutor's office (charged with supervising the investigation), and were not provided by the judiciary. Evidence linking detainees to Hizb ut-Tahrir were not presented to the court, and the court ignored allegations of torture and mistreatment.

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<sup>20</sup> According to information from Sagynbek Ryskeldiev, elder in the Church of Evangelical Christian-Baptists of the city of Naryn, and Alymbek Isakov and Sakin Tumenbaeva (parents of the deceased Aman Alymbek Uulu), <http://www.propovednik.com/krg.html>.

<sup>21</sup> Information from ANPO "Advocacy Center for Human Rights", City of Osh, [http://www.advocacy.kg/news/2012/10\\_8\\_12\\_5.htm](http://www.advocacy.kg/news/2012/10_8_12_5.htm).

7.4. This incident in the city of Nookat in the Osh oblast on 1 October 2008 coincided with the Bishkek summit of the Shanghai Cooperation Organization (SCO). As a result, 32 people were charged with committing up to 6 crimes and, despite torture, mistreatment, and violations of due process, all found guilty in court. The court issued verdicts of imprisonment for terms exceeding 20 years.

7.5. This incident came to light after it was reported on by the International Memorial Center (Russia), after which human rights defenders in the Kyrgyz Republic initiated the creation of a commission for monitoring under the Ombudsman (Akyiktchi) of the state. The commission issued a report in February of 2008 that documented many instances of violations, including those based on grounds of religious intolerance.

7.6. Local governments provided national security agencies and internal affairs agencies lists of family members of those which they had determined (without any judicial process) to be involved with Hizb Ut-Tahrir. These individuals and family members of those convicted suffered discrimination by being suspected of being associated with a religious organization. Children were deprived of social benefits, and family members were persecuted and sometimes fired from their jobs.

7.7. The religiosity of Nookat residents differed, and detainees included believers and non-believers alike. However, believers were singled out for specific degrading treatment. For example, Rakhmonberdi Zhuraev, born in 1961, had vodka poured forcibly into his mouth. Akhmadillo Ergashev, born in 1991, was hit in the genitals “so that no more Hizbutarirists” would be born.

7.8. Women – Zaripa Abdikarimova, born in 1973, and Labarkhan Saidoripova, born in 1971, were both subjected to specific forms of violence and humiliation. Both were shaved bald twice, Zaripa was forced to dance with another detainee—Kholmakhamat Ergashev, born in 1973—as well as have sexual relations with him. Zaripa was also forced to hold in her hands a wire coat hanger with a concrete base; if she were to drop it her fingers would be struck and she would be placed in a cold and dark cell filled with water and bleach. As a result of this torture, on 12 November 2008 Zaripa suffered a miscarriage. However, she was not provided with care nor treatment, but again placed in solitary confinement.

7.9. Akhmadillo Ergashev, born in 1991 and a minor at that time, was detained because his father and uncle were on the Hizb ut-Tahrir list. Ergashev was beaten in order to reveal his father and uncle’s whereabouts, although his father had long lived separately from the family. The boy was placed in a barrel of water into which was placed a live electrical wire.

7.10. All detainees suffered harsh torture. At sentencing in court, many detainees were in serious condition, but the judge did not address this. For example, Muzaffar Teshebaev, born in 1981, was brought into the courtroom on his hands for sentencing. Allegations of cruel and degrading treatment were ignored by the courts in the first and second hearings, as well as during supervisory review by the supreme court of the Kyrgyz Republic (between 14-19 May, 2009), despite overwhelming evidence.

7.11. Additional information on the case of the 1 October 2008 incident in Nookat as well as the proceedings can be found in the materials sent to the Special Rapporteur on Torture and Mistreatment, as well as other mandates from 2009 (Case of Nookat).<sup>22</sup> The Open Viewpoint fund provided lawyers for the defense of those on trial and their families in the Supreme Court in 2009. In 2010, the Kyrgyz Republic saw a change of government and the provisional government released the convicted under amnesty. Research into violations during the crackdown and infliction of torture during the investigation was not conducted.

7.12. Violation of the right to defense. State-provided legal counsel to the 32 detainees from the Nookat incident (including 2 women) did not properly perform their obligated duties.

7.13. For example, state-provided attorney Kanybek Sarpashov represented 18 people at once and his signature appeared on all materials of the criminal case, even after independent lawyers had been brought by

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<sup>22</sup> See the report entitled “Harsh Torture in Kyrgyzstan: Monitoring Materials of Violations of Human Rights during Accusations of Extremism”, 2009, <http://prava.kloop.kg/?p=543> (Russian). The report of the Commission to Conduct Monitoring of the Nookat events under the Ombudsman of the KR is also [available](#) (in English).

relatives of the detainees. Another attorney, Erkebaev, participated only during sentencing of 6 suspects, and continued no further, which suggests that his participation was a mere formality. Not one of the provided attorneys made a statement against torture suffered by the detainees.

7.14. With the participation of the KR Ombudsman in February of 2009, a commission was established to monitor the observance of human rights in the 1 October 2008 Nookat case. The Commission's report was submitted to the General Prosecutor's Office, the Supreme Court, the Security Council, the Ministry of Internal Affairs, and two parliamentary committees (Security and Human Rights). Despite cited acts of torture and cruel and degrading treatment by law enforcement agencies and other violations, no public authority ever conducted a proper investigation nor pressed criminal charges.

7.15. In May of 2010, those convicted in the Nookat events were granted amnesty. The Kyrgyz Republic has not reviewed the question of instance of torture, has not conducted an investigation, and none of the individuals responsible for the torture and mistreatment have been brought to justice. Amnesty is intended to pardon convicted persons, and as it considers them ultimately guilty it makes the situation increasingly difficult to remedy.

## **8. Freedom of Movement (article 12)**

8.1. In 2013, deputies of the Jogorku Kenesh passed a law forbidding women under 22 years old from crossing the borders of the Kyrgyz Republic without parental agreement, which violates the freedom of movement and encroaches upon the legal capacity based on gender.

8.2. Additionally, since 2013 the Jogorku Kenesh has been review a draft Law *On Religious Education and Religious Educational Institutions* to require permission from the SCRA to travel abroad with the aim of obtaining religious education.

## **9. Equality before the Court and Fair Due Process (article 14)**

9.1. Denial of registration for religious organizations is not subject to judicial review, as the State Commission makes its decisions unilaterally, which shifts the burden of proof of innocence onto the organization seeking registration. This violates the presumption of innocence and fails to ensure accountability of authorities to prove the fault or violation that served as the basis for punitive action. As a rule, when registrations are denied justification or references to violated provisions of law are not provided.

9.2. In 2011, the SCRA refused to grant registration to a mission of the Ahmadiyya Muslim community despite the fact that the community provided all required documents. After the denial of registration the community sued, but failed to win in court.

9.3. Additionally, the court has consistently rejected claims from religious organizations against the SCRA. For example, on 17 January 2013, the Inter-district court of the city of Bishkek reviewed a case of the religious organization "Church of Scientology" to invalidate a decision by the SCRA entitled order №2 dating from 07.05.2012 on the revocation of registration. The petition by a representative of the "Church of Scientology" religious organization on the reinstatement of the deadline for submitting documents was denied as baseless. The "Church of Scientology" was stripped of its registration during a raid at the beginning of 2013 despite a lack of any compelling violations, the existence of which is the basis for which a religious organization can be legally eliminated.

9.4. Tenirchilik Community, related to the Tengri movement, sued after being denied registration by the SCRA. However, on the 16th of December, the inter-district court of Bishkek, reviewing the appeal by citizen A. C. Usupbaev to invalidate the decision of the SCRA, left the case without consideration due to the fact that the claimant did not appear in court.

9.5. In the spring of 2012 in the Toktogul village of the Jalalabad Oblast local residents attacked a building belonging to the Jehovah's Witnesses community. Instead of ensuring the rights of local members of the

community to practice their faith, local authorities revoked registration from the religious community on the basis that that particular group was destabilizing the community. Following the cancellation of registration the Jehovahs Witnesses community appealed against the government bodies in court, and the judicial process continues.

9.6. The State Commission on Religious Affairs refused in 2011 to extend the registration of missionary activities of the pastor for the “Grace” Evangelical Church Kang Hyongmin, a South Korean citizen with permanent residency in the Kyrgyz Republic. The denial by the SCRA was related to the introduction in 2009 of a harmonization of the list of religious organization leaders with local government bodies. “Grace” church appealed this decision in 2013, however the court did not defend the group’s interests due to the fact that local government had not approved the law, but enacted an illegal restriction.

9.7. The Procedure for refusing registration or re-registration by the SCRA is not subject to control of the courts in terms of legality or basis for refusals. However, the burden for proving the right of creation or existence of religious organizations falls on the corresponding group, which also must protest baseless or illegal denials.

9.8. The State Commission on Religious Affairs, lacking relevant criteria established by law and not supported by appropriate judicial decisions, nevertheless formulates the list of organizations and groups defined as “destructive” and “totalitarian”. However, neither the prosecutor’s office nor the court respond to the contents of these lists, casting doubt on their legality, and do not challenge the SCRA’s citations.

## **10. Guarantee of Freedom of Religion and Military Service (article 18)**

10.1. The constitution of the Kyrgyz Republic allows for citizens to obtain exemption from military service and complete alternative service as established by law. The KR law “On Universal Conscription for Citizens of the Kyrgyz Republic, On Military and Alternative Service”<sup>23</sup> allows for replacement of military service with alternative service for citizens who are registered members of religious organizations with doctrines that do not allow the use of arms and service in the military.<sup>24</sup> The period of alternative service is 18 months, while the period of military service is 12 months.<sup>25</sup> The process for completing alternative service due to a citizen’s beliefs is under the authority of the government of the KR.<sup>26</sup> At the same time, in accordance with the KR law “On the Status of Military Personnel”<sup>27</sup>, the state and its departments are free from obligations to make demands on military personnel due to religious beliefs.<sup>28</sup>

10.2. A provision in the process for completing alternative service by citizens of the Kyrgyz Republic establishes compensation for individuals electing to complete alternative service, namely monetary compensation to the effect of 180 calculated indices for the entire period of service. Military commissariats have the right to use funds from mobilization, general service, or other general maintenance.<sup>29</sup>

10.3. The budgeting of funds for needs by the army can become an obstacle to the completion of alternative service for those whose beliefs preclude it. Jehovah’s Witnesses in particular do not accept the provided alternative service. From 2007 to 2013, 42 Jehovah’s Witnesses refused military service,<sup>30</sup> which became the grounds for opening a criminal case. Analysis of existing evidence indicates that judicial decisions often refer

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<sup>23</sup> KR law “On Universal Conscription for Citizens of the Kyrgyz Republic, On Military and Alternative Service” passed 26.12.2008 (as amended 09.06.2012).

<sup>24</sup> Article of the KR law “On Universal Conscription for Citizens of the Kyrgyz Republic, On Military and Alternative Service” passed 26.12.2008 (as amended 09.06.2012).

<sup>25</sup> *ibid*, part 1 art. 29

<sup>26</sup> Order № 306 from the Government of the Kyrgyz Republic from 18 May 2009. “On Approval of the Law on Alternative Service by Citizens of the Kyrgyz Republic”.

<sup>27</sup> Passed 1 July, 1991, with amendments from 30.12.2009.

<sup>28</sup> Article 7 of the KR law “On the Status of Military Personnel” from 1 July 1991, with amendments from 30.12.2009.

<sup>29</sup> Point 9 of the Provision on the Process for Completing Alternative Service in by Citizens of the Kyrgyz Republic..

<sup>30</sup> From parliamentary hearing materials from 5 March 2013.

to part 2 of article 351 of the Criminal Code of the KR for the avoidance of alternative (non-military) service by individuals exempt from military service.

10.4. For evading military service without legal grounds for an exemption, fines may cost from 200 to 500 calculated indices, or by between 180-240 hours of community service.<sup>31</sup>

10.5. The government has not provided resolutions for conflicts for people whose beliefs prevent them from using arms and serving in the armed forces of the Kyrgyz Republic. Replacement of military service with alternative service is provided only for those individuals who are registered with a religious organization. Religious beliefs not connected to a particular creed or membership in a religious organization are not addressed by the law. In court proceedings, individuals are required to prove their membership in a corresponding religious organization.

10.6. Factually speaking, the state does not consider diversity in religious views and associated practices (rituals, food, determining how funds are spent as well as the nature of work involved in military service). There is no possibility to replace military service for non-religious reasons, or in the case of suspension of registration due to existing conflicts in law. In cases of exemption from service through payment it is not clear where the money is ultimately directed, in order to prevent later conflicts of belief. The period of alternative service differs from the length of military service. In general, dietary restrictions are also not observed.

10.7. The Constitutional Chamber of the Supreme Court of Kyrgyzstan unanimously declared on November 19, 2013 that the country's current Law "On Universal Conscription for Citizens of the Kyrgyz Republic, On Military and Alternative Service" regarding provisions on alternative service is unconstitutional and violates the right of freedom of religion. The Court directed the government to amend the law to allow for genuine alternative civilian service for those who, for reasons of conscience, object to military service. In 2009, the Kyrgyz Republic adopted a law that recognized the right to alternative service. However, it became evident that this service actually fell under military control. Those serving were placed under the supervision of military personnel, and some were ordered to make payments in support of military activities. After completion, those who were in alternative service were automatically enrolled in the reserves of the armed forces. As a result, *Jehovah's Witnesses* refused to accept the alternative service offered, a stand that prompted several criminal cases against the Witnesses. The November ruling recognized that the Witnesses had valid reasons for rejecting the alternative service offered to them and were not attempting to evade their civic duty. On the contrary, the Court found that the Witnesses were willing to perform alternative service that is civilian in nature. It is expected that all criminal cases imposed on the Witnesses will be reopened and decided in harmony with the amended law<sup>32</sup>.

## **11. The Right to Seek, Collect, Preserve, and Disseminate Information (article 19)**

11.1. The right of religious individuals to obtain information of a spiritual or religious character is restricted by the prohibition on distributing literature except in designated areas. One of the forms of distribution of religious material is through missionary activities, which are regulated by a special procedure of inviting missionaries through the SCRA and limiting the period of stay within the territory of the Kyrgyz Republic for foreign missionaries to three years.

11.2. The 2008 law "On Freedom of Religion and Religious Organizations in the KR", contains a confusion in terms between "foreign missionary" and "spread of personal religious beliefs by citizens", as a result all missionary activity is forbidden among the population.

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<sup>31</sup> Part 2 Article 351 of the KR Criminal code.

<sup>32</sup> Human Rights Without Frontiers' Newsletter "Intolerance and Discrimination Based on Religion or Belief" of January 20, 2014.



11.3. Attempts by parliamentary deputies to establish means for investigating religious extremism in print, film, audio, video, and other media based on appeals from law enforcement could be un-objectively influenced by disputes between religious groups or between the state and any religious group.

11.4. Additionally, draft amendments from 7 December 2012 proposed to place responsibility for the control over the import, preparation, acquisition, transport, transfer, preservation, the distribution of print, film, photographic, audio, video, or other media on religious organizations, however this problem was subsequently corrected and responsibility conferred to the State Committee for Religious Affairs and authorities for national security and internal affairs.

## **12. The Right to Association (article 22).**

12.1. Registration for conducting activities in the Kyrgyz Republic and preconditions for registration as a legal entity. For conducting any religious activity the government requires religious groups or individuals to register with the SCRA and obtain legal entity status with the judiciary. Religious organization activities are prohibited without registration and unregistered are grounds for prosecution under current legislation. Registering with the judiciary without first registering with the SCRA is impossible. Thus, the SCRA determines appropriateness of a religious group and its activities within the territory of the Kyrgyz Republic.

12.2. Completing Registration. THE SCRA, in accordance with the law, requires submission of a notarized list of the founders of a religious organization, which imposes a financial burden associated with obtaining notary services (for public organizations notarization is not required). Brought into effect in 2008, these changes to the law have placed the right to association of religious individuals at the mercy of local councils.<sup>33</sup> In effect, local councils have the power to decide which religious groups can practice their faith and carry out their activities in the Kyrgyz Republic. On 2 April, 2013, the Bishkek city council agreed to a list of the founders of the Russian Orthodox Church<sup>34</sup> but rejected the lists of nine other religious organizations, all religious minorities.<sup>35</sup>

12.3. The Russian Orthodox Church has run into problems with completing registration after the change of the name of its diocese which occurred as a result of a decision to restructure handed down from the Moscow Patriarchate. From December of 2011 until April of 2013 the church was unregistered as the leaders list had not been approved by the Bishkek city council and thus was considered by the SCRA as a “mission of a foreign faith”. According to the KR law “On Freedom of Religion and Religious Organizations in the KR”, all groups labeled missions of foreign faiths are those with a center of administration outside of the Kyrgyz Republic or for which the leader is a foreign citizen.

12.4. The Spiritual Administration of Muslims of Kyrgyzstan also faced obstacles in completing registration with the state body for religious affairs of the KR. Difficulties arose related to the organization’s charter. From December of 2012 until the present, the SAMK conducts all of its activities without proper registration, which under current law is prohibited. These complications are related to bureaucratic requirements established by the law passed in 2008.

12.5. Judicial control over the legality of the SCRA and the presence of grounds for suspension or denial of registration. The State Commission on Religious Affairs does not provide clear procedures for acceptance, rejection, or suspension of documents submitted for registration. Effective protection against unreasonable refusal for SCRA registration is also not provided. Religious organizations do not always receive responses that explain the grounds for their refused registration or deficiencies that need to be addressed.

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<sup>33</sup> Part 2 article 10 of the KR law “On Freedom of Religion and Religious Organizations in the KR”.

<sup>34</sup> Order №8 Of the Bishkek city council from 2 April 2013.

<sup>35</sup> Order №9 Of the Bishkek city council from 2 April 2013.

12.6. It is crucial to assign the SCRA responsibility to present evidence of violations in court to assess the grounds for denial of registration or re-registration. Currently, religious organizations are forced to prove their innocence and challenge SCRA decisions, which violates the presumption of evidence.

12.7. Profiling. The requirement that lists be provided of a religious organization's founders is a condition for SCRA to identify religious affiliation, though the constitution of the Kyrgyz Republic (point 7 of part 4 of article 20) forbids the forced expression of religious beliefs.

12.8. Number of Founders and Residency Requirement. The right of citizens, but not everyone. The right to association of groups of religious individuals was complicated by an increase in the required number of founders from 10 to 200 people. The law recognizes the legal capacity to establish a religious organization only for citizens of the Kyrgyz Republic who permanently reside in the Kyrgyz Republic.<sup>36</sup>

12.9. The Need for Limitations in a Democratic Society. The requirement that founders be permanent residents of the Kyrgyz Republic provides a contradiction to the right of free association. Additionally, inappropriate conditions exist that require founders to be living permanently in Kyrgyzstan and subject to registration, which makes it impossible for small religious groups to exercise their freedom of religion (religious minorities, article 27 ICCPR).

12.10. Comparison of the number of founders to other types of legal entity. For other types of public associations in the Kyrgyz Republic only 10 members are required for registration, public funds or limited liability companies (not affiliates) can be established by a single founder.

12.11. Children. The law does not allow for the involvement of children in religious organizations<sup>37</sup>, which excludes a child from an understanding of "personhood" used in part 1 of article 18 of the ICCPR. Additionally, this provision contradicts the UN Convention on the Rights of the Child,<sup>38</sup> which recognizes every child's right to the freedom of thought, conscience, and religion<sup>39</sup>, as well as the right of parents and legal guardians to guide their children in exercising their rights in a manner consistent with the evolving capacities of the child.

12.12. Punishment for choice of religion and for raising children in a religious tradition. In 2012, the State Committee for National Security attempted to introduce liability (art 395, 395-1, and 395-2 of the Administrative Liability Code) for the choice of religious affiliation and involvement of children in religious organizations, effectively violating ICCPR obligations.

12.13. Complications for hierarchical (foreign) religious organizations. State recognition of communities connected to spiritual centers outside of the borders of the Kyrgyz Republic (i.e. the ROC, the Roman Catholic Church) is tied with a number of bureaucratic requirements. In the eyes of the law these types of communities are "missions of foreign religions". Certificates of registration for this type of mission are given for only one year, and the mission is not considered a legal entity.<sup>40</sup> For registration, the leader of the religious organization's mission is required to submit documents annually including a letter from superiors in the organization with the indicated period of stay and a notarized translation. This requirement imposes an annual burden of preparing and submitting notarized documents. If the leader of the religious organization is a foreign citizen, then the law considers that organization an "international religious mission"<sup>41</sup>, which imposes additional restrictions on the organization with its internal hierarchy. In instances where there is a change in leadership, all documents must be resubmitted with the name of the new leader.

12.14. Infringement of the right to connect with citizenship. Foreign citizens and individuals without any citizenship (stateless persons) face limitations to their right to establish religious organizations within the territory of the KR, although the KR constitution grants all foreign citizens and stateless persons all human

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<sup>36</sup> Point 3 article 8 of the KR law "On Freedom of Religion and Religious Organizations in the KR"

<sup>37</sup> Point 5 article 4 of the KR law "On Freedom of Religion and Religious Organizations in the KR"

<sup>38</sup> The Kyrgyz Republic is a State Party to the Convention of the Rights of the Child dating from 7 October 1994.

<sup>39</sup> Part 1 article 14 UN Convention on the Rights of the Child.

<sup>40</sup> Points and 12 in article 11 of the KR Law "On Freedom of Religion and Religious Organizations in the KR"

<sup>41</sup> Point 6 article 8 of the KR Law "On Freedom of Religion and Religious Organizations in the KR"

rights and freedoms, including the right to association and the right to freedom of thought, conscience, and religion.<sup>42</sup> Grounds for limiting the rights of foreign citizens and stateless persons are baseless and not in accordance with the obligations to the ICCPR.

12.15. Prohibition of certain religious organizations. Some of the KR's obligations to the SCO and the CSTO<sup>43</sup> require evaluation of compliance with ICCPR. On the other hand, the procedure for judicial process of designated organizations does not always guarantee a fair trial or the provision of effective legal defense.

### **13. The Right to Form Associations of Religious Organizations (article 22)**

13.1. The Kyrgyz Republic Law "On Freedom of Religion and Religious Organizations in the KR" substantially limits the abilities of religious organizations to form associations (referred to in the law as "religious unions" – Note: "unions of religious organizations"), introducing confusion between associations of believers and associations or organizations). For the creation of this type of association a minimum of 10 organizations are required, one of which must have existed within Kyrgyz Republic territory for no less than 15 years.<sup>44</sup>

13.2. For the creation of a unified governing body of several religious organizations belonging to one faith, the law requires that these organizations exist in no fewer than nine regions of the KR (7 oblasts and the cities of Osh and Bishkek).<sup>45</sup> As a result, only the Spiritual Administration of Muslims in Kyrgyzstan can comply with this requirement.

### **14. Recommendations**

1. Ensure that the 2008 law "On Freedom of Religion and Religious Organizations in the KR" is brought into accordance with provisions of the constitution of the KR and ICCPR, ensure the rights of all religious individuals to exercise all human rights and freedoms in all areas.
2. Ensure proper strengthening of laws in the KR that protect against discrimination based on religion, regardless of citizenship, sex, affiliation with particular religious groups, and in particular protect the rights of religious minorities to exercise all rights and freedoms along with other members of society.
3. The state should educate on religious diversity and the existence of different faiths in society, which would also be provided with equal opportunity to exercise their rights as well as be guaranteed safety and protection.
4. The State and its representatives should ensure effective measures to combat discrimination and proper supervision of the observance of international obligations which have been voluntarily assumed by the Kyrgyz Republic.
5. Encourage the Kyrgyz Republic to conduct a functional analysis of the authority of the State Commission on Religious Affairs in order to ensure the legality and protection of interest of religious organizations as well as the rights and freedoms of every religious individual.
6. Ensure the principle of participation and involvement of all faiths in the decision-making process of issues related to freedom of religion and the activities of religious organizations in the KR, including in the Jogorku Kenesh as well as in the government or with the participation of the president.
7. Enforce constitutional guarantees and obligations of the state-party at the local level (local self-governance, municipalities), in particular taking control of decisions and practices of local governments (burial, security and protection, conducting due process).

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<sup>42</sup> Article 19 of the Constitution of the KR, passed 27 June, 2010.

<sup>43</sup> "Tabligi Jamaat" appears on the CSTO members' list of forbidden organizations, but is not prohibited in the Kyrgyz Republic.  
<http://www.for.kg/news-225008.html>

<sup>44</sup> Part 5 article 8 of the KR law "On Freedom of Religion and Religious Organizations in the KR"

<sup>45</sup> Part 4 article 8 of the KR law "On Freedom of Religion and Religious Organizations in the KR"

## Concluding observations of the Human Rights Committee on the second periodic report of Kyrgyzstan<sup>46</sup>

(Extract related with the freedom of religion or belief)

### C. Principal matters of concern and recommendations

#### Applicability of the Covenant in domestic courts

1. The Committee notes that according to article 6 (3) of the Constitution of the Kyrgyz Republic, international human rights treaties are part of the domestic law. However, it regrets the lack of evidence that domestic courts apply the provisions of the Covenant (art. 2).

**The State party should take appropriate measures to raise awareness among judges, lawyers and prosecutors about the Covenant and the direct applicability of its provisions in domestic law, so as to ensure that they are taken into account before domestic courts. The State party should include detailed examples of the application of the Covenant by the domestic courts in its next periodic report.**

#### Implementation of the Views of the Committee

2. While welcoming article 41 (2) of the State party's Constitution, which stipulates the obligation to take measures to restore victims' rights and provide compensation in cases where violations are found by international treaty bodies, the Committee is concerned about the failure to implement the Views adopted by the Committee in relation to the State party, and about allegations that asylum seekers continue to be returned to their home countries notwithstanding the Committee's Views on the matter. Despite the information provided during the dialogue, the Committee regrets the lack of clarity on the role of the newly established Human Rights Coordination Council with respect to the implementation of the Committee's Views (art. 2).

**The State party should take all necessary measures to ensure the full implementation of the Views adopted by the Committee in relation to the State party. The Human Rights Coordination Council should also be mandated with monitoring the implementation of the Committee's Views and should address this issue as a matter of urgency.**

#### National human rights institution

3. The Committee is concerned about the insufficient guarantees of independence of the Office of the Ombudsman (*Akyikatchy*). The Committee welcomes the State party's efforts to amend the Law on the Ombudsman to ensure its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) (art. 2).

**The State party should expeditiously bring the mandate of the Ombudsman (*Akyikatchy*) into full compliance with the Paris Principles and provide it with the necessary financial and human resources to ensure that it can effectively and independently implement its mandate.**

#### Non-discrimination and equality

4. The Committee remains concerned about a lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as race, language, disability and ethnic origin, and about the lack of disciplinary sanctions for State officials acting in a discriminatory manner (arts. 2 and 26).

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<sup>46</sup> See document CCPR/C/KGZ/CO/2 as of 23 April 2014.

**The State party should review its domestic legislation and bring it into line with the principle of non-discrimination to ensure that it includes a comprehensive prohibition of discrimination on all the grounds set out in the Covenant. The State party should also ensure that reliable and public data is systematically collected on cases of discrimination and their treatment by the competent judicial authorities.**

#### **Anti-terrorism measures**

1. The Committee regrets the lack of information on the content and application of the State party's legislation to combat terrorism. The Committee is concerned at reports of excessive use of lethal force during special operations and failure on the part of the State party to provide information on the applicable legal rules restricting the use of lethal force to a strictly necessary extent (art. 6).

**The State party should ensure, as a matter of urgency that its anti-terrorism legislation and its application thereof, especially the use of force, is in conformity with the provisions of the Covenant, particularly with respect to the right to life. The State party should promptly investigate allegations of excessive use of force by the special services, prosecute perpetrators and provide compensation to victims' families.**

#### **Freedom of conscience and religious belief**

1. While noting the planned amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic, the Committee is concerned about the restrictions in the current law that are incompatible with provisions of the Covenant, including with respect to missionary activities, the registration procedure and dissemination of religious literature. The Committee is also concerned about reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech (arts. 18, 19, 26 and 27).

**The State party should ensure that the legislative amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic remove all restrictions that are incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process for religious organizations and eliminating distinctions among religions that may lead to discrimination. The State party should take measures, including through public statements and awareness-raising campaigns, to promote religious tolerance and condemn any act of religious intolerance and hatred. The State party should also investigate all cases of violence based on religion, prosecute perpetrators and compensate victims.**

#### **The right to conscientious objection**

2. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para. 18) about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and the stipulation of a shorter period of military and alternative service for persons with higher education. The Committee notes the State party's initiative to amend the Law on Universal Conscription of Citizens of the Kyrgyz Republic on Military and Alternative Service (arts. 2, 18 and 26).

**The State party should ensure that amendments to the Law on Universal Conscription of Citizens of the Kyrgyz Republic, on Military and Alternative Service provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. It should also stipulate periods of military and alternative service on a non-discriminatory basis.**

## Joint Submission of NGOs to the Universal Periodic Review of Kyrgyzstan<sup>47</sup>

(Extract related with the freedom of religion or belief)

### 1. REFORM OF CONSTITUTION, LAW AND JUDICIARY OF THE KYRGYZ REPUBLIC

#### Recommendations 76.4 and 76.70

Establish constitutional reforms that will guarantee the separation of powers, the rule of law, the independence of the judiciary and the civil and democratic rights of Kyrgyzstan's citizens

(Germany)

Take measures to ensure the full independence of the judiciary and to ensure that guarantees of fair trial for everyone are implemented

(Austria)

- (1) Implement constitutional reform recommendations in Kyrgyzstan. In 2010, Kyrgyzstan adopted a new Constitution which guarantees the separation of powers and the rule of law.
- (2) However, the judicial system does not meet constitutional principles and international standards of justice. The judiciary is not fully independent and autonomous and is under pressure of political branches of government. There are no established mechanisms to ensure real adversarial trial process between state prosecutors and defense lawyers. Under Article 95 of the Constitution, the parliament of Kyrgyzstan has the right of removal of judges. The use of these procedures brings a risk of politically motivated decisions and in the long term could undermine the authority of the judiciary. Currently, amendments to the procedure for the selection of judges have been initiated and these amendments provide for an increasing role of the President of the Kyrgyz Republic in the judge selection process.

### 2. TORTURE AND ILL TREATMENT

#### Recommendation 76.55

The Government of Kyrgyzstan reopen proceedings related to the events in Nookat and ensure that allegations of torture are investigated and that all evidence obtained through coercion is disregarded.

(Netherlands)

- (16) This recommendation was not implemented by Kyrgyzstan. Kyrgyzstan did not reopen proceedings or conduct any investigation of torture related to the events in Nookat in 2008.

### 3. MINORITY RIGHTS

#### Recommendation 77.14

<sup>47</sup> The report jointly prepared in June 2014 by PA "Youth Human Rights Group", PA "Institute for Regional Studies", PF "Justice", PF "Media Policy Institute", PF "Golos Svobody", PF "Centre for Human Rights "Kylm Shamy", PF "Open Viewpoint", PF "Precedent", PA "Resource Centre for Elderly", and PA "Women Support Center" and submitted under Universal Periodic Review (UPR) procedure, see <http://www.ohchr.org/RU/HRBodies/UPR/PAGES/KGSession21.aspx>.

Harmonize its national legislation with what has been recommended by Committee on the Elimination of Racial Discrimination. (Uruguay)

- (21) Kyrgyzstan failed to comply with this recommendation, and the state also ignores the recommendations of the Committee on the Elimination of Racial Discrimination (2007 and 2013) to include the term "discrimination" in national legislation in accordance with the Convention. Absence of the term "discrimination" is one of the reasons for the ineffectiveness of anti-discrimination policy of Kyrgyzstan. The national law does not provide special anti-discrimination rules on the liability of public officials for discriminatory decisions and behavior.

#### 4. FREEDOM OF RELIGION

##### Recommendation 77.37

Review the Law on Religion so as to ensure that the right to freedom of religion is upheld in compliance with international legal standards. (Netherlands)

- (51) In Kyrgyzstan, the legal framework has been established for the implementation of certain religious freedoms and the constitution provides freedom of religion. However, the 2008 Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" has not been brought in accordance with the constitution adopted in 2010 and international legal norms. Throughout the country there is a tendency towards tightening conditions for the registration of religious organizations and monitoring their activities. The state requires 200 initiators from all 9 regions for registration of religious organization, which is artificial obstacle to religious minorities. Some missionaries have not been able to preach in churches because of absence of registration.
- (52) Provisions of the current law violate the right to freedom of expression and distribution of religious materials. In addition, the law violates the rights of persons who are not citizens of the Kyrgyz Republic, as the right to establish religious organization is provided only for Kyrgyz citizens. The state imposes excessive reporting requirements of religious organizations including information on their activities, internal decisions, and information on leaders of the organization.
- (53) In the 2012 bill "On Amendments and Additions to the Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic", the state Commission on Religious Affairs proposed to legislate the decisive role of Hanafi Islam and traditional role of the Russian Orthodox Church in the historical formation and development of spiritual and cultural traditions of Kyrgyz society. Civil society organizations have been alarmed that in 2013 draft law introduced by the Jogorku Kenesh entitled "On state support of traditional religious organizations" only 2 denominations were mentioned: Sunni Islam and Russian Orthodoxy. The state commission for religious affairs of Kyrgyzstan labeled minority religious groups as "destructive" and "authoritarian".
- (54) Within the country, proselytizing is one cause of conflict situations between local communities and representatives of new religious organizations, especially Protestant Christian groups. There have been problems with the allocation of cemetery land for the burial of Kyrgyz Protestants.

## Report of the Working Group on the Universal Periodic Review on Kyrgyzstan<sup>48</sup>

(Extract related with the freedom of religion or belief)

### II. Conclusions and/or recommendations

117. The recommendations formulated during the interactive dialogue and listed below have been examined by Kyrgyzstan and enjoy the support of Kyrgyzstan:

117.3. Continue the work to bring the national legal framework in line with its international obligations (Russian Federation);

117.4. Continue to fulfil its international obligations and commitments it has made in the field of human rights taking into account the country's development and its historical, cultural and religious background (Bangladesh);

117.5. Review the compliance of national legislation with the provisions of ICCPR (Sweden);

117.6. Empower legal advisers in parliament to review draft laws and policies, incorporate input from civil society and experts in the international community, and oppose legislation that is inconsistent with international human rights obligations and commitments (United States of America);

117.8. Continue strengthening its national human rights institutions (Jordan);

117.10. Improve intra-state mechanisms for the implementation of international obligations in the area of human rights (Tajikistan);

117.11. Take the necessary steps to bring the Office of the Ombudsman into compliance with the Paris Principles (Turkey);

117.12. Accelerate the process of bringing the statutes of the Office of Ombudsman into full conformity with the Paris Principles (Afghanistan);

117.13. Complete the process of ensuring that the Ombudsman Institution is fully compliant with the Paris Principles, at the earliest (India);

117.14. Intensify efforts to bring the Office of the Ombudsman into compliance with the Paris Principles (Kenya);

117.15. Ensure that the Office of the Ombudsman is brought into line with the Paris Principles (Sierra Leone);

117.28. Analyse the possibility of creating a monitoring system for the implementation of international obligations in order to facilitate the systematization and follow-up of the recommendations made by the treaty bodies and the Human Rights Council (Paraguay);

117.29. Engage civil society in the implementation process of the accepted UPR recommendations (Poland);

117.38. Strengthen anti-discrimination laws and policies, and intensify the implementation of measures to protect all women from discrimination and violence, including through nationwide public awareness campaigns (Philippines); 117.39. Take all necessary measures to fight effectively against all forms of discrimination (France);

117.67. Take further steps to address gender-based violence, including guaranteeing that the cases of violence are thoroughly investigated and rights to fair trial ensured (Latvia);

117.82. Completely eliminate the practice of child labour and ensure that all children have access to free and compulsory education (Hungary);

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<sup>48</sup> Document A/HRC/29/4 of April 9, 2015, <http://www.ohchr.org/RU/HRBodies/UPR/PAGES/KGSession21.aspx>



117.86. Continue working on the ongoing reform of the judicial system to promote compliance by the courts with international standards (Turkmenistan);

117.87. Continue to implement judicial reforms in the country (Pakistan);

117.88. Take further steps to ensure, in law and in practice, the independence of the judiciary (Ireland);

117.89. Continue reforms to ensure the full independence of judges and the application of fair trial guarantees for everyone (Costa Rica);

117.90. Ensure the full independence of the judiciary, including the establishment of objective criteria for selecting and dismissing judges and guarantee the respect of a fair trial for everyone (Estonia);

117.91. Ensure that the justice system functions with independence and in full compliance with relevant international norms (France);

117.92. Take further requisite measures to ensure full independence of the judiciary, which will have a meaningful contribution to their democracy and instil confidence in the people of Kyrgyzstan (Namibia);

117.94. Strengthen the position and the independence of the Constitutional Court in order to ensure that fundamental freedoms and minority rights, as guaranteed in the Constitution, are fully respected in newly adopted legislation (Germany);

117.103. Refrain from adopting legislation that would limit the right to freedom of association (Canada);

117.104. Ensure that any legislation on NGOs is fully in line with international human rights law, including freedom of expression and freedom of association (Finland);

117.106. Ensure that its legislation protects the rights of everyone, regardless of their sexual orientation and gender identity, minority status or any other basis, to freedom of expression and assembly, freedom from discrimination and equality before the law (Finland);

117.108. Guarantee freedom of assembly and association in line with ICCPR (Germany);

117.111. Guarantee freedom of expression, association and peaceful assembly for journalists, activists, human rights defenders and for participants in demonstrations (Uruguay);

117.112. Ensure that journalists, human rights defenders and other members of civil society can seek, receive and impart information and carry out their legitimate peaceful activities without hindrance, intimidation, harassment or pressure (Belgium);

117.115. Increase the level of political participation and decision-making of women and minority groups at governmental level (Namibia);

117.134. Continue to make progress towards the full recognition of ethnic and cultural diversity that characterizes the Kyrgyz people (Nicaragua);

117.136. Actively combat all indications of inter-ethnic strife, and national and religious intolerance (Tajikistan);

117.137. Adopt additional measures to protect religious, cultural and ethnic minorities subjected to discrimination (Argentina)...

# Alternative Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in the Kyrgyz Republic

This Report has been prepared by the **Open Viewpoint Public Foundation** with the assistance of the **Interfaith Council Public Association** and religious community members of the Council. The authors of the report are **Dmitry Kabak**, President of the Open Viewpoint, a member of the Public Expert Council on Inter-ethnic and Inter-religious Development under the President of the Kyrgyz Republic, and member of the ODIHR OSCE Advisory Panel of Experts on the Freedom of Religion or Belief, and **Galina Kolodzinskaia**, Executive Director of the Interfaith Council Public Association. This report is intimately connected with the possibility of the implementation of the civil and political rights which were noted during the examination of the Kyrgyz Republic on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in March 2014 at the 110th session of the Human Rights Committee. The Open Viewpoint Public Foundation also presented its alternative report on the implementation of the ICCPR<sup>49</sup>.

## 1. General Information About Religious Diversity in the Kyrgyz Republic

1.1. The Kyrgyz Republic is a multi-ethnic and multi-religious country with a rich historical and cultural heritage of different ethnic and religious traditions. These circumstances impose on the State a particular responsibility for ensuring rights and freedoms without any discrimination.

1.2. The country has more than 30 religious movements and 2,362 mosques and 81 Islamic schools are included in the structure of the Spiritual Administration of Muslims of Kyrgyzstan (hereinafter, the "SAMK"). In 2014 there were 68 registered Muslim centers, foundations, and associations that have been engaged in education and charitable activities and the construction of places of worship<sup>50</sup>. By 2014, the number of Christian organizations in the country reached 378<sup>51</sup>. The Bishkek and Kyrgyz Diocese of the Russian Orthodox Church of the Moscow Patriarchate (the ROC) has 49 parishes and one convent; 2 schools and 3 new schools are in the process of registration. Among other Christian religious organizations in the country, officially there have been registered 4 Catholic, 50 Baptist, 20 Lutheran, 56 Pentecostal, 31 Seventh-day Adventist communities, 38 Presbyterian, 43 Charismatic, 41 Jehovah's Witnesses, and 18 other Christian organizations, and 26 foreign Protestant missions. Moreover, 1 Jewish Religious Community, 1 Buddhist and 12 communities of the Baha'i Faith are functioning in the Kyrgyz Republic<sup>52</sup>.

1.3. On August 31, 1991, the Kyrgyz Republic adopted its Declaration of Independence and on May 5, 1993, adopted the Constitution of the Kyrgyz Republic. All religious organizations have received their legal status in accordance with the applicable law. Since 2008, the requirements for registration and activities of religious organizations have increasingly restrictive.

## 2. Legislative Initiatives Affecting Freedom of Religion or Belief

2.1. On March 2014, the Kyrgyz Republic submitted its periodic report on the implementation of the ICCPR to the Human Rights Committee. During examination of the report, concerns about the following were raised about a number of violations of human rights and freedoms affecting the religious sphere: the freedom of thought, conscience and religion (Article 18), torture and ill-treatment (Article 7), the freedom of movement

<sup>49</sup> See the website for the Human Rights Committee, Session 110 (March 10-28, 2014),

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en)

<sup>50</sup> The concept of State policy of the Kyrgyz Republic in the religious sphere for 2014-2020. - P. 116

[http://www.president.kg/ru/news/ukazy/4901\\_podpisan\\_ukaz\\_o\\_kontseptsii\\_gosudarstvennoy\\_politiki\\_kyrgyzskoy\\_respubliki\\_v\\_reli\\_gioznoy\\_sfere\\_na\\_2014-2020\\_godyi](http://www.president.kg/ru/news/ukazy/4901_podpisan_ukaz_o_kontseptsii_gosudarstvennoy_politiki_kyrgyzskoy_respubliki_v_reli_gioznoy_sfere_na_2014-2020_godyi)

<sup>51</sup> Ibid.

<sup>52</sup> The concept of State policy of the Kyrgyz Republic in the religious sphere for 2014-2020. - P. 116

[http://www.president.kg/ru/news/ukazy/4901\\_podpisan\\_ukaz\\_o\\_kontseptsii\\_gosudarstvennoy\\_politiki\\_kyrgyzskoy\\_respubliki\\_v\\_reli\\_gioznoy\\_sfere\\_na\\_2014-2020\\_godyi](http://www.president.kg/ru/news/ukazy/4901_podpisan_ukaz_o_kontseptsii_gosudarstvennoy_politiki_kyrgyzskoy_respubliki_v_reli_gioznoy_sfere_na_2014-2020_godyi)

(Article 12), the equality before the courts and fair trial proceedings (Article 14), the consciousness objectors (Article 18), the right to seek, collect, store and disseminate information (Article 19), the right of association (Article 22), and the right to form associations of religious organizations (Article 22).

2.2. The Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" (hereinafter, the "Law on Religion") violates the obligations of the Kyrgyz Republic on the ICESCR by including a number of limitations related to civil and political rights and freedoms that should be provided under obligations to the ICCPR.

2.3. In particular, the Law violates the *principle of non-discrimination* (Article 2, paragraph 2 of the ICESCR) regarding the right to education (studying or upbringing); the right to import and disseminate religious literature, including educational, unequal treatment of public bodies to various religious communities; favoring of certain religious organizations in their Chaplains ministries in prisons; a biased attitude towards the rights based on nationality; and limitations of rights and freedoms on grounds of nationality for foreign citizens and stateless persons.

2.4. Moreover, in practice there have been initiatives that violate the principle of equality before the law and the prohibition of discrimination on grounds of religion and belief. Among these initiatives, several stand out: a decision of the Defense Council of the Kyrgyz Republic dated February 3, 2014,<sup>53</sup> and the Concept of the State Policy in the Sphere of Religion, adopted on November 3, 2014, pursuant to which the State provides preferential financing of certain religious communities, in particular the SAMK related to the Sunni Islam (Hanafi Mazkhab of Maturidi school). Moreover, there were attempts to set the status of traditional religions only for two religious communities - Hanafi Mazkhab of the Maturidi school represented by the SAMK, and Russian Orthodoxy represented by the Russian Orthodox Church of the Moscow Patriarchate.

2.5. In March 2013, the parliament member *Kanybek Osmonaliev* and Speaker *Asilbek Jenbekov* initiated a draft law "On Religious Education and Religious Schools in Kyrgyzstan." This bill contains provisions under which the State would have been able to set standards of religious education for faith communities. This could be classified as state interference in teaching of faith traditions and religious communities' self-governance, which would lead to violation of the secular nature of the State. The first attempt to adopt a similar law was undertaken by *Kanybek Osmonaliev* in 2009, when he was the Chairman of the State Agency on Religious Affairs (SARA), which was later renamed the State Commission on Religious Affairs (SCRA). This draft law was examined by ODIHR OSCE and was assessed as not relevant to the human rights obligations of the Kyrgyz Republic. In February 2014, the draft law failed to pass two readings in the Jogorku Kenesh (Parliament). Despite a withdrawal by its initiator in January 2015, the draft law's provisions were effectively replaced at the initiative of the SCRA in the draft amendments to the Law on Religion. On November 2014, the draft amendments were presented for public discussion on the SCRA's official website. It should be noted that the SCRA's director is appointed by the President.

2.6. In 2012-2013, the Ministry of Justice of the Kyrgyz Republic and Government of the Kyrgyz Republic tried twice to amend the Code on Administrative Responsibility of the Kyrgyz Republic. These amendments included provisions that cover heavy fines for conducting missionary activity, free choice of religious affiliation (proselytizing), religious activities without registration with the SCRA, and the involvement of children in the activities of religious communities. Ultimately, the amendments actually banned a number of actions related to the implementation of religious freedom and established the liability for these actions (articles 395, 395-1, 395-2 of the Code of Administrative Responsibility of the Kyrgyz Republic)<sup>54</sup>. In October 2014, the SCRA

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<sup>53</sup> See the decree "On the implementation of the decision of the Defense Council of the Kyrgyz Republic on State policy in the sphere of religion,"

[http://www.president.kg/ru/news/ukazy/3468\\_podpisan\\_ukaz\\_o\\_realizatsii\\_resheniya\\_soveta\\_oboronyi\\_kyrgyzskoy\\_respubliki\\_o\\_gosudarstvennoy\\_politike\\_v\\_religioznoy\\_sfere/](http://www.president.kg/ru/news/ukazy/3468_podpisan_ukaz_o_realizatsii_resheniya_soveta_oboronyi_kyrgyzskoy_respubliki_o_gosudarstvennoy_politike_v_religioznoy_sfere/)

<sup>54</sup> The draft law was approved by the Governmental Decree №527. The Government stated in the document that the developer of the draft law is the Ministry of Justice of the Kyrgyz Republic.

repeated an attempt to adopt these amendments along with the draft law on Amendments to the Law on Religion as a pretext of the initiative of the Defense Council's Working Group.

2.7. Religious educational institutions provide reports in the same way as religious organizations, by order №116 of the director of the SCRA (according to alternative data, №4) dated December 20, 2012: "On the Form and Timing of Reports by Religious Organizations on Their Activities." By this order, SCRA in fact took on the function of several authorities - the Tax Inspection, the Social Fund, and the General Prosecutor. There is additional interference with the self-administration of religious organizations in particular regarding the decisions of governing bodies, including issues related to internal affairs. Due to the fact that religious educational institutions are under the control of religious organizations, information on their activities should therefore also be reflected in the financial statements of religious organizations.

2.8. Equality and non-discrimination are offset by such initiatives as the draft law "On State Support of Traditional Religions" (initiated in 2014 by deputy Omurbek Tekebayev). It foresees State financial support to two religious organizations - *the Spiritual Administration of Muslims of Kyrgyzstan* and *the Bishkek and Kyrgyz Diocese of the Russian Orthodox Church of the Moscow Patriarchate*. The current Law on Religion prohibits the State funding of religious organizations<sup>55</sup>. In addition, government officials often use the term "traditional religions" in their speeches, despite the fact that the Constitution of the Kyrgyz Republic, adopted by referendum in 2010 (hereinafter, the "2010 Constitution"), does not establish a State religion. The current Law on Religion includes the term "sect," which has a derogatory connotation.

2.9. After the adoption by referendum of the 2010 Constitution of the Kyrgyz Republic, the Law on Religion was included in the list of laws that should be brought into line with the Constitution. For this work, the Ministry of Justice established a working group. For unknown reasons, a new version of the draft Law on the Freedom of Conscience and Religious Organizations in the Kyrgyz Republic<sup>56</sup>, which corresponded to the 2010 Constitution and treaties of the United Nations for Human Rights, was not submitted by the Government to the Jogorku Kenesh (Parliament). Thus, the Kyrgyz Republic ignores the recommendations of the ODIHR OSCE on the 2008 Law on Religion (see the opinion of the *Venice Commission* and the *ODIHR OSCE Expert Council*).<sup>57</sup> Additionally, the Law on Religion which was adopted in 2008 and has been amended several times still tightens State control over religious organizations, and complicates conditions for their activities.

### 3. The Principle of Non-Discrimination (Article 2, paragraph 2 of the ICESCR)

3.1. The Constitution of the Kyrgyz Republic prohibits discrimination<sup>58</sup>, including on grounds of religion or belief<sup>59</sup>, and guarantees the enjoyment of all human rights and freedoms to everyone, including freedom of conscience and religion<sup>60</sup> and the right to education<sup>61</sup>. International treaties to which the Kyrgyz Republic is a party and generally recognized principles and norms of international law are integral parts of the legal system of the Kyrgyz Republic<sup>62</sup>. In addition, international human rights treaties, to which the country is a party shall have priority over other international treaties.<sup>63</sup>

3.2. The attitude of state bodies and officials varies toward different faith communities and is determined by their religious background (Remark: both – of the official and of the groups). Thus, in accordance with the

<sup>55</sup> Paragraph 5 of Article 5 of the Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" (hereinafter - the Law on Religion), as amended on December 7, 2012 № 196, <http://cbd.minjust.gov.kg/act/view/ru-ru/202498>

<sup>56</sup> The draft law, in line with the 2010 Constitution of the Kyrgyz Republic, <http://prava.kloop.kg/?p=627>

<sup>57</sup> See the Joint opinion No. 496/2008, dated October 28, 2008, of the Commission for Democracy through Law (Venice Commission) Council of Europe and ODIHR OSCE Advisory Council on Freedom of Religion or Belief CDL-AD (2008)-032, <http://legislationline.org/documents/id/15360>

<sup>58</sup> Paragraph 1 of Part 1 and paragraph 1 of Part 2 of Article 16 of the Constitution of the Kyrgyz Republic.

<sup>59</sup> Paragraph 2 of Part 2 of Article 16 of the Constitution of the Kyrgyz Republic, adopted by referendum on June 27, 2010, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913>

<sup>60</sup> Article 32 of the Constitution of the Kyrgyz Republic.

<sup>61</sup> Article 45 of the Constitution of the Kyrgyz Republic.

<sup>62</sup> Part 3 of Article 6 of the Constitution of the Kyrgyz Republic.

<sup>63</sup> Paragraph 2 of Part 3 of Article 6 of the Constitution of the Kyrgyz Republic.

law, religious and educational literature must be purchased and used only in places of worship and in specialized stores.<sup>64</sup> While Islamic and Christian canonical literature can be found in open trade outside the designated stores, while sales of canonical literature of other religions is limited to those areas.

3.3. According to the law, any religious activity of foreign citizens<sup>65</sup> as well as religious activities aimed at the dissemination of their faith<sup>66</sup> is considered missionary activity. The Kyrgyz Republic controls the residence of foreign religious believers, and the maximum duration of residence for a foreign citizen registered as a missionary is limited to a 3-year term or less. Residing in the country beyond this period is not permitted.

3.4. For example, the bishop of the Russian Orthodox Church of the Moscow Patriarchate, Theodosius, after 3-year tenure on the territory of Kyrgyzstan, was not able to renew his registration in the SCRA, and due to that issue he was forced to leave the country. In addition, the pastor of the Evangelical Christian Church "Grace," Kang Hyun Min (Kang Hyongmin) from South Korea, who had permanent residence in the territory of the Kyrgyz Republic, was denied a renewal of his missionary registration in 2011. A similar case occurred with a Seventh-day Adventist missionary, also from South Korea who had been trying to register for 3 years. The Ahmadiyya community, officially registered in 2002, encountered with a refusal to renew registration with the SCRA in 2008. Upon the prosecutor's intervention, SCRA renewed the registration, but in 2011 this community was refused renewal of its registration, due to pressure from the country's religious majority. In 2014 the Supreme Court of the Kyrgyz Republic prohibited activities of this community altogether.

3.5. The attitude toward citizens carrying out missionary activity is also different. For example, "da`waatists" (Islamic missionaries) are currently freely carrying out their missionary activity among the population. They are required to carry only a permit from the governing body of their religious organization (SAMK) for this activity. Meanwhile, according to the law, representatives of other faiths are prohibited from disseminating their beliefs.<sup>67</sup>

3.6. At the same time, representatives of foreign religious organizations (referred to by the law as missions of foreign denominations), in contrast to local religious organizations, are forced to re-register annually by the SCRA.

3.7. The Chaplains` Ministry (religious activities in prisons or the military) previously allowed access to different religious communities and their clergy. At the moment, access to prisons is open only to representatives of the SAMK and the ROC.

3.8. Since August of 2014, Islamic religious leaders working in regional Kaziat (Qadi's administration at oblast level), began to get salaries from the Yiman Fund, which was established with the participation of the State after the meeting of the Defense Council in February 2014. The religious leaders of other denominations do not get any financial support from this fund.

3.9. The current Law on Religion uses a non-legal term "sect," which has a strong negative connotation, a violation of the principle of neutrality and equal treatment of the secular state for all religious groups. This term refers to religious minority's groups, despite the fact that all religious organizations obtained legal status after the Kyrgyz Republic gained independence in 1991.

3.10. In practice, different approaches have been used for the registration of religious educational institutions on the basis of their religious affiliation. For instance, the Silk Road Theological College affiliated with the Kuuday Jamaat religious organization (Assembly of God, Pentecostals), despite compliance with all regulations of the Law on Religion, has not succeeded in obtaining re-registration by the SCRA. At the same time, the Theological Islamic Faculty works under the auspices of the Osh State University. These cases raise the question of neutrality and equal treatment by the State<sup>68</sup>, since the law allows for establishing religious

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<sup>64</sup> Paragraph 7 of Article 22 of the Law on Religion.

<sup>65</sup> Paragraph 1 of Article 12 of the Law on Religion.

<sup>66</sup> See, the basic terms and concepts, paragraph 7 of Article 3 of the Law on Religion, <http://cbd.minijust.gov.kg/act/view/ru-ru/202498>

<sup>67</sup> Paragraph 2, of Part 6 of Article 22 of the Law on Religion.

<sup>68</sup> The Constitution establishes the principle of separation of religion from the State, part 2 of Article 7 of the Constitution.

educational intuitions to the registered religious organizations only; the Osh State University is not a religious organization.

#### **4. Right to Education (Article 13, paragraph 1 of the ICESCR)**

4.1. The right to religious education is inextricably connected with the stringent requirements for the registration of religious organizations (*right to association*). A religious educational institution can be created only by a registered religious organization.<sup>69</sup> At the same time, for the registration of legal entities in the form of a secular foundation, only one founder is necessary, and for secular public association three founders are necessary.<sup>70</sup> However, this approach does not apply to religious organizations<sup>71</sup>; for their establishment there must be a minimum of 200 members<sup>72</sup> (in the draft law which was put on the website of the State Commission for Religions for public discussion, 500 persons were required for each organization).

4.2. In order to establish a religious educational institution, a religious organization must first serve as the founder of the institution.<sup>73</sup> This provision greatly complicates the ability to establish religious educational institutions for believers as first, it is nearly impossible for an individual to become a founder of a religious educational institution and second the establishment of religious schools requires registration with the SCRA, which is followed by subsequent registration as a legal entity in the bodies of Ministry of Justice and requires the further obtainment of a license in the Ministry of Education of the Kyrgyz Republic. In case of amendments to the charter of the organization, it must re-register again with the risk of not passing the re-registration for whatever reasons (case of the "Silk Road" Theological College).

4.3. The laws of the Kyrgyz Republic prohibit access to non-confessional (religious studies) education on an individual basis.<sup>74</sup>

4.4. There have been cases when school teachers have collected information about the religious affiliation of students and publicized it, meanwhile such information should remain private. It is not known for what purpose and on whose initiative the administration of schools (cases in the cities of Kara-Balta and Karakol) collected such information, but it is a violation of the neutrality of the State and its subordinate institutions.

#### **5. The Rights of Parents to Raise their Children (Article 13, paragraph 3 of the ICESCR)**

5.1. The Law on Religion currently prohibits parents from ensuring the religious and moral education of their children in conformity with their own convictions.<sup>75</sup> Moreover, in 2012-2014, several attempts to establish administrative responsibility for "the involvement of children in religious organizations" were undertaken. Thus, the parents could be deprived of the right to educate their children, including to jointly attend a religious community.

#### **6. Recommendations**

6.1. The Jogorku Kenesh, the Government, and the Ministry of Justice of the Kyrgyz Republic should begin bringing the existing Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" in conformity with the provisions of the ICESCR and ICCPR. Some of these provisions are also reflected in the Constitution of the Kyrgyz Republic. The Jogorku Kenesh should take into account that each individual, including a follower of a religious faith, is entitled to all rights and freedoms equally.

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<sup>69</sup> Paragraph 4 of Article 6 of the Law on Religion.

<sup>70</sup> Article 19 of the Law on NGOs, as amended by the Law of KR, on May 30, 2014, № 82, <http://cbd.minjust.gov.kg/act/view/ru-ru/274>

<sup>71</sup> Article 1 of the Law on NGOs.

<sup>72</sup> Paragraph 3 of Article 8 of the Law on Religion.

<sup>73</sup> Paragraph 3 of Article 6 of the Law on Religion.

<sup>74</sup> Paragraph 7 of Article 6 of the Law on Religion.

<sup>75</sup> Paragraph 5 of Article 4 of the Law on Religion.

- 6.2. The Jogorku Kenesh, the Government, and the Ministry of Justice of the Kyrgyz Republic should take into consideration the draft law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic," developed by the working group under the Ministry of Justice after the adoption of the 2010 Constitution of the Kyrgyz Republic.
- 6.3. The Jogorku Kenesh should ensure proper expert conclusions, including the existing five types of compulsory expertise on the draft laws (legal, human rights, anti-corruption, environmental and gender).
- 6.4. The matter of the registration of religious organizations and religious educational institutions should be referred to the jurisdiction of the Government of the Kyrgyz Republic represented by the Ministry of Justice of the Kyrgyz Republic.
- 6.5. In cooperation with civil society organizations and international organizations, conduct training programs for employees of government bodies and local self-government bodies in order to improve cooperation with religious organizations and to promote the values of human rights and tolerance.
- 6.6. The Ministry of Justice, the Government, and the Jogorku Kenesh of the Kyrgyz Republic should perform a functional analysis of the powers of the State Commission for Religious Affairs in order to eliminate redundant functions of other authorities as well as cease interference in the self-governance of religious organizations. The presumption of innocence and fair trial standards in the work of the State Commission on Religious Affairs should be ensured and this agency should have liability in appeals to the court in the case of imposition of penalties and suspension of registration. Judicial control should apply to any government interference in the activities of religious organizations.
- 6.7. Include information about the history of religions and religious diversity historically presented in the territory of the Kyrgyz Republic in educational and training programs.
- 6.8. The Government of the Kyrgyz Republic and law enforcement agencies should take action to change attitudes towards freedom of religion or belief as positive obligations of the State, as well as eliminate negative perceptions of religious organizations. Effective control of the court and prosecutors over operations to combat extremism should be ensured.

## Concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second and third periodic reports of Kyrgyzstan<sup>76</sup>

(Extract on provisions related with the freedom of religion)

### C.Principal matters of concern and recommendations

#### *Non-discrimination*

22. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para. 18) about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and the stipulation of a shorter period of military and alternative service for persons with higher education. The Committee notes the State party's initiative to amend the Law on Universal Conscription of Citizens of the Kyrgyz Republic on Military and Alternative Service (arts. 2, 18 and 26).

**The State party should ensure that amendments to the Law on Universal Conscription of Citizens of the Kyrgyz Republic, on Military and Alternative Service provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. It should also stipulate periods of military and alternative service on a non-discriminatory basis.**

#### **Freedom of Religion: On n the Implementation of the Rights of Believers in Kyrgyzstan**

Edited by Dmitry Kabak

**Выходные данные**

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<sup>76</sup> Concluding observations adopted on April 7, 2015 (document code is E/C.12/KGZ/CO/2-3), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKGZ%2fCO%2f2-3&Lang=ru](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKGZ%2fCO%2f2-3&Lang=ru)