

**NGO report on the implementation by
Kyrgyz Republic of articles of the
International Covenant on Civil and
Political Rights to
the UN Committee on Human Rights**

Bishkek, 2014

Introduction

The Kyrgyz Republic acceded to the International Covenant on Civil and Political Rights on 7 October 1994. In accordance with the requirements of paragraph 1 of Article 40 of the ICCPR, in 2000, the Kyrgyz Republic submitted its initial report on the implementation of obligations under the ICCPR, which was considered by the Human Rights Committee at its session held on July 11th, 12th and 19th, 20th, 2000 (CCPR/C/SR.1741-43).

In its concluding observations (CCPR/CO/69/KGZ) Human Rights Committee noted the positive aspects as well as the main issues that caused concern in the implementation of the ICCPR by the Kyrgyz Republic and made recommendations to promote all-round implementation of its obligations under the Covenant. This alternative report is submitted to the Human Rights Committee as an alternative to the national due to the Committee's consideration of the second periodic report of the Kyrgyz Republic on the implementation of the ICCPR, which was submitted on April 3, 2012 (CCPR/C/KGZ/2).

Alternative report is based on information prepared for the list of issues to the second periodic report of the Kyrgyz Republic (CCPR/C/KGZ/2), adopted by the Committee at the 108th session (8-26 July, 2013). In this regard, the report does not contain general information which was included in the official report of the Kyrgyz Republic. Alternative report aims to fill gaps in information provided by the Kyrgyz Republic to the Committee, comprehensive coverage of civil and political rights in Kyrgyzstan and in order to form the most complete and objective view of the existing problems in the field of human rights.

The alternative report includes information provided by the following non-governmental organizations that specialize in various fields of civil and political rights:

- Regional human rights organization "Spravedlivost" (Jalal-Abad);
- Public Association "Youth Human Rights Group" (Bishkek);
- Public Foundation "Golos Svobody" (Bishkek);
- Public Foundation "Center for the Protection of Human Rights "Kylym Shamy" (Bishkek);
- Public Association "Institute of Public Analysis" (Bishkek);
- Public Association "Institute of Regional Studies" (Bishkek);
- Public Foundation "Independent Human Rights Group" (Bishkek);
- Public Association "Labrys" (Bishkek);
- Public Association "Kyrgyz Indigo" (Bishkek);
- Public Association "Mental Health and Society"
- Public Association "Centre for Child Protection" (Bishkek);
- Public Association "Human Rights Movement "Bir Duino Kyrgyzstan" (Bishkek);
- Public Foundation "Legal Clinic "Adilet" (Bishkek).

Coordination of the preparation of the report was conducted by Public Association "Youth Human Rights Group" (Bishkek).

Various studies, reports, reports and sources of public authorities, international and non-governmental organizations and experts were widely used and text of the report contains references. Absence of reference to the source of information means that the information was provided by one of organizations that participated in preparation of the report.

For more information, please, contact the Youth Human Rights Group at yhrg95@gmail.com.

SUMMARY

- (a) The failure to implement international obligations of Kyrgyzstan and ignorance of the decisions and recommendations of UN treaty bodies and initiatives of human rights organizations raise concerns of civil society as it effects negatively on trends in the field of human rights.
- (b) Office of the Ombudsman (Akyikatchy) is not brought into compliance with the Paris Principles, as it contradicts the principles of independence and objectivity of election and dismissal. Appropriate measures at the legislative level are not taken by the state: Provisions of the Law "On Ombudsman (Akyikatchy)" is not brought in accordance with the Constitution of the Kyrgyz Republic and rules of law are not complied with recommendations for the development of criteria for election of Ombudsman.
- (c) Kyrgyzstan has not fulfilled CERD recommendations to bring the legislation into compliance with CERD, which is one of the reasons for the weakness of the anti-discrimination policy. The absence of specific rules on the protection of minorities has a negative impact on the decisions of the courts in relation to ethnic, religious and sexual minorities. The principle of non-discrimination of ethnic minorities in recruitment of employees of state bodies is not respected.
- (d) The most discriminated part of the society is representatives of LGBT; violence against representatives of this group is approved by society. Use of torture against representatives of LGBT community by law enforcement officials arouses particular concern.
- (e) Women, children and disabled people are easy target for trafficking and being used as sex workers and beggars after being trafficked from Kyrgyzstan.
- (f) In Kyrgyzstan, "The concept of strengthening the unity of people and inter-ethnic relations in the Kyrgyz Republic", which includes a program and plan of action, was developed and adopted.
- (g) Lack of specific public services and ignoring protective orders retain a high level of domestic violence against women. There are cases of sexual violence against women and underage girls, a high level of bride kidnapping and forced marriages. At the same time, Elders' courts, considering the problems of domestic violence and bride kidnapping, are guided by traditions and customs, which adversely affects the rights of women.
- (h) The existing judicial system does not fully meet the constitutional principles and international standards of justice. The judicial system does not guarantee the rule of law and

remains dependent on other branches of government. The state does not ensure the protection and safety of participants of the trial - defendants and lawyers.

(i) Widespread practice of torture in police custody continues and even tends to increase; operational law enforcement officers continue use torture in order to coerce confessions. The state has not taken any real steps to prevent torture. Since 2003, criminalization of torture, no victim has received compensation.

(j) The right to not to be subjected to arbitrary arrest or imprisonment and the right of detainees to be informed of their rights at the time of arrest are violated.

(k) Conditions of places of detention do not meet minimum standards of treatment of people deprived their liberty in accordance with international law and relevant national legislations.

(l) The legislation of the Kyrgyz Republic retains liability for affront and insult of the customs official that gives grounds for initiating criminal cases.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Given that the Covenant is directly applicable in the State party, please provide information on cases where the provisions of the Covenant have been invoked directly before the courts, and on the availability of remedies, and their effectiveness, for individuals claiming a violation of the rights contained in the Covenant.

- (1) To the request of human rights defenders on cases of courts' use of the International Covenant on Civil and Political Rights, the Supreme Court refused to provide the information in connection with the fact that such statistic data is not available in the court system¹.

2. Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol. Please indicate what concrete measures have been taken to give effect to the Committee's Views adopted in respect of the State party, and provide information on whether compensation has been paid to victims.

- (2) The UN Human Rights Committee noted violations of ICCPR norms by Kyrgyzstan after examination of 14 individual communications against Kyrgyzstan. However, all decisions of the Committee have been ignored; investigations are not carried out and compensations to the victims are not paid.
- (3) On November 18, 2013 Coordinating Council for Human Rights was established by Resolution of the Government of the Kyrgyz Republic. However, functions of newly created institute do not stipulate mechanisms, coordination and cooperation with civil society of implementation and monitoring of considerations of UN treaty bodies on individual communications. Lack of political will and national mechanism of implementation of UN Committee's considerations violates the Constitution of the Kyrgyz Republic. Failure of Kyrgyzstan to fulfill to its obligations on international human rights reduces level of protection of human rights and safety of victims that raises serious concerns of civil society.
- (4) For example, in 2012, representatives of victim's family in the case *Dzhumabaeva (Moidunov) vs. Kyrgyzstan* filed two statements to the Government of the Kyrgyz Republic with a request to execute the decision of the Committee and pay adequate compensation to the family. However, these claims were not uphold by the Government. At the same time, representatives of the state insist on termination of communications with the Committee regarding the case as the state calls into question the correctness of the Committee's judgment².

¹ Response of the Chairman of Supreme Court of the Kyrgyz Republic to the request, dated 03.12.2013, № 07-4/1267.

² UN Human Rights Committee presented its consideration on the case number 1756/2008 of Moidunov and Dzhumabaeva on July 19, 2011 (CCPR/C/102/D/1756/2008). Detailed information about the case and attempts to promote the implementation is presented in the alternative report Open Society Justice Initiative.

- (5) In the Criminal Procedure Law of the Kyrgyz Republic, there is a list of newly discovered circumstances for possible revision of the criminal case³ but the list does not include decisions made by the Committee. Inclusion of decisions of the Committee into the list would help to increase a chance for the revision of criminal case. However, initiative of civil society in this field was not taken by the state.

3. Please explain whether any steps have been taken to bring the Ombudsman, in its capacity as national human rights institution, into line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

- (6) In 2012, the Ombudsman (Akyikatchy) has been accredited a status "B" by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights which means that the institution does not fully meet the criteria of the Paris Principles on independence and effectiveness. Measures taken by the State in order to bring the Ombudsman (Akyikatchy) of Kyrgyzstan into line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) limited to some changes in the law "On Ombudsman (Akyikatchy)".

Legislators extended terms of the Ombudsman (Akyikatchy) by granting the institute right: 1) to give opinions on draft of laws and to make proposals for amendments or additions of legislation (art. 8-1); 2) to make suggestions for entrance into international treaties (Article 8-1); 3) to make response acts on measures to eliminate violations of the rights and freedoms of citizens; 4) to initiate the submission of a petition to initiate a disciplinary or administrative proceedings against the public officials and employees of government who violate the rights and freedoms of citizen (Article 8-2); 5) to establish direct relations with international organizations and intergovernmental bodies for the protection of human rights and to enter into agreements with them for mutual assistance in the protection of human rights (Art. 8-3); 6) to participate in the preparation and review of national reports submitted to the international bodies for the protection of human rights (art. 8-3) ⁴; and 7) to apply to the Constitutional Chamber of the Supreme Court with a proposal to declare unconstitutional laws of the Kyrgyz Republic, concerning the rights and freedoms of citizen⁵.

These changes brought the provisions of the law "On Ombudsman (Akyikatchy)" in accordance with the principles in paragraph 3 a (i, ii, iii); c, d, and e of the Paris Principles.

- (7) The current law of the Kyrgyz Republic "On Ombudsman (Akyikatchy)" has a conflict with the Constitution of the Kyrgyz Republic and international standards of human rights protection. The law does not contain explicit requirements for candidates for the post of Ombudsman

³The list of reasons for retrial on newly discovered evidence is contained in Art. 384 of the Code of Criminal Procedure of the Kyrgyz Republic.

⁴Law "On Amendments and Additions to the Law of the Kyrgyz Republic "On Ombudsman (Akyikatchy)" on July 6 of 2007, No.97.

⁵Law "On Amendments and Additions to the Law of the Kyrgyz Republic "On Ombudsman (Akyikatchy)" on June 23, 2011, No.55.

(Akyikatchy), does not establish necessary educational qualifications and experience in the field of human rights and does not provide clear procedures of candidates' nomination and contradicts to the law "On Regulation of Parliament of the Kyrgyz Republic". In this context, the procedure of election of Ombudsman (Akyikatchy) excludes participation of public and is closed.

Election of Ombudsman (Akyikatchy), held in January and October 2013, caused a lot of criticism from human rights activists and candidates for Ombudsman (Akyikatchy). Former candidate for ombudsman Akylbek Sariev continues litigation with the Jogorku Kenesh, trying to recognize illegality of elections in January where he participated as a candidate. According to his opinion and opinion of other candidates, debates of fractions of Jogorku Kenesh held behind closed door and government did not provide openness and transparency of the election and there was a falsification by parliament members.⁶ Monitoring the election process of the Ombudsman (Akyikatchy) in October 2013 by civil activists from organization "Za vosstanovleniya instituta Ombudsmena" revealed that members of Parliament held closed election and it was not disclosed and transparent. Sessions of factions, that considered candidates, was conducted in state language (Kyrgyz) and translation into the official language (Russian) was not provided, not all candidates were given full freedom of expression, there was no "question-answer" discussion, and criteria for the selection and ranking of candidates were not announced⁷.

- (8) Process of dismissal of the Ombudsman (Akyikatchy) of the Kyrgyz Republic does not comply with the Paris Principles as it contravene to independence and objectivity. One of the major gaps of the law "On Ombudsman (Akyikatchy)" is an act according to which the Ombudsman (Akyikatchy) may be dismissed from his position pre-term in case of disapproval of the report to Jogorku Kenesh⁸. This enables parliamentarians to influence the publicity of information on violators of human rights and the objectivity of the report. In general, this rule creates a certain degree of dependence of the Ombudsman (Akyikatchy) from political forces and hampers effective implementation of the Ombudsman function to protect human rights.
- (9) The current legislation does not stipulate for representation of different segments of society in the Ombudsman (Akyikatchy) which will contribute to the availability of the Institute for all citizens.
- (10) There is a concern about the lack of contacts between the Ombudsman (Akyikatchy) and civil society organizations.

Non-discrimination, equal rights of men and women, and minority rights (arts. 2, para. 1, 3 and 27)

4. Please indicate all legislative measures adopted during the period under review to combat discrimination.

⁶ <http://vof.kg/?p=11610&lang=kg>

⁷ <http://www.tushtuk.kg/politics/538/>

⁸ Law "On Ombudsman (Akyikatchy)", Article 7, Part 1, paragraph 7.

- (11) The basis for protection of minority rights is the Constitution of the Kyrgyz Republic, adopted in 2010, which prohibit all forms of discrimination based "on grounds of sex, race, language, disability, ethnicity, religion, and age". The Constitution stipulates for use of official language (Russian) besides the state language which is Kyrgyz language and enshrines the right to preserve native languages of ethnic minorities. Criminal Code contains articles 134 - violation of the equality of citizens and 299 - national, racial or religious hatred. Article 373 of the Criminal Code defines genocide as "acts aimed at complete or partial destruction of national, ethnic, racial or religious groups by killing its members, causing serious damage to health and other crimes motivated by antipathy". Section 9 of part II of Article 97 contemplates murder based on racial hatred and enmity. Article 299 of the Criminal Code establishes liability for inciting national, racial or religious hatred. Moreover, in laws of the Kyrgyz Republic dated June 25, 2007 number 91, and February 20, 2009 number 60, charges for this type of crimes has increased⁹. If the previous editions of laws of 1998 and 1999 stipulated for punishment by a fine of 100 to 150 minimum monthly wages or imprisonment from 3 up to 5 years, the new editions of the laws of 2007 and 2009 stipulate for punishment by fines from 3000 to 7000 calculated indexes or imprisonment from 7 up to 10 years with deprivation of the right to occupy certain positions or to be engaged in certain activities. In 2009, the Criminal Code was introduced with article 299-1, providing increased punishment "for organized activities aimed at inciting national, racial, religious or inter-regional hatred".
- (12) In general, legislation is the main base of non-discrimination of minorities. However, mechanisms of implementation and enforcement practice do not provide adequate protection of minorities, as Articles 134, 299 and 299-1 of the Criminal Code are rarely used in the court system and it is explained by the fact that the Criminal Code of the Kyrgyz Republic uses term "equality" instead of the term "discrimination" that does not reflect current understanding of discrimination and is one of the reasons for ineffectiveness of the state anti-discrimination policies. National legislation does not contain a prohibition of discrimination i.e. it is characterized by the absence of comprehensive non-discrimination. The national legislation of Kyrgyzstan does not have norms of responsibility of public officials for discriminatory decisions and behavior. Law "On public servants"¹⁰ should be added with an article about direct prohibition of discrimination. The crime of violation of equality of citizens (Article 134) refers to cases of private prosecution, which significantly limits the ability to protect and prosecute violators. Most conflicts between ethnic majority and minorities are classified as domestic conflict as the legislation has no provision on protection from crimes motivated by hatred or enmity. Moreover, the judiciary system has no practice of prosecution of crimes motivated by discrimination or hatred and no anti-discrimination trial was provided.
- (13) Social conflicts in Kyrgyzstan, including different ethnic component, during the investigation and in court practice treated as domestic in accordance with existing norms of legislation.

⁹ Sydygalieva E., Administrative and legal ways to protect the rights of ethnic minorities in Kyrgyzstan // News of Razzakova KSTU, 26/2012.

¹⁰ Law of the Kyrgyz Republic "On Public Service" (Law of the Kyrgyz Republic on February 25, 2010, № 35)

- (14) In September 2013, national testing of senior students of high school (ORT) was again approved by the state¹¹ and this test is available only in state (Kyrgyz) and official (Russian) languages. This decision put students of high schools with Uzbek language training and students with poor knowledge of Kyrgyz and Russian languages into difficult situation.

Case 1

According to the Ombudsman Tursunbek Akun, he was addressed by Turks - residents of village Yuryevka of Issyk-Ata district of Chui oblast. According to their information, on August 4, 2013, there was a conflict among the village taxi drivers. During the fight two ethnic Turks suffered, they were brought by Kyrgyz side to farm field, where they were beaten and thrown into the river. But they survived and were in intensive care and their relatives wrote a claim to the police. "However, in the evening of that day about 300 Kyrgyz villagers gathered at houses of victims and demanded to take the claim back, otherwise they threatened to burn houses and the victims and their families will be evicted from the village", informed the Ombudsman.

The Interior Ministry gave information that parties take claims back as they have no claims against each other. (06/08/13 18:03, Bishkek - IA «24.kg»)

6. Please describe the measures adopted to prevent and punish discrimination based on gender identity and sexual orientation, together with the remedies available to victims of such discrimination. Please, provide detailed information on the case of Mikhail Kudryashov, who was detained and beaten while in police custody in October 2010 for allegedly disseminating films depicting gay themes.

- (15) **Information on the case of Mikhail Kudryashov.** On October 30, 2010, Kudryashov M. was arrested in Bishkek by officers of the State Service of Financial Police (hereinafter - SSFP) on suspicion of committing a crime under Article 262 of the Criminal Code of the Kyrgyz Republic (manufacture or sale of pornographic materials). He was in detention without detention record and legal aid for more than 12 hours. During the interrogation, financial police officers subjected him to physical violence (operating Officer V. Suslov and seven officers whose names remain unknown). They forced him to undress and insulted verbally, forced to write a statement about rape against his friends, pierced metal pen into his arm, punched and kicked him. When they brought Kudryashov to his apartment in order to conduct a search, his friend Kostjukov S. was near his house and he was also taken to the office of the Financial Police. Kudryashov was forced to write a confession under the threat of beating his friend Kostyukov, whose police officer punched in the stomach.
- (16) According to the official forensic medical examination Kudryashov received a light injury. However, the diagnosis does not correspond to the medical certificates which he received after

¹¹ Resolution of the Government of the Kyrgyz Republic dated September 13, 2013, No. 514 "On Amendments and Additions to Certain decisions of the Government of the Kyrgyz Republic".

his discharge from the Bishkek Research Center of Traumatology and Orthopedics, where he was diagnosed with closed craniocerebral injury, contusion of the occipital region of head and soft tissue bruises. This diagnosis was confirmed by a neurologist, but it was not taken into account during the state examination. In April 2012, independent experts in the field of forensic medicine, psychology and psychiatry gave their report on assessment of evidence of torture or ill-treatment in accordance with the standards of Istanbul Protocol. The conclusions of the independent experts on June 03, 2012 stated that Kudryashov received physical and psychological trauma as a result of beatings in November, 2010. Psychological symptoms typical for a survivor of torture and ill-treatment were presented in Kudryashov.

- (17) Multiple complaints about the use of torture were investigated superficially and ineffectively – necessary investigative experiments were not conducted. In addition, a statement of Kudryashov on facts of violence and torture were not taken into account by judge. Kudryashov was convicted of a crime under Article 262 of the Criminal Code and sentenced to one year of suspended sentence.
- (18) The Constitution of the Kyrgyz Republic prohibits any form of restriction of citizens' rights in marriage, and in the text of law same sex marriage is not prohibited directly. Although homosexuality is not criminally punishable, sexual orientation can play a (negative) role in the proceedings.
- (19) In Kyrgyzstan, violence against LGBT people and homophobia are endorsed by society. Although homosexuality is not criminally punishable LGBT people, especially gay men are the most brutally repressed and discriminated. Suppression and discrimination have different shapes and the most common forms of police harassment are beating, threats, and extortion of reveal their sexual orientation.

Case 2

In the Sverdlovsk district court of Bishkek, in 2001, Pimenov, Zalilov and Starodubtcev, three (young) homosexual men, were suspects of the criminal case on murder (organization and/or commitment) of their gay friend. They were sentenced to imprisonment for 14 and 15 years. Lawyers of convicted men state that representatives of justice had preconceived opinion about the accused men because of their sexual orientation. Charge, which the court ruled, was dictated by negative perception of people with alternative sexual orientation in Kyrgyz society as a whole.

- (20) Gay people perceive the police as a source of violence and harassment; in particular, 51% of respondents had problems with the police because of their sexual orientation. One of the gay men believes that “Kyrgyz police ambush gay people in clubs, extorts through drugs and use underage boys (they send the underage man to contact with gay men) in order to demand a bribe. There were cases when police officers raped lesbian woman and forced gay man to undress and dance naked in the police department.”

Case 3

«Case of Howard»

In 2001, in Bishkek, British businessman, Howard, was murdered. During the investigation police targeted about 500 gay men, forcing them to obtain evidence of murder, extorting, and demanding bribes, the size of which was from 50 to 1000 U.S. dollars.

7. Please indicate whether the Ethnic Policy has been approved by the Government and provide detailed information on its goals and allocated resources.

- (21) On March 18, 2013, the Defense Council of the Kyrgyz Republic approved submitted draft of the concept on ethnic politics. On April 10, 2013, "The concept of strengthening the unity of people and inter-ethnic relations in the Kyrgyz Republic" was approved by Presidential Decree. The aim of the Concept is to protect the rights of citizens regardless of their ethnicity, strengthening security and unity of the people, establish system of public authorities responsible for the regulation of inter-ethnic relations, and ensure citizens' participation in socio-economic and political processes. The Concept also has a task of ensuring the implementation of the principle of equality of citizens regardless of race, ethnicity, religion, and other circumstances during the hiring process for positions in the public and municipal services, law enforcement and the judicial system and formation of personnel reserve for the national, regional and local levels. Implementation of the Concept was funded by the Peacebuilding Fund.

Violence against women, including domestic violence, trafficking in persons, family life, and equality before the law (arts. 3, 7, 8, 23 and 26)

9. Please describe legislative, institutional and awareness-raising measures adopted through the review period and their effectiveness, to (a) address the prevalence of violence against women, including domestic violence; (b) encourage police reporting of gender-based violence cases; (c) train the police on relevant legislation and the nature of violence against women; (d) systematically prosecute perpetrators and punish them adequately; (e) change societal attitudes on violence against women in particular within the family; and (f) establish State-run shelters for women and girl victims of violence.

- (22) The problem of violence against women in Kyrgyzstan remains unsolved for many years. Adopted legislation, in particular the Law of the Kyrgyz Republic on prevention of domestic violence, which provides protection orders and in practice these orders are not implemented. Violence against women is committed regardless of their level of education, economic and social status, type of marriage or age. If the woman decides to demand their rights by contacting police, due to the lack of special services and practices of protection orders, these attempts turn to deterioration of crisis situation of woman. In Kyrgyzstan, annually about 10,000 women are address to crisis centers, police departments and Elders' court (Aksakals) on family and gender violence. It is revealing that 70% of women convicted of murder, committed a crime against

their husbands or boyfriends, who exposed them for long-term violence¹². State system of providing assistance to victims of discrimination against women does not exist. Usually support for these women is provided by non-governmental organizations, which establish special "crisis centers". National legislation should be improved and hotline for victims of such violence should be established.

- (23) Kyrgyzstan is a source of "human commodity" presented by women, young people and people with disabilities who are sent to other countries for sexual and labor exploitation. Women and underage girls are more vulnerable to sexual exploitation, often they are exported under false pretence to work as governesses, nurses and dancers. In 2011, the government identified 38 victims of trafficking; 13 of them were found by the consular authorities in the host countries.
- (24) Children, besides being sexually exploitation, along with persons with disabilities are used as beggars in Russia and Kazakhstan where they were trafficked. Also victims of trafficking are used as slaves in agriculture, farm, and forestry as outside and within the country. Kyrgyzstan is a transit center for redirecting "human commodity to other countries". As Kyrgyzstan, Russian Federation, Kazakhstan and a number of other CIS countries has visa-free regime victims of human trafficking, citizens of Uzbekistan and Tajikistan, are sent to Kyrgyzstan and then transported to other countries.
- (25) In Kyrgyzstan, there is a practice of selling newborn babies. One of the ways of selling is a conspiracy between birthing mother and staff of hospital, which gives the buyer a medical certificate proving that buying mother gave a birth to a baby. Detection of such "agreement" is difficult because women do not always register their pregnancy. First of all, the absence of pregnancy registration refers to internal migrants without residence permit in places of current residence.

Case 4

In prenatal centre of maternity hospital number 4 of Bishkek, on November 5, 2013, the fact of kidnapping of a newborn baby was discovered. Information about kidnapped newborn was reported to the police only after 4 hours. Mother of newborn A.M. was transferred to another facility, namely urology department of the National Hospital after the labor. During the investigation it was revealed that neonatal nurse sold newborn for U.S. \$ 1000. The woman who bought the newborn had a medical certificate stating that she gave birth to a child in this medical institution, which allowed the woman to register the newborn and receive a birth certificate for kidnapped child.

Case 5

¹² <http://www.24kg.org/community/159537-minsocrazvitiya-ezhegodno-organy-vnutrennix-del-v.html>

In October 2013, director of the psycho-neurological boarding house #2 in Tokmok sold for U.S. \$ 500 disabled children M.L. and M.O. for the exploitation as beggars in Russia. On October 28, 2013, M.L. and M.O. accompanied by person named K.A. were put on a flight "Bishkek-Moscow" and departed from the Bishkek airport "Manas". On November 11, 2013, Prosecutor's Office opened criminal case on grounds of crimes stipulated in Articles 124 (trafficking persons) and 304 (abuse of power) of the Criminal Code of the Kyrgyz Republic against the director psycho-neurological boarding house #2 in Tokmok and also opened a criminal case against K.A. and K.E. on complicity in the crime.

- (26) Measures taken by the Government of Kyrgyzstan, to conduct an effective and timely investigation of facts of human trafficking, are insufficient. Also there is no support of specialized centers for victims of trafficking for rehabilitation, re-socialization into society.

11. Please describe in detail the mandate and role of the Elders' court (Aksakals), a community justice system that handles some domestic disputes, including the legal prerequisites for referring cases to this mechanism, and its compatibility with the Covenant. Please respond to allegations that the police refer to the Elders' court too often and inappropriately, including when cases should be investigated as criminal cases, and in particular cases of violence against women, thus affecting adversely women's trust in the law enforcement institutions.

- (27) The legal framework, principles of organization and function of Elders' court (Aksakals) are determined in the Law No.113 of the Kyrgyz Republic "On Elders' court" from July 5, 2002. Elders' courts are not legal entities and not subject to registration in the judiciary authorities but at the same time they have an official seals. Elders' court is a public body created by volunteers on the basis of election and may be established by a decision of the assembly of citizens and local government in villages and cities. Men and women, who have respect and authority of citizens, can be selected as a member of Elders' court. Elders' court is intended to consider cases sent to them by judge, prosecutor, law enforcement bodies and other government agencies in accordance with the law or consider cases at the request of citizens. Elders' courts operate through persuasion and social influence, act as arbitrators in order to achieve reconciliation between the parties and make a fair decision, which is not contrary to the legislation. Elders' courts guide their activities using norms of morality and customs and traditions of the peoples of Kyrgyzstan, which are not contrary to the laws of the Kyrgyz Republic.
- (28) The Elders' courts have the right to make decision:
- a) On property and domestic conflicts of citizens
 - b) On failure of obligations of adult children on taking care of their disabled parents or persons who have raised them
 - c) On failure of obligations of parents and other family members on upbringing and support of children
 - d) On payment for work under employment contract

- e) On disputes among farmers for irrigation
- f) On property and family disputes that can be considered by Elders' court:
- g) recovering of property debt
 - a. returning property from unlawful possession
 - b. requisition of property from unlawful possession
 - c. returning property, which has been deposited
 - d. compensation for the damage caused to the property
 - e. collection of rents
 - f. partition of joint property of spouses
 - g. national marriage relations and traditions related to marriage and family relations.

- (29) After identification of guilt, Elders' court may decide to use one of the following sanctions:
- a. Give a warning;
 - b. Compel to bring a public apology to the injured party;
 - c. Declare a public reprimand;
 - d. Oblige guilty party to compensate a material damage;
 - e. Impose a financial penalty up to three minimum wages established by the legislation of the Kyrgyz Republic.
- (30) If parties do not execute decision of Elders' court in established period, enforcement order will be issued by a district or municipal court of the same territory.
- (31) **Protection of women's rights in Elders' courts.** Majority of members of Elders' courts are men, which causes problem of observance and protection of women's rights. Elders' courts consider issues related to domestic violence and divorce couples at their request or if the case was submitted by law enforcement authorities. According to official statistics, number of women applying to Elders' courts is major part of total complaints. For example, in 2008, 525 women and 412 men initiated hearings under Elders' court. Domestic disputes often are resolved in favor of reconciliation and saving a family. In cases of domestic violence, often responsibility lay on woman and often reconciliation occurs by pressure on woman and she continues to remain in abusive marriage.

From interview with a woman

Since members of Elders' courts are mostly men, usually decisions are in favor of men. They say to women: "You are the pride of family and you should do what your husband says".

From interview with a woman

"When couples want a divorce, Elders' courts do not want to divorce them. They say that women should "keep problems in their hearts" and struggle with difficulties. They judge from a male perspective. The aim of Elders' courts is family preservation".

- (32) Often women marry according to customs, without state registration of marriage. In the case of informal marriage woman faces challenge of protecting the right to inherit property and alimony, as well as subjected to psychological pressure during the divorce.

From interview with a member of Elders' court

"Our task does not include telling people that they should register their marriage. I support that people should conduct ritual "nicke", i.e. religious marriage. We must honor the nicke instead of registered marriage".

- (33) Conflicts of bride kidnapping demonstrate clearly contradiction of the mandate of Elders' courts to the legislation. The practice of bride kidnapping is often justified as traditions by Elders' court and their decision violates the national law. There had been cases when members of Elders' courts supported traditional marriage after bride kidnappings, saying: "Those who have been kidnapped are satisfied, so why do we need to change our cultural traditions?" Elders' courts have no possibility to intervene in process of abduction of women; it may be decided at the state level.

- (34) The society has also no clear opinion about the purpose of Elders' courts.

Of course, we need Elders' court! They know how to work with offenders. Aksakals cannot be replaced by anyone, and they make discussions with the public and they are better aware of everyone and everything in the village.

Maksuda Omorova, chairman of the Leninsky district court of Bishkek.

"Elders' courts should be disembodied. They cannot give an objective assessment; their decision-making process is guided by tribal relations. Sometimes Elders' courts may even exacerbate the conflict between people. "

Manas Murzaliev, businessman.

12. Please provide detailed information on measures taken to combat and eliminate practices of bride-kidnapping, early and forced marriage, and polygamy. Please provide statistics on the number of (a) complaints received (b) police investigations conducted, and (c) cases prosecuted and the type of penalties imposed.

- (35) Data of researches, conducted in 1999 and 2001 by experts of the American University in Central Asia, showed that 50% of marriages among ethnic Kyrgyz are the result of bride kidnapping. Research conducted in 2004 indicates an increasing of bride kidnappings and forced marriages. Law enforcement agencies often deny in the registration of statement of bride kidnapping for forced marriage or if they register statement effective investigation is not done. In 2010, in the Issyk-Kul region, two cases of suicide of woman after bride kidnapping and forced marriage were officially recorded.

- (36) Early and forced marriages result to problem of early motherhood. According to the data of the Information Center on National Health, in 2011, 1.2% of 139,344 births were given by adolescents. Also, 1214 newborns were children of mothers aged 15-17 years and 10 543 were children of 18-19 years old mothers, which is, in total, 8.5 % of newborns. Growing number of abortions, early motherhood, child marriages, abandoned children, suicides and deaths among adolescent mothers has a devastating impact on socialization of adolescents girls' and reduces their access to education. Early motherhood promotes growth of social abandonment and violence against women and children.

Case 5

In 2003, resident of village Ken-Suu of Tyup district of Issyk-Kul oblast, Samat Raimbekov, kidnapped Marina Sultanova. In 2004, a year after the bride kidnapping, marriage was registered in the registry office under the number 025 434. During the entire period of living together, even after the birth of three children, Samat Raimbekov, continued to beat his wife. On the night of June 30 to July 1 of 2011, he was drunk and he poured his wife with gasoline and set on fire, and then does not let her out of the house. She received 70-80 % of skin ambustion and on July 13, 2011, she died without regaining consciousness¹. She was 26 years old and had three children.

According to the Public Foundation «Open Line»

- (37) In January of 2013, the Criminal Code of the Kyrgyz Republic was amended (Articles 154 and 152 were changed); charge for bride kidnapping was increased. Now the "abduction of a person under the age of 17 for forced actual marriage" will be charged from 5 to 10 years of imprisonment (in previous Articles charge was from 3 to 7 years of imprisonment). However, the punishment is inadequate for the crime because it is less than for stealing cattle, which provides up to 11 years of imprisonment. Now Article 155 of the Criminal Code "kidnapping women for marriage against her will" is in a separate paragraph and provides punishment with imprisonment for 5 to 7 years (previously, it was assumed that charge will be up to three years of imprisonment or a fine of one hundred to two hundred calculated indices).

Prohibition of torture and cruel, inhuman or degrading treatment, and fight against impunity (arts. 2, 6 and 7)

16. Please provide information on the judicial reforms embarked upon after the 2010 presidential elections, in particular and as a matter of priority the revision and harmonization of the Criminal Code and Criminal Procedural Code. Please provide an update on efforts to reform the police with a view to fostering a zero-tolerance policy against torture and ill-treatment by law enforcement officials, and ending impunity.

- (38) **Information on judicial reform.** In 2010, the President of the Kyrgyz Republic in transition initiated judicial reform. In 2012, Presidential Decree established the Commission on development of agreed proposals for further reform of judicial system of the Kyrgyz Republic.

The Commission, after examination of the current situation, concluded that the judicial system does not solve the main problem - the right to open and fair trial¹³.

- (39) The Commission's analysis on reform of the judicial system showed that the existing judicial system does not fully meet the constitutional principles and international standards of justice, both in institutional and in the regulation of substantive and procedural law levels. Transformations, made on the previous stages of reform, did not allow the judicial system to become fully independent part of government that is outside of the politics and ensuring the rule of law. The judicial system still continues to be dependent on other bodies of government. The procedure for selection of judges politicized and leads to dependence of judges on certain political forces. There is no stable and mandatory system of training of judicial personnel and upskilling. Quality of justice decreased due to lack of specialization of judges, congestion of judges (normal caseload is about 500 criminal and civil cases per year) and the lack of effective mechanisms for pre-trial reconciliation.
- (40) There is lack of an effective mechanism for responsibilities of judges, in particular, for miscarriage of justice, unqualified exercise of the judicial function. There is no effective system of objective evaluation of judges' activity. For example, during the speech in the Parliament, the first deputy to Chairman of the Supreme Court, Kanat Turganbekov, said that *"in Kyrgyzstan, in the first instance courts, chaos is dominated; judges accept unlawful decisions. Lawyer and prosecutor agree between themselves and close cases. Cases do not reach the Supreme Court"*¹⁴.
- (41) The current judicial system does not fully ensure access to justice and opportunity to reconsider miscarriages of justice. There are no mechanisms to ensure real argumentations of state prosecutors, investigative agencies and lawyers. The court administration has mechanisms facilitating corruption practices. Access to court records and archives is not regulated by the legislation of the Kyrgyz Republic. Judicial proceedings are not sufficiently open; there are obstacles to public access.
- (42) In criminal proceedings prevails accusatory approach. Often judges are benign neglect to unfair investigation of cases and even to falsification of evidence by the investigating authorities. Often people are not persecuted for the crime but only for that the person is under prosecution. In most cases, referral to the court actually means that person is found guilty as sentence of acquittal can be reconsidered by higher courts.
- (43) Reduction of state funding of the judicial system directly affects the quality of justice. In practice, procedures of self-formation and execution of the budget of the judiciary system, identified in the law, implemented improperly. Problems of improving wages and social protection systems in the judiciary system remain unresolved. Judicial infrastructure is not

¹³ The Council was established by Presidential Decree "On the formation of the Council on development of agreed proposals for further reform of the judicial system of the Kyrgyz Republic" dated January 17, 2012, No.6.

¹⁴ <http://www.24kg.org/parlament/168741-kanat-turganbekov-v-kyrgyzstane-v-sudax-pervoj.html>

improving and information technology implemented poorly. In particular, courts are not provided with technical support for accurate documentation of proceedings.

- (44) Security for judges and court officials is not provided. The reality of justice can be assessed as non proper execution of those important public functions, which are set in the Constitution of the Kyrgyz Republic. The practice of amending rules of monetary and and procedural law during the last stages of the judicial reform had more non-systemic character, which led to internal collisions in law and various legal practice.
- (45) Solution of the problems identified in goals and targets appointed in the framework of judicial reform for 2012-2017, which envisages creation of basic institutional and regulatory legal basis. Judicial procedure requires changes in the direction of greater transparency, reducing of costs for citizens and legal entities initiating proceedings, reducing imprisonment period for defendants in custody up to 6 months from the date of actual imprisonment, eradication of falsification of documentation of pre-trial and trial in particular, court records.
- (46) **Information on police reform.** Declared reforms of law enforcement agencies under the Ministry of Internal Affairs (hereinafter - MIA) did not achieve its goal, as they were implemented piecemeal, holistic transformation did not have support of political will, there was no public support for reforms¹⁵. As long as the system has not changed, methods of work of law enforcement officers, use of force and coercion, have not changed. According to human rights organizations, more than 80 % of torture is accounted for law enforcement bodies¹⁶. General Prosecutor of Kyrgyzstan, Aida Salyanova, also believes that “there is no sphere of social life, where so many violations of human rights as in the field related to law enforcement agencies¹⁷” and “torture has become a part of the professional activities of law enforcement officers”¹⁸.
- (47) During the monitoring of places of detention and restrictions of freedom, in 2011 83.3 %¹⁹ of prisoners, in 2012 89.5 %²⁰ and in 2013 90.4%²¹ of the prisoners, who reported torture, specified that they were tortured by operating officers of law enforcement bodies in order to obtain coerced confession for crimes they did not commit. It is difficult to determine the real extent of torture, since most cases of torture are not recorded. This is due to social belief that it is useless and sometimes dangerous to complain about torture. Research, conducted by human rights defenders, lead to the conclusion that the widespread practice of torture in police custody remains unchanged and even tends to increase because of impunity and unprofessional staff of the police. Evaluation methods of police activity based on quantitative indicators of crime detection contributes to the use of torture.

¹⁵ Approved by the board of the Ministry of Internal Affairs on 25 January 2013.

¹⁶ <http://www.knews.kg/ru/society/16283>.

¹⁷ <http://www.knews.kg/ru/society/17098>.

¹⁸ <http://24kg.org/community/130408-aida-salyanova-v-kyrgyzstane-primenenie-pytok.html>.

¹⁹ Prevention of torture in detention centers of the internal affairs of the Kyrgyz Republic: monitoring, response and rehabilitation. - Bishkek, 2011. - p. 71.

²⁰ Implementation of the right to freedom from torture in closed institutions of the Kyrgyz Republic: monitoring, response and rehabilitation. - Bishkek, 2012. - p. 53.

²¹ Implementation of the right to freedom from torture and ill-treatment in the temporary detention center, pre-trial detention center, mental health and children's institutions of the Kyrgyz Republic. – Bishkek, 2013. – p.43.

- (48) Human rights organization «Spravedlivost» addressed to the local prosecutor's office to initiate criminal proceedings against the police detention center, but prosecutors has not found violation of law in police activities and decided to dismiss the criminal case. Two courts of upper instances, after an appeal against decision on dismissal of criminal case against the police detention center for ill-treatment, agreed on the need of additional investigation. The prosecutor's office did not agree with the decisions of courts and filed a complaint to the Supreme Court. On May 22, 2013, the Supreme Court of has examined the case and made decision in favor of the prosecutor's office of Jalal-Abad.

Case 6

On November 6, 2012, during the preventive searches, massacre of imprisoned people by law enforcement officers took place. 8 detainees wrote a statement describing the used torture and ill-treatment: they were beaten on the head, face and kidneys, stripped naked and forced to run and suffocated. Several detainees stated that police officers took away their medications. As a protest several detainees inflicted self-injury - cut their hands and stomachs with the help of razor.

17. Please provide a full breakdown of the following, based on the relevant articles of the national legislation, and specifically on article 305-1 of the Criminal Procedural Code - "Torture": (a) the number of claims of alleged torture and cruel, inhuman or degrading treatment during the reporting period; (b) the number of such cases investigated; (c) the outcome of these investigations, including prosecutions, and sanctions imposed; (d) the number of those convicted of torture and those who benefited from amnesty laws and/or suspended sentences; and (e) the measures taken for the rehabilitation of compensation of victims.

- (49) According to the data of the General Prosecutor's Office, in 2010, 34 criminal cases were registered; 28 were under Article 305 of the Criminal Code, part 2 paragraph 3²² - abuse of power, 6 were under Articles 305, part 2 paragraph 3 - abuse of power and 305-1 of the Criminal Code - torture. Results of the investigation of criminal cases: 4 cases are temporarily stopped, 6 cases are stopped (all due to the inability to identify subject to prosecution), 3 cases are at the investigation stage, and 21 cases against 32 persons were sent to court. 6 persons out of 32 accused were convicted, one person is justified, cases against 12 people were closed at the request of victims and 13 cases are pending court's decision.
- (50) According to the Internal Security Service, in 4 months of 2011, only 5 criminal cases were initiated out of 94 examined allegations of torture. In Kyrgyzstan, in 2012, 371 reports of torture were registered and 340 reports were rejected in initiating criminal proceedings. 31 criminal

²²Part 2 of Article 305 of the Criminal Code: "Abuse of power, i.e. act of government employee which is clearly beyond his powers and that violates the rights and legitimate interests of citizens or legal entities or legally protected interests of society or the state, and committed with the use of physical violence or threat of violence".

cases were initiated and only 20 criminal cases were sent to court; in 6 cases consideration is suspended, 2 cases are terminated and 3 cases are under investigation²³.

- (51) According to the Judicial Department of Supreme Court of the Kyrgyz Republic, in 2012, 63 cases under Article 305 ("abuse of power") of the Criminal Code were considered by courts; 49 people were convicted and 37 people were justified. 73 criminal cases against 111 people had been stopped. 11 cases against 14 people were returned to the prosecutor's office to fill the gaps of investigation. In 2013, only 11 cases out of 208 allegations of torture were prosecuted and remaining 197 (94.7%) cases were refused to initiate criminal proceedings²⁴. In 2013, 35 criminal cases indicted for torture had been under consideration of courts of the Kyrgyz Republic. Since the criminalization of torture under Article 305-1 of the Criminal Code in 2003 only one decision was made and officer of Patrol-Guard Service of the Police, Motuev A., was convicted of torture and sentenced to six years of imprisonment²⁵. In practice, many allegations of torture remain without consideration; only very small number of cases is subject to initiate criminal proceedings.

One of the main reasons for widespread use of torture in the Kyrgyz Republic is the impunity of perpetrators of the crime. During his visit to the country, the Special Rapporteur on Torture, Mr. Juan Mendez, said that torture remains unpunished and there is a little effort to investigate these crimes, which results in growth of the number of cases of torture.

- (52) **Compensation of victims of torture.** In accordance with the Criminal Procedure Law, the victim has right to require convicted for compensation of moral damage caused by the crime²⁶. National legislation does not allow victims of torture to receive compensation in civil proceedings until the torturer will not be found guilty under the criminal case. Since 2003, after the criminalization of torture, no torture victim has received compensation.

Survey of human rights organizations for 2009-2012 showed that 77 of 79 respondents appealed to the police with a statement on use of torture against them. 34 cases were prosecuted. Only one victim has filed a civil case for compensation in the amount of 5194000 Kyrgyzstani soms. Three victims were voluntarily paid compensation by accused police officers at the pre-trial stage. For example, one of the victims was paid 54,000 soms²⁷.

- (53) **Rehabilitation of victims of torture.** It should be noted that there is only one rehabilitation program for victims of torture organized by PF "Golos Svobody". During the period of 2007-2013, the rehabilitation program provided number of required services to 400 victims of torture such as medical treatment (outpatient/inpatient), medical examination, medicine treatment, psychological/psychotherapeutic counseling, and social assistance. During functioning of the rehabilitation program there had been many cases when victims had completed a course of

²³The answer of the General Prosecutor's Office, on February 12, 2013, No. 8/1-3p.

²⁴ http://rus.azattyk.org/content/kyrgyzstan_woman_torture/25183056.html.

²⁵ <http://pda.kabar.kg/law-and-order/full/67338>

²⁶ Code of Criminal Procedure. Article 22, paragraph 1.

²⁷ Information is taken from a survey on cases of torture and ill-treatment for the 2009-2012 by PF "Golos Svobody" and the centre for human rights "Kylm Shamy".

medical and psychological rehabilitation and then they were traumatized again, as their cases on torture were lost. Then a new treatment plan had been developed and psychotherapy was repeated. Psychotherapy can last for 2 -3 years.

18. Please respond to reports that torture and other ill-treatment remain widespread despite decrees issued by the Prosecutor General in 2011, particularly in temporary and unofficial detention settings; in situations of incommunicado detention; and during interrogations carried out without the presence of a lawyer. Please comment on allegations that police officers are reluctant to register torture complaints brought by detainees, and about the undue delay in providing medical assistance to victims of torture. Please respond to reports that detention is not duly registered as a matter of practice, and that detainees are denied the right to access to a lawyer. Please update the Committee on steps taken to establish the Kyrgyz National Preventive Mechanism. Please also respond to allegations that torture is routinely used to extract confessions and that judges regularly disregard allegations of torture by detainees and accept allegedly coerced confessions of guilt as evidence presented by the prosecution.

- (54) Despite the recent initiatives of the General Prosecutor's Office to strengthen prosecutorial oversight of the constitutional guarantee on prohibition of torture and other inhuman, cruel or degrading treatment or punishment²⁸, no real measures to combat torture state was accepted. Cases of torture and ill-treatment continue in the ubiquitous manner, while cases of bringing perpetrators of torture to criminal responsibility remain rare. Civil society organizations, after monitoring of the 47 detention centers across the Kyrgyz Republic in 2011, came to the conclusion that problem of torture is widespread. Thus, 70 % of the 193 respondents stated on use of torture and ill-treatment by law enforcement officials, in 83.3 % of cases purpose of torture was to obtain coerced confessions and in 13.3% cases – punishment²⁹.
- (55) Standards of Code of Criminal Procedure and Law "On Operational-Investigative Activities" do not regulate the production of search operations, do not determine the status of persons involved in the activities and most important is that it does not provide rights and duties of persons involved in operational-investigative activities. Often investigator does not allow legal counselor to accompany detainee, stating that the person is not detained but *invited for an interview* and that the Law "On Operational-Investigative Activities" does not allow a lawyer in the production of operational-investigative activities in the form of "interview". Detention practices of operating officers under guise of «interview» are often interrogation with use of torture and ill-treatment. Detention protocol, in these cases, is recorded only after the person has been "invited" to the investigating authorities and questioned as a witness. Interviewing a witness is not detention, respectively, law enforcement agencies have no obligation to inform relatives about the detention and inform detainee about his/her right to do not witness against himself or herself and to be represented by a lawyer.

28 Order of the General Prosecutor's Office No. 40 of April 12, 2011. Order of the General Prosecutor's Office No.70 of September 6, 2011.

29 Report on "Prevention of torture in detention centers of the internal affairs of the Kyrgyz Republic." Bishkek, 2011.

Information from the survey of cases of torture and ill-treatment in 2009-2012 by Public Fund "Golos Svobody" and Centre for Human Rights "Kylym Shamy": Case of the 66 detainees: eleven respondents indicated that they had no access to a lawyer from the moment of detention, three respondents was provided with a lawyer 5 hours after the arrest; five people noted that they had access to a lawyer after 1 day of arrest, another five people were able to meet with a lawyer after 2 days of arrest, one detainee was provided with a lawyer after 3 days of arrest, one after 4 days, two after 8 days of arrest and one detainee had access to a lawyer after 10 days of arrest.

- (56) According to Article 95 of the Criminal Code, protocol on the detention of a person suspected of committing a crime shall be prepared no later than three hours after the actual arrest. This provision does not comply with the international obligations of the state to provide protection from torture, according to which the protocol of detention should not be recorded after the actual arrest but after the actual detention of the person. Time of the actual detention of the person is not recorded in papers, so a protocol on detention can be postponed for indefinite period.

In practice, law enforcement officials often keep people, for a period exceeding 3 hours, in unofficial places of detention, such as rooms of the criminal police, basements, and patrol cars without issuing a protocol of detention and without contact with the outside world (incommunicado), family members, lawyers or medical professionals are not informed about the arrest. Human rights activists had recorded cases when person was officially registered after 10 hours of arrest, five people after 1 day of arrest, one after 3 days of arrest, one after 4 days of arrest and one after 10 days of arrest³⁰.

- (57) The right not to be subjected to arbitrary arrest or imprisonment was primarily violated in case of most people convicted of involvement in the armed conflict in southern Kyrgyzstan in 2010. Many of these people were illegally detained as violators of the curfew (case of Hamdamov Ikhtiyor "SANPA", case of Khaidarova Azizbeyov "Komsomol Park"). In total more than 2,500 people had been detained for violating curfew³¹. Family of some detainees were informed about the detention only after 2-3 days of arrest because suspects and accused persons (detainees often did not know about their status) were detained without contact with the outside world (incommunicado). None of the detainees, except lawyer of Azimjan Askarov, did challenge the legality of detention as all statements in the post-conflict period were ineffective. All hearings of restraint on mentioned cases were closed in accordance with Article 110 (3) and 132 (6) of Code of Criminal Procedure. Monitoring of the human rights organization "Spravedlivost" found that detainees were subjected to torture and ill-treatment, forced to give incriminating statements, as well as give testimony against relatives, friends, neighbors and other people³².

³⁰ Information is taken from a survey on cases of torture and ill-treatment for the 2009-2012 by PF "Golos Svobody" and the centre for human rights "Kylym Shamy".

³¹ Amnesty International report "Partial truth and selective justice", the United Kingdom, 2010 . p. 31.

³² Information was provided by PA "Spravedlivost, Jalal-Abad.

- (58) In practice, a major problem is a lack of guarantees for immediate and unimpeded access of lawyers to their clients from the moment of their delivery to law enforcement body and conducting interviews with suspects/accused in presence of a lawyer. This is a violation of national legislation (Code of Criminal Procedure, Art. 40) and promotes use of torture during the criminal investigation. According to the results of monitoring of temporary detention centers conducted by civil society organizations, 53.9 % of respondents stated that the lawyer was not involved in interrogations and 33.2 % pointed to absence of a lawyer in hearings on restraint in court³³. Appointment of so-called "pocket or duty counsel", who is often do not provide qualified legal counsel and also do not participate in the proceedings but fulfill formal requirements for signing of the necessary records and documents, is a serious problem of access to effective protection. Often, these lawyers cooperate closely with law enforcement agencies.
- (59) In these first hours of detention, person is subjected to torture and ill-treatment. The applicant is often rejected formal registration of a statement. Human rights defenders also know practice, when the victim under various threats is forced to waive his statement of torture. In practice, detained persons have no possibility to file complaints for various reasons, such as fear of being punished, lack of competent legal counsel and general distrust to the system. The vast majority of victims of torture and ill-treatment choose do not file complaint on torture considering such action is not only useless but dangerous³⁴.

Medical examination of accused or victim can be made in order to detect signs of physical injuries. Medical professionals often do not record all injuries because dependent on the state system. Monitoring of human rights activists revealed a case when doctor was subjected to psychological pressure by a law enforcement officer³⁵. As a result, it is almost impossible for victims of torture to document the physical injuries and prove use of torture, especially, in cases when acts of violence do not leave marks, scars or other physical evidence³⁶. Despite of the requirement of national law stating that confession of accused person cannot serve as a basis for conviction, law enforcement agencies often try to get a confession. Courts give undue weight to confessions in assessing evidence. Statement of accused on torture is seen by judges as an attempt to evade responsibility for the crime. For example, in cases of armed conflict in southern Kyrgyzstan in 2010, statements of defendants that they were subjected to unlawful interrogation methods were not taken into account and investigations on statements were not conducted.

- (60) Thus, in 2010, the prosecutor of Jalal-Abad region was submitted a statement on use of torture against Azimjan Askarov. However, prosecutor's office did not start criminal proceedings on use of torture against Azimjan Askarov. In addition, the courts, including the Supreme Court, refused to satisfy the complaint on use of torture at the stage of investigation. Nine relatives of

³³ Report on "Prevention of torture in detention centers of the internal affairs of the Kyrgyz Republic." Bishkek, 2011.

³⁴ The report of Freedom House "Guaranteeing protection from torture in Kyrgyzstan." Kyrgyzstan, 2012.

³⁵ Information is taken from a survey on cases of torture and ill-treatment for the 2009-2012 by PF "Golos Svobody" and the centre for human rights "Kylym Shamy".

³⁶ NGO's alternative report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Kyrgyz Republic, 2013.

the defendants of the case "SANPA", in September 2010, reported to lawyers about use of torture with detailed descriptions, however, they refused to write about tortures because they feared for their safety. Only after the Supreme Court verdict of life imprisonment of defendants of the case "SANPA", 15 convicted persons submitted written statements about use of torture with detailed information. However, statements of convicted people were ignored by the judge³⁷.

According to the data of two-year project of the OSCE ODIHR on monitoring trials, conducted in 2005-2006³⁸, none of the 133 allegations of torture did lead to the exclusion of evidence.

Right to liberty and security of person, treatment of persons deprived of their liberty and fair trial (arts. 9, 10 and 14)

21. Please provide information on the measures taken to guarantee that all persons detained by the police are fully informed of their fundamental rights from the outset of their detention, and have immediate access to a lawyer and a medical doctor, and are systematically brought before a judge in compliance with the Covenant. Please indicate efforts to improve detention conditions, and in doing so please refer particularly to the Kara Suu district pretrial detention facility in Osh province. Please also indicate all measures taken to ensure a regular inspection of all places of deprivation of liberty.

- (61) The right of any person subjected to arrest or detention to be informed of their rights at the time of arrest or detention or immediately after is not respected. The rights of detainees are not read at the time of actual detention and read only at the time of record of protocol of detention. Law does not require the investigative bodies to proclaim arrest and reasons of arrest to the person and read rights of arrested. For example, only 2 respondents out of the 66 people in detention indicated that they were read their rights³⁹.
- (62) **Detention conditions of Kara Suu district pretrial detention facility.** In wards there is floor ceiling (30 cm above the floor) instead of "individual sleeping place" and detained people are provided with bedding items. There is no enough sunlight for reading as windows are nailed up with metal shields. Lack of sunlight is one of the reasons for the spread of diseases, especially, tuberculosis. Artificial light spread into ward through an opening embrasure and is on the side of the corridor and regulated by administration of the institution. Wards are half lighted and there is dead air, high humidity, moisture in the ceiling and walls are covered with mold.

Toilet is designed for 5 persons and located on a hill in exercise yard and closed with metal shutters on the level of half meter from the floor. Walk is provided 2 times a day for 10-15

³⁷Results of monitoring of PA "Spravedlivost".

³⁸ Report "Result of trial monitoring in the Kyrgyz republic, 2005-2006", OSCE Office for Democratic Institutions and human Rights, OSCE Centre in Bishkek. p.9. available at: http://www.osce.org/documents/odihr/2007/12/28701_en.pdf.

³⁹ Information is taken from the review of cases of torture and ill-treatment in 2009-2012, Public Fund "Golos Svobody" and the centre for human rights "Kylym Shamy".

minutes. There is an outside shower but it is not fenced off from the general exercise yard and cannot provide the detainee with privacy. The ward for administrative detainees has wood ceiling and at night detainees are given bedding items. There is no daylight and ventilation in wards.

- (63) **The inspection of all places of detention.** OSCE Centre in Bishkek initiative a Memorandum of cooperation and on June 7 of 2011 it was signed by Ombudsman of the Kyrgyz Republic, OSCE Centre in Bishkek and the Public Fund "Kylym Shamy". the Memorandum brings together 15 NGOs and 3 international organizations and 6 government agencies. The Memorandum aims to strengthen protection of persons deprived of liberty from torture and ill-treatment through joint monitoring visits to places of detention without prior notice throughout the country. Large-scale monitoring was conducted in period from 1 July to 30 November 2011, which revealed numerous violations of norms on conditions of detention and treatment in the pre-trial detention facilities. Conditions of the facilities do not meet minimum standards of treatment of prisoners in accordance with international law and relevant national legislation⁴⁰. The monitoring group concluded that detainees are living in conditions equivalent to cruel and inhuman treatment: absence or poor ventilation of wards, concrete floors, windows are nailed up with metal shields, insufficient number of beds in wards, lack of bedding items and kitchen utensils. Absence of access to potable water, opportunities to keep good personal hygiene as well as to meet the needs alone and in a clean and private place was evaluated as degrading treatment of detainees.
- (64) In 2012, the participants of the Memorandum monitored temporary and pre-trial detention centers under the SSEP. Detainees in these institutions, fearing persecution for cooperating with the monitoring group, reluctantly told about torture. Only after transfer to pre-trial detention center under the SSEP, where access of police is limited, torture victim feels safer and decide to tell about illegal methods of inquiry. In 2013, monitoring of closed institutions of residential type, which contains a variety of categories of people deemed "mentally ill", was conducted. Persons with mental health problems, problems with intelligence, orphans and the homeless people are placed in hospitals and boarding schools. In the recent past, persons with epilepsy were placed in psychiatric hospitals and the number of placement in hospitals has decreased but number placement of the persons with epilepsy remains high⁴¹.

22. Please provide information on the mandate of the Council for the Selection of Judges, and respond to allegations that the process of selecting judges lacks independence given the President's power to veto proposed candidates by the Council. Please explain how the executive power's oversight of judicial selection is compatible with the Covenant. Please describe legislative measures taken to ensure equality of arms, in particular, with regard to (a) access to legal counsel, to court files and evidence; (b) security and safety of the

⁴⁰Report on the results of monitoring, "Prevention of torture in detention centers of the internal affairs of the Kyrgyz Republic." Bishkek, 2011.

⁴¹Report on the results of monitoring "Respect for the right to freedom from torture and ill-treatment in the detention center, jail, mental health and children's institutions of the Kyrgyz Republic." Bishkek, 2013.

parties including defendants, lawyers and family members; (c) ability to summon witnesses; and (d) equal evidentiary weight of medical forensic reports.

- (65) One of the main achievements of the constitutional reform in 2010 is that the selection of candidates for the post of judges at all levels is carried out by the Council on selection of judges, which is independent from all branches of government. In accordance with Article 19 of the Law “On the Council on the Selection of Judges”, the Council makes a proposal to a President after competitive selection process: 1) on presentation of candidates to Parliament of the Kyrgyz Republic for positions of judges of the Supreme Court and the Constitutional Chamber; 2) on appointment of local court judge or transfer (rotation) of a local court judge. President of the Kyrgyz Republic has the right to return any materials on the proposed nominee together with a reasoned decision and the Council is forced to conduct a new competitive selection. Thus, according to the legislation⁴², the Council has no right to reconsider candidate rejected by President. The principle of "absolute veto" puts the judicial system in dependence on political forces and the President of the Kyrgyz Republic. The constitution of the Kyrgyz Republic does not stipulate any role for the President of the Kyrgyz Republic in the appointment of judges of the Supreme Court and the Constitutional Chamber and consequently, validity of this provision of the law causes doubt.

During the selection procedure of judges of the Supreme Court and judges of the Constitutional Chamber, in August 2011, the President of the Kyrgyz Republic held interviews with candidates for judges of the Supreme Court who were considered by the Council on selection of judges⁴³. The President of the Kyrgyz Republic has no authority to influence on procedure of election of judges of the Supreme Court, except the right to present to the Parliament list of candidates, who were selected by the Council. Candidates selected by the Council were made to be examined by the President, which is contrary to the Constitution and legislation of the Kyrgyz Republic and international standards.

- (66) **Legislative measures to ensure equality of parties.** All previous attempts to bring criminal-procedural legislation of the Kyrgyz Republic in accordance with international standards of fair trial were non-systemic, which led to internal collisions in law and various legal practices. The structure of the Code of Criminal Procedure has not been changed in order to "allow argumentation of parties to flourish and at the moment it has almost all features of the official investigation inherent to Soviet and post-Soviet model"⁴⁴. Norms of the Code of Criminal Procedure does not fully comply with the constitutional provision that person, at the moment of imprisonment, should be provided security, given the opportunity to defend himself in person, qualified legal aid and lawyer⁴⁵. Code of Criminal Procedure requires obtaining certain procedural status of person - suspect or accused. As long as procedural status will not be

⁴² Law on Amendments to the Law "On Council for the selection of judges of the Kyrgyz Republic" on April 6, 2012, N 27.

⁴³ Selection of judges and international standards of judicial independence. Final report. Seminar for members of the Council on the selection of judges of the Kyrgyz Republic. Bishkek, 2011.

⁴⁴ Vogler R., Analysis of the criminal procedural legislation of the Kyrgyz Republic.

⁴⁵ The Constitution, Art. 24, Part 5.

determined, person, who is actually limited in freedom, cannot claim a lawyer. Operating officers, using the fact that a detained person cannot claim for a lawyer, conduct the first informal interrogation ("interview"), during which they use torture and ill-treatment to obtain confessions. As a result, a person, in fear, forced to "voluntarily" confess of crimes he allegedly did in the presence of a lawyer.

- (67) Lack of transparency in allocation of cases and appointment of counsel and absence of coordination among investigation, court and legal aid agencies are the main problems of the current system of state-guaranteed legal aid⁴⁶. This often leads to violations of the rights of suspects/accused to defense and control deadlines and quality of procedures. Low level of qualification of lawyers, provided by the state, is noted⁴⁷.
- (68) Government investigators limit the access of accused and his legal counselor to the evidence contained in the file of case throughout the investigation. This asymmetry of the rights of prosecution and defense provided in the Code of Criminal Procedure, according to which, the accused access to all available evidence against him is only possible after the investigation (Article 231 Code of Criminal Procedure). As a result, the defendant and his legal counselor are vulnerable against prosecutor who has all information.
- (69) **Safety and security of trial participants.** Responsibility for safety of trial participants should be assigned to the officers of justice, which, according to Code of Criminal Procedure, should "ensure the rules of court"⁴⁸. However, service of bailiffs, which is provided by the legislation, has not yet been established⁴⁹ and functions on protection of security of participants of trial are not fulfilled. During the monitoring of court cases related to the armed conflict in southern Kyrgyzstan in 2010, human rights activists documented facts of repeated beatings of defendants. For example, on September 15, 2010, in the Kara-Suu district court, defendants Sadykzhanov and Khaidarov were beaten for 10 minutes, in the presence of police officers, judges and 20 officers of bailiff's service⁵⁰. During the beating, nationalist statements were shouted and representatives of the court, the prosecution and the police had not taken action to ensure the safety of defendants. Request of the defendants to register received physical damages was refused by representatives of pre-trial detention center.

On September 29, 2010, during a break of the court hearings, which was held in a military unit number 7703 of MIA, escorting police officers opened doors of the ward, where defendants Djuraev, Ashirov and Tashirov were placed, and employees of MIA came in and brutally beaten defendants for 20 minutes. Then the defendants were threatened that if they will file a complaint they will be killed in the pre-trial detention center⁵¹.

⁴⁶ Law of the Kyrgyz Republic "On state-guaranteed legal aid" from July 17, 2009, № 227.

⁴⁷ Report on the evaluation of the quality of legal aid in the Kyrgyz Republic, research and consulting center SIAR, September 2004.

⁴⁸ Code of Criminal Procedure of the Kyrgyz Republic, Art. 270.

⁴⁹ Law "On introduction of the Code of Criminal Procedure of the Kyrgyz Republic" dated June 30, 1999, № 63, Art. 5. (Terms of bailiffs had been adopted before 2011).

⁵⁰ Information was provided by human rights center "Citizens against corruption".

⁵¹ <http://vof.kg/?p=1726>

- (70) Observers of trials in southern Kyrgyzstan on cases related with conflict in June 2010 noted **the facts of attacks and pressure on lawyers** and threatening of defense witnesses by accused. Atmosphere of hostility and violence in the courts were also undermined the defendants' right to a fair trial. Hearings were accompanied by pressure and attacks on lawyers in southern Kyrgyzstan, who defended the accused Uzbeks. Despite the fact that such incidents often occurred in presence of the representatives of judicial and police structures, no one has been prosecuted for the attacks on lawyers. On October 13, 2010, at a military garrison where hearings were scheduled, the accused Sukhbatullo Nizamhodzhoev and his lawyers Tatiana Tomina and Dilbar Turdieva were beaten⁵². As a result, the defendant Nizamhodzhoev was taken to hospital in critical condition. In addition, the defendant party had beaten three relatives of the accused, who had also been hospitalized. Lawyer Tomina refused to participate in the process until the local authorities and law enforcement officials would ensure safety of her and participants of the trial⁵³.

On October 14, 2010 during the hearing of case on murder of D. Turusbekov and D. Ermekbaev, relatives of murdered people beat lawyers N. Suyunbaeva and D. Turdumatova. Also driver of law firm K. Kadyrov had been injured and car windshields and side windows of a car were broken during the beatings⁵⁴. On September 30, 2010, during the consideration of the criminal case against Azimjan Askarov and others in the Jalal-Abad regional court, the defendants' relatives had been beaten and nobody was brought to justice⁵⁵. Lawyers of defendants were under real threat so the police was forced to get them out through the "corridor" created by officers of Special Forces⁵⁶.

On August 30, 2013, after end of hearings in Suzaksky District Court, 12 defendants and their relatives were attacked by numerous relatives of the victim. And about 30 police officers were not able to bring quickly the situation under control and restore order⁵⁷. On January 9, 2014, lawyer, Dinara Medetova, was attacked by 20 people near the Chui Regional Court, where hearing on case against Bizurukova was supposed to be held. This was the second attack on the lawyer Medetova, the first attack was on August 20, 2013 near the building of the Osh regional court and attack was related to the case of Bizurukova⁵⁸.

- (71) **Violations of the principle of equality of parties.** Article 294 part 1, paragraph 2 Code of Criminal Procedure allows exclusion of the ICCPR principle of everyone has the right during determination of any criminal charge against him, to questioning the witnesses against him or have the right to ensure that the witnesses are questioned⁵⁹. Code of Criminal Procedure allows

⁵² Information is provided by human rights center "Kylym Shamy".

⁵³ <http://vof.kg/?p=1733>

⁵⁴ AKIpress – «Svodka», 21-10-2010, 13:01. Prosecutor General's Office reports on criminal investigation into the beating of lawyers in the south. 21-10-2010, 13:01.

⁵⁵ Data of the monitoring of the human rights organization "Spravedlivost" Jalal-Abad.

⁵⁶ <http://vof.kg/?p=1732>

⁵⁷ <http://vof.kg/?p=11695>

⁵⁸ <http://kloop.kg/blog/2014/01/09/advokata-izbili-za-zashhitu-v-sude-e-tnicheskogo-uzbeka/>

⁵⁹ ICCPR, Art. 14, Part 2 (e).

disclosure of the testimony of the victim and witness, during the court hearings, obtained during investigation in the absence of these persons in the trial.

This provision violates the principle of equality of parties and reduces guarantee of effective protection. If there is no opportunity to question a witness in court, his testimony recorded at the inquest and read out at the trial can be accounted as evidence that will be considered in sentence statement. In practice, the judges interpret widely reasons for non-attendance of a witness or victim at the hearing and announce statement of witnesses of the persecution who are not presented at trial and use them in their conclusion statement. Objections of the defense, in this case, are not decisive.

The law allows reading out of statement of a victim or witness, which was given during the investigation, even when there are significant contradictions between the testimonies given at the hearings⁶⁰. In practice, this rule is often used to "return" a witness to his initial conditions, if in the court; he is confused or changes the testimonies. In this case, always testimony, given at the pretrial stage, is read loudly and witness is reminded that he is liable for perjury at the stage of investigation and in court. Therefore, if his testimony on these stages is different, it can be regarded as perjury (which is a crime). After such "explanation", witnesses tend to confirm written testimony given at the stage of investigation. As a result, it negates all efforts of lawyer to examine witnesses of prosecution in court.

- (72) **Access to evidence: medical forensic examination.** Expert opinion, in accordance with Article 81 of Code of Criminal Procedure, may be considered as evidence in a criminal case. Forensic examination can be held by state forensic experts and other experts who have needed knowledge and qualification (Article 199 of Code of Criminal Procedure). Code of Criminal Procedure does not limit forensic examination to state expert examination, but in practice, examination, especially medical, is entrusted mainly to government experts. Examination depends on the willingness of the investigator; he is entitled to refuse petition of counsel on forensic examination, which adversely affects to the effectiveness of the defense.
- (73) In Kyrgyzstan, there is one non-governmental medical forensic organization LLC "Center of Independent Medical Forensic Expertise" which was officially registered in 2009. Since the establishment of the Center, its activities were obstructed by the former head of investigative and prosecution agencies. On May 16, 2013 law "On the forensic activities" was adopted. According to the organization "Physicians for Human Rights", most of provisions of the law are not consistent with the purpose of providing independent and non-governmental forensic evaluations in accordance with the principles of the Istanbul Protocol. Law contains no clear rules on procedure and determination of the level of training of experts and difference between a "certificate of competence" for private forensic experts and "qualification certificate" for government experts and it also contains provision that certain types of forensic examination can be carried out exclusively by government agencies. These gaps prevent the development of independent forensic institutions.

⁶⁰ Code of Criminal Procedure, Art. 294, Part 1, paragraph 1.

23. Please clarify whether military courts can try civilians and if so, how and under what circumstances.

- (74) According to the Code of Criminal Procedure, military courts have jurisdiction over criminal cases committed by the military people and people called to military service (Article 240, part 2 of the CCP). In case of the charge of a crime or several crimes against one person or group of people, if one of the crimes is under the jurisdiction of a military court and other are under jurisdiction of the civil court, all crimes will be considered by military court (article 240, part 3 of the Criminal Procedure Code) . Thus, the military courts try criminal cases against civilians, if they are accused of committing crimes as a part of a mixed group of military servants or people called to military service and civilians, under the conditions stipulated by paragraphs 3 and 4 of Article 240 of the Criminal Procedure Code.
- (75) During the session on review of the Kyrgyz Republic within the Istanbul Anti-Corruption Action Plan, it was noted that the preservation of military courts, where judges are military personnel and, accordingly, report to the military commandment and are dependent from the Ministry of Defense hierarchy when it comes to promotion which is against the principles of judicial independence and might also hamper anti-corruption efforts in the army and military commandment. Consideration of liquidation of military courts and reassignment of respective cases to other courts was given as recommendation⁶¹. The Commission created by Presidential Decree in 2012 as part of initiatives to change the judicial system also proposed to liquidate military courts⁶². However, on October 1, 2013, the President Almazbek Atambaev, who is a chairman of the Council, noted that "the abolition of the military courts within the reform of the judicial system is premature decision" at the meeting of the Council for Judicial Reform⁶³.

Freedom of expression, freedom of assembly and of association (arts. 19, 21 and 22)

26. Please provide information on persecution of individuals, including journalists and prominent human rights defenders for their criticism of State institutions in relation to the June 2010 events. Please explain how the closure of the two independent Osh-based Uzbek language television stations, Mezon TV and Osh TV, following the June 2010 events conforms to the Covenant's provisions on freedom of expression. Please also indicate how the crimes of "insult" and "insult of public officials" adopted in the Criminal Code (article 128) are compatible with the Covenant, in particular with regard to the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression.

⁶¹Second round monitoring report on Kyrgyz Republic, adopted at the plenary session of Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on February 24, 2012, Paris. p. 87.

⁶²Presidential Decree "On the formation of the Council on the development of agreed proposals for further reform of the judicial system of the Kyrgyz Republic" dated January 17, 2012, № 6.

⁶³ <http://www.for.kg/news-240214-ru.html>

(76) In June 2007, the Criminal Code of the Kyrgyz Republic had excluded criminal liability for insulting a government official (Art. 342). In accordance with the Constitution of the Kyrgyz Republic (Article 33 part 5) no one may be prosecuted for disseminating information discrediting or humiliating honor and dignity. However, the Criminal Code of the Kyrgyz Republic retains responsibility for insult (Article 128) and the Code of Administrative Responsibility retains responsibility for insulting the customs official (Article 504-32). The Criminal Code defines “insulting” as a deliberate insult to honor and dignity of another person in obscene manner. In part 2 of the mentioned article insulting in a public statement, in a publicly exhibited works or in the media qualified as the same crime. Article 128 of the Criminal Code of the Kyrgyz Republic is contrary to the Constitution of the Kyrgyz Republic: Article 20, Part 4, paragraph 6 and article 33, part 5. However, Article 128 of the Criminal Code was actively used in practice, in 2009 143 criminal cases were filed and 19 people were convicted, in 2010 104 cases were filed and 24 people were convicted for 9 months and in 2011 48 cases were filed and 5 people were convicted⁶⁴.

27. Please provide information on the new Law on Peaceful Assembly, and the draft bill on Fighting against Legalization (Laundering) of Criminal Revenue and Financing Terrorist or Extremist Activity that allegedly imposes restrictive reporting obligations on non-governmental organizations (NGOs) to various State authorities, and their compatibility with the Covenant’s provisions on freedoms of assembly and association.

(77) **Information on Peaceful Assemblies.** Norms of the Constitution of the Kyrgyz Republic, accepted by referendum in 2010, put ground for a new approach to the regulation of social relations associated with the realization of everyone's right to peaceful assembly. On May 23 2012 a new Law "On peaceful assemblies" was adopted. This law fully reflects international legal norms guaranteeing and developing principles of the right to freedom of peaceful assembly, such as the presumption in favor of participants of assembly, the State's duty to protect peaceful assembly, legality, proportionality, proper practice of administrative regulation and non-discrimination. Law "On peaceful assemblies" of 2012 helped to overcome the pre-existing procedure of prior notification of assembly. An important addition is that the notice of the authorities on the planned assembly, now, is right of the organizers and participants of peaceful assembly. Thus, the results of monitoring of assemblies, conducted by independent observers during the period from 2011 to 2013, showed a positive trend. In 2012, 75.9% of assemblies were held with prior notification of the authorities, and in 2013, only 25.5% were held with prior notification⁶⁵. Observers did not record any case of refusal of the assembly when the organizers notified authorities. The main requirement that the assembly is held for peaceful purposes and has been peaceful. Only peaceful assemblies are protected by law and the state. In law, there are places where it is forbidden to hold assemblies: location near (not less than 100 meters) from the objects with hazardous and noxious industries, power plants, facilities of the penitentiary system, state and municipal health organizations, kindergartens, pre-school and

⁶⁴Second round monitoring report on Kyrgyz Republic, adopted at the plenary session of Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on February 24, 2012, Paris. p.78.

⁶⁵ The right to freedom of peaceful assembly in the Kyrgyz Republic. Monitoring report, 2013, p. 19.

educational organizations, near railways, oil pipelines, and high-voltage power transmission line.

The monitoring showed that, in 2013, 65.6% of assemblies were held in violation of law as they were held in places prohibited by law⁶⁶. To date, it was registered that only one assembly was stopped with the justification that it was held in a prohibited place. Nevertheless, the provision of the law of "automatic ban" should be reconsidered, as it restricts the right of peaceful assembly members to hold an assembly within hailing distance of their target audience in accordance with the Guidelines on Freedom of Peaceful Assembly⁶⁷. Also norm that establishes automatic ban initially puts even the organizers and participants of a peaceful assembly in position of offenders and leaves room for their persecution.

- (78) On January 28, 2013 the government introduced Jogorku Kenesh with a draft of law "On Combating Legalization (laundering) of income from crime and financing of terrorist or extremist activity" (hereinafter - bill), developed by the State Financial Intelligence Service under the Government⁶⁸. Article 12 of this bill poses a threat to civil society organizations in the Kyrgyzstan⁶⁹, as non-profit organizations were highlighted in a special category of suspected terrorists and extremist activities. In addition, the bill establishes additional reporting for NGOs receiving funding from any foreign sources including international organizations. The proposed provisions of the bill expand the power of state bodies to monitor the activities of local and foreign NGOs operating in Kyrgyzstan and do not comply with international practice including recommendations of FATF⁷⁰.

Birth registration and equality before the law (arts. 2, 24 and 26)

28. Please explain why registration of newborns has been introduced in all regions except in the Uzbek-ethnic populated provinces of Osh and Jalal-Abad. Please also explain measures taken to eliminate difficulties faced by women without passports in registering their newborn children.

- (79) Code of the Kyrgyz Republic "On Children" has provisions establishing mandatory immediate birth registration. More legal information about registration of birth and child's name can be found in the law "On Civil Status" from April 12, 2005 No.60 and Regulation "On the procedure of civil registration in the Kyrgyz Republic", which was approved by the Ministry of Justice of the Kyrgyz Republic on June 13, 2001 No.91. In practice, cases of violations of the rights to birth registration are found in Kyrgyzstan. Excessive red tape is notes when parents attempt to get the birth certificate for a child who reached the age of 1 year, or restore lost

⁶⁶ The right to freedom of peaceful assembly in the Kyrgyz Republic. Monitoring report, 2013, p. 24..

⁶⁷ Guidelines on Freedom of Peaceful Assembly, principles 2.2, 3.2, 3.5.

⁶⁸ Resolution of the Government of the Kyrgyz Republic dated 29 December 2012, No.8683.

⁶⁹ International center for not-for-profit law, LLC (ICNL, LLC). Kyrgyz Republic.

⁷⁰ FATF - The Financial Action Task Force is inter-governmental body developing and promoting policies to combat money laundering and terrorist financing.

documents. Thus, employees of one of the registry office in Bishkek demanded from social worker of PF "Center for Children Protection" to provide references from all other district registry offices of Bishkek that the birth certificate had not been issued earlier, despite of presented documents required for issue of birth certificate and this demand contradicts the legislation.

- (80) Basically, the problem of birth registration of children is faced by residents of new settlements of Bishkek. A study conducted in the residential community near Bishkek, in 2013, showed that in a relatively affluent residential community the percentage of children who do not have a birth certificate is from 4 to 8% and in the least favorable it is from 9 to 13%. Approximately the same situation with regard to persons under 16 years of age who do not have a passport. 92% of children without birth certificates have not received this document before. The vast majority of children (83% aged 6-15 and 98% of children under 1) have never had a birth certificate. Children of age group 16-18 are the largest group among those who have never had passports and aged 16 or above and 98% of them never had a passport. 48% of people of the age group 19-29 years never had an identification documents⁷¹.

Lack of documents (passports, birth certificates) is limiting people's access to free public health services and education. There have been cases when children aged 8-15 do not attend secondary school due to lack of a birth certificate. A key problem of receiving and recovery of passport is a requirement set by public authorities, according to which passports are issued only at the place of registration (residence permit) except Interregional department of passport, visa and registration work in Bishkek.

Right to participate in public life and minority rights (arts. 25 and 27)

29. Please describe in detail measures taken to increase the representation of ethnic minorities, especially persons of Russian and Uzbek origin, in parliament, government, public administration and law enforcement. Please provide data disaggregated by ethnicity on the representation of ethnic minorities in these State structures.

- (81) Effective participation of minorities in political life is not guaranteed. Negative trend in the field of the rights of ethnic minorities is more often seen in job opportunities in the public authorities; especially problem for employment of minority youth is high. According to the State Personnel Service of the Kyrgyz Republic, at the beginning of 2011, 10% of civil servants and about 12.6% of municipal employees are representatives of minority ethnic groups. There is a low level of representation of ethnic minorities in the judiciary system; 408 of 436 judges are members of the ethnic majority⁷². In the law enforcement agencies ethnic minorities represent only 7.2% and the Prosecutor's Office is 6.6%.

⁷¹ Report of the NGO "Centre for Child Protection", 2013, Bishkek.

⁷² Stat. data of the Supreme Court for 2010 // Z. Chotaev, "Legal aspects of protection of the rights of ethnic minorities in Kyrgyzstan"// Yearbook-2011, Bishkek, 2012.

In Jogorku Kenesh, which was elected in 2007, the proportion of the different ethnic groups was 20%, from total and in 2010 decreased to 12.5%. In local keneshes (councils) deputies from ethnic minorities are on average 14%. In Bishkek City Council 30% of members are representatives of ethnic minorities. In places of compact places of residence of the second-largest ethnic group Uzbeks, member of local government system are: in the Jalal-Abad oblast - 27% and in Osh oblast - 18%⁷³.

⁷³ Z. Ergeshov "Interethnic relations in Kyrgyzstan: The International Convention on the Elimination of All Forms of Racial Discrimination as a tool to monitor the implementation of human rights" // Yearbook on Human Rights for 2012, Bishkek, 2012.

RECOMMENDATIONS

1. Take measures to increase general awareness on the ICCPR and its Optional Protocol through expansion of programs, including systematic training of all persons involved in administration of justice, including judges, prosecutors, and lawyers.
2. Introduce norms into procedural law that give legal value to decisions of the UN Human Rights Committee during the administration of justice.
3. Establish and ensure efficient and functioning mechanism of execution of decisions of international human rights bodies, including the UN Human Rights Committee, which found violations of human rights and freedoms by the Kyrgyz Republic. Take comprehensive measures on restoration of violated rights and freedoms and compensation.
4. Develop specific criteria for election and dismissal of the Ombudsman (Akyikatchy), policies and procedures to ensure a broad and pluralistic representation of society among employees of the Ombudsman (Akyikatchy).
5. Develop new mechanisms of cooperation between civil society and law enforcement bodies to ensure public safety, as well as monitoring and evaluation of law enforcement bodies.
6. Exclude existing criteria for evaluating activities of law enforcement bodies and orient the police from percentage of detection to public confidence and safety.
7. Establish clear and effective criteria for selecting staff and management of law enforcement bodies.
8. Establish clear criteria on selection of members of Judges Selection Council, which is selected from civil society representatives in order to avoid political bias and create a transparent and public selection process, ensuring adequate representation of minority groups in the Judges Selection Council.
9. Adopt legislative and practical measures to avoid possibility of any interference in the process of judges' selection.
10. Provide civil society with access to submitted material of candidates for judge in order to monitor integrity of candidates.
11. Include representatives of civil society into disciplinary committee of the Judicial Council.
12. Take measures to implement the principle of adversarial proceedings and equality of parties in criminal proceedings, overcoming accusatory approach in law enforcement and

courts systems, as well as introduction of effective restoration of victims' rights, including:

- bring Code of Criminal Procedure in accordance with the principles and norms of the ICCPR;
- expand judicial control in pre-litigation stages (procedures) in criminal proceedings;
- exclude dominant role of prosecutor;
- create a full procedural form of defense activities aimed at finding, seizure and recording of evidence, describe in detail the procedure of consignment of evidence, appointment and production of examinations, and use of private detective services;
- abolish institute of return of criminal proceedings in order to fill gaps of investigation (further investigation);
- provide release of the defendant from the courtroom after the proclamation of acquittal.

13. Ensure the availability of qualified legal assistance through:

- establishment of procedural guarantees of choice of lawyer by accused and convicted in Code of Criminal Procedure;
- establishment of a special law on effective mechanisms to ensure free and fair legal counselor and lawyer's activities;
- development of legal procedures for establishing control the quality of legal services provided by government lawyers and its implementation into national law.

14. Shorten the period of stay of defendants in pre-trial detention centers.

15. Abolish military courts and transfer them to the jurisdiction of civil courts.

16. Provide effective personal safety involved in criminal proceedings through improvement of legal framework and adequate funding for programs for the protection of witnesses and other participants in criminal proceedings.

17. Decriminalize insulting.

18. Reconsider desirability of establishing an automatic ban on assemblies near (not less than 100 meters) the places listed in Article 12 of the Law "On peaceful assemblies".

19. Develop guidance defining the rules of conduct for representatives of law enforcement to maintain public order during peaceful assembly, including their interaction with the organizers and participants.

20. Establish help line for victims of domestic violence.

21. Improve participation of ethnic minorities in political life by the representation of minorities in public institutions. Selection of candidates for the vacant positions in the

public service should be done through open competition and representation of ethnic aspect. Ensure open competition by advertisement of vacancies on the website and the media.

List of abbreviations

AC KR - Administrative Code of the Kyrgyz Republic

BIA - Bureau of the Interior Affairs

CC - Criminal Code of the Kyrgyz Republic

CCP – Code of Criminal Procedure

CDIA - City Department of Internal Affairs

DDIA - District Department of Internal Affairs

DIA - Department of the Interior Affairs

GDCID MIA - General Directorate of Criminal Investigation Department of the Ministry of Internal Affairs

LGBT - lesbian, gay, bisexual and transgender

MIA - Ministry of Internal Affairs

NGO - Non-Governmental Organization

OSCE - Organization for Security and Cooperation in Europe

PC - Penal Colony

PTDC – Pre-trial detention center

SSEP - State Service of Executive Penitentiary

TDC - Temporary detention center