



EQUAL RIGHTS TRUST

The Equal Rights Trust

Alternative report submitted to the 95th session of the Committee on the Elimination of Racial Discrimination in relation to the combined 8th to 10th periodic reports submitted by:

Kyrgyzstan

March 2018

Statement of Interest

1. The Equal Rights Trust submits this alternative report to the Committee on the Elimination of Racial Discrimination (the Committee) commenting on the combined 8th to 10th periodic reports by Kyrgyzstan.
2. The Equal Rights Trust (the Trust) is an independent international organisation whose objective is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice. Over the course of the last decade, we have worked in partnership with civil society organisations in over 45 different countries, supporting our partners and other equality defenders to press for the adoption and implementation of comprehensive anti-discrimination laws.
3. The Trust has been actively involved in efforts to combat discrimination in Kyrgyzstan since 2012. We are currently implementing a three-year project, funded by the European Union, in which we are working in partnership with Jalal-Abad-based organisation Public Association Spravedlivost to improve the monitoring and implementation of UN Convention obligations on equality and non-discrimination, including obligations arising under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). In 2016, we published *Looking for Harmony, Addressing Discrimination and Inequality in Kyrgyzstan* following a four year process of desk-based and field-based research and consultation.¹ The report provides, for the first time, a comprehensive assessment of the lived experience of those exposed to discrimination on the basis of various grounds, together with an analysis of the gaps, weaknesses and inconsistencies in the national legal framework on equality and non-discrimination.
4. This submission is based on the findings of *Looking for Harmony* (available [here](#)). Given the comprehensive nature of this report, the submission does not reproduce the report's findings but instead highlights certain particular patterns of ethnic discrimination. In addition to highlighting these patterns of discrimination, our submission focuses on the inadequacy of the legal framework on discrimination, and in particular on the absence of comprehensive anti-discrimination legislation in Kyrgyzstan. In the absence of such legislation, Kyrgyzstan is unable to meet its obligations to prevent racial discrimination, arising under the Convention, and is ill-equipped to address the patterns of discrimination highlighted below.

¹ Equal Rights Trust, *Looking for Harmony, Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf.

5. Part 1 of the submission examines the national legal framework on discrimination, assessing the extent to which the state has met its obligations under Article 2, to effectively prohibit discrimination. Part 2 discusses the principal patterns of discrimination identified through our research, focusing on (i) discrimination during and after the 2010 inter-ethnic conflict; (ii) other significant patterns of discrimination and inequality constituting violations of Article 5 of the Convention.
6. In analysing the legal framework in Part 1, the submission relies in part on the *Declaration of Principles on Equality* (the Declaration)², a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts and has also been endorsed by the Parliamentary Assembly of the Council of Europe.³ In discussing different patterns of discrimination in Kyrgyzstan, the submission presents the findings and conclusions from our 2016 *Looking for Harmony* report.

Article 2(d): Legal Framework on Discrimination

7. Under Article 2(d) of the Convention, Kyrgyzstan has committed to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization”. The Equal Rights Trust’s assessment of the legal framework on equality in Kyrgyzstan finds that the state has not put in place an effective system of legislation to prohibit racial discrimination. Although there is a basic constitutional protection from discrimination, beyond this, the framework is patchy and inconsistent, and problems arise due to limited implementation, weak mechanisms of enforcement and significant barriers to access to justice.⁴ Comprehensive legislative protection from racial discrimination is notably absent.

Constitution

8. The principal protection for the rights to equality and non-discrimination in Kyrgyz law is found in the Constitution, which was adopted in 2010 and amended in late 2016. However, this single provision is not well defined, leaving significant scope for discretion in interpretation. Our review of judicial interpretation indicates that the provision has been interpreted narrowly and in ways which are inconsistent with international standards on equality and non-discrimination.
9. The Constitution of Kyrgyzstan guarantees the rights to equality and non-discrimination through Article 16, the relevant paragraphs of which read:

2. The Kyrgyz Republic shall respect and ensure human rights and freedoms to all persons on its territory and under its jurisdiction.

No one may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status as well as other circumstances.

Special measures defined by law and aimed at ensuring to ensure the highest values of the Kyrgyz Republic, as well as equal opportunities for various social groups in

² *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

³ Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

⁴ See above, note 1, Chapter 2.

accordance with international commitments shall not be considered as discrimination.

3. In the Kyrgyz Republic everyone shall be equal before the law and the courts.

4. In the Kyrgyz Republic men and women shall have equal rights and freedoms and equal opportunities for their realization

10. The scope of Article 16 is narrower than is demanded by international best practice: the right to equality, as defined in Principle 1 the Declaration, is broader including (i) the right to recognition of the equal worth and equal dignity of each human being; (ii) the right to equality before the law; (iii) the right to equal protection and benefit of the law; (iv) the right to be treated with the same respect and consideration as all others; (v) the right to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.⁵
11. Moreover, the scope of the right to non-discrimination, as provided by Article 16(2), is unclear, leading to concern that the interpretation of the provision will fall short of the standards required by international law. In respect of the personal scope, the provision explicitly lists both race and ethnicity as protected characteristics, and list of characteristics is clearly non-exhaustive and open-ended. However, our review of the jurisprudence of the Constitutional Court found a number of cases in which the Court had failed to consider well-established grounds of discrimination as falling within the scope of “other circumstances”.⁶ In addition, it is unclear from Article 16(2) whether the provision extends to providing protection on the basis of multiple, intersecting characteristics. In light of the practice of the Constitutional Court in interpreting other aspects of Article 16(2), there is significant cause for concern that the Court would fail to recognise the obligation to prohibit intersectional discrimination.
12. International best practice, as set out in the Declaration and clarified by *inter alia* the Committee on Economic, Social and Cultural Rights in its General Comment 20, dictates that there are four forms of discrimination: direct discrimination, indirect discrimination, harassment and denial of reasonable accommodation.⁷ While Article 16(2), correctly interpreted, would entail protection from all four forms of discrimination, the provision makes no explicit reference to these forms of discrimination, leading to concern that the provision will be interpreted narrowly, as prohibiting direct discrimination alone. As noted, our review of the jurisprudence of the Constitutional Court found numerous examples where the Court’s interpretation of Article 16(2) was inconsistent with international standards,⁸ leading to the exclusion of cases which clearly constitute discrimination from the protection of the provision.
13. The Constitution also does not expressly provide that positive action is required in order to overcome past disadvantage and accelerate progress towards equality of marginalised groups. Instead, Article 16(2) provides that “special measures (...) shall not be considered discrimination”. This is inconsistent with Article 2(2) of the Convention, which provides that state parties “shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures”.

⁵ See above, note 2, Principle 1.

⁶ See above, note 1, pp. 39-46, discussing the jurisprudence of the Constitutional Court on Article 16.

⁷ See above, note 2, Principle 5 and Principle 13; and Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Paras 7, 10 and 28.

⁸ See above, note 6.

Legislative Protections from Discrimination

14. As discussed above, our assessment is that the constitutional non-discrimination provision to be vague and inadequate to meet the standards required by Article 2 of the Convention. However, even in cases where states have robust and expansive constitutional non-discrimination provisions, it is well-recognised that there is a need to pass specific anti-discrimination legislation, if the right to non-discrimination is to be protected effectively in practice.⁹ In the absence of specific anti-discrimination law, states are *inter alia* unable to properly define and prohibit all recognised forms of discrimination, or to establish the necessary procedural elements of effective anti-discrimination law – such as the transfer of the burden of proof.
15. Indeed, Kyrgyzstan has implicitly recognised the need to enact specific anti-discrimination law through passing such specific legislation on gender equality and persons with disabilities.¹⁰ Yet the state has neither specific legislation on racial or ethnic discrimination, nor comprehensive anti-discrimination legislation.
16. Beyond Article 16 of the Constitution, protection from discrimination on the basis of race and ethnicity in Kyrgyzstan is limited to isolated provisions in different areas of law. Significant gaps in legislative protection remain, with no legislative protections from discrimination in certain key areas. Moreover, those protections which do exist are not consistent with international standards and – by their nature – lack the level of detail required to provide effective protection from discrimination.
17. Article 134 of the Criminal Code¹¹ provides an offence of “violation of equality of citizens”, committed by the “direct or indirect violation of the rights and freedoms of persons and citizens” on the basis of a closed list of characteristics which include race and ethnic origin, which harms the legitimate interests of a citizen. Article 134 thus creates a criminal offence of discrimination which is significantly narrower than accepted definitions of direct and indirect discrimination, which focus, respectively, on less favourable treatment or the creation of a particular disadvantage. Moreover, it must be noted that international best practice requires that discrimination be treated as a matter of civil law rather than criminal law, and thus Article 134 is inconsistent with such international best practice. In addition to the Criminal Code, both the Criminal Procedure Code¹² and the Code of Administrative Responsibility of the Kyrgyz Republic¹³ provide basic guarantees of equality before the law.

⁹ See above note 2, Principle 15, which states: “The realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage”. See also: Committee on Economic, Social and Cultural Rights, above, note 7, Para 37; and Committee on the Elimination of Discrimination Against Women, *General Comment No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, Para 31,

¹⁰ Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, 4 August 2008, № 184, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202398>; Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities”, 3 April 2008, № 38, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202329>;

¹¹ Criminal Code of the Kyrgyz Republic, 1 October 1997, № 68, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/568>.

¹² Criminal Procedure Code of the Kyrgyz Republic, 30 June 1999, № 62, Article 16(1) available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/9>.

¹³ Code of Administrative Responsibility of the Kyrgyz Republic, 4 August 1998, № 114, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/6>, Articles 3 and 550.

18. Beyond the criminal law, our research only found legislative protections from discrimination on the basis of race and ethnicity in the area of employment law. Article 9 of the Labour Code¹⁴ prohibits discrimination in the area of employment, providing inter alia that everyone has an equal opportunity to exercise their labour rights and freedoms; and that no one may be restricted in their labour rights and freedoms or receive any advantages in their realisation on the basis of a list of characteristics which include race, nationality, language and origin. Article 9 provides that a person who considers that they have been discriminated against in employment has the right to bring a case to court with the appropriate application for restoration of the violated rights as well as compensation for pecuniary and non-pecuniary damages. Article 9 provision is positive in many ways, particularly in the breadth of its scope and its open list of prohibited grounds of discrimination. However, the provision does not define nor specifically prohibit the different forms of discrimination (direct or indirect discrimination, harassment or a failure to make reasonable accommodation) and the Labour Code lacks procedural guarantees related to non-discrimination, such as provisions for the transfer of the burden of proof, for example.
19. Our research found no legislative protections from discrimination in other key areas, such as education, health and legislation governing the provision of goods and services. Thus, in these areas of law, victims of discrimination would be forced to rely upon Article 16 of the Constitution which, as discussed, is vague and open to restrictive interpretation.

Conclusions

20. Thus, it is clear that Kyrgyzstan's legal framework on discrimination falls far short of the standard required by Article 2(d) of the Convention. The scope of the constitutional protection, in Article 16 of the Constitution, is ill-defined and unclear, and there is evidence that the courts have interpreted the provision in ways which are inconsistent with international standards. Moreover, even if this provision met the highest international standards, it would not obviate the need for specific legislation defining and prohibiting discrimination and providing the necessary procedural guarantees.
21. In order to meet its explicit obligations under Article 2(d) of the Convention, read in conjunction with the implicit obligations of Article 5, Kyrgyzstan should enact anti-discrimination legislation prohibiting discrimination on the basis of race and ethnicity in all areas of life as governed by law. In the view of the Equal Rights Trust, in order to comply with international best practice standards, such legislation should not be limited to prohibition of race and ethnicity discrimination but should be comprehensive in its personal scope.
22. The need for states to adopt comprehensive anti-discrimination law has been recognised by many UN Treaty Bodies,¹⁵ including the Committee itself.¹⁶ Such legislation is necessary if states are to provide comprehensive and effective protection from discrimination, if gaps and inconsistencies in protection are to be avoided, and if levels of protection are to be the same across different characteristics and grounds. Comprehensive anti-discrimination legislation is necessary if states are to provide effective protection from multiple discrimination; as the Committee has noted, groups

¹⁴ Labour Code of the Kyrgyz Republic, 4 August 2004, № 106, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1505>.

¹⁵ See above, note 9.

¹⁶ See, for example, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: Kazakhstan*, UN Doc. CERD/C/KAZ/CO/4-5, 6 April 2010, Para 10.

such as ethnic minority women and persons, ethno-religious minorities and persons with disabilities from ethnic minorities all face unique and particular problems, which can only be properly addressed through comprehensive legislation. Finally, comprehensive anti-discrimination legislation allows states to provide the procedural safeguards which are necessary to the effective functioning of the right to non-discrimination, including provisions on access to justice, protection from victimisation, rules on standing, evidence and proof, including the transfer of the burden of proof.¹⁷

23. Kyrgyzstan has received multiple recommendations to enact comprehensive anti-discrimination legislation in recent years. In 2014, the UN Human Rights Committee (HRC) raised concerns over the “lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as race, language, disability and ethnic origin” as well as “the lack of disciplinary sanctions for State officials acting in a discriminatory manner”.¹⁸ The HRC recommended that Kyrgyzstan “review its domestic legislation and bring it in to line with the principle of non-discrimination to ensure that it includes a comprehensive prohibition of discrimination on all the grounds set out in the Covenant”.¹⁹ Similarly, in 2015, the Committee on Economic, Social and Cultural Rights also expressed concern over “the lack of comprehensive anti-discrimination legislation” and recommended that Kyrgyzstan “adopt a comprehensive antidiscrimination law that provides a definition of direct and indirect discrimination”.²⁰ In addition, at Kyrgyzstan’s second Universal Periodic Review in 2015, a number of states made recommendations to Kyrgyzstan to adopt comprehensive anti-discrimination legislation, recommendations which were rejected.²¹
24. The Trust strongly urges the Committee to recommend that Kyrgyzstan adopts comprehensive anti-discrimination law. Such legislation should be in line with international best practice standards and should *inter alia* prohibit all forms of discrimination, on all grounds recognised at international law and in all areas of life regulated by law; require the adoption of positive action measures to address substantive inequalities; and provide the procedural safeguards necessary for the effective functioning of the rights protected therein. The state should engage and consult with civil society in the development of such law.

Article 5: Principal Patterns of Discrimination

25. Our research in Kyrgyzstan identified significant patterns of discrimination against the largest minority group in the country, the ethnic Uzbeks, who reside predominantly in the south of the country. In particular, our research found evidence of discrimination by law enforcement agencies both during and after inter-ethnic violence in Uzbek-dominated Osh in 2010, and of the continuing failure of the state to address the patterns of discrimination and inequality which precipitated this violence. The Committee dealt in some detail with the 2010 ethnic violence in its last Concluding Observations, so we do not revisit the history of the events here, but instead focus on patterns of discrimination arising from, and persisting after, the violence.

Articles 5(a) and 5(b): Discrimination during and after the 2010 Conflict

¹⁷ See above, note 2, Principles 18-23.

¹⁸ United Nations Human Rights Committee, *Concluding Observations: Kyrgyzstan*, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 5., Para 8.

¹⁹ *Ibid.*

²⁰ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kyrgyzstan*, UN Doc. E/C.12/KGZ/CO/2-3, 7 July 2015, Para 5.

²¹ United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kyrgyzstan*, UN Doc. A/HRC/29/4, 9 April 2015, Paras 118.18 to 118.21.

26. Article 5(a) and (b) of the Convention provide guarantees of non-discrimination in the administration of justice and in protection against violence, as follows:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

27. In its last Concluding Observations, the Committee expressed its concern at the repeated ethnic conflicts in the country, focusing in particular on the June 2010 ethnic conflict. This included a recommendation that Kyrgyzstan *inter alia*, (i) initiate or establish a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial and (ii) investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status.²²
28. Our research found evidence that, in the period since the Committee's last review, Kyrgyzstan has failed to implement these recommendations effectively. Specifically, we found evidence of discrimination by law enforcement during and after the conflict and discrimination in the administration of justice, which hampers efforts to implement the rule of law and promote long-term stability which undermines all reconciliation efforts.²³
29. By December 2012, a total of 5,162 criminal investigations had commenced related to the violence in June 2010.²⁴ Yet despite the fact that ethnic Uzbeks represented the majority of the victims of the violence, 79% of those accused of criminal offences were Uzbek, with only 18% being Kyrgyz and 3% belonging to other ethnic groups.²⁵ Of the 27 individuals accused of murder during the violence, 24 were Uzbeks and only 2 Kyrgyz.²⁶ Uzbek individuals interviewed during the research for our report complained of fabricated evidence and bias and discrimination in the prosecution process,²⁷

²² Committee on the Elimination of Racial Discrimination, *Concluding observations on the fifth to the seventh periodic reports of Kyrgyzstan*, UN Doc. CERD/C/KGZ/CO/5-7, Para. 6

²³ Equal Rights Trust, *Looking for Harmony, Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf. Pg. 136 - 143

²⁴ Kyrgyzstan Inquiry Commission, *Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010*, 2011, p. 39.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ See above, note 1, pp. 136-141.

allegations which support the conclusion reached by others that there were serious questions “about ethnic bias in the investigation and prosecution of perpetrators”.²⁸

30. In addition to the evidence of apparent discrimination in the administration of justice, we found evidence of discrimination in other areas of life, including credible allegations of torture. We received numerous allegations of the denial of various due process rights, such as the right to a lawyer of one’s choosing and to private consultations.²⁹ Those interviewed by the Trust and by other organisations also spoke of torture during imprisonment.³⁰
31. In this context, continued lack of trust for state authorities by ethnic Uzbeks is largely unsurprising. Thus, although there have been some positive developments since the 2010 violence – notably the adoption of the “Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic” – avenues for effective remedies remain limited. For example, one of the Trust’s interviewees noted that “public reception rooms” established by the State Agency for Local Self-Government and Inter-Ethnic Relations, which are intended to provide a complaint mechanism for ethnic minorities, have very little practical impact as the staff simply inform the State Agency of problems but do not have powers to follow up on disputes or complaints.³¹
32. We urge the Committee to reiterate its recommendations from its last Concluding Observations that the State party take appropriate measures to:
 - a. Initiate or set up a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial;
 - b. Investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status;
 - c. Provide compensation to those who were victims of miscarriage of justice, regardless of their ethnic origin;
 - d. Register and document all cases of torture and ill-treatment, including rape and other forms of violence against women from minority groups, including rape;
 - e. Conduct prompt, thorough and impartial investigations of all allegations of torture and ill-treatment and prosecute and punish those responsible, including police or security forces.

Discrimination and inequality in other areas of life

33. Both the 2010 conflict and the earlier 1990 conflict had their roots in historic patterns of discrimination, disadvantage and distrust. In particular, socio-economic inequalities played a role in both the 1990 and 2010 violence, with competition for scarce land and jobs a particular factor.³² In

²⁸ Human Rights Watch, *Distorted Justice: Kyrgyzstan’s Flawed Investigations and Trials of the June 2010 Violence*, 2011, p. 3; See also Amnesty International, *Report 2015/16: The State of the World’s Human Rights*, 2016, pp. 224-225.

²⁹ Equal Rights Trust, Interview with M., Osh, 22 July 2014.

³⁰ Equal Rights Trust, Interview with F., Osh, 22 July 2014

³¹ Equal Rights Trust, Interview with Klym Shamy Centre for Human Rights Protection, 2 November 2016.

³² See above, note 1, pp. 132-136

its last concluding observations, the Committee noted these historic problems, and called on the State party to: “take effective measures to address the fundamental problems and the root causes that constitute an obstacle to the peaceful coexistence between different ethnic groups living in its territory.”³³ However, our research found evidence of continuing discrimination and inequality affecting the ethnic Uzbek population in the south of the country.

Article 5(c): Political Rights

34. Despite constituting 14.6% of the population, ethnic Uzbeks remain underrepresented in many areas of political and public life, including the Jogorku Kenesh, executive bodies, the police and the judiciary.³⁴ Although a quota was introduced in the October 2015 elections, its impact on the representation of ethnic Uzbeks in the Jogorku Kenesh remains unclear.³⁵ In local government, representation of ethnic minorities even in areas with a large Uzbek population, remains unrepresentative of the population as a whole. The proportion of ethnic minorities in the civil service is equally low.³⁶
35. We call on the Committee to recommend that the State party observe its obligations under Article 5(c) of the Convention to ensure equal participation in political rights; and to take concrete and comprehensive measures – including positive action measures – to ensure that ethnic minority representation in political bodies reflects the proportion of ethnic minorities in the population as a whole previously recommended in the Committee.

Article 5(e)(i): Right to Work

36. Ethnic Uzbeks continue to face difficulties in the area of employment. The lack of industry – and therefore jobs – in the southern regions dominated by ethnic minorities,³⁷ could point to evidence of a failure by the authorities to take positive action to address *de facto* inequalities. Moreover, in the immediate aftermath of the 2010 conflict, there were reports of discrimination against, and summary dismissals of, ethnic Uzbeks from their positions in central or local government and the forced takeover of Uzbek businesses by Kyrgyz gangs.³⁸ Our research found that more than five years after the 2010 violence, ethnic Uzbeks were subject to discrimination in the employment market, on the basis of their association with those convicted for involvement in the 2010 violence.³⁹
37. We call on the Committee to recommend that the State party observe its obligations to eliminate racial discrimination in the area of employment and to ensure equal enjoyment of the right to work – including through positive action measures – as provided by Article 5(e)(i) of the Convention.

Article 5(e)(iii): Right to Housing

³³ See above, note 20, Para 5.

³⁴ See above, note 1, pp. 145-147

³⁵ *Ibid*, p. 146.

³⁶ Committee on the Elimination of Racial Discrimination, *Fifth to Seventh Periodic Reports: Kyrgyzstan*, UN Doc. CERD/C/KGZ/5-7, 8 June 2012, Para 101.

³⁷ See above, note 1, p. 144.

³⁸ See, for example, Vela, J, “Kyrgyzstan: Where the Restaurants in Osh Have New Names”, *eurasianet.org*, 12 July 2011, available at: <http://www.eurasianet.org/node/63866>.

³⁹ See above, note 1, p. 144.

38. There is evidence that ethnic Uzbeks living in Osh have been disproportionately affected by the government expropriation of private property as a result of urban development projects. A Human Rights Watch report from 2014 indicated that a number of those whose homes were expropriated were not appropriately consulted, were not provided with fair compensation, were pressured to agree to sell their homes, and were given limited opportunity to contest such expropriation orders.⁴⁰ The Equal Rights Trust interviewed representatives of InterBilim, an NGO based in Osh working on this issue, who informed us that the government targets areas of the city dominated by Uzbeks for such “urban development” programmes and takes advantage of relatively low levels of understanding among these communities.⁴¹ Even in the absence of an intentional targeting of areas with a predominantly Uzbek population, any expropriation programme which disproportionately impacts on a particular ethnic group would constitute indirect discrimination, unless justifiable as a necessary and proportionate means of achieving a legitimate aim.
39. We call on the Committee to recommend that the State party observe its obligations to eliminate racial discrimination in the area of housing and to ensure equal enjoyment of the right to housing as provided by Article 5(e)(iii) of the Convention.

Article 5(e)(v): Right to Education

40. In its last Concluding Observations, the Committee called on the State party to promote education in minority languages.⁴² Unfortunately, as demonstrated in *Looking for Harmony*,⁴³ access to education for minorities is becoming increasingly problematic, due to the reduction in the number of educational institutions providing instruction in minority languages.
41. Although the Constitution guarantees the right for minorities to receive education in their own language,⁴⁴ there is a growing trend for schools which traditionally taught in the Uzbek language to increase the proportion of the curriculum provided in Kyrgyz. The UN Human Rights Committee has expressed concern that many schools in Osh and Jalal-Abad which formerly provided education in Uzbek now only teach in Kyrgyz and that some no longer receive government funding which allowed them to provide classes in Uzbek.⁴⁵ The motivation behind this trend is ostensibly the authorities’ desire to promote the integration of ethnic Uzbeks and prevent further inter-ethnic clashes.⁴⁶ However, the impact, as attested to by an expert in multi-lingual education interviewed by the Trust, is that Uzbek minority students are deprived of the opportunity to learn in their primary language, while simultaneously being afforded an inadequate amount of time – just one hour a week – in which to learn the state language.⁴⁷

⁴⁰ Human Rights Watch, *Submission to the Committee on Economic Social and Cultural Rights in Advance of its Pre-Sessional Review on Kyrgyzstan*, October 2014, available at: <http://www.refworld.org/pdfid/556c58064.pdf>.

⁴¹ Equal Rights Trust, Interview with InterBilim, 3 November 2016.

⁴² See above, note 20, Para 12.

⁴³ See above, note 1, pp. 154-156.

⁴⁴ Constitution of the Kyrgyz Republic, 2010, Article 10, paragraph 3.

⁴⁵ See, for example, United Nations Human Rights Committee, *Concluding Observations: Kyrgyzstan*, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 27.

⁴⁶ Najibulah, F., “Kyrgyzstan's Uzbek Schools Set a New Course”, *Radio Free Europe / Radio Liberty*, 1 September 2011, available at: http://www.rferl.org/a/kyrgyzstans_uzbek_schools_set_a_new_course/24315081.html.

⁴⁷ Equal Rights Trust, Interview with X., an expert in multi-lingual education, 30 November 2016, Osh and London.

42. The shift has been dramatic. In 2002, a total of 106,577 children attended 141 Uzbek language schools, but by 2012 years later, the figure was 40,833 children (a 62% reduction) attending 91 Uzbek language schools.⁴⁸ Of the two universities which previously offered courses in Uzbek, one – the Kyrgyz-Uzbek University – has been turned into the Osh State Social University and offers courses only in Kyrgyz and Russian, while the other – the Friendship University in Jalal-Abad – has shut down.⁴⁹ The reduction in the number of schools and universities providing education in Uzbek has meant that it is becoming increasingly difficult for those parents and students who want to pursue this education. Their fears are exacerbated by statements from politicians who, in promoting the use of the Kyrgyz language, indicate that, eventually, no education will be provided in Uzbek.⁵⁰
43. As the Committee is aware,⁵¹ a further very significant change was introduced in 2014, when the government changed policy to require all testing at secondary school level and all university entrance exams be conducted in either Kyrgyz or Russian, and no longer in Uzbek.⁵²
44. We call on the Committee to recommend that the State party observe its positive obligation under Article 5(e)(v) of the Convention to ensure equal access to education and training regardless of race, colour, or national or ethnic origin, and to take measures to ensure that its policy on language use in education does not discriminate, directly or indirectly, on the basis of ethnicity.

⁴⁸ Eurasianet, “Kyrgyzstan: Uzbek-Language Schools Disappearing”, *eurasianet.org*, 6 March 2013, available at: <http://www.eurasianet.org/node/66647>.

⁴⁹ Ibraimov, B. and Akmatov, T., “Tough Talk on Kyrgyz Schools”, *Transitions Online*, 6 August 2012, available at: <http://www.tol.org/client/article/23290-tough-talk-on-kyrgyz-schools.html>.

⁵⁰ *Ibid.*

⁵¹ See above, note 20, Paras 12 – 13.

⁵² United Nations Country Team in Kyrgyzstan, *Joint UNCT submission for the 2015 Universal Periodic Review of Kyrgyzstan*, 2014, pp. 3-4; Youth Human Rights Group et al, *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*, 2014, Para 14.