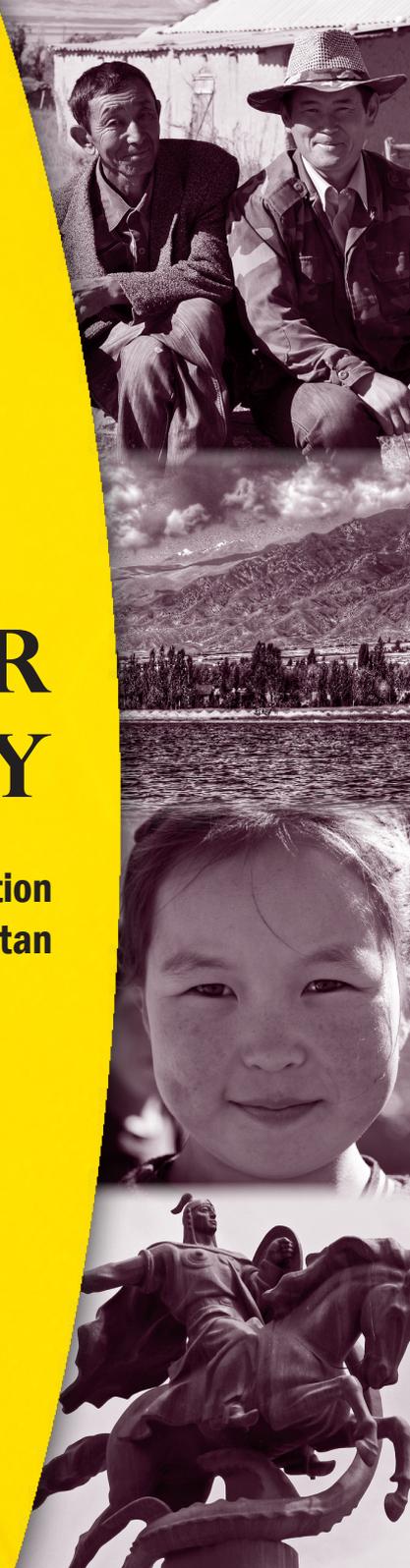


LOOKING FOR HARMONY

**Addressing Discrimination
and Inequality in Kyrgyzstan**

Equal Rights Trust
In partnership with Peremena Public Foundation



EQUAL RIGHTS TRUST
IN PARTNERSHIP WITH
PEREMENA PUBLIC FOUNDATION

Looking for Harmony

Addressing Discrimination and Inequality in Kyrgyzstan

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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Acting on behest of our ancestors to live in peace and accord, in harmony with nature, hereby adopt the present Constitution.

Constitution of Kyrgyzstan, 2010

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

ACRONYMS AND ABBREVIATIONS

EXECUTIVE SUMMARY

1. INTRODUCTION	1
1.1 Purpose and Structure of This Report	2
1.2 Conceptual Framework and Research Methodology.....	3
1.3 Country Context	16
1.4 History	19
1.5 Government and Politics	24
2. THE LEGAL FRAMEWORK RELATED TO EQUALITY.....	26
2.1 International and Regional Law	26
2.1.1 Major United Nations Treaties Related to Equality	27
2.1.2 Other Treaties Related to Equality.....	29
2.1.3 Regional Instruments	31
2.1.4 Treaties Not Ratified by Kyrgyzstan	31
2.1.5 Customary International Law	31
2.1.6 Status of International Law in National Law	32
2.2 The National Legal Framework on Equality and Non-Discrimination.....	35
2.2.1 The Constitution.....	36
2.2.2 Specific Equality and Anti-Discrimination Legislation.....	56
2.2.3 Non-Discrimination Provisions in Other Pieces of Legislation	83
2.3 Enforcement and Implementation.....	94
2.4 Conclusions	113

3. PATTERNS OF DISCRIMINATION AND INEQUALITY	114
3.1 Discrimination and Inequality on the Basis of Religion or Belief ..	114
3.2 Discrimination and Inequality on the Basis of Ethnicity	130
3.2.1 Discrimination and Inequality Affecting Uzbeks	131
3.2.2 Discrimination and Inequality Affecting Smaller Ethnic Minorities	148
3.3 Discrimination and Inequality on the Basis of Language	152
3.4 Discrimination and Inequality on the Basis of Gender.....	159
3.5 Discrimination and Inequality on the Basis of Sexual Orientation and Gender Identity.....	178
3.6 Discrimination and Inequality Affecting Persons with Disabilities ..	192
3.7 Discrimination and Inequality on the Basis of Health Status	200
3.7.1 Discrimination and Inequality on the Basis of HIV	200
3.8 Conclusions.....	207
4. RECOMMENDATIONS	210
<i>BIBLIOGRAPHY</i>	<i>220</i>

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ACRONYMS AND ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CIS	Commonwealth of Independent States
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ITTIPAK	Kyrgyz-Uighur Unity Association
KIC	Kyrgyzstan Inquiry Commission
LBT	Lesbian, Bisexual and Transgender
LGBT	Lesbian, Gay, Bisexual and Transgender
NHRI	National Human Rights Institution
OSCE	Organization for Security and Cooperation in Europe
RSD	Refugee Status Determination
SCRA	State Commission on Religious Affairs
SSR	Soviet Socialist Republic
UN	United Nations
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

On 11 December 2016, the people of Kyrgyzstan voted in a referendum to approve a series of amendments to the country's Constitution. These amendments undermine the status of international human rights law, strengthen the powers of the executive and limit the ability of the Constitutional Chamber to act as a check on government. As such, the referendum reverses a series of democratic gains made in the wake of a 2010 revolution which established Kyrgyzstan as the first and only of the former Soviet Central Asian republics with a parliamentary system.

This report, published immediately after the referendum, concludes that the constitutional reforms which it ushers in put the protection of the rights to equality and non-discrimination under threat. Yet, it also finds that the democratic gains which followed the 2010 revolution did not translate into greater equality of participation. In the years which followed the transition to parliamentary democracy, Kyrgyzstan failed to reverse discriminatory laws and policies, and took inadequate steps to tackle long-standing patterns of discrimination and inequality. Moreover, the last decade has seen equal rights come under renewed threat.

Kyrgyzstan's failure to address long-standing patterns of inequality and discrimination is most evident in the case of ethnic Uzbeks, women and persons with disabilities. We find evidence of discrimination by law enforcement agencies following inter-ethnic violence in Uzbek-dominated Osh in 2010, and of the failure of the state to address the inequalities which precipitated this violence. We find that women experience discrimination and inequality in all areas of life, underpinned by discriminatory social norms which legitimise the maintenance of discriminatory laws and the continuation of horrific practices such as "bride kidnapping" and child marriage. This report also concludes that despite the enactment of legislation setting out a wide range of guarantees for persons with disabilities, these are rarely provided in practice, and so long-standing inequalities remain.

Beyond the failure to address these long-standing problems, this report also traces a number of developments which put equal rights under renewed threat. Thus, we find that the state has increasingly restricted the activities of minority religious groups, subjecting them to an onerous – and indirectly dis-

criminatorial – registration regime and criminalising those who practice unregistered religions. We also highlight the discriminatory impact of changes to the state policy on education in minority languages, including in particular a 2014 decision to end the ability of Uzbek children to take university entrance exams in the language in which they were educated. Finally, we express deep concern at ongoing attempts in the Jogorku Kenesh to criminalise the “propaganda of a positive attitude towards non-traditional sexual relations”.

Our assessment of the Kyrgyzstani legal framework finds further evidence of missed opportunities. The Constitutional non-discrimination provision is limited in its personal scope. The state has not enacted comprehensive equality legislation, and while it has adopted laws prohibiting discrimination against women and against people living with human immunodeficiency virus, and providing a range of guarantees for persons with disabilities, these are rarely used in practice. Moreover, the report notes with concern the threats posed to equal rights through constitutional reforms which diminish the position of international human rights law in the legal system. The overarching conclusion is that the state has not taken sufficient measures to combat discrimination and promote equality in its legal framework, and that these rights are now under renewed threat.

Thus, this report finds that, while the 2016 constitutional referendum presents a new challenge to the enjoyment of the rights to equality and non-discrimination, this is far from the whole story. Despite the reforms brought in in 2010, the state has largely failed to ensure that disadvantaged groups can participate in society on an equal basis.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in the Kyrgyz Republic (Kyrgyzstan) and to recommend steps aimed at combatting discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work and the research methodology. It also provides basic information about Kyrgyzstan, its history and the current political and economic situation. **Part 2** analyses the legal framework as it relates to non-discrimination and equality. **Part 3** discusses the principal patterns of discrimination and inequality affecting different groups in Kyrgyzstan. **Part 4** contains recommendations, drawn from an analysis of both the gaps, weaknesses and inconsistencies in the legal framework identified in Part 2 and the patterns of discrimination and inequality examined in Part 3.

Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- c) status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world.

The Equal Rights Trust has been working to document and combat discrimination in the five countries in the Central Asia region since 2013, in the context of the project, *Empowering human rights defenders in Central Asia to combat discrimination on the basis of ethnicity and religion*, funded by the European Union through its European Instrument for Democracy and Human Rights.

This report is one of the results of a partnership between the Equal Rights Trust and the Kyrgyz non-governmental organisation Peremena, who have been working together to advance equality in Kyrgyzstan since 2013. The report is one of the outcomes of a three-year project to combat discrimination and inequality in the country.

During this period, the partners had extensive opportunities to consult and conduct research on patterns of discrimination and inequality in Kyrgyzstan. We commissioned research by non-governmental organisations and individuals on different patterns of discrimination, and engaged with representatives of these groups directly. We also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country's legal and policy framework related to equality. Prior to publication, this report was the subject of a consultation, in which its findings and conclusions were exposed to scrutiny by experts. We believe that as a result, the report's findings and conclusions have been significantly strengthened.

Country Context, History, Government and Politics

As Section 1.3 elaborates, the Kyrgyz Republic (Kyrgyzstan) is a landlocked and mountainous country in Central Asia, bordered to the north by Kazakhstan, to the east by China, to the south by Tajikistan and to the west by Uzbekistan. The capital city is Bishkek, which has a population of slightly under 1 million people. The country is divided into seven provinces and two cities with special status (Bishkek and Osh). It is a unitary state with a uniform system of laws throughout the country.

Kyrgyzstan has a population of approximately 6 million people. Ethnic Kyrgyz make up the majority ethnic group (73.0%) with Uzbeks (14.6%) and Russians (6.0%) as sizeable minorities. Smaller minorities include Dungans (1.1%), Uighurs (0.9%), Tajiks (0.9%), Turks (0.7%), Kazakhs (0.6%) and Tatars (0.5%). The Uzbek population is mainly located in the southern provinces (Osh, Jalal-Abad and Batken) with the Russian population mainly located in the north (Chui and Issyk-Kul provinces and the city of Bishkek). The Dungan population mostly live in Chui province and the Uighur population mostly in Chui province and the city of Bishkek.

Official statistics on the religion of the population are not recorded, however it is estimated that approximately 75% of the population is Muslim, the ma-

jority of whom are Sunni, approximately 20% are Russian Orthodox and the remaining 5% belong to minority religious groups, including Baptists, Lutherans, Pentecostals, Presbyterians, charismatics, Seventh-day Adventists, Jehovah's Witnesses, Roman Catholics, Jews, Buddhists, and Bahais.

Kyrgyzstan's official language is Kyrgyz, though Russian has the status of an "official language". At the 2009 census, which recorded primary and secondary languages, 99.9% of ethnic Kyrgyz stated that Kyrgyz was their primary language, 99.9% of ethnic Russians stated Russian and 98.6% of ethnic Uzbeks stated that they spoke Uzbek as their primary language.

In 2015, Kyrgyzstan's Gross Domestic Product (GDP) \$6.6 billion (in current USD), placing it in the lower middle income group. The GDP per capita adjusted by purchasing power was \$3,427. In 2015, the United Nations Human Development Index for Kyrgyzstan was 0.655 (medium human development), placing it 120th in the world out of 188 countries. In the period 2005–2013, the ratio of the average earnings of the richest 20% to those of the poorest 20 was 5.4.

The territory comprising modern-day Kyrgyzstan has been controlled by a succession of powers over the centuries. Alongside much of Central Asia, the territory was conquered by the Russian Empire in the late nineteenth century. Soviet rule was established in 1924, with the establishment of the Kara-Kyrgyz Autonomous Oblast, and the area was renamed the Kyrgyz Soviet Socialist Republic in 1936. During the Soviet period, the nomadic lifestyle of the Kyrgyz people was suppressed, and the populace was forced into work on collective farms. At the same time, the country experienced significant migration from other parts of the Union of Socialist Soviet Republics (USSR), Russia in particular. As the USSR destabilised in response to the *glasnost* and *perestroika* policies, the Kyrgyzstan Democratic Movement was formed, and began to gain political strength. The country declared independence in 1991.

Since independence, Kyrgyzstan has experienced a number of democratic protest movements which have led to significant changes in the structure of government and political leadership of the country. The 2005 "Tulip Revolution" led to the ouster of the incumbent President, while in April 2010, a protest against energy shortages, rolling blackouts and increased energy prices led to government buildings being stormed and ultimately a revolution forcing the

President to flee the country. The new President, Roza Otunbayeva, oversaw a transitional period in which a new Constitution was drafted and adopted in June that year following a referendum. The new Constitution established a parliamentary system with limited presidential powers. The weeks preceding the referendum were marred by ethnic violence between Kyrgyz and Uzbeks primarily in Osh and Jalal-Abad. Hundreds, mostly Uzbeks, died and hundreds of thousands more were displaced as a result.

The general human rights situation in Kyrgyzstan is mixed. In 2016, Freedom House considered Kyrgyzstan to be “partly free”, receiving an overall freedom rating of 5 (with specific ratings of 5 for civil liberties and 5 for political rights), the highest of all Central Asian states.

Part 2: Legal Framework Related to Equality

This part examines both Kyrgyzstan’s international legal obligations and the domestic legal framework which protects the rights to equality and non-discrimination. It also considers the extent to which there is adequate enforcement of the legal framework and effective access to justice for victims of discrimination.

Section 2.1 of the report assesses Kyrgyzstan’s **participation in international instruments**. It finds that Kyrgyzstan has a generally good record of participation in the UN human rights treaty system having acceded to seven of the nine core UN human rights treaties, however the omissions include the Convention on the Rights of Persons with Disabilities, which is of particular concern, and the International Convention for the Protection of All Persons from Enforced Disappearances.

Kyrgyzstan also has a mixed record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the Convention relating to the Status of Refugees but not the Convention relating to the Status of Stateless Persons nor the Convention on the Reduction of Statelessness. It has ratified all eight of the fundamental International Labour Organization Conventions and the 1960 UNESCO Convention against Discrimination in Education.

Part 2.2 explores Kyrgyzstan’s domestic legal system, looking first at its **Constitution**, adopted in 2010. The Constitution guarantees the rights to equality and non-discrimination through Article 16 however with signifi-

cant shortcomings. The list of protected grounds in Article 16 omits many recognised under international human rights law such as sexual orientation and gender identity. The Constitution does not expressly provide that positive action is to be taken by the state in order to overcome past disadvantage and accelerate progress towards equality of marginalised groups, but does provide that special measures aimed at ensuring equal opportunities for various social groups in accordance with international commitments shall not be considered discrimination. In addition, the passing of the referendum on 11 December making a series of amendments to the Constitution is a worrying development. Once the amendments are signed into law by Presidential Decree, they will weaken a number of its provisions in ways which may impact on the adequacy of protection of the rights to equality and non-discrimination.

Part 2.2.2 assesses the major pieces of **anti-discrimination legislation** in Kyrgyzstan. There is no comprehensive anti-discrimination legislation, but there is a specific law on gender equality, legislation relating specifically to persons with disabilities and persons living with HIV/AIDS, and a number of standalone provisions which either prohibit discrimination or guarantee equal rights in a number of other pieces of legislation regulating specific fields.

The Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” prohibits discrimination on the basis of gender but with weak enforcement mechanisms and remedies for discrimination; the law is also seldom used in practice. The Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities” provides a large number of varied and important guarantees for persons with disabilities, however it does not in fact prohibit discrimination on the basis of disability, and whilst recent amendments to the Code on Administrative Responsibility creating offences for violations of the Law have significantly strengthened the potential enforcement mechanisms, the law is also rarely used in practice. The Law of the Kyrgyz Republic “On HIV/AIDS in the Kyrgyz Republic” prohibits discrimination on the basis of HIV/AIDS status but, again, there is no evidence of its being used in practice.

Further to these pieces of legislation, Part 2.2.3 reviews a number of **non-discrimination provisions in other legal fields**, including the Criminal Code, the Criminal Procedure Code, the Code of Administrative Responsibility, the

Family Code and the Labour Code, as well as legislation regulating trade unions, procurement, internal migration and religion and religious organisations. Whilst the Criminal Code contains certain important protections, these are limited in scope and seldom enforced. The non-discrimination provisions in the other pieces of legislation are seldom, if ever, used.

Finally, the enforcement and implementation of laws related to equality is analysed in Part 2.3. It finds that, in addition to the patchy and inconsistent level of protection offered under the Constitution and legislation, there is also weak implementation and enforcement need to be strengthened. A lack of legal aid outside of the criminal law means victims of discrimination face barriers in bringing cases to court in the first place. Further, whilst remedies and sanctions are potentially available under the Civil Procedure Code and Code of Administrative Responsibility, these have not yet been fully harmonised with what anti-discrimination legislation there is, making the task of courts in attaching liability for breaches of legislation difficult. The Ombudsperson, Kyrgyzstan's National Human Rights Institution has an extensive set of powers and has the potential to play a critical role in the promotion and protection of the rights to equality and non-discrimination in Kyrgyzstan. Unfortunately, there is little evidence of this role currently being fulfilled with few efforts of the Ombudsperson being made on issues of discrimination. Furthermore, the Ombudsperson is not fully compliant with the Paris Principles, being considered only a "B" grade, with reforms and a greater focus on discrimination needed to ensure that its role is fulfilled.

Part 2 of this report therefore concludes that the legal framework in place to prevent discrimination in Kyrgyzstan is patchy and inconsistent with limited implementation, weak mechanisms of enforcement, significant barriers to access to justice, and thus falls far below Kyrgyzstan's international obligations in many respects.

Part 3: Patterns of Discrimination and Inequality

Part 3 of the report discusses what the Equal Rights Trust's research identified as the principal patterns of discrimination and inequality in Kyrgyzstan. It is based on original direct testimony collected from a range of individuals, research undertaken by authoritative sources in the last decade, and, where necessary, news reports. This part of the report does not seek to provide an exhaustive picture, but rather an insight into what appear to be the most significant patterns of discrimination in the country.

This part of the report presents evidence of discrimination and inequality on grounds of (i) religion; (ii) ethnicity; (iii) language; (iv) gender; (v) sexual orientation and gender identity; and (vi) disability; and (vii) health status. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education healthcare.

Whilst Kyrgyzstan is, officially, a secular state, section 3.1 of the report nonetheless identifies discrimination on the basis of **religion** on the part of state authorities. Religious organisations and their activities are heavily regulated. The law indirectly discriminates against smaller religious communities, who are disproportionately disadvantaged by onerous registration requirements, to the detriment of the Bahai, Jehovah's Witnesses, Catholics and others. There is also evidence of discrimination in the application of the regulations: for example, the Ahmadiyya community, despite being registered in 2002, were subsequently refused re-registration in 2009. Unregistered groups have been targeted by law enforcement agencies for practising or manifesting their faith. There is also evidence of increasing intolerance towards more overtly religious groups and individuals, even when they practice Islam, the faith of the majority. This section documents cases of individuals who are demonstrably devout Muslims – including men with beards and women who wear the hijab or headscarf – suffering discrimination in fields such as employment and education.

Section 3.2 examines discrimination on the basis of **ethnicity**, focusing on the situation of the largest ethnic minority, the Uzbeks, before briefly examining the situation of the Uighurs, Dungans and Lyuli. While **Ethnic Uzbeks** are well-integrated into society in some respects, there is a history of tension with the majority ethnic Kyrgyz population, manifested most strongly in episodes of inter-ethnic violence in 1990 and 2010 in Osh, an area with a large Uzbek population.

The section examines evidence that, despite being disproportionately affected by the 2010 violence, 79% of those accused of criminal offences related to the events were Uzbek. We present original testimony from those alleging discrimination by law enforcement in investigating and bringing criminal charges, and discriminatory torture and ill-treatment in detention. The section also examines allegations that ethnic Uzbeks convicted of crimes associated with the violence and their relatives continue to face discrimination in areas such as employment,

six years after the events, before looking at evidence that Uzbek-dominated areas are being targeted for “urban development” programmes, resulting in expropriation of private property. Finally, this section considers evidence of significant under-representation of ethnic Uzbeks in political and public life.

Section 3.2.2 examines discrimination and disadvantage suffered by a number of smaller ethnic minority groups. Pressure from Kyrgyzstan’s neighbour, China, has resulted in concerns that the **Uighur minority** are being targeted by the Kyrgyz authorities and that Uighur refugees from China are treated less favourably than other refugees. There are sporadic instances of violence between ethnic Kyrgyz and the **Dungan minority** and fear on the part of the latter indicating a lack of efforts on the part of authorities to ensure inter-ethnic harmony. This section also looks at the situation of the **Lyuli**, a small ethnic minority group which suffers disadvantage in various areas of life, particularly poor housing conditions, a lack of identification documents and poorer educational outcomes.

Section 3.3 examines the contentious issue of **language**. Language is closely linked to ethnicity: while ethnic Kyrgyz speak Kyrgyz as their primary language, the two largest ethnic minorities speak Uzbek and Russian respectively. Historically, Russian was spoken widely and it remains an official language, which is spoken by 40% of ethnic Kyrgyz and 23% of ethnic Uzbeks, as well as by the Russian minority. However, there is a growing political focus on increasing the use of the Kyrgyz language, ostensibly motivated by a desire to improve inter-ethnic relations through the establishment of a common language. Irrespective of its objective, this policy has resulted in disadvantage for Uzbek speakers (almost all ethnic Uzbeks) and, to a lesser extent, Russian speakers. There are diminishing opportunities for children to receive primary and secondary education in Uzbek and no opportunities at all in higher education. A 2014 state policy decision means that it is no longer possible to take university entrance exams in Uzbek, something which directly disadvantages students from the ethnic Uzbek minority, many of whom study in Uzbek language schools. Since the June 2010 inter-ethnic conflict, almost all Uzbek-language media has disappeared from the country. With respect to the Russian language, there are fewer opportunities for children to receive an education in Russian, and there is some evidence that politicisation of language has resulted in Russian-speakers facing harassment.

Section 3.4 finds that women experience **gender** discrimination in many areas of life, despite the fact that the legal and policy framework on discrimination

against women is stronger than in respect of any other group. The state retains a range of discriminatory legal provisions, despite the establishment of a procedure to assess and identify gender discriminatory laws in 2008. Thus, for example, the Labour Code includes a number of provisions which, whilst ostensibly designed to “protect” women, in fact limit their opportunities to undertake certain forms of work. Rates of domestic violence remain high, with nearly 1 in 3 women participants in a 2012 survey stating that they had experienced violence. We note with the gravest concern the fact that thousands of women each year are subjected to the dehumanising practice of “bride-kidnapping”, despite the fact that the practice is illegal and that child marriage also remains prevalent. In other areas of life, the section finds that women are less likely to be in employment, and that the labour market is heavily segregated by gender, with sectors dominated by women generally lower-paid. Women also remain severely under-represented in political life, with the proportion of women in the Jogorku Kenesh actually decreasing in recent years.

There are high levels of homophobia and transphobia in Kyrgyzstan, and there is no explicit legal protection from discrimination on the basis of **sexual orientation and gender identity**. Section 3.5 finds that while many lesbian, gay, bisexual and transgender (LGBT) individuals choose not to disclose their sexual orientation or gender identity, there is evidence of widespread discrimination against those who do so. Laws in a number of areas of life discriminate on the basis of sexual orientation, and the state is considering the criminalisation of the “propaganda of a positive attitude towards non-traditional sexual relations”. The government has failed to introduce regulations which would allow trans individuals to change their recorded gender, forcing them to “out” themselves in any situation in which they need to show identification documents. There is significant evidence of violence and hate crimes targeted towards people on the basis of their actual or perceived sexual orientation and gender identity, as well as towards LGBT organisations. Far from receiving support from the police, there are persistent reports of LGBT individuals being harassed, abused, physically attacked and blackmailed by police officers. There is evidence of discrimination in employment and healthcare against those who disclose their sexual orientation or gender identity.

Section 3.6 finds that **persons with disabilities** face barriers in a wide range of areas of life, making their full and equal participation in society impossible. Despite legislation setting out a wide range of guarantees for persons with disabilities, implementation is poor. Much public infrastructure, both physi-

cal and non-physical, has not been adapted to ensure it is accessible to persons with disabilities. Public buildings (such as schools, hospitals and courts) are often physically inaccessible, as are roads and transport facilities. The unemployment rate amongst persons with disabilities is far higher than that for the general population and legislative quotas for employing persons with disabilities appear to be largely ignored. A significant number of children with disabilities, between 10,000 and 16,000, receive no form of education and those that do are often segregated and taught in “special schools” rather than inclusively in mainstream education, further embedding inequality and disadvantage once children reach working age.

Finally, section 3.7 examines the issue of discrimination on the basis of **health status**, focusing on the position of people living with Human Immunodeficiency Virus (HIV). It finds that despite the enactment of legislation guaranteeing some rights to people living with HIV, negative cultural attitudes and discrimination in various areas of life remain prevalent. A number of discriminatory legal provisions exist, including directly discriminatory restrictions in employment. There is also evidence of discrimination by medical professionals, and of regular breach of the principle of medical confidentiality. The section also highlights legal provisions which permit the forced detention and treatment of people with tuberculosis, with insufficient safeguards to ensure that there is no discriminatory treatment.

This part of the report concludes by noting the range of ways in which equal rights are under renewed threat in Kyrgyzstan. Following its second revolution in 2010, Kyrgyzstan was held up as an example in the region, as the first of the Central Asian republics to embrace parliamentary democracy. Even today, Freedom House ranks it higher for political freedom and respect for civil liberties than any of its neighbours, Yet, this part of the report notes the state’s failure to reverse long-standing discriminatory laws, policies and practices in the years since the 2010 revolution. It also highlights a number of recent negative developments, ranging from the criminalisation of minority religious groups to proposals to criminalise of the “propaganda of a positive attitude towards non-traditional sexual relations”. Ultimately, the report concludes that the constitutional amendments approved in the December 2016 referendum put the rights to equality and non-discrimination at risk.

Part 4: Recommendations

Part 4 of the report presents the Equal Rights Trust's recommendations, whose purpose is to strengthen protection from discrimination and to enable Kyrgyzstan to meet its obligations under international law to respect, protect and fulfil the rights to equality and non-discrimination. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations in eight areas:

- Strengthen international commitments related to equality;
- Reform of discrimination legislation;
- Reform, implementation and enforcement of existing laws aimed at prohibiting discrimination;
- Introduce comprehensive equality legislation;
- Actions to address discrimination against specific groups;
- Data collection;
- Education on equality; and
- Prohibition of regressive interpretation.

1. INTRODUCTION

On 11 December 2016, the people of Kyrgyzstan voted in a referendum to approve a series of amendments to the country's Constitution. These amendments undermine the status of international human rights law, strengthen the powers of the executive and limit the ability of the Constitutional Chamber to act as a check on government. As such, the referendum reverses a series of democratic gains made in the wake of a 2010 revolution which established Kyrgyzstan as the first and only of the former Soviet Central Asian republics with a parliamentary system.

This report, published immediately after the referendum, concludes that the constitutional reforms which it ushers in put the protection of the rights to equality and non-discrimination under threat. Yet, it also finds that the democratic gains which followed the 2010 revolution did not translate into greater equality of participation. In the years which followed the transition to parliamentary democracy, Kyrgyzstan failed to reverse discriminatory laws and policies, and took inadequate steps to tackle long-standing patterns of discrimination and inequality. Moreover, the last decade has seen equal rights come under renewed threat.

Kyrgyzstan's failure to address long-standing patterns of inequality and discrimination is most evident in the case of ethnic Uzbeks, women and persons with disabilities. We find evidence of discrimination by law enforcement agencies following inter-ethnic violence in Uzbek-dominated Osh in 2010, and of the failure of the state to address the inequalities which precipitated this violence. We find that women experience discrimination and inequality in all areas of life, underpinned by discriminatory social norms which legitimise the maintenance of discriminatory laws and the continuation of horrific practices such as "bride kidnapping" and child marriage. This report also concludes that despite the enactment of legislation setting out a wide range of guarantees for persons with disabilities, these are rarely provided in practice, and so long-standing inequalities remain.

Beyond the failure to address these long-standing problems, this report also traces a number of developments which put equal rights under renewed threat. Thus, we find that the state has increasingly restricted the activities of minority religious groups, subjecting them to an onerous – and indirectly dis-

criminary – registration regime and criminalising those who practice unregistered religions. We also highlight the discriminatory impact of changes to the state policy on education in minority languages, including in particular a 2014 decision to end the ability of Uzbek children to take university entrance exams in the language in which they were educated. Finally, we express deep concern at ongoing attempts in the Jogorku Kenesh to criminalise the “propaganda of a positive attitude towards non-traditional sexual relations”.

Our assessment of the Kyrgyzstani legal framework finds further evidence of missed opportunities. The Constitutional non-discrimination provision is limited in its personal scope. The state has not enacted comprehensive equality legislation, and while it has adopted laws prohibiting discrimination against women and against people living with human immunodeficiency virus, and providing a range of guarantees for persons with disabilities, these are rarely used in practice. Moreover, the report notes with concern the threats posed to equal rights through constitutional reforms which diminish the position of international human rights law in the legal system. The overarching conclusion is that the state has not taken sufficient measures to combat discrimination and promote equality in its legal framework, and that these rights are now under renewed threat.

Thus, this report finds that, while the 2016 constitutional referendum presents a new challenge to the enjoyment of the rights to equality and non-discrimination, this is far from the whole story. Despite the reforms brought in in 2010, the state has largely failed to ensure that disadvantaged groups can participate in society on an equal basis.

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Kyrgyzstan (the Kyrgyz Republic)¹ and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report

1 While the official name of the country is the Kyrgyz Republic, it is most commonly referred to in English as Kyrgyzstan. This report uses the name “Kyrgyzstan” save where reference is made to an official document such as legislation, a court decision or government publication which uses the term “the Kyrgyz Republic”.

brings together – for the first time – evidence of the lived experience of discrimination and inequality in Kyrgyzstan with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Kyrgyzstan, its history and the current political and economic situation.

Part 2 begins by reviewing the main international legal obligations of Kyrgyzstan in the field of equality and non-discrimination, within the frameworks of the UN human rights system. It then discusses Kyrgyz national law related to equality and non-discrimination, starting with the Constitution before examining both specific anti-discrimination legislation and non-discrimination provisions in other legislation, including a review of judicial practice. The potential for the realisation of the rights to equality and non-discrimination is illustrated by a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

Part 3 presents patterns of discrimination and inequality, highlighting evidence of discrimination and inequality on the basis of a range of characteristics: religion or belief; ethnicity (with a focus on discrimination against ethnic Uzbeks); language; gender, sexual orientation and gender identity, disability and health status. Each section of this part considers and analyses evidence of discrimination in a range of areas of life, including in respect of discriminatory laws, discrimination by state actors, discriminatory violence and discrimination and inequality in areas such as education, employment and healthcare. Part 3 also examines state policies relevant to equality.

Part 4 contains the report’s recommendations, which are based on the assessment of Kyrgyz legislation in Part 2 and the analysis of patterns of inequality and discrimination in Part 3.

1.2 Conceptual Framework and Research Methodology

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human

rights from all over the world. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has been used as the basis for those developing anti-discrimination legislation in a number of countries and has received support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its General Comment 20: Non-discrimination in economic, social and cultural rights. In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation calling on the 47 Council of Europe member states to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the right to equality:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.²

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnectedness of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimina-

² Declaration of Principles on Equality, Equal Rights Trust, London, 2008, Principle 1.

tion, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus the unified framework makes *de facto* unfair inequalities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as subsumed in the right to equality.³ Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner

3 *Ibid.*, Principle 4.

that is comparable to discrimination on the prohibited grounds stated above.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

Direct discrimination *occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*

Indirect discrimination *occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.*

Harassment *constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.*

An act of discrimination may be committed intentionally or unintentionally.⁴

4 *Ibid.*, Principle 5.

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “candidate grounds” should meet at least one of three listed conditions.⁵ Thus, the definition provides a foundation for tackling the full complexity of the problem to be addressed – a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law.⁶ They are used throughout Part 2 to explore the extent to which the national legal framework provides protection for these forms of prohibited conduct and in Part 3 to assess the patterns of discrimination identified by our research and to evaluate the state’s efficacy in meeting its obligation to respect, protect, and fulfil the right to non-discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

5 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, above, note 1, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’.

6 See, for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 10.

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.⁷

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.⁸ Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.⁹ Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon established approaches to the interpretation of international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments.¹⁰ Principle 3 states:

7 See above, note 2, Principle 13.

8 See, for example, Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 2; Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes the denial of “reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

9 See above, note 5, p. 39.

10 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, 1979, Article 4(1).

To be effective, the right to equality requires positive action.

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.¹¹

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Part 2 of this report analyses the adequacy of positive action measures in Kyrgyzstani legislation, while Part 4 offers recommendations for change.

The review of laws and policies in Part 2 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained, *inter alia*, in General Comment No. 3 of the Committee on Economic, Social and Cultural Rights and General Comment No. 31 of the Human Rights Committee (HRC). As stated in the commentary on the Declaration:

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The require-

11 See above, note 1, Principle 3.

*ment to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.*¹²

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of different grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Kyrgyz context. In respect of certain grounds, it has not been possible to include every group which is vulnerable to discrimination and inequality on that ground: the examination of ethnic discrimination, for example, does not look at the position of all ethnic groups in Kyrgyzstan, but instead focuses on those groups which appear from our research to be the most exposed to discrimination, either as a result of their size or their unique position in society; the aim in taking this approach is to illustrate the most significant patterns of ethnic discrimination.

Presenting patterns of discrimination and inequality alongside each other requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, and disaggregated data on the position of different groups in particular areas of life. Such information was available in some areas, but limited in others. For example, there is limited statistical data available in relation to discrimination on the grounds of gender identity and sexual orientation. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims, or interviews with professionals working on behalf of particular groups. The evidence obtained through field research and desk research has been weighed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as

12 See above, note 4, p. 38.

representative of Kyrgyzstani reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of interactions with the state, personal safety, employment, education and healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, section 3.2 of the report does not include discussion of discrimination against ethnic Uzbeks in education, as the only evidence which our research elicited on this issue related to issues of language, which are discussed elsewhere in the report.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality, by looking at the element of "participation on an equal basis with others in economic, social, political, cultural or civil life",¹³ thereby extending beyond experiences of discrimination.

The **fourth implication** of applying the unified framework is the definition of discrimination used, which, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of religion or belief; ethnicity; language; gender; sexual orientation and gender identity; disability; and health status. Furthermore, analysis of certain types of discrimination, notably that suffered by children, is interwo-

13 See above, note 2, Principle 1.

ven throughout the report, rather than considered separately. This is not because they are less important or widespread, but because they appear to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity.

The **final implication** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of the Kyrgyzstani legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced.

The analysis of laws and policies designed to address discrimination and inequality in Kyrgyzstan in Part 2 of this report identifies gaps in the legal framework and in the application and enforcement of legal guarantees that inhibit the effective enjoyment of rights. It also assesses the adequacy of the legal and policy framework in the light of the Declaration's principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of the enforcement of equality rights.¹⁴ Part 3 expands upon those issues identified, highlighting the existence of discriminatory laws and the impact which inadequate or inadequately enforced laws have in resulting in or contributing towards the marginalised position of certain groups in Kazakhstani society. The necessity of effective protection and enforcement of the rights to non-discrimination and equality is illustrated by the findings of both Parts 2 and 3 of this report, and is discussed further in Part 4, which formulates recommendations about legal and policy reform, implementation and enforcement.

14 *Ibid.*, Principles 18–25.

Research Methodology

This report is the outcome of a lengthy engagement by the Equal Rights in Kyrgyzstan. Between 2012 and 2016, the Equal Rights Trust and the Peremena Public Foundation worked in partnership on a project designed to empower civil society to combat discrimination and inequality in Kyrgyzstan funded by the European Union.

Throughout this project, the partners undertook research on discrimination and inequality by gathering direct testimony, as well as by reviewing research conducted by others. The Equal Rights Trust also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the legal and policy framework related to non-discrimination and equality in Kyrgyzstan. Drafts of this report were the subject of a validation exercise, in which its findings and conclusions were exposed to scrutiny by legal experts and civil society representatives.

Research on law and policy for Part 2 of the report was undertaken by the Equal Rights Trust, with assistance from a Kyrgyzstani legal expert. Research on Kyrgyzstan's international legal obligations benefited from the United Nations Treaty Collection database¹⁵ and the website of the Office of the High Commissioner for Human Rights.¹⁶ Research on Kyrgyzstani laws, including the Constitution and national legislation, consisted of reviewing primary sources, accessed via the website of the Ministry of Justice. Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites. Research on the role, functions and operations of the National Human Rights Commission was undertaken by review of the relevant legislation, together with commentaries and reports produced by the Commission and by independent organisations.

Research for Part 3 of the report commenced with desk-based research of existing sources, helping to identify the major patterns of discrimination in Kyrgyzstan. Following this initial assessment, Peremena conducted in depth field

15 United Nations, United Nations Treaty Series Online Collection, available at: <http://treaties.un.org/pages/UNTSOnline.aspx?id=1>.

16 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

research in all seven regions of Kyrgyzstan. Using a standard field research guide developed and provided by the Equal Rights Trust, Peremena allocated grants to researchers to conduct focus groups and interviews in each region, documenting patterns of discrimination and inequality, with a particular focus on discrimination on the basis of religion and ethnicity. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld, to respect their wishes for confidentiality. Information on the identities of all persons whose names have been withheld is kept on file by the Equal Rights Trust.

Alongside the field research, desk-based research was undertaken by both the Equal Rights Trust and Peremena. This involved a review of relevant literature on discrimination and inequality in Kyrgyzstan, including reports by both the government and non-governmental organisations (NGOs) to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media organisations. Following the field and desk-based research phases, a draft of the report was compiled by a team of Equal Rights Trust researchers.

As a final step in the process, the Equal Rights Trust conducted a validation visit to Bishkek and Osh in November 2016. During this visit over 25 interviews were conducted with members of vulnerable communities, civil society representatives and legal experts. We also sought to meet with the Ombudsperson, State Committee for Religious Affairs and State Agency for Local Government and Inter-Ethnic Relations but were unable to schedule meetings.

Scope and Limitations of the Report

Part 2 of this report captures the legislative status quo as of December 2016. It should be noted at this juncture that as frameworks on equality evolve, the presentation of the Kyrgyzstani legal framework, while not ephemeral, will become obsolete within less than a decade. Legislative developments have been promised by the state, while recent political events signal the potential for political, economic and legislative upheaval.

Part 3 of this report explores patterns, processes and root causes of discrimination and inequality in Kyrgyzstan. By utilising both modern and historical

examples of discriminatory practices, continuing and emerging trends in the treatment of minority groups are recognised; providing a unique account of lived experiences of discrimination and inequality.

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Kyrgyzstan itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 3 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the Kyrgyzstani context. Analysis of certain types of discrimination, notably those experienced by children, is interwoven in the report, rather than presented separately. The decision to not devote a separate section to this group is motivated not by their lesser significance in the country context, but by our opinion that, from the point of view of equality and non-discrimination law, discrimination against children appears to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender, ethnicity or language. Discrimination against underage girls, for example, is better understood through the prism of gender, rather than age.

As is often the case when researching discrimination, the research for this report was constrained, to some extent, by the lack of disaggregated statistical data pertaining to the situation of certain groups and in certain areas of life. Consequently, certain issues which would usually fall within the scope of a report addressing inequality and discrimination do not feature in the report at all.

These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

1.3 Country Context

Kyrgyzstan (officially the Kyrgyz Republic), is a landlocked, mountainous country in Central Asia, bordered to the north by Kazakhstan, to the east by China, to the south by Tajikistan and to the west by Uzbekistan. It has a total area of around 200,000km² and is divided into seven provinces and two cities with a special status (Bishkek and Osh).¹⁷ Bishkek is the capital, with a population of slightly under 1 million people.¹⁸

The total population of Kyrgyzstan, as of 1 January 2016, was 6.02 million people; there has been a consistent 1–2% population growth rate over the previous ten years.¹⁹ The birth rate in 2014 was 27.7 births per 1,000 people;²⁰ the death rate for the same year was 6.1.²¹ Life expectancy at birth is 70.4 years,²² although there is a sizeable gap between life expectancy for men (66.5 years)²³ and women (74.5 years).²⁴

According to the National Statistical Committee, as of 1 January 2016, ethnic Kyrgyz made up 73.0% of the total population, with Uzbeks (14.6%) and Russians (6.0%) constituting sizeable minorities.²⁵ Much smaller ethnic minorities in Kyrgyzstan include Dungans (1.1%), Uighurs (0.9%), Tajiks (0.9%), Turks (0.7%), Kazakhs (0.6%) and Tatars (0.5%).²⁶ The Uzbek population is mainly

17 The seven provinces are Batken, Chuy, Issyk Kul, Jalal-Abad, Naryn, Osh and Talas.

18 National Statistical Committee of the Kyrgyz Republic, “5.01.00.17 The number of resident population”, available at: <http://www.stat.kg/en/statistics/naselenie/> (as of August 2016).

19 *Ibid.*

20 World Bank, *Data: Birth rate, crude (per 1,000 people)*, available at: <http://data.worldbank.org/indicator/SP.DYN.CBRT.IN?locations=KG> (as of August 2016).

21 World Bank, *Data: Death rate, crude (per 1,000 people)*, available at: <http://data.worldbank.org/indicator/SP.DYN.CDRT.IN?locations=KG> (as of August 2016).

22 World Bank, *Data: Life expectancy at birth, total (years)*, available at: <http://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=KG> (as of August 2016).

23 World Bank, *Data: Life expectancy at birth, male (years)*, available at: <http://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=KG> (as of August 2016).

24 World Bank, *Data: Life expectancy at birth, female (years)*, available at: <http://data.worldbank.org/indicator/SP.DYN.LE00.FE.IN?locations=KG> (as of August 2016).

25 National Statistical Committee of the Kyrgyz Republic, “5.01.00.03 Total population by nationality”, available at: <http://www.stat.kg/en/statistics/naselenie>.

26 *Ibid.*

located in the southern provinces (Osh, Jalal-Abad and Batken) with the Russian population mainly located in the north (Chui and Issyk-Kul provinces and the city of Bishkek). The Dungan population mostly live in Chui province and the Uighur population mostly in Chui province and the city of Bishkek.

Official statistics on the religion of the population are not recorded, but it is estimated that approximately 75% of the population is Muslim, the majority of whom are Sunni, approximately 20% are Russian Orthodox and the remaining 5% belonging to minority religious groups including Baptists, Lutherans, Pentecostals, Presbyterians, charismatics, Seventh-day Adventists, Jehovah's Witnesses, Roman Catholics, Jews, Buddhists, and Bahais.²⁷ Islam is the main religion in both urban and rural areas, with members of the Russian Orthodox Church and other minority religious living mainly in large cities. Ethnic Kyrgyz and Uzbeks are predominantly Muslim whilst ethnic Russians are largely Russian Orthodox or belong to one of the Protestant denominations.²⁸

According to Article 10 of the Constitution, the state language is Kyrgyz, with Russian also considered an "official language". However, Article 10 provides that the state shall "ensure that the representatives of all ethnicities which form the population of Kyrgyzstan have the right to preserve their native language as well as creation of conditions for its learning and development."

In practice, Kyrgyz and Russian are both spoken widely with Uzbek also used by the Uzbek minority. There are close links between ethnicity and language spoken. At the 2009 census, which recorded people's primary language and other languages in which they were fluent, 99.9% of ethnic Kyrgyz stated that Kyrgyz was their "mother tongue" and 0.1% that it was Russian.²⁹ However almost 40% of ethnic Kyrgyz were also fluent in Russian.³⁰ Amongst ethnic Rus-

27 United States Department of State, *International Religious Freedom Report for 2014: Kyrgyzstan*, 2015, p. 1, available at: <http://www.state.gov/documents/organization/238710.pdf>.

28 *Ibid.*, pp. 1–2.

29 National Statistical Committee of the Kyrgyz Republic, *Population and Housing Census of the Kyrgyz Republic of 2009, Book I: Main social and demographic characteristics of population and number of housing units*, 2009, Table 4.2, p. 53, available at: <http://unstats.un.org/unsd/demographic/sources/census/wphc/Kyrgyzstan/A5-2PopulationAndHousingCensusOfTheKyrgyzRepublicOf2009.pdf>.

30 *Ibid.*, Table 4.3, p. 54.

sians, 99.9% stated that they considered Russian to be their “mother tongue”.³¹ However, whereas a significant proportion of ethnic Kyrgyz spoke Russian a second language, only 2.7% of ethnic Russians spoke Kyrgyz as a second language.³² Finally, amongst ethnic Uzbeks – who made up 14.3% of the population in 2009 – 98.6% stated that they spoke Uzbek as their “mother tongue”.³³ Over 23.0% of ethnic Uzbeks also spoke fluent Kyrgyz and 23.2% spoke fluent Russian (although it is not recorded to what extent these two groups overlapped).³⁴

The Kyrgyzstani som is the national currency of Kyrgyzstan. The World Bank estimated Kyrgyzstan’s gross domestic product in 2015 to be US\$6.6 billion,³⁵ placing it in the lower middle income group. Kyrgyzstan’s GDP per capita (purchasing power parity) in 2015 was US \$3,427³⁶ and its GNI per capita (purchasing power parity) in 2015 was \$3,300.³⁷ In 2015, the United Nations Human Development Index for Kyrgyzstan was 0.655 (medium human development), placing it 120th in the world out of 188 countries.³⁸ Kyrgyzstan’s Gini Income coefficient (measuring inequality in the distribution of wealth) for the period 2005–2013 was 33.4.³⁹ The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 5.4.⁴⁰ In 2014, the economically active population of Kyrgyzstan was 2.43 million people with the unemployment rate at just over 8%.⁴¹

31 *Ibid.*, Table 4.2, p. 53.

32 *Ibid.*, Table 4.3, p. 54.

33 *Ibid.*, Table 4.2, p. 53.

34 *Ibid.*, Table 4.3, p. 54.

35 World Bank, *Data: GDP (current US\$)*, available at: <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=KG> (as of August 2016).

36 World Bank, *Data: GDP per capita, PPP (current international \$)*, available at: <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=KG> (as of August 2016).

37 World Bank, *Data: GNI per capita, PPP (current international \$)*, available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD?locations=KG> (as of August 2016).

38 United Nations Development Programme, *Human Development Report 2015: Work for Human Development*, 2015, p. 209, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

39 *Ibid.*, p. 218.

40 *Ibid.*

41 National Statistical Committee of the Kyrgyz Republic, “1.07.00.01 Economically active and inactive population”, available at: <http://www.stat.kg/en/statistics/zanyatost/> (as of August 2016).

The general human rights situation in Kyrgyzstan is mixed. In 2016, Freedom House considered Kyrgyzstan to be “partly free”, receiving an overall freedom rating of 5 (with specific ratings of 5 for civil liberties and 5 for political rights), the highest of all Central Asian states.⁴² These scores have remained unchanged in recent years. In its 2016 report, Freedom House highlighted various concerns including attempts by the President to influence electoral and judicial outcomes, the rise of ultra-nationalist vigilante groups, pervasive corruption, limited media in the Uzbek language, a “cumbersome and arbitrary” process of registering religious organisations, police interference with protests, widespread homophobia and police brutality against LGBT persons, underrepresentation of women in leadership positions in government and business, the practice of “bride kidnapping” and the trafficking of women into forced prostitution and men into labour abroad.⁴³

1.4 History

The history and origins of Kyrgyzstan and the Kyrgyz people cannot be separated from the broader history of Central Asia. Indeed, the roots of Kyrgyzstan and the Kyrgyz people are found, in some sense, outside the territory of modern-day Kyrgyzstan. An ancient Turkic people – the Yenisei Kyrgyz (or Kirghiz) – had inhabited the upper section of the Yenisei River in central Siberia since the second century BC. By the mid-6th century AD, the Yenisei Kyrgyz had established the Kyrgyz Khaganate (or empire). Having been conquered by the neighbouring Uyghurs in 758 AD, the Kyrgyz rebelled and formed an alliance with the Chinese Tang dynasty to defeat the Uyghur Khaganate, which they succeeded in doing in 840 AD, expanding the territory of the Kyrgyz Khaganate into Central Asia. Over the next decades, the Kyrgyz migrated from their original territory along the Yenisei River to the Tian-Shan region, part of which is now modern-day Kyrgyzstan.

Over time, the strength of the Kyrgyz Khaganate, whilst lasting around two centuries, began to wane. Rising Mongol expansion led to the territory shrinking in size by the 12th century and the growing power of the Mongol Empire and Genghis Khan in the early 13th century resulted in the submis-

42 Freedom House, *Freedom in the World 2016*, 2016, p. 22.

43 Freedom House, *Freedom in the World 2015: Kyrgyzstan*, 2016, available at: <https://freedomhouse.org/report/freedom-world/2016/kyrgyzstan>.

sion of the Kyrgyz and the territory being absorbed into the Mongol Empire. The following centuries saw the Kyrgyz people come under the nominal rule of successive imperial powers: the Golden Horde, the Chagatai Khanate, the Timurids and eventually the Junghars, although it is unclear how much real control these powers were able to exercise over the mountainous territory in which the Kyrgyz lived. In the early 19th century, the Kyrgyz came under the suzerainty of the Khanate of Khoqand, based in the Ferghana Valley.

In the 1850s and 1860s, Russian forces defeated the Khanate of Khoqand and established a fortress at Vernyi (modern Almaty) from which they extended their control over territory including the territory of the northern Kyrgyz. In 1876, the remainder of the Khanate of Kokand was conquered by the Russian Empire, bringing the southern Kyrgyz under Russian control as well. From the 1890s, increasing numbers of Russian settlers settled in the Kyrgyz populated regions of Pishpek (Bishkek) and Przhevalsk (Karakol), causing increasing tensions over access to land and water.

In 1916, when the Russian Empire sought to conscript men from Central Asia to fight in World War I, a revolt broke out and at least 150,000 Kyrgyz died either fighting or attempting to flee in what is known as the “Urkun” (Exodus).⁴⁴ The revolt of 1916, together with the revolutions of 1917 in Russia, led to the collapse of Tsarist rule in Central Asia, but Soviet rule was not fully established in the region until after the Civil War, in 1921–2.

Following the establishment of Soviet rule, the authorities pursued a national delimitation policy, leading to the creation of supposedly autonomous republics across Central Asia. In 1924, the Kara-Kyrgyz Autonomous Oblast was created within the Russian Soviet Federative Socialist Republic. In 1925 it was renamed the Kyrgyz Autonomous Oblast and in 1926 the Kyrgyz Autonomous Socialist Soviet Republic. Finally, in 1936, it was established as the Kyrgyz Soviet Socialist Republic (SSR), one of the Soviet Socialist Republics making up the Union of Soviet Socialist Republics (USSR).

Between 1924 and 1936 the Soviet authorities under the resolution “On the National Redistricting of the Central Asian Republics” drew the boundaries

44 Pannier, B., “Remembering the Great Urkun 100 Years Later”, *Radio Free Europe / Radio Liberty*, 29 April 2016, available at: <http://www.rferl.org/content/qishloq-ovozi-remembering-great-urkun/27706415.html>.

between modern Uzbekistan, Kyrgyzstan and Tajikistan. The Soviet authorities were seeking to divide Central Asia in a series of 'national mono-ethnic' republics, however the boundaries drawn were not "ethnically homogenous" meaning large numbers of ethnic groups were located in a state designated for another ethnic group.⁴⁵ As a result, there are large numbers of ethnic Uzbeks living in modern-day Kyrgyzstan.

Under Soviet rule, the nomadic Kyrgyz suffered as Stalin's land reforms forced thousands of farmers to live on large farms (collectives), striking at the heart of the group's traditional way of life. Opposition – such as killing horses, camels and sheep rather than giving them up to be collectivised – was ruthlessly suppressed.⁴⁶ Kyrgyzstan became the site of a number of Soviet development projects, such as the hydroelectric dam on the Naryn river, but the economy remained heavily dependent on agricultural production. Northern Kyrgyzstan became increasingly Russified, and large numbers of Slavs settled in Bishkek and other northern towns, but this was much less marked in the South.⁴⁷

The poor state of the Soviet economy by the mid-1980s led Mikhail Gorbachev to pursue reform policies of *glasnost* and *perestroika*, but these had the effect of undermining the legitimacy and stability of the Soviet regime.⁴⁸ In 1990, opposition groups in the Kyrgyz SSR began to protest and formed the Kyrgyzstan Democratic Movement. In June of that year, ethnic tensions between Kyrgyz and Uzbeks around the southern city of Osh resulted in riots, leaving hundreds dead.⁴⁹ A state of emergency was declared, lasting until August.⁵⁰ Meanwhile, the Kyrgyzstan Democratic Movement was quickly gaining in strength and, in October, the Communist Party's preferred candidate for the newly created post of President of the SSR, Absamat Masaliyev, was de-

45 Rezvani, B., "Understanding and Explaining the Kyrgyz-Uzbek Interethnic Conflict in Southern Kyrgyzstan", *Anthropology of the Middle East*, Vol. 8 No.2, p. 66.

46 King, D C., "Cultures of the World: Kyrgyzstan", Marshall Cavendish Benchmark, New York, 2006, p. 24.

47 Fumagalli, M., "Framing ethnic minority mobilisation in Central Asia: The cases of Uzbeks in Kyrgyzstan and Tajikistan", *Europe-Asia Studies* Vol. 59(4), 2007, p. 572.

48 See above, note 45, p. 66.

49 Kyrgyzstan Inquiry Commission, *Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010*, 2011, Paras 38–39.

50 See above, note 47.

feated by a reformist, Askar Akayev.⁵¹ In December 1990, the Supreme Soviet voted to change the republic's name to the Republic of Kyrgyzstan. In May 1991, a new constitution was adopted and the country's name was changed to the Kyrgyz Republic.

History Since Independence

By August 1991, when the State Emergency Committee took power in Moscow, an attempt was made to depose President Akayev. The attempt failed and both Akayev and the Vice-President, German Kuznetsov resigned, along with the entire politburo and secretariat. On 31 August, the Supreme Soviet voted to declare the Republic of Kyrgyzstan's independence from the USSR.

The country's first presidential election took place in October that year, albeit with Akayev as the sole candidate. Akayev would go on to win two further elections in 1995 and 2000, amid accusations of ballot rigging and heavy criticism from Organization for Security and Co-operation in Europe observers. Over Akayev's period in office, Kyrgyzstan economically was liberalised, with the government promoting land privatisation and other economic reforms, more so than any of its Central Asian neighbours. This produced only limited foreign investment, with the major exception being the controversial Kumtor goldmine.

In February 2005, the legislative elections were widely believed to have been rigged by the government; anger over this and the government's corruption and authoritarianism led to large opposition rallies. Known as the Tulip Revolution, the protests quickly forced President Akayev to flee the country. Kurmanbek Bakiyev, leader of the opposition People's Movement of Kyrgyzstan, whose power-base was largely in the south of the country, was appointed as acting President until the presidential election of July 2005 where he stood and won almost 90% of the votes.

President Bakiyev's time in office was marred by a series of crises. Protests in Bishkek took place in 2006 over his alleged failure to tackle corruption and crime and to transfer power from the President to the parliament. Bakiyev was re-elected in 2009, but that winter, energy shortages, rolling blackouts

51 See above, note 49, Para 31.

and increased energy prices led to wide scale anger. On 6 April 2010, a protest took place in Talas with the local government headquarters stormed. The next day, President Bakiyev declared a state of emergency. Protests, known as the Kyrgyz Revolution, continued across the country and by 15 April 2010, President Bakiyev had resigned.

Opposition leaders formed an interim government headed by former Foreign Minister Roza Otunbayeva. She soon announced that a referendum on a new constitution would be held in June of that year. At the referendum on 27 June, over 90% of voters voted in favour of a new constitution which reduced the powers of the President and strengthened the powers of the parliament – the Jogorku Kenesh. However, the weeks preceding the referendum were reportedly marred by pogroms engineered by supporters of Bakiyev in alliance with local criminals which targeted the Uzbeks population in Osh and Jalal-Abad. Hundreds, mostly Uzbeks, died, and hundreds of thousands more were displaced as a result.

The first parliamentary elections under the new constitution took place in October 2010. A coalition of three parties was formed, headed by the new Prime Minister Almazbek Atambayev of the Social Democratic Party of Kyrgyzstan. Just one year later, at the first presidential election under the new constitution, Atambayev stood and won with over 63% of the vote. He was replaced as Prime Minister by Omurbek Babanov of the conservative Respublika Party of Kyrgyzstan, however neither he, nor his successors, remained in post long. Babanov stood down in September 2012 following allegations of corruption; his successor, the independent Zhantoro Satybaldiyev, lasted in post until March 2014 when the governing coalition fell, again following allegations of corruption; and his successor, a fellow independent, Djoomart Otorbaev, stood down in April 2015.

Six months after his successor, Temir Sariyev, took over the post, Kyrgyzstan's second parliamentary elections took place, with the Social Democratic Party increasing its share of the vote and leading a second coalition government, still headed by Temir Sariyev. In August of that year, Kyrgyzstan joined the Eurasian Economic Union. However, in April 2016, Sariyev resigned after a parliamentary commission accused the government of corruption. Since April 2016, Kyrgyzstan's Prime Minister has been Sooronbay Jeenbekov.

1.5 Government and Politics

As noted above, the current Constitution of Kyrgyzstan was adopted in 2010, following a referendum. It entered into force, in part, on 1 July 2010 when the results of the referendum were published and in part later that year.⁵² Under the Constitution, Kyrgyzstan is a sovereign, democratic, secular, unitary and social state governed by the rule of law. It has a parliamentary system with the President having certain, largely ceremonial, functions.

The President is head of state⁵³ and Commander in Chief of the Armed Forces,⁵⁴ elected by popular vote for a single term of six years, without the possibility of re-election.⁵⁵ Article 64 of the Constitution sets out the powers and duties of the President, including: calling general and local elections; signing and promulgating legislation; nominating judges and other senior public positions; and representing Kyrgyzstan outside of the country.

The Jogorku Kenesh is “the highest representative body exercising legislative power”⁵⁶ and comprises 120 deputies elected for five-year terms on the basis of proportional representation, with a limit which prevents any single party from having more than 65 deputies.⁵⁷ Article 74 of the Constitution sets the powers of the Jogorku Kenesh, including: calling presidential elections; adopting legislation; ratifying international treaties; and approving the national budget. The Jogorku Kenesh also has the role of scrutinising the activity of the government by voting on the government’s proposed programme of activity and holding

52 Article 1 of the Law of the Kyrgyz Republic “On the Implementation of the Constitution of the Kyrgyz Republic”, 27 June 2010, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202914>; see also Decision of the Central Commission for Elections and Referendums of the Kyrgyz Republic “On the Results of the Referendum (nationwide voting) of the Kyrgyz Republic of 27 June 2010”, 1 July 2010, № 130, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/19400?cl=ru-ru>. As per Article 1, the third section, parts two and three of the fourth section, and the fifth and sixth sections of the Constitution all came into force upon the first meeting of the new Jogorku Kenesh (which took place at the end of 2010); and Article 30, Para 2 of the Constitution which prohibits “[s]earches, seizures, inspections and performing other actions as well as penetration of public agents in housing or other objects owned or otherwise possessed” without a court order, came into force on 1 June 2011.

53 Constitution of Kyrgyzstan, Article 60, Para 1.

54 *Ibid.*, Article 64, Para 8.

55 *Ibid.*, Article 61.

56 *Ibid.*, Article 70, Para 1.

57 *Ibid.*, Article 70, Para 2.

votes of confidence in the government,⁵⁸ as well as electing (and dismissing) senior members of the judiciary and other senior public positions.⁵⁹

Executive power is exercised by “the Government, ministries subordinate to it, state committees, administrative departments and local state administrations”,⁶⁰ although it is the government, led by the Prime Minister, which is the “highest body of executive power”.⁶¹ Within 15 days of each new convocation of the Jogorku Kenesh, the party which has more than half the seats (or a coalition of parties which together has more than half the seats) puts forward its nomination for Prime Minister to the Jogorku Kenesh, together with the Prime Minister’s proposed programme, structure and composition of the government.⁶² If this programme is not approved by the Jogorku Kenesh, or if there is no coalition with more than half the seats, then a series of procedures must be followed, in sequence: first, the President may propose up to two alternative parties who can nominate a Prime Minister; if both fail, then the parties in the Jogorku Kenesh themselves can nominate a Prime Minister; and if that fails the President must call new elections.⁶³

Judicial power in Kyrgyzstan is only exercisable by a court.⁶⁴ Whilst the Constitution allows the vast majority of the court structure to be determined by legislation, it does provide for a Supreme Court as “the highest body of judicial power in respect of civil, criminal, administrative as well as other cases”.⁶⁵ The Supreme Court only has appellate jurisdiction, with the power to “revise the court rulings of local courts upon appeals of the participants in the judicial process” following the procedure set down in legislation.⁶⁶ The Constitution also provides that, as part of the Supreme Court, there shall be a Constitution Chamber “which shall perform constitutional oversight”.⁶⁷

58 *Ibid.*, Article 74, Para 3.

59 *Ibid.*, Article 74, Para 4.

60 *Ibid.*, Article 83, Para 1.

61 *Ibid.*, Article 83, Para 2.

62 *Ibid.*, Article 84, Para 1.

63 *Ibid.*, Article 84, Paras 2 to 6.

64 *Ibid.*, Article 93, Para 1.

65 *Ibid.*, Article 96, Para 1.

66 *Ibid.*,

67 *Ibid.*, Article 97, Para 1.

2. THE LEGAL FRAMEWORK RELATED TO EQUALITY

This part of the report examines the legal framework related to equality in Kyrgyzstan. It examines both Kyrgyzstan's international legal obligations and the domestic legal framework. In respect of domestic law, it examines the Constitution and analyses the impact of the constitutional amendments approved in the December 2016 referendum, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. The chapter then assesses the enforcement and implementation of laws aimed at ensuring equality, including an examination of the national human rights institution whose functions cover matters relating to equality, the Ombudsperson (Akyi-katchy) of Kyrgyzstan. In order to assess the full picture of the Kyrgyzstan's legal framework as it relates to equality, this part should be read together with, and in the context of, the following part, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application.

It is clear from what follows that Kyrgyzstan's legal framework contains some important protections of equality and non-discrimination. The Constitution contains a relatively strong, albeit imperfect, equality provision and there is an extensive law on gender equality and another law which purports to protect the rights of persons with disabilities. However, the amendments to the Constitution recently approved are very concerning and none of these specific laws offers sufficient protection. Taken as a whole, the Kyrgyz legal framework falls significantly short of that which is required by international law and best practice. More concerning is the patchy enforcement mechanisms and almost complete lack of jurisprudence applying the available laws. Accordingly, there are numerous areas of improvement required for Kyrgyzstan's legal framework to adequately protect the rights to equality and non-discrimination.

2.1 International and Regional Law

This section provides an overview of Kyrgyzstan's international obligations in relation to the rights to equality and non-discrimination. Kyrgyzstan has ratified or acceded to seven of the nine key UN human rights treaties and has thereby expressly agreed to protect, respect and fulfil the rights contained in these instruments and to be bound by the legal obligations contained therein. In addition, Kyrgyzstan is bound by customary international law which pro-

vides some important protection in respect of the right to non-discrimination on certain grounds.

2.1.1 Major United Nations Treaties Related to Equality

Kyrgyzstan has a good record of participation in international human rights and other legal instruments. With the exception of the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention for the Protection of All Persons from Enforced Disappearances Kyrgyzstan has committed itself to the core United Nations human rights treaties. In relation to the treaties that it has ratified, it has done so without reservation.

Kyrgyzstan has a moderate record of allowing individual complaints to be made to the relevant Treaty Bodies as it has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Instrument Relevant to Equality	Signed	Ratified/Acceeded/Succeeded
International Covenant on Civil and Political Rights (1966) (ICCPR)	n/a	7 October 1994 (Acceded)
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	n/a	7 October 1994 (Acceded)
Second Optional Protocol to the International Covenant on Civil and Political Rights (1989)	n/a	6 December 2010 (Acceded)
International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)	n/a	7 October 1994 (Acceded)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	No	No
Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD)	n/a	5 September 1997 (Acceded)
Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)	n/a	No
Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW)	n/a	10 February 1997 (Acceded)

Instrument Relevant to Equality	Signed	Ratified/Acceeded/ Succeeded
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	n/a	22 July 2002 (Acceded)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT)	n/a	5 September 1997 (Acceded)
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	n/a	29 December 2008 (Acceded)
Convention on the Rights of Persons with Disabilities (2006) (CRPD)	21 September 2011	No
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	No	No
Convention on the Rights of the Child (1989) (CRC)	n/a	7 October 1994 (Acceded)
Optional Protocol I to the Convention on the Rights of the Child (2000) (involvement of children in armed conflict)	n/a	13 August 2003 (Acceded)
Optional Protocol II to the Convention on the Rights of the Child (2000) (sale of children, child prostitution and child pornography)	n/a	12 February 2003 (Acceded)
Optional Protocol III to the Convention on the Rights of the Child (2011) (communicative procedure)	No	No
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (ICRMW)	n/a	29 September 2003 (Acceded)
International Convention for the Protection of All Persons from Enforced Disappearances (2006)	No	No

During its most recent performance at the Universal Periodic Review (UPR), Kyrgyzstan committed to ratifying the CRPD and its Optional Protocol.⁶⁸ However, as of 2016, it has still not been ratified and the government has indicated that it would not be able to consider ratification until 2017 at the earliest due to

⁶⁸ United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kyrgyzstan, Addendum*, UN Doc. A/HRC/29/4/Add.1, 22 June 2015.

the financial implications of compliance.⁶⁹ Two experts, one a lawyer working on disability rights in Kyrgyzstan and the second an employee of an international organisation in Kyrgyzstan are convinced that the government is committed to ratification and to advancing the position of persons with disabilities.⁷⁰

At the same UPR, Kyrgyzstan rejected recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearances,⁷¹ the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷² and Optional Protocol III to the Convention on the Rights of the Child (CRC).⁷³

2.1.2 Other Treaties Related to Equality

Kyrgyzstan has a mixed record in relation to other international treaties which have a bearing on the enjoyment by all of the rights to equality and non-discrimination. Kyrgyzstan acceded to the 1951 Convention Relating to the Status of Refugees in 1996. Kyrgyzstan has not, however, ratified the key Conventions relating to statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

In the field of labour standards, Kyrgyzstan has ratified all eight of the fundamental International Labour Organization (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention. In the field of education, Kyrgyzstan has ratified the 1960 UNESCO Convention against Discrimination in Education.

Kyrgyzstan has not ratified the Rome Statute and, as such, Kyrgyzstan does not recognise the jurisdiction of the International Criminal Court and so the international crimes which fall within the Court's jurisdiction – genocide,

69 Tursunov, H., "Kyrgyzstan: Activists Say Government Dithering on Disability Convention", *eurasianet.org*, 16 March 2015, available at: <http://www.eurasianet.org/node/72556>.

70 Equal Rights Trust, Interview with S. Dyikanbaeva, Bishkek, 1 November 2016; Equal Rights Trust, Interview with J., an employee of an international organisation, Bishkek, 4 November 2016.

71 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 118.10, 118.11 and 118.12.

72 *Ibid.*, Paras 118.13 and 118.14.

73 *Ibid.*, Para 118.15.

crimes against humanity and war crimes – cannot be prosecuted if they have taken place within the territory of Kyrgyzstan. Recommendations made to Kyrgyzstan during its most recent performance at the UPR that it ratify the Rome Statute were rejected.⁷⁴

Instrument Relevant to Equality	Signed	Ratified/Acceded/ Succeeded
Convention relating to the Status of Refugees (1951)	n/a	8 October 1996 (Acceded)
Convention relating to the Status of Stateless Persons (1954)	No	No
Convention on the Reduction of Statelessness (1961)	No	No
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	n/a	5 September 1997 (Acceded)
UN Convention against Transnational Organised Crime (2000)	13 December 2000	2 October 2003 (Ratified)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	13 December 2000	2 October 2003 (Ratified)
Rome Statute of the International Criminal Court (1998)	8 December 1998	No
UNESCO Convention against Discrimination in Education (1960)	n/a	3 July 1995 (Acceded)
Forced Labour Convention (1930) (ILO Convention No. 29)	n/a	31 March 1992 (Ratified)
Equal Remuneration Convention (1951) (ILO Convention No. 100)	n/a	31 March 1992 (Ratified)
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)	n/a	31 March 1992 (Ratified)
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)	n/a	10 May 2004 (Ratified)
Indigenous and Tribal Peoples Convention (1989) (ILO Convention No. 169)	No	No

⁷⁴ *Ibid.*, Paras 118.1 to 118.10.

2.1.3 Regional Instruments

Kyrgyzstan is a member of the Commonwealth of Independent States (CIS) and ratified the CIS Convention on Human Rights in May 1995. In addition, the Parliamentary Assembly of the Council of Europe (PACE) granted Kyrgyzstan Partner for Democracy Status in 2014. This creates a mechanism for institutional cooperation between PACE and the Kyrgyz government to benefit from PACE's "experience in democracy building" and debate common problems and challenges.⁷⁵ In 2015 a delegation from PACE visited Kyrgyzstan to observe the Parliamentary elections.⁷⁶ There have also been two visits from PACE Special Rapporteurs to Kyrgyzstan in both 2014 and early 2016.

2.1.4 Treaties Not Ratified by Kyrgyzstan

While the few treaties which have not been ratified by Kyrgyzstan do not bind the state they, together with comments of their respective treaty bodies, do have an important interpretative function when determining the obligations of Kyrgyzstan. They should be used to elucidate: (i) Kyrgyzstan's obligations under the treaties to which it is a party, to the extent that the treaties to which it is not a party can explain concepts which are also found in those treaties to which it is a party; (ii) the content of the right to equality and non-discrimination for persons covered by the ratified treaties who are vulnerable to multiple discrimination on grounds which include those protected by other treaties or in areas of life covered by other treaties; and (iii) Kyrgyzstan's obligations under customary international law.

2.1.5 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states.⁷⁷

75 Parliamentary Assembly of the Council of Europe, *Kyrgyz Parliament obtains Partner for democracy status*, 8 April 2014, available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=4970&lang=2>.

76 Parliamentary Assembly of the Council of Europe, *PACE to observe Parliamentary elections in the Kyrgyz Republic*, 1 October 2015, available at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5805&lang=2>.

77 Shaw, M., *International Law*, Fifth edition, Cambridge University Press, 2003, p. 69.

Customary international laws are particularly significant when they reach a level – known as peremptory norms⁷⁸ – at which they are binding on all states and from which there can be no derogations. It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international customary law.⁷⁹ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.⁸⁰ Some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-discrimination is a peremptory norm of customary international law⁸¹ but this is subject to debate.⁸²

2.1.6 Status of International Law in National Law

According to the 2010 Constitution, Kyrgyzstan is a monist state and, as such, international treaties that are ratified by the state and have entered into force automatically become part of national law. Article 6, paragraph 3 of the Constitution provides that:

78 *Prosecutor v Anto Furundzija*, ICTY- IT-95-17/1-T, 10 December 1998, Para 153; Parker, K. and Neylon, L. B., “Jus Cogens: Compelling the Law of Human Rights”, *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53.

79 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68 and the materials referred to therein; Pellett, A., “Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation”, *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; cf Shaw, M., *International Law*, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm.

80 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; and Cassel, D., “Equal Labor Rights for Undocumented Migrant Workers”, in Bayefsky, A. (ed.), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

81 Inter-American Court of Human Rights, Advisory Opinion OC-18/03 – Juridical Condition and Rights of Undocumented Migrants, Inter- Am. Ct. H.R. (Ser. A) No. 18 (2003), 17 September 2003, p. 23. See also, by way of example, Martin, F.F. et al., *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

82 See Bianchi, A., “Human Rights and the Magic of Jus Cogens”, *The European Journal of International Law*, Vol. 19, 2008, p. 506; see Cassel, above, note 80, pp. 511–512; see Pellett, above, note 79, p. 85.

International treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognised principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic.

Amongst international treaties, under the 2010 Constitution international human rights treaties are given superior status under Article 6, paragraph 3, which continues: “The provisions of international treaties on human rights shall have direct effect and shall enjoy precedence over provisions of other international treaties.” However, as discussed below in Part 2.2.1, the amendments approved in the December 2016 referendum delete this reference removing the precedence of international human rights treaties.⁸³ The amendments also appear to undermine the automatic incorporation of ratified treaties into national law as the revised text provides that “the procedure and modalities of the application of international treaties and universally recognised principles and norms of international law shall be defined in the law”.⁸⁴

Under Article 97, paragraph 6, subparagraph 2, of the Constitution, the Constitutional Chamber of the Supreme Court has the power to determine the constitutionality of international treaties which have not entered into force and to which Kyrgyzstan is a party.

The question then becomes how the ratified treaties which have entered into force fit within the hierarchy of the Constitutional legal order and which laws take precedence in a case of inconsistency. The Constitution provides no guidance on whether treaties determined to be incompatible with the Constitution can still be ratified, nor how any incompatibility between an international treaty which is ratified and in force and the Constitution is resolved. The Constitutional Chamber only has the power to review treaties which are submitted to it for review; thus, in practice, ensuring consistency between the Constitution and international treaties relies on the goodwill of the President, the Prime Minister, the Government, the Jogorku Kenesh and political parties submitting potentially inconsistent treaties to the Constitutional Chamber before their ratification.

83 Jogorku Kenesh of the Kyrgyz Republic, “On the appointment of the referendum (popular vote) in the Kyrgyz Republic Law “On Amendments to the Constitution of the Kyrgyz Republic”, 29 July 2016, Article 1(2), available at: <https://goo.gl/71Deet>, Russian and Kyrgyz only.

84 *Ibid.*, Article 1(2).

The Constitution is silent on the relationship between ratified international treaties and other pieces of legislation. Article 20 of the Law of the Kyrgyz Republic “On International Agreements of Kyrgyz Republic”,⁸⁵ however, provides that where there is an inconsistency between national legislation and the provisions of an international treaty which has been ratified, in order to fulfil treaty obligations, the provisions of national law shall be amended in accordance with the treaty. Thus, in theory at least, there should be no conflict between international treaties and national law. It remains to be seen whether the amendments to Article 6 of the Constitution approved in the December 2016 referendum will impact on the hierarchy in the event of a conflict between national law and international law.

Regardless of their status, international treaties are largely not applied in practice. In 2014, the UN HRC expressed its concern that over “the lack of evidence that domestic courts apply the provisions of the [ICCPR]”⁸⁶ and, in 2015, when the Committee on Economic, Social and Cultural Rights (CESCR) asked Kyrgyzstan to give examples of the ICESCR being invoked before or applied by domestic courts,⁸⁷ Kyrgyzstan was not able to provide any.⁸⁸ Whilst research for this report has identified a number of cases decided by the Constitutional Chamber of the Supreme Court in which provisions of international human rights treaties were referred to, the references were passing, unelaborated and with no clear impact upon the decision of the court. Research for this report has found no cases of lower courts in which international treaties were referred to, although such research is significantly hampered by the near absence of publication of court judgments other than those of the Supreme Court and its Constitutional Chamber. A Kyrgyzstani lawyer with experience of bringing claims for violations of human rights suggested in an interview with the Equal Rights Trust that while she might refer to international law in making arguments before the courts, she was much more likely to rely (exclusively) on national law provisions notwithstanding the binding nature of

85 Law of the Kyrgyz Republic “On International Treaties of the Kyrgyz Republic”, 24 April 2014, № 64.

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

87 United Nations Committee on Economic, Social and Cultural Rights, *List of Issues: Kyrgyzstan*, UN Doc. E/C.12/KGZ/Q/2-3, 9 December 2014, Para 1.

88 Committee on Economic, Social and Cultural Rights, *List of Issues: Kyrgyzstan, Addendum: Replies of Kyrgyzstan*, UN Doc. E/C.12/KGZ/Q/2-3/Add.1, 7 April 2015, Paras 1–3.

ratified international human rights treaties under Kyrgyzstan's law.⁸⁹ She indicated that, from her experience, most lawyers involved in bringing claims for violations of human rights would adopt a similar approach because there is a lack of capacity among the judiciary in relation to the consideration and application of international human rights law creating the perception that arguments based on international law are less persuasive.⁹⁰

While the Constitution does not explicitly refer to customary international law, Article 6, paragraph 3 does state that “universally recognized principles and norms of international law” shall be a constituent part of the Kyrgyzstan's legal system, which is an acceptance of the principles of customary international law into national law. However, the lawyers interviewed by the Trust who work in a range of areas when asked about their experience of using customary international law at the national level, indicated that they were not aware of any court decisions making reference to, let alone relying upon, principles of customary international law.⁹¹

2.2 The National Legal Framework on Equality and Non-Discrimination

In addition to a certain degree of protection from discrimination in the Constitution, Kyrgyzstan has legislation which specifically seeks to tackle inequality on the basis of gender, legislation which seeks to guarantee equal rights and opportunities to persons with disabilities, a standalone provision prohibiting discrimination against persons living with HIV/AIDS, and a variety of standalone non-discrimination provisions within pieces of legislation regulating various fields of activity. This section contains an analysis of constitutional and legislative provisions both in terms of their substance and their impact in practice.

89 Equal Rights Trust, Interview with Y. Votslava, Bishkek, 2 November 2016.

90 *Ibid.*

91 The individuals interviewed were all lawyers working in the fields of LGBT rights, rights persons with HIV/AIDS, women and children. All lawyers interviewed had considerable experience in litigating to protect the rights of vulnerable minorities before national courts. Equal Rights Trust, Interview with G., Bishkek, 31 October 2016. G. is a qualified lawyer working for an NGO which represents persons with HIV/AIDs and LGBT individuals. Equal Rights Trust, Interview with Y. Votslava, Bishkek, 2 November 2016; Equal Rights Trust, Interview with L, an employee of Kyrgyz Indigo (an LGBT organisation), Bishkek, 1 November 2016.

2.2.1 The Constitution

The Constitution of Kyrgyzstan was adopted in 2010, following a referendum, replacing the previous Constitution of 1993.⁹² The preamble to the Constitution states that it is adopted, in part, to “[confirm] adherence to the goal to build free and democratic state based on respect and protection of human rights”. Section II of the Constitution is dedicated to “human rights and freedoms”: within this Section, Chapter I provides for a series of “fundamental rights and freedoms” including the “highest values” introduced by the amendments approved in the referendum, Chapter II a series of “human rights and freedoms” and Chapter III “rights and duties of citizens”.

Together, Section II provides for a wide range of rights and freedoms, the majority of which are guaranteed to all individuals and a small number of which are guaranteed only to citizens. In addition, Article 17 provides that:

Rights and freedoms established in the present Constitution shall not be exhaustive and shall not be interpreted as denial or derogation of other universally recognized human and civic rights and freedoms.

Through Article 17, the Constitution, in theory at least, guarantees rights which are not explicitly enumerated, although it makes no provision as to how further rights protected by the Constitution are to be determined.

Article 16 sets out some broad principles relating to “fundamental human rights and freedoms” and also contains the most significant provisions protecting the rights to equality and non-discrimination. The first paragraph provides that:

Fundamental human rights and freedoms are inalienable and belong to each person from birth.

Under the 2010 Constitution the second paragraph provides that:

Human rights and freedoms are of superior value. They act directly and define the meaning and the content of

92 For further details, see above, Part 1.4.

the activity of legislative, executive power and self governance bodies.

However, an amendment to the second paragraph of Article 16 has been accepted in the recent referendum and provides that:

Human rights and freedoms are the highest values of the Kyrgyz Republic. They act directly and define the meaning and content of the activity of all state bodies, local self-government bodies and their officials.

Paragraphs 2 to 4, with amendments following the referendum shown in bold, set out the constitutional rights to equality and non-discrimination:

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 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.

Together, the scope of Article 16 can be seen as encompassing four aspects of the rights to equality and non-discrimination: (i) equal human rights and

freedoms, (ii) the prohibition of discrimination on an open-list of grounds; (iii) equality before the law and the courts; and (iv) equal rights and freedoms for men and women. Article 16 as amended, in its definition of discrimination, excludes “special measures” set out in law and aimed at ensuring both the highest values as articulated in the amended Article 1 and equal opportunities for “various social groups in accordance with international commitments”.

While the relatively broad scope of Article 16 is welcome, it is still narrower than is demanded by international best practice. The right to equality, as defined in Principle 1 of the Declaration of Principles on Equality (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.⁹³

Notwithstanding the open-ended nature of the constitutional guarantee of equality, this definition is not consistent with Principle 5 of the Declaration which provides:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

The failure to include in Article 16 of the Constitution grounds such as sexual orientation, gender identity, disability and health status in line with the Dec-

93 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 1, p. 5.

laration is disappointing.⁹⁴ Article 16, paragraph 2, does, however, provide for an open list of characteristics upon which discrimination is prohibited, through the term “other circumstances”, allowing for further characteristics to be recognised (including those not explicitly mentioned above), thus mirroring international best practice.⁹⁵

For a characteristic not explicitly mentioned in Article 16, the only way to determine whether it is included or not is to initiate a legal proceeding before the Constitutional Chamber of the Supreme Court for an official interpretation of the Constitution. The Constitution does not, however, provide any guidance on what “any other circumstances” may protect; Principle 5 of the Declaration on Principles of Equality recommends that discrimination should be prohibited where it:

(i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

Most of the cases brought before the Constitutional Chamber arguing discrimination under Article 16 have alleged discrimination based on another ground than one of the enumerated grounds. However, the Constitutional Court has not taken advantage of these opportunities to make clear when further grounds will fall within “other circumstances”. The closest that the

94 See for example, Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, *ibid.*, p. 34: “Legal provisions relating to equality must combine legal certainty with openness to improvement in order to reflect the lived experiences of those disadvantaged by inequality. Grounds which historically have been related to the most egregious forms of discrimination and are significant factors in a society, including race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, association with national minority, belonging to an indigenous people, age, disability, sexual orientation or health status, should be explicitly referred to in legislation.”

95 See Principle 5 of the Declaration of Principles on Equality which provides that, in addition to being prohibited on the explicitly listed characteristics, “[d]iscrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’ rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.” (See above, note 93, p. 6.)

Constitutional Chamber has come to considering “other circumstances” is in one of the first cases decided by the Constitutional Chamber, the **decision of 16 November 2013**,⁹⁶ in which a group of citizens challenged a government regulation which provided for increased pensions for certain individuals who had provided “special services” to Kyrgyzstan. The increased pension was automatic for all groups listed in the regulation except for the executives of state bodies, deputies of the Jogorku Kenesh and the Chairman of the Kyrgyzstan Federation of Trade Unions. For those groups, the increased pension could be limited following the determination of a commission when the person left office.

The Constitutional Chamber briefly discussed Article 16, and whilst it did not explicitly interpret the term “other circumstances”, the Constitutional Chamber stated more broadly that Article 16 prohibited discrimination, including on the basis of a person’s “social qualities”. The Constitutional Chamber stated that a person’s “social qualities” included their origin, property and official status, affiliation to religious and social organisations and place of residence. It also noted that a person’s “social qualities” depended on the person concerned and were changeable.

With respect to the facts of the case before it, the Constitutional Chamber noted that paragraph 3 of Article 16 guarantees equality before the law, whilst the regulation put certain groups of people in a different position with respect to their increased pension on the basis of their “official position”. The Constitutional Chamber therefore held that the provision violated Article 16 and was unconstitutional. The failure of the Constitutional Chamber in this and other cases to set out how it determines what “other circumstances” might be protected under Article 16 means it is unclear what further grounds might be considered as falling within its scope.

It is unclear from Article 16, paragraph 2 whether the prohibition of discrimination based on the listed grounds includes discrimination based upon an association with a person with a protected characteristic (discrimination by association) or where they are imposed due to a perception that a per-

96 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of the second part of paragraph 12 of the Regulation “On pensions for special services to the Kyrgyz Republic”, 13 November 2013.

son has a particular protected characteristic (discrimination by perception). The Declaration of Principles on Equality⁹⁷ requires that these forms of discrimination be prohibited.

It is also unclear from Article 16, paragraph 2 whether the prohibition on discrimination based on the listed characteristics includes discrimination based upon a combination of characteristics (multiple discrimination). The Declaration requires that multiple discrimination be prohibited.⁹⁸

Article 16 does not define discrimination and it is clear from the case law in which the Article has been interpreted, that there is significant confusion on the content of the right. One aspect, in particular, where there is a lack of clarity is when differential treatment on an enumerated ground will not be considered unlawful discrimination. The Constitutional Chamber has set out only a very vague test to apply once different treatment on the basis of an enumerated ground has been *prima facie* shown. This test has resulted in decisions which are clearly contrary to international human rights standards. Most notably, in no less than three cases, the Constitutional Chamber has been presented with straightforward cases of age discrimination, but found in each case that it was justified on questionable grounds. In the first of these, the **decision of 30 April 2014**,⁹⁹ the applicant challenged provisions in the Law of the Kyrgyz Republic “On the Civil Service” which imposed a maximum age of 65 for civil servants and allowed for a civil servant to be dismissed once they reached that age. The applicant, who had been dismissed from the civil service upon reaching the age of 65, argued that this was discrimination on grounds of age and violated Article 16.

97 See Principle 5 of the Declaration of Principles on Equality which provides that “Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.” (See above, note 93, pp. 6–7).

98 See Principle 12 of the Declaration of Principles on Equality which provides that: “Laws and policies must provide effective protection against multiple discrimination, that is, discrimination on more than one ground.” (See above, note 93, p. 10.)

99 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of item “m” in the first and eighth paragraph of Article 31 of the Law of the Kyrgyz Republic “On the Civil Service”, 30 April 2014.

The Constitutional Chamber acknowledged that the principles of equality and non-discrimination permeated through all areas of public life, including the right to work, reflected by Article 42 of the Constitution which guaranteed the right to work to “everyone”. However, whilst Article 52, paragraph 4 guaranteed equal opportunities, this did not provide a right to any particular post. Furthermore, it was permissible to regulate the civil service, including the appointment, passage and dismissal of persons with the civil service, in order to maintain a high level of service and because of the specific nature of the professional activities involved. Such regulations could include restrictions or requirements on who may be appointed and when they may be dismissed, and gave examples of other legislative requirements such as that person be at least 21 years old, a citizen of the Kyrgyz Republic, meet the qualifications required of the position and not to have a criminal record or court order prohibiting them from working in the civil service. The Constitutional Chamber considered that a mandatory retirement age of 65 was equally permissible and that such legal regulation ensured the principles of stability, professionalism, competence, regular turnover and continuous improvement of the civil service. Restrictions would only be unconstitutional if they were not objectively justified, reasonable and in pursuance of a constitutionally significant aim.

In concluding that the age requirement was not unconstitutional, the Constitutional Chamber also referred to ILO Convention No. 111 on Discrimination (Employment and Occupation) (which provides, at Article 1(2), that distinctions, exclusions or preferences in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination) and ILO Recommendation No. 162 On Older Workers (which states at Article 5 that, in exceptional cases, age limits may be set because of special requirements, conditions or rules of certain types of employment). The articles of the ILO Convention and Recommendation referred to by the Constitutional Chamber only allow age restrictions in “exceptional cases” and where age is connected to an “inherent requirement” of the job i.e. a genuine occupational requirement. The Constitutional Chamber does not set out in its decision how a blanket ban on all persons over the age of 65 in the civil service is an “exceptional case” or how being under the age of 65 is a “inherent requirement” of being a civil servant, suggesting a misunderstanding or misinterpretation of the relevant international law.

In two similar cases, the **decision of 14 May 2014**¹⁰⁰ and the decision of **16 December 2015**,¹⁰¹ the Constitutional Chamber reached the same conclusion with respect to age limits for those working within the internal affairs agencies and those in senior positions at universities respectively, again concluding that the age limits helped ensure the stability, professionalism, competence, regular turnover and continuous improvement of the civil service.

The Constitutional Chamber's **decision of 4 July 2014**¹⁰² provides another example whereby the court found that different treatment did not amount to discrimination, but provided only very basic reasoning as to how the different treatment was justified, again simply using a test of the different treatment was "justified and reasonable, and complied with constitutionally important aims", with no further elaboration. The case concerned Kubanychbek Asanovich Dzhanseitova who was dismissed from his post as Deputy Director at the National Centre for Forensic Expertise at the Ministry of Justice. Article 84 of the Labour Code prohibited the dismissal of persons who belonged to trade unions or other representative bodies of workers without their consent but contained an exception for the heads of organisations, their assistants, and executives in public authorities and non-governmental organisations. Dzhanseitova, a member of a trade union, argued that the exception in Article 84, and his dismissal, was a breach of the rights to equality and non-discrimination in Article 16 of the Constitution.

The Constitutional Chamber accepted that the Constitution guaranteed equality in labour rights, but that this did not prevent the legislature from passing legislation which established different treatment in the regulation of labour and employment, including differences in the legal status of persons in different groups (with reference to the nature and conditions of their professional activity) and different rules on their dismissal, provided that such differences were "justified and reasonable, and complied with constitutionally important

100 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of paragraph 2 of Article 7-2 of the Law of the Kyrgyz Republic "On the Internal Affairs Agencies of the Kyrgyz Republic", 14 May 2014.

101 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of paragraph 4 of Article 384 of the Labour Code of the Kyrgyz Republic 16 December 2015.

102 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of paragraph 3 of Part 2 of Article 84 of the Labour Code, 4 July 2014.

aims". The Constitutional Chamber considered that there were important differences between heads of organisations and other employees, specifically the fact that heads of organisations had various powers including entering and terminating employment contracts with employees, to bargain and make collective agreements, to promote employees, to initiate disciplinary proceedings against employees, and to set internal rules and regulations. They therefore act on behalf of the organisation through their role, and so their interests may differ with those of other employees as they fall on different sides of labour relations. As such, heads of organisations could not expect the same protection as other employees provided by trade unions or other labour rights organisations when they were dismissed and the exception in Article 84 did not breach the rights to equality or non-discrimination and was constitutional. In its reasoning the Constitutional Chamber did not make direct reference to the specific wording of Article 16, merely referring to Articles 16, paragraphs 2 and 3 being relevant; to the extent that it referred to discrimination, it did not explain what it meant by discrimination and nor did it set out any general test for determining whether differential treatment could be justified beyond that set out in its earlier age-related cases, again simply saying that in this case, the different treatment was "justified and reasonable, and complied with constitutionally important aims".

In another employment related case, and in which the same basic test was applied, the decision of **18 February 2015**,¹⁰³ a challenge was brought against a provision of the Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic" which prohibited a person from being eligible to work in the Prosecutor's Office if he had not completed either military service or alternative (non-military) service for reasons of marital status. The effect of this law was to exclude individuals who were not able to complete military service due to health reasons, and undertook alternative (non-military) service from working in the Prosecutor's Office. The complainant had been diagnosed with moderate myopia (short-sightedness) in 2009 and was subsequently found unsuitable to complete military service. Although he underwent surgery which restored full vision, he was subsequently found eligible only to complete alternative (non-military) service on the basis of his health.

103 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of Article 4 of the Law of the Kyrgyz Republic "On the Introduction of Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic", 18 February 2015.

The Constitutional Chamber noted that Article 16, paragraph 3 of the Constitution guaranteed equality of all before the law and the courts, and that Article 52, paragraph 4 guaranteed “equal rights and equal opportunities to take up posts in civil and municipal service as well as promotion” to all citizens. However, these provisions did not amount to a right to any post a person desired. The civil service could establish certain restrictions and requirements which related to the nature of the employment. Restrictions were permitted which reflected the differences in the legal status of persons in different categories and legislation setting out such restrictions would not be unconstitutional provided it was objectively justified, reasonable and pursued a constitutionally significant aim. The Constitutional Chamber noted that the Prosecutor’s Office was a particular form of public service and that setting special requirements which were connected to the nature of the work and the principles of the organisation and operation of the office and which had the aim of ensuring a high level of administration of the service would not be unconstitutional. However, in setting those requirements, legislation had to ensure a balance between constitutionally significant aims, public and private interests, and respect the constitutional principles of justice, equality and proportionality. The imposed requirements must meet certain criteria: clarity, unambiguity and consistency with existing regulatory system.

In this instance, the Constitutional Chambers considered that undertaking the constitutional duty to defend “the fatherland” by completing military service or alternative (non-military) service demonstrated an individual’s capability of responsible and faithful undertaking of professional activity and could thus be considered a special requirement that the state could impose on persons applying for a position in the Prosecutor’s Office. In doing so, the restriction would also increase the prestige and attractiveness of military service. Furthermore, those who did not undertake their constitutional duty of defending the fatherland did not have the moral qualities required of prosecutors.

However, the Constitutional Chamber noted that a person’s health could change over time, and that the law allowed for reviews of individual’s medical fitness to establish whether they could eventually undertake military service. The Law of the Kyrgyz Republic “On the Prosecutor’s Office” also included a requirement that a person wishing to work for the office be medically fit to do so, and, as such, the fact that a person had to undertake alternative (non-military) service for health reasons could not be considered as a reason that they were unable to work in the Prosecutor’s Office, provided

that they were at that point medically fit. The Constitutional Chamber concluded, therefore, that whilst the contested provision was not unconstitutional per se, the Law nonetheless needed to be amended to remove the restriction on persons who had undertaken alternative (non-military) service for reasons of health.¹⁰⁴

Citizens and Non-Citizens

The Constitution makes an explicit distinction between citizens and non-citizens in its guarantees of human rights. Article 19, paragraph 1 states that:

Foreign citizens and stateless persons in the Kyrgyz Republic shall enjoy rights and perform obligations equally with the citizens of the Kyrgyz Republic except for cases defined by law or international treaty to which the Kyrgyz Republic is a party.

While the vast majority of rights set out in the Constitution are guaranteed to everyone (Sections I and II of Chapter II), there are a notable number (in Section III) which are limited to citizens.

Sections I and II of Chapter II: Rights Guaranteed to Everyone

Article	Right
16, para 2	The prohibition of discrimination.
16, para 3	Equality before the law and the courts.
16, para 4	Equality between men and women.
18	The right to perform any action and activity except for those prohibited by the present Constitution and laws.
21	The right to life and the prohibition of the death penalty.
22, para 1	The prohibition of torture and inhuman, cruel and degrading treatment and punishment.

104 On 28 July 2015, the Law was amended to implement the Constitutional Chamber’s decision (Law of the Kyrgyz Republic “On the Introduction of Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic”, 28 July 2015, № 201, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111245/20?cl=ru-ru>).

Article	Right
22, para 2	The right of persons deprived of their liberty to human treatment and respect of human dignity.
22, para 3	The prohibition on experimentation on people without their consent.
23, para 1	The prohibition of slavery and human trafficking.
23, para 2	The prohibition of exploitation of child labour.
23, para 3	The prohibition of forced labour.
24	The right to liberty and security of the person (paragraph 1); the prohibition of imprisonment for failure to meet civil legal obligations (paragraph 2); and various rights of detained persons (paragraphs 3 to 5).
25, para 1	The right to freedom of movement and to choice of place of residence.
25, para 2	The right to leave Kyrgyzstan.
26	The right to presumption of innocence (paragraph 1) and to a fair trial (paragraphs 2 to 6).
27	The right to appeal convictions to a higher court and the prohibition of double jeopardy.
28	The prohibition of retrospective criminal liability or punishment.
29	The right to privacy and protection of honour and dignity (paragraph 1) and the right to private correspondence and to data protection (paragraph 2).
30	The right to inviolability of the home and property.
31, para 1	The right to freedom of thought and opinion.
31, para 2	The right to freedom of expression of opinion, freedom of speech and press.
31, para 4	The prohibition of national, ethnic, racial and religious hatred.
32	The right to freedom of conscience and belief.
33	The right to freely seek, receive, keep and use information and to disseminate it (paragraph 1); the right to access personal information held by state bodies (paragraph 2); and the right to freedom of information (paragraphs 3 and 4).
34	The right to freedom of peaceful assembly.
35	The right to freedom of association.

Article	Right
36, para 1	Protection of the family, paternity, maternity and childhood.
36, para 2	The right to a standard of living adequate for physical, mental, spiritual, moral and social development.
36, para 5	The right of persons reaching the age of consent to marry and found a family.
37, para 1	State support for folk customs and traditions.
38	The right to determine and state one's ethnicity.
39	The right to compensation for damaged caused by illegal acts of state bodies.
40, para 1	Judicial protection of rights and freedoms.
40, para 2	The right to protect one's rights and freedoms by any means not prohibited by law.
40, para 3	The right to legal aid.
41, para 1	The right to appeal to state bodies and officials and to receive a response.
41, para 2	The right to apply to international human rights bodies and receive restoration and/or reparation for any violations of human rights.
42, para 1	The right to possess, use and dispose of one's property.
42, para 2	The right to economic freedom.
42, para 3	The right to freedom of labour, to dispose of their abilities to work, to choose a profession and occupation, protection and working conditions that meet safety and hygiene requirements, as well as the right to remuneration not less than the legal minimum wage.
43	The right to strike.
44, para 1	The right to leisure.
45, para 1	The right to education.
46, para 1	The right to housing.
47, para 1	The right to health.
48, para 1	The right to an environment favourable for life and health.
48, para 2	The right to compensation for damage to health or property resulting from actions in the area of nature management.
49, para 1	Freedom of activity in literature, art, science, technical and other areas, as well as teaching.
49, para 2	The right to participate in cultural life and access cultural values.

Sections III of Chapter II: Rights Guaranteed Only to Citizens

Article	Right
50, para 2	The prohibition of deprivation of citizenship and the right to change one's citizenship.
50, para 3	The right for Kyrgyz people living outside of Kyrgyzstan to acquire citizenship of Kyrgyzstan.
50, para 4	The prohibition of expulsion or extradition from Kyrgyzstan
51	The right to unimpeded return to Kyrgyzstan.
52, para 1	The right to participate in the discussion of laws and decisions of national and local significance, to elect and be elected to state authorities and local government bodies, and to take part in referendums.
52, para 2	The right to hold people's kurultai (assemblies) on issues of state and public importance.
52, para 3	The right to participate in the formulation of the national and local budget and to obtain information on spending of funds.
52, para 4	Equal rights and opportunities to take up posts in civil and municipal service and be promoted.
53	Guarantee of social security in old age, cases of disease or disability, or loss of the breadwinner.
58	The right to establish courts of arbitration.
59	The right to establish courts of aksakaly (elders).

The limited number of rights guaranteed only to citizens largely comply with the limited rights guaranteed under international human rights law which only apply to citizens of a particular state. Many of the rights limited to citizens are political rights, such as the right to vote or to stand for election and rights mirror those within Article 25 of the ICCPR which are guaranteed only to citizens. Others are simply not applicable to non-citizens, such as the prohibition of deprivation of citizenship, the prohibition of expulsion or extradition, and the right to unimpeded return to Kyrgyzstan.

However, it is more problematic that the right to equal opportunities to take up posts and be promoted in the civil and municipal service is limited to citizens. While Article 22(1) of the ICCPR limits to citizens the right and opportunity "to have access, on general terms of equality, to public service in his country", the term "public service" is not defined. However, the interpretation of "public ser-

vice” given in the HRC’s General Comment No. 25 suggests that the term refers to senior public positions rather than the entirety of the civil service.¹⁰⁵ Further, it could be argued that limiting positions in the entirety of the civil service to citizens would likely contravene the prohibition of non-discrimination in the right to work, as protected by Articles 2(2) and 6 of the ICESCR.

Positive Action Measures

The Constitution does not expressly provide that positive action is to be taken by the state in order to overcome past disadvantage and accelerate progress towards equality of marginalised groups. However, Article 16, paragraph 3, as amended in the December 2016 referendum, provides that special measures aimed at ensuring the highest values specified in the amended Article 1 and equal opportunities for various social groups in accordance with international commitments shall not be considered discrimination.

Kyrgyzstan is required under its international treaty obligations not just to permit but actively to take positive action measures; it is also international best practice, with Principle 3 of the Declaration making clear that “[t]o be effective, the right to equality requires positive action” and that:

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

Principle 3 mirrors the obligations under the international treaties to which Kyrgyzstan is party. The HRC has stated, for example, that:

[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.¹⁰⁶

105 United Nations Human Rights Committee, *General Comment No. 25*, UN Doc. CCPR/C/21/Rev.1/Ad.7, 1996, Paras 23–24.

106 United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 10.

Similarly, the CESCR has stated that:

In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing healthcare facilities.¹⁰⁷

As such, while Article 16, paragraph 3 provides a welcome protection for special measures which are being voluntarily taken, the Article's failure to mandate such measures to accelerate progress towards equality, means the Article does not go far enough to fully advance the right to equality. In addition, the change in scope for permitted "special measures" following the referendum is of concern given the definition of "highest values" under Article 1.¹⁰⁸

Restriction of Rights and Freedoms

Article 20, paragraph 2 of the Constitution provides that the rights and freedoms in the Constitution may be limited either by the Constitution itself or by legislation but only for the purposes of protecting national security, public order, the health and morals of the population or the rights and freedoms of others. However, in accordance with the amendments approved in the December 2016 referendum, this list is extended to allow restrictions which take "into account peculiarities of the military or other public service."¹⁰⁹ The extension to the military and public service is very concerning as it is broad

107 Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 9.

108 See below discussion of Constitutional referendum.

109 See above, note 83, Article 1(3).

and creates an effective exclusion for entire spheres of life from the protection of the rights and freedoms under the Constitution. Any restrictions must be “proportionate” to those aims and cannot be made via secondary legislation. Further, by virtue of Article 20, paragraph 3, there can be no restrictions made other than for the purposes set out in paragraph 2 nor to any greater extent than permitted by the Constitution. Article 20, paragraphs 4 and 5 set out certain rights which cannot be restricted under any circumstances (such as the prohibition of the death penalty and torture) but these lists do not include the rights to equality and non-discrimination.

Constitutional Referendum

On 29 July 2016, several members of the Jogorku Kenesh placed a Bill before the Jogorku Kenesh seeking a number of amendments to the Constitution. In accordance with the procedure under Article 114 of the Constitution the Bill was approved by the Jorgoku Kenesh and subsequently approved by a referendum on 11 December 2016. The amendments will be binding once the Central Commission for Elections and Referendums has approved the result of the referendum and issued a Decree declaring the results of the referendum, which is signed by the President.¹¹⁰ This is usually a matter of procedure and is currently expected to occur shortly after publication of this report. Accordingly, at the time of publication, it is almost certain that the amendments will become binding law.

The amendments make fundamental changes to the constitutional order of Kyrgyzstan moving the Constitution further away from compliance with international law and best practice.¹¹¹ In particular, the amendments restrict parliamentary powers, erode judicial independence, remove the priority of international human rights law, enhance the powers of the Prime Minister and limit the role of the Constitutional Chamber. The ostensible purpose behind the amendments was to create a comprehensive and transparent system of checks and balances on the respective powers of the President and the

110 Law of the Kyrgyz Republic “On Commissions on Elections and Referendums of the Kyrgyz Republic”, No.40, dated 30 June 2011, Article 18, available at: <http://www.prokuror.kg/kg/82-russkaya-versiya/zakonodatelstvo/zakonodatelstvo-o-vyborakh/770-ob-izbiratelnykh-komissiyakh-po-provedeniyu-vyborov-i-referendumov-kyrgyzskoj-respubliki.html>.

111 See above, note 83.

Prime Minister.¹¹² However, during the course of interviews conducted by the Trust, one anonymous source close to the political process, shared their view that the amendments are due to the outgoing President seeking to strengthen the powers of the Prime Minister with a view to running for the office of Prime Minister at the next election.¹¹³

The approval by the public of the amendments is a worrying development. The Venice Commission and the OSCE Office for Democratic Institutions and Human Rights reviewed the amendments in advance of the referendum and issued a highly critical joint opinion noting that:

*[s]ome of the proposed amendments raise concerns with regard to key democratic principles, in particular the rule of law, the separation of powers and the independence of the judiciary, and have the potential to encroach on certain human rights and fundamental freedoms.*¹¹⁴

As noted above, Article 1 of the Constitution has been amended by introducing a set of “highest values” into Article 1 of the Constitution which would include “love for the fatherland”, “unity of the people of the Kyrgyz Republic”, “morality”, and a “combination of traditions and progress”.¹¹⁵ The inclusion of such broad values and express reference to vague notions such as “love for the fatherland” and “traditions” may provide a basis for restricting human rights such as the right to freedom of expression, in a discriminatory manner.¹¹⁶ One representative of Kyrgyz Indigo, an LGBT organisation interviewed by the Equal Rights Trust, also expressed concern that these “highest values” would take priority

112 Central Asia-Caucasus Analyst, “Kyrgyzstan set to hold another constitutional referendum”, *CaciAnalyst.org*, 19 September 2016, available at: <https://www.cacianalyst.org/publications/field-reports/item/13394-kyrgyzstan-set-to-hold-another-constitutional-referendum.html>.

113 Equal Rights Trust, Interview with Q, an anonymous expert close to the political process, Bishkek, 1 November 2016.

114 European Commission for Democracy Through Law and OSCE Office for Democratic Institutions and Human Rights, *Preliminary Joint Opinion: On the Draft Law “On Introduction of Amendments and Changes to the Constitution”*, 29 August 2016, p. 5, available at: <http://www.osce.org/odhr/261676?download=true>.

115 See above, note 83, Article 1(1).

116 This concern is also shared by the European Commission for Democracy Through Law and OSCE Office for Democratic Institutions and Human Rights; see above, note 114, pp. 9–11.

over respect for human rights and that references to “traditions” expressly targets LGBT rights, in particular in relation to same-sex marriage.¹¹⁷ This concern also extended to the amendments under Article 36 paragraph which provide that “a family is created upon voluntary union of a man and woman who reached the age of consent”¹¹⁸ which suggests that the only form of marriage that will be recognised is that between a man and a woman.¹¹⁹

As noted above, Article 6 paragraph 3 of the 2010 Constitution provided that: “[t]he provisions of international treaties on human rights shall have direct effect and shall enjoy precedence over provisions of other international treaties.” This reference has been deleted so that under the amended Constitution international human rights treaties will no longer take priority over other international treaties.¹²⁰ The replacement text provides that “the procedure and modalities of the application of international treaties and universally recognised principles and norms of international law shall be defined in the law”.¹²¹ As discussed above, this appears to suggest that international law may no longer be automatically incorporated into national law, but rather requires an implementing measure at the national level. Article 41 paragraph 2 has also been amended to delete the provision which required the government to take action where an international human rights body has found a violation of rights and freedoms.¹²² The international human rights treaties which Kyrgyzstan has ratified provide crucial support to the rights to equality and non-discrimination in Kyrgyzstan and this erosion of their status and the status of decisions of international treaty bodies presents a significant risk to the protection and advancement of those rights. In addition to the impact on the guarantees of international human rights treaties, as noted above, the amendments to Article 20 seriously limit the scope of the protective rights and guarantees in the Constitution to allow for the restriction of rights in the broad areas of the military and public service.¹²³

117 Equal Rights Trust, Interview with L, an employee of Kyrgyz Indigo, Bishkek, 1 November 2016.

118 See above, note 83, Article 1(7).

119 Equal Rights Trust, Interview with L, an employee of Kyrgyz Indigo, Bishkek, 1 November 2016.

120 See above, note 83, Article 1(2).

121 *Ibid.*, Article 1(2); see above, note 114, p. 11–12.

122 See above, note 83, Article 1(8).

123 *Ibid.*, Article 1(3).

The amendments strengthen the role of the executive branch; for example under the revised Article 80 laws triggering increased expenditure may only be passed with the government's consent.¹²⁴ Article 80 of the 2010 Constitution provides that such laws may be passed only once the Government has determined the source of funding, meaning the executive's role is far more circumscribed than the amendments envisage in this respect.¹²⁵ Further, under the revised Article 85 paragraph 4, a vote of no-confidence now requires a two-thirds (rather than simple) majority to pass meaning a government could remain in power even though it does not have the support of the majority in the Jogorku Kenesh.¹²⁶

Certain of the amendments undermine the independence and role of the judiciary. For example, the revised Article 95 gives the President the right to submit names of judges for dismissal to the Jogorku Kenesh.¹²⁷ The Bill also weakens the role of the Constitutional Chamber by downgrading it to having a purely advisory role. The revised Article 97 provides that where the Constitutional Chamber has decided that a particular law is unconstitutional, this constitutes only a "preliminary conclusion" to be considered by the President and Jogorku Kenesh.¹²⁸ If either the President or Jogorku Kenesh disagree with the conclusion of the Constitutional Chamber, the decision will only be binding if two thirds of all judges in the Constitutional Chamber support the decision; if both the President and Jogorku Kenesh disagree with the conclusion, then the decision is only binding if three quarters of the judges in the Constitutional Chamber support the decision.¹²⁹ This allows for considerable interference by both the executive and the legislature on the powers of the judiciary.

These amendments to the Constitution are a regrettable negative development; of particular concern are the changes to the status of international law

124 *Ibid.*, Article 1(16).

125 Constitution of the Kyrgyz Republic, 2010, Article 80; see above, note 114, p. 22.

126 *Ibid.* Constitution of the Kyrgyz Republic, 2010, Article 85; see above, note 83, Article 1(19); *ibid.*, European Commission for Democracy Through Law and OSCE Office for Democratic Institutions and Human Rights, p. 22.

127 *Ibid.*, Jogorku Kenesh of the Kyrgyz Republic, Article 1(25).

128 *Ibid.*, Article 1(27); see above, note 114, p. 16.

129 *Ibid.*, Article 1(27).

and the promotion of “traditional” family values in the context of marriage. The consequences of these changes will take some time to manifest and it can only be hoped that they result in limited practical impact on the rights to equality and non-discrimination.

2.2.2 Specific Equality and Anti-Discrimination Legislation

Kyrgyzstan does not have comprehensive equality or anti-discrimination legislation. In 2014, the 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”.¹³⁰ 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”.¹³¹ Similarly, in 2015, the CESCR 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”.¹³² 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.¹³³

Instead of comprehensive anti-discrimination legislation, Kyrgyzstan has a specific law on gender equality, legislation relating specifically to persons with disabilities, legislation relating specifically to persons living with HIV/AIDS, and a number of standalone provisions which either prohibit discrimination or guarantee equal rights in a number of other pieces of legislation regulating specific fields. While these are not sufficient, they do provide some important protections.

130 See above, note 86, Para 8.

131 *Ibid.*

132 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.

133 See above, note 71, Paras 118.18 to 118.21.

Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”

The Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”¹³⁴ (the Law) came into force on 8 August 2008 and replaced a previous piece of gender equality legislation from 2003.¹³⁵ It is Kyrgyzstan’s most significant piece of legislation designed to ensure equality between women and men and, on the whole, provides important protections for the achievement of gender equality.

Chapter 1: General Provisions

The Law sets out its purposes and objectives in Article 2: its purpose is to achieve parity between women and men in all areas of life and its objective is to establish national frameworks for people of different sexes to ensure:

- Equality of rights, obligations and responsibilities in the political, social, economic, labour and other fields;
- Equality of opportunities;
- Equal partnership relations in all areas of life;
- Equality in family relationships; and
- Equality of results.

Some of these terms are defined in Article 1 of the Law. “Equality of opportunities”, for example, is defined as “the system of means and conditions necessary to achieve gender equality”; “equal partnership relations” as “cooperation and joint participation of the different sexes in political and public life on an equal basis”.

The principles of the Law are set out in Article 3, namely:

- Respect for international law in the field of gender equality;
- Democracy;

134 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>.

135 Law of the Kyrgyz Republic “On the Fundamentals of State Guarantees of Gender Equality”, 12 March 2003, № 60, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1184?cl=ru-ru>.

- The rule of law;
- Non-discrimination;
- Responsibility and accountability of each agency for the implementation of gender policy; and
- Cooperation and participation of civil society in the promotion of gender policy.

Article 4 provides that legal framework in the field of gender relations is based on the Constitution, international treaties and agreements to which Kyrgyzstan is a party, the Law itself, laws adopted in accordance with the Law, and other regulatory legal acts of Kyrgyzstan. According to Article 4, if an international treaty or agreement which Kyrgyzstan has entered into in accordance with the law sets out rules other than those in the Law On State Guarantees of Equal Rights and Equal Opportunities for Men and Women, the rules of the international treaty or agreement shall prevail. Thus, to the extent that the Law is inconsistent with the ICCPR, the ICESCR or the CEDAW, courts should prefer the requirements of the treaties – this is of course only beneficial to the extent that international treaty obligations go further than the Law. However, in researching this report, no evidence of any court decisions in which Article 4 was used was found.

Further, Article 4 provides that the Law applies to citizens of Kyrgyzstan, foreign nationals and stateless persons permanently or temporarily residing in the territory of Kyrgyzstan, legal persons and the state represented by state bodies and local government bodies.

Article 5 is the only provision which provides a substantive prohibition on discrimination, stating that “direct and indirect gender discrimination in any field of activity in relation to persons of different sexes is prohibited”. Article 1 of the Law defines “gender discrimination (direct, indirect)” as:

[A]ny distinction, exclusion or preference which restricts the rights and interests of persons on grounds of sex; aimed at weakening or limiting the recognition, enjoyment or exercise of equality of men and women in political, economic, social, cultural, civil or any other field of public life.

“Direct discrimination” is defined in Article 1 as “discrimination, directly referencing gender” and includes, under Article 5, discrimination on grounds of marital status, pregnancy, potential pregnancy and family responsibilities; sexual harassment; and different pay for equal work of equal qualification.

“Indirect discrimination”, in Article 1, as “discrimination without directly referencing gender” and includes, under Article 5, the production of gender stereotypes through the media, education and culture; and creating and establishing conditions, requirements, which resulted or may result in negative consequences in the form of harm to persons of a particular sex.

The CEDAW Committee has set out the forms of discrimination which must be prohibited if laws are to reflect the requirements of the Convention. The Committee defined direct discrimination and indirect discrimination in its General Recommendation No. 28:

Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.¹³⁶ (emphasis added)

Whilst the definition of “direct discrimination” in Article 1 of the Law largely meets the definition provided the CEDAW Committee, the definition of “indirect discrimination” is somewhat confusing. The definition of “indirect discrimination” in Article 1 of the Law itself does not meet the definition provided by the CEDAW Committee, however one of the two examples of “indirect discrimination” in Article 5 is, in fact, a definition of “indirect discrimination” which does largely meet the definition provided by the CEDAW Committee. In evidence to the CEDAW Committee in 2015, at Kyrgyzstan’s fourth periodic review by the Committee, the Equal Rights Trust raised concerns over the text of the Law:

¹³⁶ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, UN Doc. CEDAW/C/GC/28, 2010, Para 16.

30. By including “the establishment of conditions, requirements, which result or may result in negative consequences in terms of harm to persons of a particular sex” as an example of indirect discrimination, the legislation does thus prohibit indirect discrimination largely in accordance with the definition provided for by the Committee in General Comment No. 28. However, we are concerned that by making the definition of indirect discrimination an example of discrimination, the Gender Equality Law remains confusing. To add to the confusion, Article 5 includes a second example of indirect discrimination – reproducing gender stereotypes in the media, education and culture – which is not an example of indirect discrimination, within the definition used by the Committee and by the Declaration of Principles on Equality.

31. The Equal Rights Trust believes that the lack of clarity and the inconsistency in the Gender Equality Law’s necessitates its amendment so that the Law provides clear and consistent definitions of direct and indirect discrimination which are also in line with international standards, as elaborated by the Committee in its General Comment. In the view of the Trust, such definitions should be distinct from any examples which are also included in the Gender Equality Law.¹³⁷

Nonetheless, in its concluding observations in 2015, the CEDAW Committee concluded that the Law “provides a definition of discrimination that encompasses direct and indirect discrimination in both the public and private spheres, in accordance with article 1 of the Convention”.¹³⁸

In addition to its prohibition of discrimination, Article 5 also provides for a number of exceptions to the general prohibition:

137 Equal Rights Trust, *Shadow report submitted to the 60th session of the Committee on the Elimination of All Forms of Discrimination against Women in relation to the fourth periodic report of Kyrgyzstan*, 2015, Paras 30 and 31.

138 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kyrgyzstan*, UN Doc. CEDAW/C/KGZ/CO/4, 11 March 2015, Para 9.

- (1) The establishment of differences in the regulation of relations connected with the functions of the birth of children and breast-feeding;
- (2) The call to active military service of men only in cases stipulated by laws of the Kyrgyz Republic;
- (3) Decision on the basis of this Law, special measures aimed at achieving de facto equality in political, economic, labour and other social relations;
- (4) Features of labour protection for women and men related to the protection of their reproductive health;
- (5) The establishment of professional qualification requirements, based on the capabilities of the duties only of persons of a particular sex;
- (6) Affirmative action.

The scope of the first of these is unclear but it is widely accepted in international law that the provision of some legal protection for mothers with respect of childbirth is necessary and so the exclusion of this protection from the general prohibition of discrimination is welcome. The second exception relates to military service. Kyrgyzstan's legislation requires all male citizens over the age of 18 to undertake military service whereas for women it is voluntary.¹³⁹ This is clearly discriminatory on the basis of sex in that it makes requirements of men that are not made of women and cannot be justified.

The third exception allows for special measures to achieve de facto equality between women and men. "Special measures" is defined in Article 1 as "organisational, legal and institutional measures aimed at supporting persons of one sex in the most discriminatory areas of life. Special measures may be temporary." The sixth allows for affirmative action, defined in Article 1 as "measures aimed at ensuring equal opportunities for men and women in the implementation of the rights granted to them by the Constitution and legislation". These two exceptions overlap somewhat, and can both be described as measures of "positive action".

As mentioned above, Kyrgyzstan is required under its international treaty obligations and international best practice to implement positive action meas-

139 Law of the Kyrgyz Republic "On Universal Military Duty of Citizens of the Kyrgyz Republic Military Duty", 9 February 2009, № 43.

ures.¹⁴⁰ The CEDAW Committee has given the most detailed guidance on the use of temporary special measures to ensure equality between women and men. The CEDAW Committee has stated that the purpose of these temporary special measures is:

*[T]o accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation.*¹⁴¹

The CEDAW Committee has also made clear that temporary special measures are not an “exception to the norm of non-discrimination” but “part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms”.¹⁴²

The approach taken in Article 5 in respect of positive action measures is out of step with the Declaration, international best practice and the international treaties to which Kyrgyzstan is party which, as identified above, require rather than permit positive action to be taken.

The fourth exception, namely labour protection measures for women and men related to the protection of their reproductive health, is, in theory, justified and, indeed, mandated by Article 11(1) of the CEDAW which requires states parties to:

[T]ake all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women (...) the right to protection of health and to safety in

140 See section 2.2.1 above.

141 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25: on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, UN Doc. HRI/GEN/1/Rev.7 at 282, 2004, Para 15.

142 *Ibid.*, Para 18.

working conditions, including the safeguarding of the function of reproduction.

However, as will be seen in Part 3 of this report, the Labour Code contains a number of restrictions on work which women can undertake, restrictions which – whilst classified as measures to protect women’s health – in fact bear no relation to women’s health or ability and are in fact purely discriminatory.

The fifth exception, professional qualification requirements based on capabilities only of persons of a particular sex, is unproblematic only to the extent that it covers “genuine occupational requirements”, namely requirements for certain roles that can only be met by persons of a particular sex. However, this has not been clarified by case law.

Article 5 provides that persons who carry out direct or indirect discrimination are liable in accordance with Kyrgyzstan’s legislation.¹⁴³ Finally, Article 5 prohibits acts based on customary law, traditions and culture which contravene the Law or rules of international law in the implementation of gender equality, but also states that Kyrgyzstan supports folk customs and traditions which do not contain element of gender discrimination.

Article 6 sets out state policy on gender equality which is to be developed and implemented in accordance with the democratic principles of state bodies and local government bodies with the participation of civil society and the private sector. The state’s policy comprises eight elements:

- The formation, development and improvement of the regulatory and legal framework for gender equality;

¹⁴³ It is common for laws in Kyrgyzstan to state that those who breach particular provisions shall be liable “in accordance with Kyrgyzstan’s legislation” or similar wording. In practice, this means that courts should use the main pieces of legislation which determine liability and the punishment or consequence of acting unlawfully, namely the Criminal Code, the Code of Administrative Responsibility and the Civil Code. In some cases, the relevant Code (or Codes) are amended at the same time as (or shortly after) the original law to set out clearly how liability is determined (i.e. whether the unlawful act is a criminal offence, an administrative offence or results in civil liability) and what the punishment or consequence is. However, in some cases, no amendments to the Codes are made, resulting in a gap in the law, and a lack of clarity for courts on how to proceed and deal with cases where a person has breached a particular provision.

- The establishment of institutional gender policy implementation mechanisms;
- The development and implementation of state programmes aimed at achieving gender equality;
- Special measures to address the imbalance between women and men;
- The integration of a gender perspective into national, regional and local development programs and strategies;
- The protection of society against information, propaganda and agitation aimed at the violation of gender equality;
- The education and promotion of a culture of gender equality; and
- The implementation of universally recognised principles and norms of international law and the international obligations of Kyrgyzstan on gender equality issues.

Article 7 provides that responsibility for monitoring and evaluating the implementation of gender policy is held by state bodies, local government bodies and civil society on the basis of “gender indicators” which are to be set down by the government. State bodies and local government bodies are required to submit annual reports on the implementation of gender policy in a format to be set down by the government and published in the media.

Finally, Article 8 provides that the National Statistical Committee must collect information on “gender statistics” using information provided by state bodies, local government bodies and the heads of legal entities.

Chapter 2:

Guarantees of Gender Equality in Government and the Provision of State and Municipal Services

Chapter 2 concerns gender equality in government, in the provision of state and municipal services, and elections. Article 9 places a duty on the state to guarantee and create opportunities for both men and women to participate in government by ensuring “gender representation” in all branches of state power through legal, organisational and other mechanisms. Article 9 also establishes liability for failure to fulfil the provisions of the Law in accordance with Kyrgyzstan’s legislation. “Gender representation” is defined in Article 1 simply as “the presence in an organisation of men and women in prescribed proportions.”

Article 10 contains various provisions aimed at ensuring gender equality in the state and municipal service (the civil service). First, Article 10 states that men and women have equal rights and equal opportunities when applying for positions and promotions in the state and municipal service. Furthermore, the heads of state bodies and local government bodies must ensure equal access for men and women to the state and municipal service in accordance with their abilities and training.

Second, the personnel structure of employees in state bodies and local government bodies must not be dominated by employees of the same sex. Article 10 required a quota system to be established by legislation providing that no more than 70% of personnel in government bodies and local government bodies, including at a decision-making level, be of the same sex; the relevant legislation was subsequently passed in July 2011.¹⁴⁴

Third, persons who have been in post for three years and who have not been promoted or provided with training or further professional development have the right to request and receive from the head of the state body or local government body a written justification of the reasons for that failure, as well as information on the experience and qualifications of people who have been promoted or received such training.

Fourth, vacant positions in state and municipal services must be open to competition equally and on equal terms for both men and women. Fifth, the heads of state bodies and local government bodies must develop policies for the career growth of employees in gender policy. Sixth, advertisements for posts solely for persons of a particular sex are prohibited.

Where the requirements of Article 10 are breached, decisions are unlawful and the results of competitions for vacant positions can be annulled by a court. Article 10 also contains a “tie break” provision whereby if there is an open position in the state or municipal service and there are two candidates of different genders and who are otherwise equally qualified, then the candidate of the lesser represented gender must be appointed. Finally, Article 10 provides that persons who

144 Article 60, paragraph 2 of the Constitutional Law of the Kyrgyz Republic “On the Election of the President of the Kyrgyz Republic and the Deputies of the Jogorku Kenesh of the Kyrgyz Republic”, 2 July 2011, Law № 68; Article 49, paragraph 7 of the Law of the Kyrgyz Republic “On the Election of Deputies to Local Councils”, 14 July 2011, Law № 98.

breach the Article bear administrative responsibility in accordance with Kyrgyz legislation. However, the Code of Administrative Responsibility has not been amended in consequence of Article 10 and contains no corresponding offences for gender-based discrimination in the civil service, or any of the other prohibitions in the Law, making it difficult for courts to know how to apply the Law.

Article 11 contains provisions to guarantee gender equality in the electoral process. First, it states that men and women have equal rights to participate in the election of the head of state, higher state bodies and local government. Second, at elections, women and men must be provided with fair and real possibilities to realise the right to elect and be elected to state bodies and local government bodies. Third, in order to achieve parity, the state may establish specific measures to support candidates of the under-represented sex. Fourth, political parties are required to guarantee gender parity in lists of candidates in elections. Finally, legislation on elections and political parties shall set out the electoral rights of citizens, the conduct of elections to state bodies and local government bodies, and measures to encourage and support political parties comply with gender representation.

Chapter 3:

Guarantees of Gender Equality in Economic and Social Relations

Chapter 3 sets out various areas of economic and social life where the state is required to guarantee gender equality and where discrimination on the basis of gender is prohibited: property ownership (Article 12), access to land and land use (Article 13), entrepreneurial activity (Article 14), establishing legal entities (Article 15), management of business (Article 16) and access to social services and social protection (Article 17).

Chapter 4:

Gender Equality in Labour Relations

Chapter 4 sets out various measures to ensure gender equality in employment. Article 18 provides that employers should ensure a gradual move towards gender representation and sets out a series of specific measures:

- Employers are specifically permitted to take positive action measures aimed at achieving a balance of women and men in different areas of

work and among different categories of workers, however there is an exception for entrepreneurs who operate without the use of hired labour and organisations with fewer than ten employees.

- Employers are required to take measures to ensure work conditions are equal for both women and men.
- Employers are prohibited from advertising jobs only for persons of one gender (except where the specific work can only be carried out by persons of a particular sex); establish different conditions for women and men; or require persons applying for a job to provide information about their private life or plans for having children.
- Employers are required to provide both women and men the opportunity to combine their career with family responsibilities.

Article 19 provides that women and men are entitled to equal pay where they are equally qualified, and the same working conditions. Article 19 also prohibits paying women or men less or providing worse working conditions on the basis of sex.

Article 20 provides that where an employer makes staff redundant, he or she must ensure that female and male staff are made redundant in proportion to the existing proportion of employees.

Article 21 prohibits victimisation of employees (termed “pressure or harassment”) on the basis that they have filed a complaint of gender discrimination. Article 21 also makes employers liable, in accordance with Kyrgyzstan’s legislation, for exerting pressure or harassing employees based on gender stereotypes, including sexual harassment. Employers are also required to take measures to prevent sexual harassment. Finally, employers can be held liable if their unlawful actions force an employee to resign.

Where an employee brings a claim, courts may provide a remedy of moral and material damages. Courts may also require employers to hire persons not hired because of gender discrimination or to reinstate employees dismissed because of gender discrimination.

Finally, under Article 22, the state recognises “domestic work” which creates, supports and promotes the health, ability and spiritual needs of family members. Article 22 provides that “domestic work is performed by family members on a voluntary basis and cannot serve as a means of gender or other form of

discrimination against family members and it can be performed equally by the different sexes.” Article 22 requires the state to compensate family members, regardless of their gender, for domestic work (childcare or supporting elderly parents or persons with disabilities) through the payment of state benefits. Article 22 also requires the state to “encourage and work with civil society and the private sector in the development of services connected with domestic work”.

Chapter 5: The Mechanisms of Enforcement of Gender Equality

The first Articles of Chapter 5 set out the roles of different bodies in enforcing gender equality. Under Article 23, the President’s sole role is to nominate and makes public appointments, taking into account gender representation of not more than 70% of each sex. The Law, as originally adopted, also set out two further roles for the President – to determine the main direction of gender policy and to introduce special measures to ensure the implementation of gender policy – however these were removed when the Law was amended in 2011.¹⁴⁵

Under Article 24, the Jogorku Kenesh can adopt legislation which forms the legal basis of state policy of gender equality in all areas of public life. The Jogorku Kenesh is also required to ensure that no more than 70% of nominations to the Supreme Court (including the Constitutional Chamber of the Supreme Court), the Judges Selection Council, the members of the Central Commission on Elections and Referendums, the members of the Accounts Chamber and the Vice-Ombudsmen are persons of the same sex.

Article 25 sets out various duties on the government:

- To determine the main directions of gender policy;
- To introduce special measures to ensure the implementation of gender policies established by law and to ensure equal opportunities for different social groups, in accordance with international obligations;
- To participate in the development and ensure the implementation of a single state policy aimed at achieving gender equality in all areas of public life;

145 Law of the Kyrgyz Republic “On Making Additions and Amendments to the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, 14 July 2011, № 97.

- To set the state target program for the implementation of gender equality, and ensure its implementation;
- To finance activities for the implementation of state policy in the area of gender equality at the expense of the national budget;
- To direct and control the activities of executive bodies of state power to protect and promote gender equality; and
- To prepare an annual report on the situation in Kyrgyzstan in the field of gender equality.

Article 26 sets out the various duties of state bodies:

- To pursue the common state gender policy;
- To coordinate the activities of state agencies, local government and legal entities, regardless of ownership, on the implementation of national policies aimed at achieving gender equality in Kyrgyzstan;
- To provide information and educational activities in the field of gender development;
- To ensure gender mainstreaming in national policies and government programs;
- To assist in conducting gender analyses of legislation, draft legislation and regulations;
- To promote the establishment of mechanisms to ensure the achievement of gender equity and equality in all spheres of socio-economic and socio-political life;
- To register and record violations of gender equality;
- To coordinate the activities of bodies for the resolution of disputes regarding violations of gender equality;
- To monitor the implementation of the Law and the international obligations of Kyrgyzstan in the field of gender development; and
- To annually prepare and publish reports on the implementation of the Law and to send recommendations to state and local governments.

Article 27 sets out the duties of local government bodies, namely to take measures for the development and implementation of gender policies and to coordinate their actions with those of the executive bodies of state power in support of relevant national, regional and local programmes.

Article 28 sets out the means by which civil society organisations are able to participate in promoting gender policy:

- They can participate in the development and implementation of relevant decisions made by public bodies and local authorities on issues of gender equality;
- They can nominate and support candidates in programmes to protect the principles of gender equality;
- They have the right to receive from relevant state bodies and local government bodies methodical, information and other assistance in the amount and procedure established by national, state and local programmes aimed at the elimination of gender discrimination;
- They can record violations of gender equality and provide data to the authorised state body in the field of gender equality for monitoring in the field of gender equality;
- They can monitor implementation of the Law; and
- They can prepare alternative public reports.

Finally, Article 29 establishes a procedure of “gender analysis” of legislation and draft legislation in order to identify any discriminatory provisions and to bring the legislation or draft legislation in line with international law in the field of gender equality. This “gender analysis” is carried out by state bodies, local authorities and civil society organisations. Where a provision is found to be non-compliant, the body which conducted the gender analysis shall send this conclusion to the body responsible for the particular legislation or draft legislation.

Article 29 gives the government the power to set out the procedure for conducting gender analysis is to be set out in regulations. In 2010, the government issued regulations covering not only the gender analysis of legislation, but also legal, human rights, environmental and anti-corruption analysis.¹⁴⁶

Chapter 6: Ensuring Implementation of the Provisions of the Law

The final substantive Chapter of the Law deals with enforcement of the Law. Under Article 30, an individual who has been subject to gender discrimination

¹⁴⁶ Decision of the Government of the Kyrgyz Republic “On Approval of Instruction on the procedure for the legal, human rights, gender, environmental, anti-corruption expertise of projects regulations of the Kyrgyz Republic”, 8 December 2010, № 319.

can bring claims before the Ombudsperson, the Prosecutor's Office, courts and other state and local government bodies. These bodies shall then review the case as per Kyrgyzstan's legislation. Article 31 allows for challenges to be brought against actions of state bodies and local government bodies and their officials; as well as legal entities, regardless of ownership, and their officials. Article 32 provides that the Prosecutor's Office has the duty to supervise the precise and uniform implementation of the Law, although civil society organisations can carry out public control over its implementation.

Article 33 provides that where there has been a finding of gender discrimination, the bodies which exercise control over implementing the Law are entitled to:

- Direct state bodies, local government bodies and the heads of legal entities, regardless of ownership, with written orders to eliminate the identified violations of gender equality, including a deadline for performance;
- Bring to justice those responsible for violations of the provisions of the Law;
- Publish in the media the names of legal entities, regardless of ownership, which have violated the Law.

In summary, the Law provides impressive protection from gender discrimination and also a number of important positive action provisions with the potential to accelerate progress towards gender equality. Article 34 provides that those officials found to have breached the Law shall be held liable in accordance with Kyrgyzstan's legislation. However, neither the Civil Code¹⁴⁷ nor the Code of Administrative Responsibility¹⁴⁸ contains provisions prohibiting discrimination on the basis of sex, thus making it difficult for courts to determine precisely what civil or administrative liability is attached in any particular case. Two human rights activists working in the field of women's rights interviewed by the Equal Rights Trust indicated that they were not aware of any cases directly invoking

147 Civil Code of the Kyrgyz Republic, 8 May 1996, № 15, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/4?cl=ru-ru>.

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

the Law.¹⁴⁹ Additionally, there are no official statistics on the number of cases brought before court or prosecuting authorities which makes unclear the practice of prosecution regarding this category of cases. Accordingly, it is difficult to assess the extent to which the Law is being implemented in individual instances.

Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities”

The Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities” (the Law)¹⁵⁰ came into force in July 2008, replacing the Law of the Kyrgyz Republic “On Social Protection of Disabled People” of 1991. Whilst not strictly anti-discrimination legislation, it is nonetheless Kyrgyzstan’s most significant piece of legislation designed to ensure equality for persons with disabilities and thus meet its international legal obligations. As noted above in Part 2.1, Kyrgyzstan has signed, but not yet ratified the United Nations Convention on the Rights of People with Disabilities (CRPD), however it is obliged under Article 18 of the Vienna Convention on the Law of Treaties to “refrain from acts which would defeat the object and purpose” of the CRPD; furthermore, Kyrgyzstan has obligations to prohibit discrimination on the basis of disability, particularly as a party to ICESCR, which the CESCR has interpreted as giving rise to an obligation to prohibit discrimination on the basis of disability in the enjoyment of all economic, social and cultural rights.¹⁵¹

The Law provides at Article 5, that if an international treaty which Kyrgyzstan has entered into in accordance with the law sets out rules other than those in the Law, the rules of the international treaty or agreement shall prevail. Thus, to the extent that the Law is inconsistent with the ICCPR or ICESCR, for example, courts should prefer the requirements of the treaties – this is of course only beneficial to the extent that international treaty obligations go further than the Law. Ratification of the CRPD would potentially strengthen this provision, allowing courts to follow the standards of the CRPD rather than the Law. In researching this report, however, the authors found no evidence of any court decisions in which Article 5 was used.

149 Equal Rights Trust, Interview with C., Osh, 3 November 2016; Equal Rights Trust, Interview with N. Djanaeva of the Forum of Women’s NGOs, Bishkek, 4 November 2016.

150 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>.

151 International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 1966, Article 2; see above, note 107, Para 28.

The preamble to the Law is bold, stating that:

The Law determines the state policy in relation to persons with disabilities in order to ensure equal opportunities in exercising the rights and freedoms to eliminate restrictions in their ability to live, create favourable conditions and enable persons with disabilities to lead a full life, actively participate in the economic, political and cultural life of the community, and fulfil their civil obligations (...)

The Law does not, however, prohibit discrimination on the basis of disability, *per se*. Indeed, the only reference to non-discrimination is in Article 2 which states that the state policy of Kyrgyzstan in relation to persons with disabilities is based on, *inter alia*, non-discrimination on the grounds of disability. “Discrimination” is defined in Article 1 of the Law as an “infringement of the rights of persons with disabilities as compared with other persons, any distinction, exclusion or preference which denies or diminishes the equal enjoyment of rights”. The failure to prohibit discrimination is inconsistent with the CRPD which, at Article 5, requires states to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” The definition of discrimination in Article 1 of the Law partially meets that provided in Article 2 CRPD, but notably fails to include denial of reasonable discrimination as a form of discrimination.

Rather than prohibiting discrimination against persons with disabilities, the Law instead focuses on setting out obligations on state and non-state actors in order to ensure equal access to various areas of life to persons with disabilities, and providing various guarantees provided to persons with disabilities.

Chapter 2 sets out various social guarantees including:

- Social benefits, compensation and services guaranteed by the state (Article 6);
- Social assistance, such as pensions, home services, the provision of technical equipment and rehabilitation (Article 7);
- Social guarantees such as medical care and free prosthetic and orthopaedic equipment (Article 8);

- Pensions (Article 9);
- For isolated persons with disabilities, material and personal services, such as food, catering services and leisure activities (Article 10);
- Home services, including pest control services (Article 11);
- Home care for persons for persons who have partially or fully lost the ability to look after themselves and need permanent care (Article 12);
- Rehabilitative equipment such as prosthetic, orthopaedic and other technical equipment (Article 13); and
- Additional social guarantees where funded by the local government (Article 14).

These provisions (particularly Articles 9 and 12) secure compliance of Kyrgyzstan's legislation with Article 9 of the ICESCR which guarantees "the right of everyone to social security, including social insurance" and Article 12 which guarantees "the right of everyone to an adequate standard of living for himself and his family" which includes adequate food and housing. Together, these guarantees are also in line with a number of the CRPD's provisions particularly: Article 26 which requires states to provide "comprehensive habilitation and rehabilitation services and programmes"; and Article 28 which guarantees the right of persons to disabilities to "an adequate standard of living for themselves and their families" which, like Article 12 of the ICESCR, includes adequate food and housing, but which also includes social protection programmes and retirement benefits and programmes.

Chapter 3 guarantees various political rights including:

- The right to vote and stand for election (Article 15);
- The right to form non-governmental organisations (Article 16);
- The right to peaceful assembly and to participate in public administration (Article 17); and
- The right to participate in public administration (Article 18).

Article 19 specifically provides that protection of the rights, freedoms and legitimate interests of persons with disabilities shall be provided by the courts in the procedure established by Kyrgyzstan's legislation. Further, officials and other citizens who violate the rights, freedoms or legitimate interests of persons with disabilities are liable in accordance with Kyrgyzstan's legislation. Article 20 provides that persons with disabilities have the right to submit complaints to state bodies, local government bodies and officials.

Together, the provisions in Chapter 3 provide important equality protections and help to pursue Article 29 of the CRPD which requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others” including the right to vote and be elected, to participate in non-governmental organisations, and to participate in the conduct of public affairs.

Chapter 4 guarantees various forms of healthcare for persons with disabilities. Article 21 provides that persons with disabilities have the right to healthcare, to the prevention of disability, to medical and sanitary care, to rehabilitation, to the provision of medicine, orthopaedic equipment and means of transportation, as set out in Kyrgyzstan’s legislation. Article provides that this healthcare can be provided out at home or in medical institutions.

The provisions in Chapter 4 largely comply with international best practice as well as Kyrgyzstan’s obligations. Article 25 of the CRPD provides that persons with disabilities “have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability” and Article 12 of the ICESCR which guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. However, one important element of Article 25 of the CRPD, the requirement that healthcare services do not discriminate on the basis of disability, is not reflected in Chapter 4, nor elsewhere in the Law, as a result of its failure explicitly to prohibit discrimination and to give victims of discrimination a cause of action.

Chapter 5 guarantees the right to work for persons with disabilities. Under Article 27, persons with disabilities have the right to work regardless of their category or disability group. Furthermore, employers are required to accept persons with disabilities in accordance with the quota established by the state employment service. Employers are also prohibited from requiring persons with disabilities to undertake a trial period of employment.

Article 28 requires employers to create jobs for persons with disabilities in accordance with the established quota, which must be not less than 5% of the workforce (with an exception for employers with fewer than 20 staff). Article 29 states that the employment of persons with disabilities is ensured by the state employment service and that the unjustified refusal to hire a person

with disabilities when directed to by the state employment service render the employer liable in accordance with Kyrgyzstan's legislation.

Article 30 requires employers to create working conditions suitable for persons with disabilities which includes working hours and rest periods and annual leave. Persons with disabilities in categories I and II cannot be required to work more than 36 hours a week without their consent or for more than 7 hours per day. Persons with disabilities cannot be required to work overtime, on weekends or at night unless they have consented and such work is not prohibited by a medical report. Further, persons with disabilities cannot be required to go on business trips without their consent.

Where a worker becomes disabled as a result of occupational injury or disease within the organisation, the employer must re-allocate them to a new post or create a new post for them (Article 31). Article 32 guarantees the right for persons with disabilities to engage in business activities (i.e. become self-employed) and local state bodies are required to provide the necessary assistance for this, including by providing premises and materials.

These provisions, together, go some way in meeting the requirements of Article 6 of the ICESCR which guarantees the right to work, and Article 27 of the CRPD which guarantees "the right of persons with disabilities to work, on an equal basis with others". However, Article 27 of the CRPD requires states to prohibit discrimination on the basis of disability with respect to "all matters concerning all forms of employment" and this isn't provided by Chapter 5 or elsewhere in the Law. Indeed, many of the requirements placed on employers may in fact provide a disincentive to hire persons with disabilities, a concern noted by the country's Ombudsperson.¹⁵²

Chapter 6 guarantees the right to cultural and educational integration. Article 33 requires the state to ensure that persons with disabilities have access to information, education and training, which must be free. Article 36 states that secondary education for persons with disabilities should be carried out in mainstream schools and, if necessary, in special educational institutions. If it is not possible to provide education in either mainstream or special

152 Ombudsperson of the Kyrgyz Republic, *Special Report: The Situation of Persons with Disabilities in the Kyrgyz Republic*, 2014, available at: <http://www.ombudsman.kg/ru/node/361>.

educational schools, then financial support should be provided for home schooling (Article 39).

In order to ensure that persons with disabilities have equal access to information, the state must publish periodic scientific, educational, reference-informational materials and literature accessible for persons with disabilities, such as by tape, disk, Braille and videotape, and via television programmes (Article 41). State and local bodies must also ensure that persons with disabilities are able to access, for free, cultural and entertainment establishments (such as museums, theatres and cinemas) and sports and recreational facilities.

As they relate to education, these provisions help meet the requirements of Article 24 of the CRPD which guarantees “the right of persons with disabilities to education” and Article 13 of the ICESCR which guarantees the “the right of everyone to education”. With respect to cultural activities, and they help to meet the requirements of Article 30 of the CRPD which guarantees “the right of persons with disabilities to take part on an equal basis with others in cultural life” and Article 15(a) of the ICESCR which guarantees the right of everyone to “take part in cultural life”.

Chapter 7 guarantees the right to access infrastructure. This requires state and local bodies to ensure that persons with disabilities are able to access residential and public buildings, structures and premises, places of recreation and cultural and entertainment establishments, public transportation and communication (Article 43). Article 44 provides that infrastructure should be designed and constructed taking into account the needs of persons with disabilities, and residential and public buildings and facilities should be designed with consideration of the possibilities of their use by persons with disabilities, including those using wheelchairs or other equipment, and the commissioning of such buildings and facilities it not permitted without the input of organisations representing persons with disabilities.

Article 45 extends the obligation to the private sector, requiring legal entities to ensure that their infrastructure is accessible for persons with disabilities, and that existing infrastructure should be adapted for use by persons with disabilities. Article 46 provides that the development and manufacture of vehicles should be carried out taking into account the needs of persons with disabilities.

Whilst the CRPD does not contain any explicit right to access infrastructure, it does require the provision of reasonable accommodation to ensure that persons with disabilities can enjoy or exercise “on an equal basis with others of all human rights and fundamental freedoms”, with particular reference in the rights to education (Article 24) and employment (Article 27). As such, the requirement that both the public and private sector make infrastructure accessible is welcome and going some way to meet this requirement. However, physical infrastructure is only one element of the provision reasonable accommodation and, as noted above, the Law does not make any requirement more generally to provide reasonable accommodation nor recognise failure to provide reasonable accommodation as a form of discrimination, which weakens the Law notably.

Finally, Chapter 8 provides various guarantees to help rehabilitate persons with disabilities. Articles 48 and 49 require the state to guarantee rehabilitation measures and to support the integration of persons with disabilities into society through medical rehabilitation (such as equipment) and guidance, education, training and support in finding employment. These rehabilitation programmes must be free (Article 50).

Along with the provisions in Chapter 2, these help to meet obligations under Article 26 of the CRPD which requires states to provide “comprehensive habilitation and rehabilitation services and programmes”.

The Law does not contain any substantive enforcement mechanisms (Article 19 simply stating that those who violate the Law are liable under Kyrgyzstan’s legislation) and in an interview with Ms. Dyikanbaeva, an expert on the rights of persons with disabilities, the Equal Rights Trust was informed that there have not been any cases directly alleging a breach of the Law. Ms. Dyikanbaeva noted that in her experience, persons with disabilities suffer in particular from the failure to make reasonable accommodation by employers. She indicated that the lack of cases is partly as a result of the lack of understanding among judges and lawyers of the concept of “failure to make reasonable accommodation” as a form of discrimination in refusing to hire persons with disabilities.¹⁵³

153 Equal Rights Trust, Interview with S. Dyikanbaeva, Bishkek, 1 November 2016.

Amendments to the Code of Administrative Responsibility in 2015 have created specific administrative offences related to violations of the Law,¹⁵⁴ however prosecutions under the Code of Administrative Responsibility can only be brought by the Prosecutor's Office (see section 2.3 of this report below) and there is no ability for individual victims to bring claims of their own volition, although courts can make an order for compensation to the victim where a person has been found to have committed an offence under the Code.

Article	Offence	Sentence
68	Unjustified refusal to hire a person in accordance with the quota established by the state employment service.	<p>First offence: Administrative fine of 80 to 100 calculation indexes.</p> <p>Repeated offence within a year: Administrative fine of 150 to 200 calculation indexes or the removal from office of a state or local government or organisational official.</p>
72	Violation of the law by the employer on the rights of persons with disabilities. ¹⁵⁵	<p>First offence: Administrative fine of 80 to 100 calculation indexes.</p> <p>Repeated offence within a year: Administrative fine of 150 to 200 calculation indexes.</p>

154 Law of the Kyrgyz Republic "On Amendments and Additions to the Code of Administrative Responsibility", 14 July 2015, № 154, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111197?cl=ru-ru>.

155 The offence encompasses (i) setting additional testing requirements in comparison with other applicants during recruitment; (ii) requirement persons with disabilities to work overtime, night or on weekends without their written consent; (iii) refusing to create jobs for the appropriate individual programme of rehabilitation of persons with disabilities; (iv) paying a person with disabilities less than other workers; (v) requiring a person with disabilities to travel without their written consent; (vi) transferring a person with disabilities to another job without their consent because of their disabilities, unless the conclusion of the Medico-Social Expert Committee is that their health prevents their ability to carry out certain professional duties or creates a health and safety risk at work; and (vii) refusing to re-allocate or create jobs for employees with disabilities because of injury or occupational injury acquired at the organisation.

Article	Offence	Sentence
79-1	Failure of officials at the state employment service to provide jobs for persons with disabilities in accordance with the quota established by state employment service.	<p>First offence: Administrative fine of 20 to 50 calculation indexes.</p> <p>Repeated offence within a year: Administrative fine of up to 180 calculation indexes or the removal of the official from the state employment service.</p>
85	Violation by officials of legal acts regulating the rehabilitation of persons with disabilities.	<p>First offence: Administrative fine of 80 to 100 calculation indexes.</p> <p>Repeated offence within a year: Administrative fine of 150 to 200 calculation indexes or the removal of an official from office.</p>
85-2	The refusal of officials of the authorised state bodies to develop individual rehabilitation programmes for persons with disabilities.	<p>First offence: Administrative fine of 150 to 200 calculation indexes.</p> <p>Repeated offence within a year: Removal of an official from office.</p>
212-1	Violation of the rights of persons with disabilities to access and use rail.	<p>First offence: Administrative fine of 20 to 50 calculation indexes (citizen), 150 to 200 calculation indexes (official) or 500 calculation indexes (legal entities).</p> <p>Repeated offence within a year: Administrative fine of 80 to 100 calculation indexes (citizen), removal from office (officials) or 1,000 calculation indexes (legal entities).</p>
213-10	Violation of rules of transportation and access for persons with disabilities at bus stations and other required transportation.	Administrative fine of 20 to 50 calculation indexes (citizen), 80 to 100 calculation indexes (official) or 1,000 calculation indexes (legal entities).
252-1	Violation of rules of transportation of persons with disabilities, as well as impeding the realisation of their rights to use air transportation.	Administrative fine of 20 to 50 calculation indexes (citizen), 80 to 100 calculation indexes (official) or 1,000 calculation indexes (legal entities).

Article	Offence	Sentence
470	Failure to comply with the requirements of accessibility for persons with disabilities in the construction or renovation of social, administrative, residential, industrial or manufacturing buildings and structures.	<p>First offence: Administrative fine of 80 to 100 calculation indexes (officials) or 500 calculation indexes (legal entities) along with the elimination of the violation.</p> <p>Repeated offence within a year: Administrative fine of 500 calculation indexes and removal from office (officials) or 1,000 calculation indexes (legal entities) along with the elimination of the violation.</p>
470-1	Failure to comply with accessibility requirements for persons with disabilities in the construction of apartment buildings.	<p>First offence: Administrative fine of 80 to 100 calculation indexes (officials) or 500 calculation indexes (legal entities) along with the elimination of the violation.</p> <p>Repeated offence within a year: Administrative fine of 500 calculation indexes and removal from office (officials) or 1,000 calculation indexes (legal entities) along with the elimination of the violation.</p>
475-1	<p>Para 1: Violation of the procedure for conformity assessments of completed construction projects, and changes in real estate accessibility requirements for persons with disabilities, as well as giving a positive assessment to objects that do not meet the accessibility requirements for people with disabilities.</p> <p>Para 2: Presentation of false declaration of conformity of the construction requirements of accessibility for persons with disabilities.</p>	<p>Para 1: Administrative fine of 200 calculation indexes and removal of officials from office.</p> <p>Para 2: Administrative fine of 100 calculation indexes (citizen) or 200 calculation indexes (legal entities) along with the elimination of the violation.</p>

Law of the Kyrgyz Republic “On HIV/AIDS in the Kyrgyz Republic”

The Law of the Kyrgyz Republic “On HIV/AIDS in the Kyrgyz Republic”, adopted in 2005,¹⁵⁶ contains a number of measures both to prevent the spread of HIV/AIDS and to protect the rights and interests of persons living with HIV/AIDS. Article 13 prohibits any discrimination, stigmatisation or denial of legitimate rights, interests and freedoms against persons living with HIV/AIDS. “Discrimination” is defined in Article 1 as any “infringement on the rights and freedoms of persons living with HIV/AIDS based on their HIV status”. This definition is not sufficiently broad as it does not capture indirect or multiple discrimination. Nor does it include discrimination by association or discrimination by perception. Article 13 also specifically prohibits refusing or terminating an employment contract (save for certain specified professions set out by the government) and denying access to educational or health care institutions on the basis of the fact that they have HIV or AIDS. Unfortunately, the Law is declaratory in nature and the rights which it sets out cannot be directly enforced by individuals a fact which undermines any protection which the guarantees of the Law confer.¹⁵⁷

A lawyer working for an organisation which provides advice and support to persons living with HIV/AIDS interviewed by the Equal Rights Trust indicated that there is a need to update the law, as the terminology used is outdated and there is an urgent need to expressly prohibit mandatory HIV testing.¹⁵⁸ She went on to say that a working group has been set up to review this law, however, progress has been slow.¹⁵⁹

156 Law of the Kyrgyz Republic “On HIV/AIDS in the Kyrgyz Republic”, 13 August 2005, № 149, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1747>.

157 This interpretation was confirmed by G. and A. Sultangaziye. G. is a lawyer working to defend the rights of persons with HIV/AIDS and A. Sultangaziye is a health expert working for an NGO which seeks to advance the rights of drug users, TB sufferers and persons living with HIV/AIDS. Equal Rights Trust, Interview with G., Bishkek, 31 October 2016; Equal Rights Trust, Interview A. Sultangaziye, Bishkek, 31 October 2016.

158 Equal Rights Trust, Interview with G., Bishkek 31 October 2016. G. is a qualified lawyer working for an NGO which represents persons with HIV/AIDS and LGBT individuals.

159 *Ibid.*

2.2.3 Non-Discrimination Provisions in Other Pieces of Legislation

In addition to the laws discussed above, there are other pieces of legislation containing equality and non-discrimination provisions.

Criminal Code

International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, adequate protection from discrimination demands that certain severe manifestations of discrimination be recognised as a criminal offence. Principle 7 of the Declaration of Principles on Equality provides that:

Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.

Thus, Principle 7 requires states to treat offences of violence and incitement to violence as aggravated where the offence is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground.

The Criminal Code of the Kyrgyz Republic, adopted in 1997,¹⁶⁰ contains a number of provisions which criminalise certain acts of discrimination or incitement of ethnic violence. Somewhat positively, Article 3 of the Criminal Code provides that one of the principles upon which it is based is equality of citizens before the law, although the reference to “citizens” rather than “persons” is problematic.

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

Criminal Offence of Discrimination

Article 134 of the Criminal Code 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 (gender, race, ethnic origin, language, social background, property status or official capacity, residence, religion or other belief, and membership of a public association) which harms the legitimate interests of a citizen. Article 134 thus creates a narrow criminal offence of discrimination, limited to situations where the person’s actions result in the violation of the victim’s rights or freedoms *and* which harms their legitimate interests, rather than simply amounting to less favourable treatment or creating a particular disadvantage in an area of life regulated by the law. However, as noted above, 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.

The available sentence for the offence in Article 134 varies depending on who has committed the offence and the consequences. The standard offence is punishable by a fine of up to 50 calculation indexes or correctional labour for up to two years. Where the offence is carried out by someone in an official capacity, the sentence is a fine of up to 100 calculation indexes or up to two years’ imprisonment.

Article 144, whilst not using the term “discrimination” creates an offence of unjustifiably denying employment of, or dismissing, a woman on the basis that she is pregnant or has children under the age of three. The offence is punishable by a fine of up to 100 calculation indexes.

Incitement to Hatred

Article 299, paragraph 1 of the Criminal Code creates an offence of incitement to national, racial or religious hatred:

Actions aimed at the incitement of national, racial, or religious hatred, abasement of human dignity, and also propaganda of the exceptionality, superiority, or inferiority of individuals on the basis of their religion, national, or racial belonging, if these acts have been committed in public or with the use of media, shall be punishable by imprisonment for between three and five years.

If the offence is committed with the use (or threat) of violence, by a person acting in an official capacity, by a group of people or a criminal organisation, or by a person with a previous conviction for extremist offences, the sentence is higher: imprisonment for between five and eight years with forfeiture of the right to hold certain positions or to engage in certain activities.

In 2009, the Criminal Code was amended to introduce a new Article 299-1 which created an offence of organising activities aimed at inciting national, racial, religious or interregional hatred:

(1) The establishment and leadership of voluntary associations, religious organisations or any other organisations whose activities are linked to inciting national, racial, religious or interregional hatred, denigrating national pride or promoting the exclusivity, superiority or inferiority of citizens on the basis of their religion shall be punishable by imprisonment for between five and seven years, with forfeiture of the right to hold certain posts or to engage in certain activities for up to three years.

There are connected offences of organising and participating in activities of such voluntary associations, religious organisations or other organisations where they have been dissolved by a court order due to extremist activity (Articles 299-1, paragraphs 2 and 3). Where an offence under Article 299-1, paragraphs 1, 2 or 3 is committed by a person acting in an official capacity, the sentence is higher: imprisonment for between seven and ten years with forfeiture of the right to hold certain positions or to engage in certain activities.

These provisions fall far short of the requirements of international best practice. Their breadth poses a risk to freedom of expression and may enable them to be used to target minority groups. As discussed above, international best practice requires states to criminalise incitement to violence on the basis of discrimination. However, this should not be restricted to the grounds identified in Article 299 and 299-1. Further, it should be limited only to incitement to violence. The provisions have been criticised, *inter alia*, by the CERD which in 2013 expressed its concern that the provisions did not cover the requirements of Article 4 of the ICERD and recommended that they be amended.¹⁶¹

¹⁶¹ United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kyrgyzstan*, UN Doc. CERD/C/KGZ/CO/5-7, 19 April 2013, Para 16.

Offences Motivated by Hatred

Article 55 of the Criminal Code sets out the list of aggravating circumstances that may be taken into a court when sentencing an individual, regardless of the crime. Circumstances which are not included in the list cannot be taken into account and the list does not include the offence being motivated by any of the victim's characteristics. As such, courts are prohibited from imposing higher sentences for offences motivated by hatred.

The Criminal Code does, however, permit courts to impose a higher sentence for the offence of murder where it is motivated by ethnic, racial or religious hatred or enmity (Article 97, paragraph 2, subparagraph 9). Whereas the standard sentence for murder is imprisonment for 8 to 12 years, for this aggravated offence, the sentence is imprisonment for 12 to 20 years with or without confiscation of property or life imprisonment with or without the confiscation of property.

Criminal Procedure Code

The Criminal Procedure Code of the Kyrgyz Republic, adopted in 1999,¹⁶² provides at Article 16, paragraph 1 that:

Justice shall be administered on the basis of equality of citizens before the law regardless of their social origin, property or official status, race or nationality, sex, education, language, religion, belief, membership of public associations, place of residence and other circumstances.

There has been no jurisprudence elaborating upon the requirements of Article 16, nor any reported cases of alleged violations of the provision, indicating that the provision may be more symbolic than practical. However, it is nonetheless welcome that such a provision is contained within the Criminal Procedure Code given that the scope of rights to equality and non-discrimination includes the criminal justice system.

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

Code of Administrative Responsibility

The Code of Administrative Responsibility of the Kyrgyz Republic, adopted in 1998,¹⁶³ states at Article 3 that it is based on the principle of, *inter alia*, equality of citizens before the law, and, at Article 550 that:

Consideration of an administrative case is based on the principle of equality before the law and the authority considering the case, of all citizens regardless of origin, social and property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, place of residence and other circumstances.

As with the Criminal Procedure Code, there has been no jurisprudence elaborating upon the requirements of Articles 3 or 550, nor any reported cases of alleged violations of the provisions, raising questions over how much effect the provision has in practice. However the scope of the rights to equality and non-discrimination extends to the administrative justice system and so the inclusion of such a provision is nonetheless welcome.

Family Code

While family relationships are generally considered to be private relations and thus outside of the scope of rights to equality and non-discrimination both under Kyrgyzstan's international treaty obligations and international best practice,¹⁶⁴ where relationships are in some way regulated by law (for example rights and responsibilities which arise through marriage, parenthood or rights upon divorce), such rights and responsibilities must be enjoyed on an equal basis and in a non-discriminatory manner. For example, Article 16(1) of the CEDAW requires states parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations". Similarly, Article 23(4) of the ICCPR requires states par-

163 See above, note 148.

164 See, for example, above, note 106, Para 12, where the Human Rights Committee interpreted Article 26 as "prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities"; and Principle 8 of the Declaration of Principles on Equality which provides that: "The right to equality applies in all areas of activity regulated by law." (See above, note 93, p. 8.)

ties to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.

Family law in Kyrgyzstan is largely, but not entirely, regulated by the Family Code of the Kyrgyz Republic, which was adopted in 2003.¹⁶⁵ Its scope includes the majority of family law in Kyrgyzstan, including marriage and divorce, the rights and duties of spouses, matrimonial property, the rights and duties of parents and children, and maintenance payments and child support. Other areas of the law which relate to children – including adoption law – are governed by separate legislation, the Children’s Code of the Kyrgyz Republic.

The Family Code does contain a number of provisions regarding equality. Article 1, for example, states that one of the Code’s objectives is “gender equality in family relationships” and that family relations shall be regulated in accordance with the principle of, *inter alia*, “the equal rights of spouses”. Article 3 is dedicated to “gender equality” (defined in Article 2 as “the equal social status of men and women in society”) and provides that:

- (1) In accordance with the provisions of the Constitution of the Kyrgyz Republic on the equality of rights and freedoms of women and men and the equal opportunities for their realisation in the Kyrgyz Republic, women and men in family relationships have equal personal and property rights and duties.
- (2) Gender equality in family relations shall be protected by society and the state.
- (3) The relationship between family members and persons living together with them shall be based on the principles of gender equality as well as respect for the honour and dignity of the individual.
- (4) Discrimination on the basis of gender in family relations is prohibited.

Whilst positive at first glance, the narrow definition of “family” provided in Article 1 of the Code excludes many people from the protections offered by the Code. “Family” is defined as:

165 Family Code of the Kyrgyz Republic, 30 August 2003, № 201, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1327>. Some aspects of family law relating to children, such as adoption, are regulated by the Children’s Code of the Kyrgyz Republic, 10 July 2012, № 100, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/203700>.

[A]a group of related persons with property and personal non-property rights and obligations arising from marriage, kinship, adoption or other form of adoption and foster care designed to help strengthen and develop family relationships.

By limiting family relationships to those relationships arising from marriage, kinship or adoption, the Family Code excludes same-sex couples (who are prohibited from getting married) and unmarried different-sex couples, cohabiting or otherwise.

Thus, for example, whilst Article 32 of the Family Code guarantees equality of spouses, such protection is only afforded to married different-sex couples. Article 32 provides that:

- (1) Each spouse is free to choose an occupation, profession and place of residence.
- (2) Matters of maternity, paternity, the upbringing and education of children and other issues of family life are to be resolved jointly by the spouses based on the principles of equality between spouses.
- (3) Spouses are obliged to build their relations in the family on the basis of mutual respect and mutual assistance, to promote the well-being and to strengthen the family, and to take care of the welfare and development of their children.
- (4) Spouses bear equal responsibility with regard to domestic work.
- (5) Gender discrimination by one spouse against the other spouse is prohibited.

Article 41 further elaborates on the principles of spouses bearing equal responsibility with regards to domestic work (defined in Article 2 as “independent kinds of work aimed at meeting the needs of the family”), providing that:

- (1) Spouses bear equal responsibility with regards to domestic work.
- (2) Domestic work cannot be a form of gender discrimination and must be carried out equally by both spouses.
- (3) The principle of the policy of equality in the labour market also apply to domestic work.

Whilst problematic in that these provisions (and the protections that they offer) are only available to different-sex couples and thus discriminate on the basis of sexual orientation through the failure to recognise same-sex relationships (see Part 3.2.2 of this report), they nonetheless help to meet Kyrgyzstan's obligations to ensure that women are not discriminated against in marriage and family relations (Article 16(1) of the CEDAW) and that spouses enjoy equal rights and opportunities during marriage (Article 23(4) of the ICCPR), as noted above.

With regards to parental rights, Article 66, paragraph 1 provides that parents have equal rights and responsibilities towards their children, with no requirement that the parents be married. As well as being non-discriminatory with regards to marital status, this provision also helps Kyrgyzstan meet its international obligations under Article 16(1) of the CEDAW and Article 23(4) of the ICCPR.

Labour Code

Article 6(1) of the ICESCR guarantees the right to work, which includes the right of everyone to the opportunity to gain a living by work which they freely choose or accept. Article 7 of the ICESCR guarantees the right of everyone to the enjoyment of just and favourable conditions of work. Both of these rights must be guaranteed "without discrimination of any kind" by virtue of Article 2(2).

Employment law in Kyrgyzstan is largely regulated by the Labour Code, adopted in 2004,¹⁶⁶ although it is supplemented by other pieces of legislation including the Law of the Kyrgyz Republic "On the Promotion of the Employment of the Population"¹⁶⁷ and the Law of the Kyrgyz Republic "On Protection of Labour".¹⁶⁸

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

167 Law of the Kyrgyz Republic "On Promotion of the Employment of the Population, 3 August 2015, № 214, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111258>.

168 Law of the Kyrgyz Republic "On Protection of Labour", 1 August 2003, № 167, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1293?cl=ru-ru>.

While the Labour Code makes repeated reference to “citizens” in terms of the rights and guarantees it provides, Article 7 provides that it also applies to foreign nationals and stateless persons working for organisations in Kyrgyzstan unless otherwise provided in international or national law.

One of the principles of the regulation of labour relations, according to Article 2, is the “prohibition of forced labour and discrimination” and Article 9 sets out the prohibition of discrimination, providing that:

- Everyone has an equal opportunity to exercise their labour rights and freedoms.
- No one may be restricted in their labour rights and freedoms or receive any advantages in their realisation on the basis of gender, race, nationality, language, origin, property and official status, age, place of residence, religion, political convictions, membership or non-membership of a trade union or other circumstances unrelated to the professional qualities and results of his work.
- Unequal pay for equal work is prohibited.

Article 9 does, however, provide that distinctions, exclusions, restrictions and preferences which are defined by a particular kind of labour characteristics in a requirement established by law, or due to the state’s special concern for persons requiring enhanced social and legal protection shall not constitute discrimination.

Finally, 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.

In addition to Article 9, Article 61 states that employment contract conditions which are discriminatory are invalid. Article 20 supplements Article 9 by providing that, *inter alia*, employers must provide employees with equal pay for work of equal value.

The inclusion of important protections from discrimination and unequal pay are welcome. Notably, the 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, there is no definition of discrimination or any of the forms (such as direct or indirect discrimination, harassment or a failure to make reasonable accommodation) and although the list of grounds is open, it omits to enumerate several upon which discrimination ought to be explicitly prohibited such as disability, sexual orientation and gender identity. Accordingly, the Law would benefit from amendment or the provision of interpretative guidance in this respect.

Law of the Kyrgyz Republic “On Trade Unions”

Article 5 of the Law of the Kyrgyz Republic “On Trade Unions”, adopted in 1998,¹⁶⁹ prohibits discrimination in two ways: first, it states that belonging or not belonging to a trade union does not entail any restriction of labour, socio-economic, political or personal rights and freedoms guaranteed by the Constitution. Secondly, Article 5 prohibits hiring, promoting or dismissing a person on the basis that they belong or do not belong to a trade union.

Law of the Kyrgyz Republic “On State Procurement of Social Services”

The Law of the Kyrgyz Republic “On State Procurement of Social Services”, adopted in 2008,¹⁷⁰ sets out the general principles of, and regulates, the procurement of social service programmes. Article 4 of the Law, which sets out the principles of state procurement of social services, includes “providing equal opportunities and non-discrimination in access to social services”, however there is no evidence of this provision ever actually having been used in practice.

Law of the Kyrgyz Republic “On Internal Migration”

The Law of the Kyrgyz Republic “On Internal Migration”, adopted in 2002,¹⁷¹ regulates internal migration within Kyrgyzstan. Article 3 sets out the prin-

169 Law of the Kyrgyz Republic “On Trade Unions”, 5 October 2008, № 130, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/137>.

170 Law of the Kyrgyz Republic “On State Procurement of Social Services”, 21 July 2008, № 162, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202373?cl=ru-ru>.

171 Law of the Kyrgyz Republic “On Internal Migration”, 30 July 2002, № 133, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1090>.

ciples of internal migration policy in Kyrgyzstan and includes, *inter alia*, the prohibition of discrimination or the violation of rights and freedoms on the basis of origin, sex, race, nationality, language, political or religious beliefs, or any other conditions or circumstances of a personal or social nature. In addition, Article 40, which provides guarantees to forced migrants (i.e. Kyrgyzstani citizens forced to leave their home and move due to man-made or environmental threats or disasters) includes a guarantee that they will not be discriminated against in the enjoyment of any rights or freedoms on the basis that they are forced migrants.

Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic”

The Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic” was adopted in 2008¹⁷² and regulates the establishment and requirements of religious organisations in Kyrgyzstan. One of those requirements, at Article 4, paragraph 8, is that the activities of religious organisations should not infringe on human rights and dignity or promote social or gender discrimination.

Part 3.1.2 of this report deals extensively with the many problematic aspects of the Law both in its wording and its application. It was criticised when it was adopted by the country’s Ombudsperson as well as the Organization for Security and Co-operation in Europe¹⁷³ and, in 2014, the Human Rights Committee expressed its concerns over restrictions which were “incompatible with provisions of the Covenant including with respect to missionary activities, the registration procedure and dissemination of religious literature”.¹⁷⁴

The most significant restriction is a requirement in the Law that for a religious organisation to operate lawfully in the country, it must register with the State Commission on Religious Affairs and, in so registering, present a

172 Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic”, 31 December 2008, № 282, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202498>.

173 Corley, F., “KYRGYZSTAN: President’s signing of restrictive Religion Law condemned”, *Forum 18 News Service*, 13 January 2009, available at: http://www.forum18.org/archive.php?article_id=1240.

174 See above, note 86, Para 22.

list of 200 citizens who are members which has been “approved” by a local authority. However, the Law does not set out the criteria by which local authorities decide whether or not to “approve” the list put forward and between 2011 and 2013 several local authorities refused to agree the lists put forward by several local congregations of Jehovah’s Witnesses. Although the provision was held to be unconstitutional by the Constitutional Chamber of the Supreme Court (specifically in violation of Article 35, the right to freedom of association) in 2014,¹⁷⁵ it has not been removed or amended and is still enforced. The provision makes it particularly difficult for smaller religious organisations, such as the Ahmadiyya Muslim community, Jehovah’s Witnesses, Hare Krishna devotees and Catholics to register, rendering any activity of these organisations unlawful.

2.3 Enforcement and Implementation

Despite a reasonably strong constitutional equality provision and relatively comprehensive gender equality law, taken as a whole, the legal framework protecting the rights to equality and non-discrimination in Kyrgyzstan is relatively weak with patchy and inconsistent protection on different grounds and in different areas of life. Whilst the framework does offer some protection, the extent to which the Constitution and legislative provisions are effective depends on how they are enforced and implemented in practice. As this section identifies, their enforcement and implementation needs to be radically strengthened if the provisions are to be effective in practice.

International law is clear that states do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in practice. This means that, in addition to improving legal protection from discrimination, Kyrgyzstan must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration of Principles on Equality:

175 European Association of Jehovah’s Christian Witnesses, *Contribution to the Report of the U.N. High Commissioner for Human Rights prepared pursuant to the new review mechanism of the Human Rights Council, established by GA Resolution 60/251 and by the Human Rights Council in Resolution 5/1 of 18 June 2007 for the 21st session of the UPR (Jan/Feb 2015): Kyrgyzstan*, June 2014, p. 2.

*Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.*¹⁷⁶

Access to Justice

Access to justice will only be effective where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be “accessible and effective”¹⁷⁷ and legal aid must be provided where necessary. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by marginalised groups in accessing the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed.

The means by which individuals in Kyrgyzstan are able to enforce equality and non-discrimination provisions depend on whether the provision is found in the Constitution or in legislation.

Access to Justice under the Constitution

The Constitution primarily creates institutions and espouses broad principles and rights. The operation of the institutions it creates and the justiciable rights they uphold are then predominantly a matter for legislation. Nevertheless, the Constitution contains several provisions relevant to access to justice.

After setting out a wide range of rights and freedoms, the Constitution provides, at Article 40, paragraph 1, that:

¹⁷⁶ See above, note 93, Principle 18, p. 12.

¹⁷⁷ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, Para 15.

Everyone shall be guaranteed judicial protection of his/her rights and freedoms envisaged in the present Constitution, laws, international treaties to which the Kyrgyz Republic is a party as well as universally recognized principles and norms of international law.

Despite this, there is no mechanism in the Constitution for challenging the acts of state or non-state actors on the grounds that they interfere with any of the rights and freedoms in the Constitution through the courts. Instead, only legislation which breaches rights or freedoms can be challenged and only through the Constitutional Chamber of the Supreme Court.

Article 97 of the Constitution sets out the basic framework of the Constitutional Chambers and its working methods. The Constitutional Chambers role is to perform constitutional oversight¹⁷⁸ and has the power to:

- (1) Declare unconstitutional laws and other normative legal acts where they breach the Constitution;
- (2) Provide an opinion on the constitutionality of international treaties which have not yet entered into force in Kyrgyzstan; and
- (3) Provide a conclusion on draft laws amending the Constitution.¹⁷⁹

Cases challenging the constitutionality of legislation can be brought by anyone who believes that legislation complained of violates their constitutional rights or freedoms. If, during court proceedings more broadly, a question arises as to the constitutionality of legislation, that court may send an inquiry to the Constitutional Chamber.¹⁸⁰

Under Article 97 of the 2010 Constitution the rulings of the Constitutional Chamber were final and not subject to appeal. However, as noted above, under the revised Article 97 decisions of the Constitutional Chamber are now “preliminary conclusions” which are subject to review by both the Jogorku Kenesh and the President. If either or both of the Jogorku Kenesh or the President disagree with the result, the Constitutional Chamber is required to revis-

178 Article 97, paragraph 1.

179 *Ibid.*, paragraph 3.

180 Article 101, Para 2.

it its decision and for the decision to be binding it must reach the same conclusion with a specified majority.¹⁸¹ This is very concerning as it undermines the independence of the judiciary and coupled with the amendments to the procedure to the dismissal of judges under the revised Article 95 may limit the ability of the Constitutional Chamber to effectively protect the guarantees under the Constitution.

Supplementing Article 97 is the Constitutional Law of the Kyrgyz Republic “On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”,¹⁸² which provides the details of which cases can be brought to the Constitutional Chamber, including cases alleging a violation of the constitutional provisions protecting the rights to equality and non-discrimination (primarily Article 16).

The Constitutional Law expands upon who has standing to bring cases, stating that cases can be brought by both individuals and legal entities who believe that their rights or freedoms have been violated by legislation. In addition, a wide range of persons can also bring cases without having been personally affected including the Jogorku Kenesh and factions thereof, the President; the Government; the Prime Minister; judges; local authorities; the Attorney General and the Ombudsperson.

Part 2.2.1 of this report reviews and analyses the jurisprudence of the Constitutional Chamber on cases involving equality and non-discrimination. Relatively few cases have been heard by the Constitutional Chamber and those that have been heard have offered little interpretative guidance on the rights to equality and non-discrimination set out in the Constitution. Indeed, a number of cases involving age discrimination have upheld age limits in certain professions with weak justification and in direct contradiction to Kyrgyzstan’s international human rights obligations. The limited jurisdiction of the Constitutional Chamber and the weak jurisprudence thus far suggests

181 If either the President or the Jogorku Kenesh disagree with the conclusion, the decision is only binding if two thirds of judges in the Constitutional Chamber agree with the conclusion; if both the Jogorku Kenesh and the President disagree, then a three quarter majority of the Constitutional Chamber is required. See above, note 83, Article 1(27).

182 Constitutional Law of the Kyrgyz Republic “On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic” 12 June 2011, № 37, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/203281>.

that the Constitutional Chamber is largely ineffective as providing access to justice for victims of discrimination.

Access to Justice under Legislation

While the Constitutional Chamber has the key role of addressing discriminatory legislation, it should be the role of the lower courts to provide access to justice for victims of discrimination by state and non-state actors. While the Criminal Code contains some provisions which prohibit discrimination, the vast majority of the legislative framework prohibiting discrimination, such as it is, is found in the civil law.

The civil justice system of Kyrgyzstan is largely set out in the Civil Code¹⁸³ and the Civil Procedure Code,¹⁸⁴ which, in theory at least, are able to deal with cases of discrimination. Article 2 of the Civil Code states that civil law is based, *inter alia*, on “the need for the smooth implementation of civil rights” and “ensuring restoration of violated rights and their judicial protection”. Any interested party (whether a natural or legal person) is entitled to apply to a court for the protection of their violated or disputed rights, freedoms or interests protected by law (Article 4 of the Civil Procedure Code). Furthermore, Article 23 of the Civil Procedure Code makes clear that cases can be brought not only against other individuals but also the actions and omissions of state bodies, local self-government bodies, public associations and religious organisations and officials. The courts also have explicit jurisdiction to consider cases relating to the protection of civil, political, social, cultural and other rights and freedoms of citizens which are protected by law.

Article 31 of the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” explicitly states that victims of discrimination on the basis of gender can bring claims to the courts, and Article 9 of the Labour Code provides that a person who considers that they have been discriminated against in employment have the right to bring a case to court. However, as noted above in the context of the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal

183 See above, note 147.

184 Civil Procedure Code of the Kyrgyz Republic, 29 December 1999, № 146, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/12>.

Opportunities for Men and Women”, the specific pieces of legislation which actually specify how liability is to be determined (and punished or otherwise dealt with) for violations of other laws – the Criminal Code, the Code of Administrative Responsibility and the Civil Code – have not been amended to set out clearly how liability is determined in cases of discrimination, resulting in gaps in the law, and a lack of clarity for courts on how to proceed and deal with cases where a person has violated the non-discrimination provisions of legislation. As such, cases are rarely, if ever, brought, making access to justice for victims of discrimination in Kyrgyzstan through the courts largely theoretical.

Legal Aid System

Kyrgyzstan’s obligations under international treaties to which it is party only provide for a limited explicit right to legal aid. Article 14(3)(d) of the ICCPR, for example, requires states parties to provide legal assistance in criminal proceedings only, and only “in any case where the interests of justice so require” and “if he does not have sufficient means to pay for it. In respect of the CEDAW, the CEDAW Committee has stated that: “States must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary.”¹⁸⁵

In addition, Article 2(3)(a) of the ICCPR requires states parties to ensure that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”. Without effective access to justice, including legal aid where the person cannot otherwise afford to bring a claim, it is arguable that the state cannot ensure an “effective remedy” for violations of the rights to equality and non-discrimination as guaranteed under Articles 2(1) and 26 of the ICCPR. International best practice requires “appropriate legal aid” to be provided in cases where an individual asserts their right to equality or non-discrimination.¹⁸⁶

The Constitution guarantees the availability of legal aid in two places: first, where a person is detained (Article 24, paragraph 5); and, second, more generally, through Article 40, paragraph 3 which provides a general right to

185 See above, note 136, Para 34.

186 See above, note 93, Principle 18, p. 12.

“qualified legal aid” with legislation to set out the circumstances in which the state shall cover the cost of legal fees.

The relevant legislation is the Law of the Kyrgyz Republic “On State Guaranteed Legal Aid”,¹⁸⁷ adopted in 2009 and which came into force in full in 2011. The Law only guarantees legal aid in criminal proceedings and only where a person either falls into one of a number of specified classes (minors, persons with severe disabilities, persons suspected of serious crimes, persons who are unemployed and persons undertaking compulsory military service) or if their annual income is less than twelve times the minimum monthly wage.

The narrow scope of the Law thus means that there is no legal aid available for individuals, regardless of their need, who wish to pursue claims using either the Constitution or other pieces of legislation to enforce their rights to equality and non-discrimination, falling significantly short of international best practice.¹⁸⁸

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima

187 Law of the Kyrgyz Republic “On State Guaranteed Legal Aid”, 17 July 2009, № 227, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/203186>.

188 As discussed above, Principle 18 of the Declaration of Principles of Equality requires “appropriate legal aid to be provided” in cases where an individual asserts a breach of his or her right to equality and non-discrimination.

*facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.*¹⁸⁹

As this principle indicates, international law requires that the “burden of proof” in cases of discrimination be transferred to the defendant, once a *prima facie* case that discrimination has occurred has been made. The CESCR has stated in its General Comment No. 20 that:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*¹⁹⁰

None of the legislative provisions prohibiting discrimination identified in Part 2.2 of this report, nor any provisions relating to civil procedure, provide for a reversal of the burden of proof. Indeed, Article 61, paragraph 1 of the Civil Procedure Code¹⁹¹ states that “[p]ersons participating in the case must prove the facts to which they have referred as the base of their claims and objection” and contains no exceptions.

Remedies and Sanctions

Principle 22 of the Declaration of Principles on Equality sets out the importance of appropriate remedies and sanctions where the rights to equality and non-discrimination are violated:

Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, or-

189 See above, note 93, Principle 21, p. 13.

190 See above, note 107, Para 15.

191 See above, note 184.

*ganisational, or policy change that is necessary for the realisation of the right to equality.*¹⁹²

At the international level, the HRC has stated that remedies must be “accessible and effective”¹⁹³ while the CESCR has said that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.¹⁹⁴

The Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, the most advanced piece of anti-discrimination legislation, does not set out specific remedies available where discrimination has taken place, simply stating that those who violate the Law bear liability in accordance with legislation of Kyrgyzstan. There are two exceptions. First, the Law states that where a violation has been found, the body which found the violation can:

- Direct the public authorities, local authorities and heads of legal entities, regardless of ownership, with written orders to eliminate the identified violations of gender equality, within an indicated period of time;
- Bring to justice those responsible for violations of the provisions of the Law; and
- Disclose to the media the names of the legal entities, regardless of ownership, which violate the Law.

The second is that breaches of the prohibition of gender discrimination and single-gender advertisements in the civil service can be remedied through the annulment of decisions or the results of competitions for vacant positions.

For individuals bringing a case, the general remedies available under Kyrgyzstan’s legislation are set out in the Civil Code,¹⁹⁵ Article 11 of which lists the specific remedies a court may grant:

192 See above, note 93, Principle 22.

193 See above, note 177, Para 15.

194 See above, note 107, Para 40.

195 See above, note 147.

- (1) The recognition of a right;
- (2) The restoration of the situation which existed before the violation of the law;
- (3) The prevention of an action which infringes the right or threatens to infringe it; infringing the right or threatening to infringe it;
- (4) The recognition of an action as null and void and the application of the consequences of it as invalid;
- (5) The invalidation of an act of a state authority or local government;¹⁹⁶
- (6) The self-protection of civil rights;¹⁹⁷
- (7) An award of specific performance of an obligation;
- (8) Compensation for damages;
- (9) Penalty sanctions;
- (10) Non-pecuniary damage;
- (11) The termination or alteration of legal relations;
- (12) Non-application by the court of an act, issued by a state body or body of local self-government, which does not comply with the law;
- (13) Other remedies set out in law.

Where a case is brought under the Code of Administrative Responsibility, the body which imposes the sanction is restricted to those specified in the relevant article under which the offence was committed. With regards to discrimination cases, the only administrative offences listed relate to violations of the Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities” which are set out above. The only sanctions are fines, the removal of the violation or the removal of the relevant official from office.

With regards to the requirements of international human rights law, the HRC has stated in its General Comment No. 31 that:

[W]here appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices,

196 Article 12 of the Civil Code provides that where an act is declared invalid, any violated right should be restored, as and other remedies set out in Article 11 can be provided.

197 Article 13 of the Civil Code defines “self-protection” as “the direct protection of civil rights of the person whose rights have been violated” however these must be proportionate to the violation and not go beyond the actions needed to prevent or repress it.

*as well as bringing to justice the perpetrators of human rights violations (...) In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices.*¹⁹⁸

The CESCR has stated in its General Comment No. 20 that:

*[I]nstitutions should (...) be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies, and State parties should ensure that these measures are effectively implemented.*¹⁹⁹

The CERD has stated in a General Recommendation that:

*[T]he right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.*²⁰⁰

The CEDAW Committee, in relation to Article 2(b) of the CEDAW, has stated in its General Recommendation No. 28 that:

198 See above, note 177, Paras 16 and 17.

199 See above, note 107, Para 40.

200 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 26: Article 6 of the Convention*, UN Doc. A/55/18, annex v. at 153, 2000, Para 2.

This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.²⁰¹

The specific remedies available under the Civil Code are relatively comprehensive and close to satisfying Kyrgyzstan's international human rights obligations. However, remedies which go beyond the specific victim and seek to ensure the structural, legislative or policy changes necessary to ensure non-repetition of the discrimination are notably lacking. Furthermore, the fact that the Civil Code and the Civil Procedure Code have not been amended to make specific reference cases of discrimination makes it difficult for courts to determine precisely what civil liability should be attached in any particular case.

The Ombudsperson (Akyikatchy) of the Kyrgyz Republic

Principle 23 of the Declaration on Principles of Equality highlights the important role of specialised bodies in the protection of the right to equality:

States must establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. States must ensure the independent status and competences of such bodies in line with the UN Paris Principles, as well as adequate funding and transparent procedures for the appointment and removal of their members.²⁰²

201 See above, note 136, Para 32.

202 See above, note 93, Principle 23, p. 13.

The importance of specialised bodies has also been highlighted by, *inter alia*, the CESCR which has stated that:

*National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, **national human rights institutions** and/or ombudspersons, which should be accessible to everyone without discrimination.*²⁰³ (Emphasis added)

While Kyrgyzstan has not established a specialised body focussed on the protection and promotion of the right to equality, it does have a National Human Rights Institution (NHRI), the Ombudsperson (Akyikatchy) of the Kyrgyz Republic. The Ombudsperson has a constitutionally recognised role, Article 108 of the Constitution providing that:

The parliamentary oversight over the observance of human and civil rights and freedoms in the Kyrgyz Republic shall be performed by the Ombudsperson (Akyikatchy).

The Ombudsperson was established in 2002 by the Law of the Kyrgyz Republic “On the Ombudsperson (Akyikatchy) of the Kyrgyz Republic”²⁰⁴ with the post currently held by Kubat Otorbaev, appointed for a five-year term by the Jogorku Kenesh in 2015. The Law sets out the purpose of the Ombudsperson’s activities in Article 3 as:

- (1) Protection of the rights and freedoms of citizens proclaimed by the Constitution and the laws of the Kyrgyz Republic, and by international treaties and agreements ratified by the Kyrgyz Republic.

203 See above, note 107, Para 40.

204 Law of the Kyrgyz Republic “On the Ombudsperson (Akyikatchy) of the Kyrgyz Republic”, 31 July 2002, № 136, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1093>.

- (2) Compliance with and respect for the rights and freedoms of the subjects of persons and citizens;
- (3) Prevention of violations of the rights and freedoms of persons and citizens, or the promotion of their restoration;
- (4) Promoting harmonisation of legislation of the Kyrgyz Republic on the rights and freedoms of persons and citizens in accordance with the Constitutional and international standards in this field;
- (5) Improvement and further development of international cooperation in the field of protection of the rights and freedoms of persons and citizens;
- (6) Prevention of all forms of discrimination in the exercise of human rights and freedoms; and
- (7) Promotion of legal awareness and the protection of confidential information about individuals.

The Law sets out that the Ombudsperson must be independent from any state bodies and officials and the Ombudsperson themselves cannot be a deputy of the Jogorku Kenesh or in a local council.²⁰⁵ The Ombudsperson is appointed by the Jogorku Kenesh by a secret ballot for a term of five years (and for a maximum of two terms),²⁰⁶ and can only be dismissed in certain circumstances such as death, application for resignation or violation of the Ombudsperson's oath.²⁰⁷

The Ombudsperson must be a citizen of Kyrgyzstan aged between 30 and 65, speak Kyrgyz and Russian, and have no criminal convictions.²⁰⁸ There are no requirements that the Ombudsperson have any particular qualifications or experience in the field of human rights, one of the reasons why the Ombudsperson has not been classified as an "A" status NHRI (see below). The criteria for appointment of the Ombudsperson violate the right to non-discrimination. In particular the express inclusion of an age criterion is directly discriminatory.

The Law sets out an extensive list of powers of the Ombudsperson including:

205 *Ibid.*, Article 6.

206 *Ibid.*, Article 4.

207 *Ibid.*, Article 7.

208 *Ibid.*, Article 4.

- To apply to the Constitutional Chamber of the Supreme Court with a request that the constitutionality of legislation concerning human rights be determined;
- To ask the Jogorku Kenesh to provide an official interpretation of legislation;
- To visit, with unimpeded access, any public authority, local government body, business, institution, organisation or military unit;
- To visit places of detention, pre-trial detention and mental health hospitals and to talk to persons there in confidence;
- To attend any court proceedings, including closed court proceedings;
- To require evidence from any official, civil servant or member of the public;
- To bring court proceedings in order to protect a person's human rights where they are unable to do so themselves, as well as to participate in other proceedings;
- To commission state bodies and institutions to undertake research and analysis;
- To make recommendations to public authorities to improve human rights protections;
- To ask the Supreme Court to provide guidance to courts on the application of international and national human rights law;
- To ask the Jogorku Kenesh to establish a commission of inquiry into gross and flagrant violations of human rights; and
- To provide state bodies and local government bodies with guidance to improve their administrative procedures.

In 2007, the Ombudsperson was also granted further powers to make proposals for legislative reform, to participate in the drafting of legislation and to make proposals on draft legislation, and to participate in international activities such as by submitting reports to international bodies and to represent the state as an expert in international relations in the field of human rights.²⁰⁹

One of the main tasks of the Ombudsperson is to submit an annual report on human rights to the Jogorku Kenesh containing details of the complaints

209 Law of the Kyrgyz Republic "On Amendments and Additions to the Law of the Kyrgyz Republic "On the Ombudsperson (Akyikatchy) of the Kyrgyz Republic"", 6 July 2007, № 97, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202130?cl=ru-ru>.

received alongside conclusions and recommendations. These reports are also published on the Ombudsperson's website. The Ombudsperson may also submit special, thematic reports to the Jogorku Kenesh. The Ombudsperson's annual reports do not contain extensive information relating to discrimination in the country, although there are some references. In its 2015 annual report, for example, the Ombudsperson raised concerns over disadvantages faced by older persons and the low level of social security; discrimination against women in areas such as reproductive health as well as the high levels of domestic violence; and child marriage which has been condemned by the CEDAW Committee.²¹⁰

One of the other main tasks is to receive complaints from members of the public over human rights violations to which the Ombudsperson can take action such as asking the subject of the complaint for information and observations and the exercise of the Ombudsperson's various powers. In 2015, a total of 11,721 people made complaints to the Ombudsperson, down slightly from 2014 when the figure was 13,652.²¹¹ The breakdown of complaints does not make it entirely clear how many of these complaints related to discrimination since the categorisation includes both subject-matter (such as torture or education issues) and the body complained of (such as the courts or the police). However, only eleven were recorded as complaints of breaches of women's rights and four as complaints of breaches of the rights of persons with disabilities.²¹²

The Ombudsperson has only been accredited as a "B" status NHRI by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. In setting out their proposal that the Ombudsperson receive a "B" status, the Sub-Committee on Accreditation set out a number of concerns and reasons as to why the Ombudsperson was not in full compliance with the Paris Principles, a set of Principles adopted by the UN General Assembly which set out best practice for national human rights institutions:

210 Akyikatchy (Ombudsperson) of the Kyrgyz Republic, *Report of the Akyikatchy (Ombudsperson) of the Kyrgyz Republic on Respect for the Rights and Freedoms of Persons and Citizens in the Kyrgyz Republic in 2015, 2016.*

211 *Ibid.*

212 *Ibid.*

- Vacancies for the post of Ombudsperson and Deputy Ombudsperson were not advertised widely, the eligibility criteria for these positions were quite vague; neither educational qualifications nor any experience in the field of human rights were prescribed under the Law; and there was a lack of involvement of civil society in appointing the posts.
- The Law made no requirement that the staff at the Ombudsperson be representative of the diverse segments of Kyrgyz society.
- There was a lack of engagement between the Ombudsperson and civil society organisations.
- The Law allows the Ombudsperson and Deputy Ombudsperson to be dismissed in the event that the Jogorku Kenesh does not approve a report they have submitted, potentially affecting the ability of the Ombudsperson to submit independent and unbiased reports on human rights.
- The Law does not give the Ombudsperson a specific mandate to encourage ratification and implementation of international human rights standards.

In response, the government has submitted draft legislation to the Jogorku Kenesh with the aim of bringing the Ombudsperson into line with the Paris Principles.²¹³

Overall, despite the potential of the Ombudsperson for playing a critical role in the promotion and protection of the rights to equality and non-discrimination in Kyrgyzstan, there is little evidence of this role currently being fulfilled. Despite an extensive list of powers, they are seldom utilised in cases of discrimination and the annual reports produced by the Ombudsperson do not even contain a substantive section focused on discrimination with only a few references on specific issues such as domestic violence. Given the prevalence of discrimination against a wide range of groups identified in Part 3 of this report, it is concerning that the Ombudsperson has made little reference to this in his annual reports. Only a fraction of complaints received relate to discrimination suggesting low levels of public awareness of discrimination and the Ombudsperson's role in this field. The concerns raised by the International

213 Human Rights Council, Universal Periodic Review, *National Report: Kyrgyzstan*, UN Doc. A/HRC/WG.6/21/KGZ/1, 5 December 2015, Para 27.

Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights as to how the Ombudsperson does not comply with the Paris Principles only strengthen the need for reform to ensure that the Ombudsperson is fully compliant with Kyrgyzstan's international obligations both with regards to human rights generally and the rights to equality and non-discrimination specifically. The Trust interviewed one civil society representative who works closely with the Ombudsperson who indicated that high turnover among Ombudsperson staff coupled with a lack of capacity in relation to international human rights law undermines the effectiveness of this national human rights institution.²¹⁴ One qualified lawyer with extensive experience of bringing claims for human rights violations indicated that the extremely broad mandate of the Ombudsperson inhibits its ability to effectively deal with cases of discrimination and recommended that a special unit focusing on discrimination be created.²¹⁵

The General Prosecutor of the Kyrgyz Republic

One of the state bodies established by the Constitution, the General Prosecutor, also has a role and various duties in respect of ensuring the protection of human rights, including the rights to equality and non-discrimination. Whilst the role of the General Prosecutor is largely focused on criminal law, Article 104, paragraph 1 of the Constitution sets out a general role of "Supervision over the accurate and uniform implementation of laws by executive power agencies, local self-governance bodies as well as officials thereof". The functions of the General Prosecutor are set out in more detail in the Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic".²¹⁶ Chapter 2 of Section 4 of the Law sets out the Prosecutor's Office's role in the field of human rights, namely supervision to ensure the "precise and uniform implementation of laws and other normative legal acts in the sphere of the observance of human rights and freedoms" by state bodies.²¹⁷

214 Equal Rights Trust, Interview with D., Bishkek, 31 October 2016. D is the executive director of an organisation working in the fields of gender discrimination and reproductive health.

215 Equal Rights Trust, Interview with Y. Votslava, Bishkek, 2 November 2016.

216 Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic", 17 July 2009, № 224, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202597>.

217 *Ibid.*, Article 33.

The Prosecutor's Office has the duties of receiving applications, complaints and other reports of violations of human rights, providing information on procedures to protect human rights, and taking measures to prevent and limit violations of human rights and to bring to justice those who violate the law.²¹⁸ In doing so, the Prosecutor's Office has a wide range of powers including entering the premises of state bodies and requiring access to their legal acts, documents and other materials; requiring documentation, materials, statistics and other information from officials at state bodies; and requiring explanations for the violations of legislation from officials at state bodies.²¹⁹

Where the Prosecutor's Office believes that there has been a violation of human rights which amounts to a criminal offence, it can institute criminal proceedings.²²⁰ Where the violation amounts to an administrative offence, the Prosecutor's Office can institute administrative proceedings.²²¹ Where a case involving human rights is a matter of civil law, and either the victim cannot defend themselves in court for reasons of health, age or otherwise, or there is a large number of victims in a case of public importance, the Prosecutor's Office can bring civil proceedings on behalf of the victim of victims.²²²

Whilst the ability for proceedings to be brought by the Prosecutor's Office to ensure compliance with legislation protecting the rights to equality is welcome, the full effectiveness of this ability relies on criminal and administrative law to be harmonised with other legislation prohibiting discrimination, so that there are clear offences which can be prosecuted, and the capacity and willingness on the part of the Prosecutor's Office to use those powers. With respect to the issue of harmonisation, Part 2.2 of this report highlights the fact that the Criminal Code and Code of Administrative Responsibility have not yet been fully harmonised, with effective harmonisation only completed with respect to legislation guaranteeing equal rights and opportunities for persons with disabilities. With respect to the latter, although Article 13 requires the Prosecutor General to submit an annual report to the President and the Jogorku Kenesh on its activities, these reports are not published or

218 *Ibid.*, Article 34, paragraph 1, sub-paragraphs 1–3.

219 *Ibid.*, Article 34, paragraph 1, subparagraph 4 and Article 32.

220 *Ibid.*, Article 34, paragraph 2.

221 *Ibid.*, Article 34, paragraph 3.

222 *Ibid.*, Article 34, paragraph 4.

otherwise publicly available making it difficult to ascertain how effective the Prosecutor's Office is in the field of non-discrimination. Comments from NGOs in Kyrgyzstan, however, suggest that little action is taken by the Prosecutor's Office, with Tolkunbek Isakov, Director of "Legal Assistance to the Disabled" criticising the Prosecutor's Office in 2016 for its inaction with respect to enforcing the rights of persons with disabilities.²²³

2.4 Conclusions

The legal framework on equality and non-discrimination in Kyrgyzstan is composed of the Constitution, international treaties, and national law. However, there is no comprehensive protection from discrimination and the framework as a whole does not sufficiently protect the rights to equality and non-discrimination. In particular, the Constitutional guarantee of equality does not include the grounds of sexual orientation, gender identity, disability and health status. Further, although there are specific laws protecting women and persons with disabilities, these laws have not been directly invoked.

The enforcement of the legal framework is patchy. Although there is broad standing to bring a claim before the Constitutional Chamber, it has heard very few cases involving the rights to equality and non-discrimination and the role of the Chamber has been severely circumscribed by the amendments to the Constitution. Legal aid entitlement and the burden of proof in cases of discrimination are inconsistent with international best practice and the Ombudsperson has had little role to play in advancing the rights to non-discrimination and equality.

The most concerning development is the approval of the amendments to the Constitution in December 2016; these amendments negatively impact both the legal framework and the enforcement mechanisms. In particular, the amendments jeopardise the automatic incorporation of international law, expressly remove the precedence of international human rights law and describe marriage as being between men and women. Furthermore, the restrictions on the role of the Constitutional Chamber undermine both the independence of the judiciary and the ability of the judiciary to act as an effective counterbalance to the executive and legislature.

223 Ganyeva, N., "Only 10% of the rights of persons with disabilities are implemented in Kyrgyzstan", *24.kg*, 25 April 2016, available at: http://24.kg/obschestvo/31201_prava_lovz_v_kyrgyzystane_realizuyutsya_na_10_protseptov_/

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in Kyrgyzstan. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Kyrgyzstan. It is based on original direct testimony collected from a wide range of individuals, together with analysis of research undertaken by authoritative sources in the last decade. We have sought to corroborate all facts and provide accurate attribution of all statements.

This part of the report focuses on discrimination and inequality arising on the basis of (i) religion or belief; (ii) ethnicity and language, with a particular focus on discrimination experienced by ethnic Uzbeks; (iii) gender; (iv) sexual orientation and gender identity; (v) political opinion; (vi) disability; and (vii) health status.

In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

3.1 Discrimination and Inequality on the Basis of Religion or Belief

Kyrgyzstan is required to ensure the enjoyment of all rights guaranteed under the ICCPR and the ICESCR without discrimination on the basis of religion by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Kyrgyzstan is required by virtue of Article 26 of the ICCPR to ensure that its law prohibits discrimination on grounds including religion. Under Article 18 of the ICCPR, read together with Article 2, the state is required to guarantee the equal enjoyment, without discrimination, of the right to freedom of religion. Both the CESCR and the HRC have confirmed that the obligations of non-discrimination arising under the Covenants include a prohibition on both direct and indirect discrimination.²²⁴

224 United Nations 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*

As set out in Part 2 of this report, Article 16 of the Constitution of Kyrgyzstan contains provisions prohibiting discrimination on the basis of religion. There are also a number of other provisions related to religion designed to protect Kyrgyzstan as a secular state and to promote religious harmony. Article 1, paragraph 1 states that Kyrgyzstan is a “secular” state. This is reinforced, in particular by Article 7 which provides that there shall be no state or mandatory religion in the country and that religion and cults shall be separate from the state. Article 7 also prohibits the involvement of religious associations and ministers of religion in the activity of state authorities. The prohibition on religious organisations involving themselves in politics is also found in Article 4, paragraph 4, subparagraph 3 which prohibits the “creation of political parties on [a] religious or ethnic basis as well as pursuit of political goals by religious associations”. Article 4, paragraph 4, subparagraph 5 which prohibits religious organisations from pursuing political goals aimed at altering the constitutional framework, undermining national security or inciting social, racial, inter-national, inter-ethnic or religious hatred. Article 31, paragraph 4 prohibits propaganda of, *inter alia*, religious hatred.

The Constitution also contains provisions guaranteeing freedom of religion. Article 32 in particular, guarantees “freedom of conscience and belief”, the right to “confess individually or jointly with other persons any religion or not to confess religion” and the right to “freely choose and have religious and other convictions”. Article 32 also prohibits anyone from being forced to express his or her religion and other convictions or to deny them.

Discriminatory Legal Provisions

Given the clear constitutional separation of state and religion, and its guarantees of freedom of religion, it is somewhat surprising that, in practice, religious organisations and their activities are heavily regulated by the state. In 2008, the state adopted the Law of the Kyrgyz Republic “On Freedom of

Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, 2009, Para 10; United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 1994, Para 7. While the terms “purpose” and “effect” in General Comment No. 18 are not equivalent to direct and indirect discrimination respectively, the scope of prohibited behaviours covered by the definition referring to “purpose or effect” is coextensive with a prohibition of both direct and indirect discrimination.

Conscience and Religious Organisations in the Kyrgyz Republic” which prohibits any religious organisation from undertaking any activities, religious or otherwise, unless it has first been registered with the State Commission on Religious Affairs (SCRA).²²⁵ The Law replaced an earlier law from 1991. Whilst the Law, the process for registration it sets out, and the restrictions it places on religious organisations apply equally to all, the vague wording in certain parts, and the Law’s application in practice result in certain minority religions and their adherents being disadvantaged, particularly the Ahmadiyya Muslim community, Jehovah’s Witnesses and smaller religious groups.

The Law was widely criticised when it was adopted, including by the country’s Ombudsman and the Organization for Security and Co-operation in Europe (OSCE).²²⁶ In 2014, the HRC, albeit in the context of Article 18 of the ICCPR (the right to freedom of conscience and religion) expressed its concerns over:

*[T]he restrictions in the current law that are incompatible with provisions of the Covenant, including with respect to missionary activities, the registration procedure and dissemination of religious literature.*²²⁷

The Committee went on to call for the Law to be amended to:

*[R]emove all restrictions that are incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process for religious organizations and eliminating distinctions among religions that may lead to discrimination.*²²⁸

225 Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic”, 31 December 2008, № 282, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202498>.

226 Corley, F., “KYRGYZSTAN: President’s signing of restrictive Religion Law condemned”, *Forum 18 News Service*, 13 January 2009, available at: http://www.forum18.org/archive.php?article_id=1240.

227 United Nations Human Rights Committee, *Concluding Observations: Kyrgyzstan*, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 22.

228 *Ibid.*

The registration process set out under the Law has been described as “cumbersome and arbitrary”,²²⁹ requiring the documented support of at least 200 citizens and the submission of various documents to the SCRA for approval.²³⁰ The list of documents required includes the full details of the 200 citizens; the religious organisation’s charter; minutes from its initial meeting; and information about the religious organisation and its practices, history, attitude towards the family, marriage and the health of its adherents.²³¹

Where the religious organisation has its primary base outside of Kyrgyzstan, the process is even more complicated and the SCRA has the discretion to deny registration if it considers that any of the organisation’s activities pose a threat to national or public security, inter-ethnic or inter-religious harmony, or public health or morality.²³² Additionally, “foreign” based religious organisations are required to re-apply for registration annually.²³³ The whole process can take anywhere from a month to several years to complete and every congregation of a religion must register separately.²³⁴ Even if approved, the religious organisation is still not a legal entity and so cannot own property, open bank accounts or engage in contractual activity.²³⁵ In order to become a legal entity, it is required to undertake a second registration process with the Ministry of Justice.²³⁶

In addition to the requirement that at least 200 citizens support the registration of a particular religious organisation, the Law also requires that the list of citizens be notarised and approved by a local authority in each location that it wishes to practice.²³⁷ This is a burdensome requirement which creates many problems. The Law requires all of the details of the 200

229 Freedom House, *Freedom in the World 2015: Kyrgyzstan*, 2016, available at: <https://freedomhouse.org/report/freedom-world/2016/kyrgyzstan>.

230 See above, note 225, Article 8, paragraph 3 and Article 10 respectively.

231 *Ibid.*, Article 10, paragraph 2.

232 *Ibid.*, Article 11, paragraph 8.

233 *Ibid.*, Article 11, paragraph 7.

234 United States Department of State, *International Religious Freedom Report for 2014: Kyrgyzstan*, 2015, p. 2, available at: <http://www.state.gov/documents/organization/238710.pdf>.

235 *Ibid.*, p. 3.

236 *Ibid.*

237 See above, note 225, Article 10, paragraph 2.

citizens to be provided to the authorities, but individuals in some religious communities, such as the Baha'i are unwilling to be identified, meaning in some cases that a list of 200 citizens cannot be made.²³⁸ The Equal Rights Trust spoke with a Baha'i representative in late 2014, who (while apparently misunderstanding the precise requirements of the registration process) confirmed that his organisation had not been reregistered after the 2008 Law came into force:

*Here in Kyrgyzstan we should have 500 members to get registered according to the legislation (...) We have an office and we, the society of Bahai (Bahauallah), were registered in Kyrgyzstan since 1992, but we were not re-registered.*²³⁹

Moreover, for some religious minorities, such as Hare Krishna devotees and Catholics, there are not 200 members in some areas, meaning they are not able to register at all.²⁴⁰ One expert advised us that for many organisations, it is impossible to assemble 200 people together to support an application for registration as such an assembly is prohibited unless the relevant religious organisation is registered.²⁴¹ Thus, it appears that the requirement of securing 200 signatures in each local area where a religious organisation wishes to register, while applying equally to all organisations, disproportionately disadvantages minority religious groups, thus constituting indirect discrimination.

Indeed, since the new Law came into force in 2009, no religious organisation that is not Muslim or Russian Orthodox has succeeded in registering.²⁴² Indeed, the Equal Rights Trust was informed by one expert that new

238 Forum 18, *Kyrgyzstan UPR submission, June 2014*, Para 12, available at: http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/forum_18_-_forum_18.pdf; Bayram, M., "KYRGYZSTAN: "Don't meet for worship"", *Forum 18 News Service*, 13 August 2009, available at: http://www.forum18.org/archive.php?article_id=1336.

239 Equal Rights Trust, Interview with R., 24 November 2014.

240 See Forum 18, above, note 238.

241 Equal Rights Trust, Interview with R., 2 November 2016.

242 Equal Rights Trust, Interview with K., Expert on Religion in Kyrgyzstan, 2 November 2016. K previously worked in the State Committee for Religious Affairs and has multiple years' experience working on inter-faith and religious freedom issues in Kyrgyzstan.

dioceses of the Russian Orthodox Church have not been registered since 2012.²⁴³ While registrations made before 2009, under the 1991 Law remain valid at present, it appears to be the intention of Parliament to make re-registration mandatory.²⁴⁴

Many religious organisations have been refused registration, even when they meet the requirements. For example, in 2009 the SCRA refused to register the Ahmadiyya community, a minority Muslim sect which is considered heretical by many other Muslims, despite having registered the community under the 1991 law in 2002. This happened after the Spiritual Administration of Muslims of Kyrgyzstan called for the activities of the Ahmadiyya be suspended as they posed a “threat to religious security”.²⁴⁵ The Ahmadiyya community appealed this decision up to the level of the Supreme Court and at each level, the decision of SCRA was upheld. In its judgment, the Supreme Court noted that the registration of the Ahmadiyya community might lead to “interfaith hostility” between Sunni Muslims and the Ahmadiyya creating a “real threat to public order and stability in the country.”²⁴⁶ Separately, in 2012 the Ministry of the Interior unsuccessfully applied to have the Ahmadiyya deemed an “extremist organisation”. At the time of drafting this report, the Ahmadiyya community retains its “legal entity” status, allowing them to undertake commercial activities, but has not been successful in registering under the 2008 Law, meaning they are not permitted to organise themselves as a religious community.

In 2014, the Equal Rights Trust interviewed a representative of the Ahmadiyya community in Bishkek. He recounted the difficulties faced by his community in securing registration, both before and after the entry into force of the new law.

243 *Ibid.*

244 *Ibid.*

245 Radio Free Europe / Radio Liberty, “Kyrgyz Officials Reject Muslim Sect”, rferl.org, 30 December 2011, available at: http://www.rferl.org/content/kyrgyz_officials_reject_muslim_sect/24438562.html.

246 Decree of the Supreme Court of the Kyrgyz Republic, Case No. AD-130/13, 10 July 2014.

**Case Study 1: An Ahmadiyya representative
on the difficulties faced in registering a religious organisation²⁴⁷**

The state did not permit us to register in 1996. Only in 2002 did it become possible to register our community, but [the registration] was limited by the following terms: for one year or one and 5 months. This continued until 2008, when we were refused registration for one year and 9 months. Since that time we do not have registration and do not have an opportunity to conduct our religious rituals.

In 2008, we applied to the State Commission for Religious Affairs and submitted an application to register us. The Commission had to get approval from The State Committee for National Security [who] did not answer for one and half years. The State Committee for National Security made their decision based on the negative answer from the Spiritual Directorate of Kyrgyz Muslims. Thus, the state registration of Ahmadiyya community was refused.

We filed complaints to the Ministry of Internal Affairs, the Parliament, the Prosecutor General's office. We reached the Supreme Court; the verdict was the same everywhere – refusal to register. The state bodies did not give a clear answer to our question why registration was refused.

We applied to the first, second, third and the current President, Almazbek Atambayev and we either receive a negative answer, or no answer at all. The state bodies ask the Spiritual Directorate of Kyrgyz Muslims to give recommendations and the Directorate naturally refuses to give positive recommendation to our community because the Directorate does not acknowledge us (...)

State and law enforcement bodies put pressure on our community and obstructed the state registration. The registration was refused based on groundless accusations of extremism by state bodies such as the Ministry of Internal Affairs, the State Committee for National Security and the State Commission for Religious Affairs. [They] accused our religious community of terrorism.

247 Equal Rights Trust, Interview with M., a representative of the Ahmadiyya community, Bishkek, 24 November 2014.

In 2012 and in early 2013 (...) we applied to district, city level courts and the Supreme Court asking to review the issue of the registration (...) the courts did not want to hear us; they were eating sunflower seeds during court hearings. All of the state bodies defame us, issue unfair verdicts and do not let us register.

Where a list of 200 citizens is prepared, the Law requires that it is “approved” by the relevant local authority. However, the Law does not set out the criteria by which local authorities decide whether or not to “approve” the list put forward. Between 2011 and 2013, several local authorities refused to approve the lists provided by a number of Jehovah’s Witnesses congregations.²⁴⁸ In 2014, several of these congregations brought a case to the Constitutional Chamber of the Supreme Court arguing that certain provisions of the Law were unconstitutional.²⁴⁹ Specifically, they challenged the prohibition on undertaking religious activities without being registered, the requirement that at least 200 citizens support the application for registration, and the requirement that the local authority in each area approve the list of citizens. They argued that these provisions constituted a violation of the right to non-discrimination (Article 16 of the Constitution), the right to freedom of conscience and religion (Articles 32 of the Constitution) and the right to freedom of association (Article 35 of the Constitution).

The Constitutional Chamber’s decision included two key elements: first, that while the prohibition on unregistered religious organisations undertaking any activity was not itself unconstitutional, once a religious organisation had been registered, it could undertake activity anywhere in Kyrgyzstan and not only in the location where it was based. Second, while the requirement

248 European Association of Jehovah’s Christian Witnesses, *Contribution to the Report of the U.N. High Commissioner for Human Rights prepared pursuant to the new review mechanism of the Human Rights Council, established by GA Resolution 60/251 and by the Human Rights Council in Resolution 5/1 of 18 June 2007 for the 21st session of the UPR (Jan/Feb 2015): Kyrgyzstan*, June 2014, p. 2.

249 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on the constitutionality of paragraphs 2 and 3 of Article 8 and subparagraph 3 of part 2 of Article 10 of the Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic” in connection with the application of the Religious Centre of Jehovah’s Witnesses in the Kyrgyz Republic, 4 September 2014.

that at least 200 citizens support the application for registration was not a restriction on freedom of religion and not unconstitutional, the requirement that the list be approved by the local authority *was* unconstitutional. Article 112 of the Constitution sets out the powers of local authorities but limits them to decisions “of local significance”. The Constitutional Chamber concluded that as the registration process was the function of a state body – the SCRA – it was not an issue “of local significance”. Furthermore, as the Law did not set out a process for determining eligibility for the list, there was inconsistency and differing interpretations amongst local authorities. The Law also failed to provide for any process of appeal against refusal to approve the list of citizens, depriving individuals of the ability to have their rights protected by a court. This resulted in violations of the right to freedom of association.

The Constitutional Chamber thus held that the requirement of local authority approval of the list of citizens violated Article 35 of the Constitution, and required the Jogorku Kenesh to amend the Law accordingly. The Constitutional Chamber also recommended that the Jogorku Kenesh amend the Law to require religious organisations to inform local authorities of the activities they would be carrying out in the area, after accepting that the activity of religious organisations could influence decisions “of local significance”. As of 2016, however, the Law has not been amended and, despite the Constitutional Chamber’s decision, the SCRA and many local authorities continue to apply the provision declared unconstitutional, refusing to register Jehovah’s Witnesses associations,²⁵⁰ for example.

In October 2014, proposals were mooted to amend the 2008 Law, introducing greater restrictions. The proposed amendments included: a requirement that anyone working in any role within a religious organisation should apply for a licence from SCRA on an annual basis; an increase in the minimum threshold for registering a religious organisation from 200 citizens in support to 500; and increased penalties for breach of the Law’s provisions.²⁵¹ These proposals have not resurfaced since October 2014, but one expert interviewed by the

250 Bayram, M., “KYRGYZSTAN: Impunity for officials, mob and torturers ignoring law”, *Forum 18*, 3 March 2016.

251 Bayram, M., “KYRGYZSTAN: “Draconian” proposed Religion Law and Administrative Code changes”, *Forum 18 News Service*, 24 October 2014.

Equal Rights Trust in 2016 indicated that they may re-appear following the Presidential elections in 2017.²⁵²

Discrimination by State Actors

Without being registered, any activity undertaken by a religious body is illegal. This leaves members of religious minority groups disproportionately exposed to harassment, interference and enforcement action by the law enforcement agencies. For example, M., the Ahmaddiya representative who explained the difficulties which his community experienced in registration procedures, also spoke about Ahmaddiya experiences of harassment by police:

There were cases when police brought members of our community in Bishkek and Osh cities to police stations. The state structures and law enforcement bodies put strong pressure and blackmail our community (...) In our country Sunni Islam (administered by Muftiyat) and Russian Orthodox Christianity (...) are considered to be official religions. The state bodies refer to the letter from the president [about this]. The state bodies put strong pressure on us (...) [A]llegedly the State Committee for National Security has literature where we call for terrorism. The Prosecutor-General's office refers to this in their answers to us.²⁵³

Without being registered, any religious activity by the Jehovah's Witnesses is prohibited, resulting in police raids. In May 2013, police raided a meeting of Jehovah's Witnesses in the apartment of a Witness, beating several of the men and making lewd comments towards some of the women.²⁵⁴ In August 2015, police in Osh raided a Jehovah's Witness service, shouting at the attendees

252 Equal Rights Trust, Interview with K., an Expert on Religion in Kyrgyzstan, 2 November 2016. K previously worked in the State Committee for Religious Affairs and has multiple years' experience working on inter-faith and religious freedom issues in Kyrgyzstan.

253 Equal Rights Trust, Interview with M., a representative of the Ahmadiyya community, Bishkek, 24 November 2014.

254 See above, note 248, p. 3.

and beating one of the men.²⁵⁵ The police took ten of the men to the police station, detaining them for three hours and physically assaulting them. One of the ministers, Nurlan Usupbaev, was charged with breaching the law on religious organisations, an administrative offence under Article 395 of the Code of Administrative Responsibility. The case was, however, decided in favour of Nurlan Usupbaev with the judge relying on the decision of the Constitutional Chamber regarding Jehovah's Witnesses.²⁵⁶

A number of people interviewed for this report also highlighted regular police harassment of Muslim men with beards. One interviewee said that "Sometimes the police detain and take people to a police station to identify who they are or find out some other details when they see men who appear to be Muslim according to their attire and beards."²⁵⁷

Violence and Hate Speech

There is evidence of isolated incidents of violence motivated by religion. One individual interviewed for this report told us about an incident in September 2015 in Kashkar Kishlak where a group of masked men broke into the house of an Ahmadiyya man and attacked him and his family, resulting in him being stabbed; the same person stated that in one incident, another member of the Ahmadiyya community was shot twelve times in the street.²⁵⁸ In other interviews conducted for this report, members of the Ahmadiyya community and Christian evangelists also reported violent hate crime and harassment, based on their religious views.²⁵⁹ For example, a man named Sharshenbak, spoke about a number of violent incidents affecting the Baptist community.

255 European Association of Jehovah's Christian Witnesses, *Statement to the OSCE Human Dimension Implementation Meeting, Warsaw: Jehovah's Witnesses in Kyrgyzstan: Religious Freedom Concerns*, September 2015, p. 2.

256 See above, note 249.

257 Equal Rights Trust, Interview with Irsalat, Batken, 18 June 2014.

258 Equal Rights Trust, Interview with H., 4 November 2016.

259 Equal Rights Trust focus group in Bishkek, 24 November 2014.

Case Study 2: Baptist Experiences of Violence²⁶⁰

In villages there are reports of violence, verbal abuse, and beatings.

One woman was dragged around by the hair. In Naryn Region, in Eki Naryn district, [some of] our members were dragged along by horses.

In Ak-Tala village, two years ago [2012] on New Year's eve, we were handing over Christmas gifts from our community to Christian and non-Christian children. Our goal was to make children happy. There was no hint of religious campaigning. We made arrangements with the local authorities and some non-governmental organizations in advance. Religious people gathered in a crowd after finding out about [what we were doing]. Drunken people turned against us (...) began beating us (...) trampled our gifts, broke our cars, verbally abused and cursed us (...) They began to walk around and threaten that they would kill our children. They regularly persecuted us. Persecution of our co-religionists is a usual event in our villages.

Our co-religionist is an honorary citizen of Naryn city for services because he arranged water pipelines in 40 villages, built sports facilities and arranged sports events from his own money as charity.

Reports from other organisations indicate that other communities are also exposed to violence. On 30 November 2012, for example, a mob attacked a Jehovah's Witness Kingdom Hall in Toktogul.²⁶¹ Five people were convicted for inciting religious hatred against Jehovah's Witnesses.²⁶²

In addition, our research identified evidence of speech which could constitute hate speech, by the *Muftiyat*, the highest Muslim religious body in the country, against Ahmaddiya, who practice a heterodox interpretation of Islam, which

260 Equal Rights Trust, Interview with Sharshenbek, Bishkek, 24 November 2014.

261 See above, note 248, p. 3.

262 *Ibid.*

is considered heretical by other Muslim sects.²⁶³ M., an Ahmaddiya representative, told our researchers that:

[The] mullahs say that it is prohibited to go to a mosque with us, that Muslims should not greet us, and that we should not marry their daughters. They say disgusting things about us (...) write complaints to all state bodies, the State Committee for National Security, the Commission for Religious Affairs so that we are destroyed. They threaten and harass us so that we give up on our community.

Hate speech has been defined as intentional promotion of hatred which incites violence, discrimination or hostility on grounds including religion.²⁶⁴ Given the prominent public position of the *Muftiyat*, there is a genuine risk that statements such as those cited above could incite violence, discrimination or hostility.

Employment

The Special Rapporteur on freedom of religion or belief affirms that states “have a formal responsibility to prevent and eliminate all forms of intolerance and discrimination based on religion or belief, including in the workplace.”²⁶⁵ In 2014, the United Nations Human Rights Council expressed its concern about the ongoing problem of religious intolerance in Kyrgyzstan and emphasised the state’s duty to implement a comprehensive range of measures to ensure that such discrimination is eliminated.²⁶⁶ Despite this, our research for this report found significant evidence of discrimination on the basis of religion in employment.

263 Valentine, S. R., *Islam and the Ahmadiyya Jama’at: History, Belief, Practice*, Hurst Publishers, 2008, pp. 127–128.

264 See Principle 12 in Article 19, *The Camden Principles on Freedom of Expression and Equality*, April 2009; Article 20(2), International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966.

265 United Nations General Assembly, *Interim report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/69/261, 5 August 2014, Para 69.

266 See above, note 227, Para 22.

Those interviewed for this report described widespread discrimination in employment against Muslims considered more overtly and demonstrably religious. For example, one focus group respondent in Naryn stated that Muslims are unable to secure posts in public administration: “[if a Muslim] wants to get a position at a state or local body he is told how can he become a deputy of district head? It is said in order not to hire a Muslim”.²⁶⁷

A number of people interviewed for this report reported that people who are identified as demonstrably religious, particularly Muslim men who have beards and women who wear hijabs, find it difficult to gain employment. In Talas, Baktygul, a focus group participant stated that he knew of a case in which a man was refused employment because he wore a beard, with the employer placing “conditions that [if] he shaves his beard and he will be accepted to work at a bank”.²⁶⁸ In Naryn, a woman, Farida, told our researchers that “many young women face hardships in employment due to religious views”, continuing:

*My classmate found a work at a kindergarten; she is religious and wears the Muslim headscarf. She was told to take off her scarf in order to continue her work. A director of the kindergarten told her that it is prohibited to work at the kindergarten in religious clothing.*²⁶⁹

Irsalat, another woman interviewed by the Trust, spoke of her experience of discrimination by employers and harassment by colleagues arising as a result of her decision to wear a headscarf:

I got job at a state-run company that maintains roads. I wore the hijab, but they required me to wear miniskirt and have makeup. I had to leave. They took another woman who wore a miniskirt and had makeup (...) Muslims like me who look different and wear different clothes are treated differently, mostly people speak ill of us and spread rumours about us (...) For example, if I

267 Equal Rights Trust, Interview with Karybek, Naryn, 25 June 2014.

268 Equal Rights Trust, Interview with Baktygul, Talas, 23 June 2014.

269 Equal Rights Trust, Interview with Farida, Naryn, 25 June 2014.

*want to work, my colleagues will not like me because we are different in clothing, we always wear Muslim attire while they do not. They wear secular dresses; revealing some parts of body which is strictly forbidden for us Muslim women. So, for example, it happened when I used to work in a regional road department. I had to quit my job due to their dislike of my clothing.*²⁷⁰

In addition to these examples of direct discrimination, our researchers were told of failures to accommodate the needs of religious persons. One focus group respondent in Naryn stated that “[i]f I ask a permission to attend Friday prayers my bosses tell me to go and work at the very mosque where I go to pray”.²⁷¹

In addition to discrimination against demonstrably devout Muslims, the Equal Rights Trust’s researchers received evidence of discrimination against the marginalised Ahmaddiya minority sect. M., an Ahmaddiya representative told our researchers that:

*The State Committee for National Security forced a director of a private company to fire an employee due to his belonging to our religious community. In addition to that he was told to get out of the country.*²⁷²

Education

As in the area of employment, a number of people interviewed for this report stated that students who wore a hijab were either forced to remove it or were harassed by staff or other students. For example, Turdubek, a focus group participant in Naryn recounted the story of a girl with a disability, stating that the Deputy Principal of the school “forces her to take off her religious clothing and always harasses her”.²⁷³ Farida, also from Naryn, stated:

270 Equal Rights Trust focus group, Batken, 18 June 2014; Equal Rights Trust, Interview with Irsalat, Batken, 18 June 2014.

271 Equal Rights Trust, Interview with Kuban, Naryn, 25 June 2014.

272 Equal Rights Trust, Interview with M., a representative of the Ahmadiyya community, Bishkek, 24 November 2014.

273 Equal Rights Trust, Interview with Turdubek, Naryn, 25 June 2014.

School children were not allowed to go to the school in Ak-Talaa district because they were wearing Muslim hijab. Also, the administration of a college puts pressure [on those] who wear hijab.²⁷⁴

Another focus group participant, in Batken, stated that harassment of girls wearing religious clothing is a problem in that area:

In schools pupils can be harassed; there were cases when a teacher said rude things to pupils and also pupils were kicked out of school, especially during Ramadan. It is allowed to wear Muslim scarves in schools but teachers do not like it.²⁷⁵

However, our researchers were also given evidence that the state and local authorities have acted to address this form of discrimination in education and to take enforcement action against those responsible in some cases. Thus, in Talas, two individuals recounted a case in which two girls were dismissed from a college for wearing the hijab. There was then an investigation involving the regional education department, the girls were readmitted to school and the Deputy Principal was dismissed.²⁷⁶

Cemeteries

A common concern raised in interviews for this report was the refusal of local authorities to provide spaces in cemeteries for individuals in minority religions. In 2009, for example a young Baptist boy from the village of Kulanak died, but the local authority refused to allow him to be buried in the local cemetery as a warning to Muslims who converted to another religion.²⁷⁷ His relatives ultimately had to bury him 30km away from the village. In another example, from Issyk-Kul, an older Baptist man died in a predominantly Muslim village. Despite having permission from the local authority to bury him in the village's cemetery, the local residents refused to allow it and threatened

274 Equal Rights Trust, Interview with Farida, Naryn, 25 June 2014.

275 Equal Rights Trust, Interview with Isralat, Batken, 18 June 2014.

276 Equal Rights Trust, Interview with Myskal and Bakhtiyar, Talas, 23 June 2014.

277 Equal Rights Trust, Interview with Sharshenbek, Bishkek, 24 November 2014.

the man's family with physical violence if they attempted to do so. They ultimately had to bury him in a Christian cemetery 50km away.²⁷⁸

Conclusions

While the Constitution of Kyrgyzstan establishes the state as secular, and guarantees both freedom of religion and non-discrimination on the basis of religion or belief, the state maintains a legal regime which discriminates against members of minority religious groups. In particular, the Law of the Kyrgyz Republic "On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic" establishes a regime of legal registration which indirectly discriminates against members of small or geographically dispersed religious groups such as the Bahai, Ahmaddiyya and Jehovah's Witness communities. There is evidence that members of groups which have not been able to register are subject to discrimination by law enforcement agencies, and that such groups are also vulnerable to discriminatory violence and hate speech. In addition, despite the fact that Kyrgyzstan is a majority Muslim country, our research also found evidence of discrimination against more demonstrably religious Muslims, based on their clothing and appearance.

3.2 Discrimination and Inequality on the Basis of Ethnicity

As noted above in Part 2, Kyrgyzstan is required to prohibit discrimination against persons on the basis of their race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Kyrgyzstan is also required by Article 26 of the ICCPR to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground", including on the basis of race, colour and national origin. In addition, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Kyrgyzstan is required to prohibit all forms of discrimination on the basis of race, colour, descent, national and ethnic origin.

²⁷⁸ *Ibid.*

It is well established that in international human rights law, regardless of the way in which different social sciences distinguish between the terms “race”, “colour”, “national origin”, “ethnicity”, “ethnic origin”, and “descent”, they are equivalent legal terms when designating prohibited grounds of discrimination.²⁷⁹ The term most relevant to Kyrgyzstan within this family of protected characteristics is “ethnicity” and therefore this is the terminology employed in this section.

As noted above in Part 1 of this report, as of 1 January 2016, ethnic Kyrgyz made up 73.0% of the total population of Kyrgyzstan. The two most sizeable ethnic minorities are Uzbeks (14.6%) and Russians (6.0%).²⁸⁰ Much smaller ethnic minorities include Dungans (1.1%), Uighurs (0.9%), Tajiks (0.9%), Turks (0.7%), Kazakhs (0.6%) and Tatars (0.5%).²⁸¹

Our research identified little evidence of discrimination affecting ethnic Russians, and as such, the majority of this section focuses on the experiences of ethnic Uzbeks in different areas of life. The section then looks at discrimination and disadvantages experienced by other ethnic minorities, namely Uighurs, Dungans and Lyuli.

3.2.1 Discrimination and Inequality Affecting Uzbeks

There are approximately 880,000 ethnic Uzbeks in Kyrgyzstan, located mostly in the south of the country and in the cities of Osh and Jalal-Abad.²⁸² Whilst the ethnic Uzbek community are in many ways generally well-integrated, the research for this report found evidence of discrimination and disadvantage in a number of different areas of life. This section of the report starts by looking at the inter-ethnic tensions between ethnic Uzbeks and the majority ethnic Kyrgyz population which have – notably in 1990 and 2010 – resulted in inter-ethnic violence coupled with persecution and human rights violations

279 See, for example, Article 1 of the International Covenant on the Elimination of All Forms of Racial Discrimination which states that “racial discrimination” includes discrimination on the basis of “race, colour, descent, or national or ethnic origin” and United Nations Committee on Economic, Social and Cultural Rights, above, note 224, Para 19 which states that “Discrimination on the basis of ‘race and colour’ (...) includes an individual’s ethnic origin”.

280 National Statistical Committee of the Kyrgyz Republic, “5.01.00.03 Total population by nationality”, available at: <http://www.stat.kg/en/statistics/naselenie>.

281 *Ibid.*

282 *Ibid.*

targeted at ethnic Uzbeks both during and after the conflicts. The section then looks at the experience of ethnic Uzbeks in other areas of life. The concerns of many ethnic Uzbeks with regards to the Uzbek language, namely the difficulties in receiving education in the Uzbek language and the near-absence of Uzbek-language media, are dealt with in Part 3.2 below.

Inter-ethnic Conflict

Kyrgyzstan's recent history has been marred by inter-ethnic conflict, predominantly between ethnic Kyrgyz and ethnic Uzbeks, with two large-scale clashes taking place in June 1990 and June 2010. The causes of these conflicts are complex with their roots in the historical and cultural differences between the two groups, the policies of the Soviet Union, and actual and perceived socio-economic and political inequality between the two groups.²⁸³

Background

During the Soviet period, the Soviet Socialist Republics (SSRs) were established on the basis of ethnic lines with the titular ethnic group given a privileged status within their own SSR. Whether as a result of a deliberate "divide and rule" policy, poor ethnographic data, or to ensure that all SSRs had viable urban centres, the boundaries of the SSRs did not always reflect the actual ethnic divisions.²⁸⁴ Thus, while the titular ethnic group was in the majority in each state, a number of the states had significant ethnic minorities. This was true of the Kyrgyz SSR: when its borders were drawn, much of the southern part, including cities such as Osh and Jalal-Abad, were predominantly inhabited by ethnic Uzbeks. As such, a large concentration of ethnic Uzbeks found themselves living in the Kyrgyz SSR instead of the Uzbek SSR. As a result of the privileged status of the "titular" ethnic Kyrgyz under the Soviet system, ethnic Uzbeks were disadvantaged and unrepresented, leading to frustration and resentment.²⁸⁵

283 For further reading, see Rezvani, B. "Understanding and Explaining the Kyrgyz-Uzbek Interethnic Conflict in Southern Kyrgyzstan", *Anthropology of the Middle East*, Vol. 8(2), Winter 2013, pp. 60–81.

284 Rezvani, B., *Conflict and Peace in Central Eurasia: Towards Explanations and Understandings*, Brill, 2015, p. 224.

285 See above, note 283, p. 66. See also Minority Rights Group International, *Kyrgyzstan – Uzbeks*, 2011, available at: <http://minorityrights.org/minorities/uzbeks-2>.

In addition, whilst ethnic Uzbeks in these areas were traditionally sedentary traders and farmers, the nomadic and semi-nomadic ethnic Kyrgyz moved across the territory over the different seasons.²⁸⁶ With the adoption of Soviet policies of forced collectivisation, these two discrete economic and social structures were disrupted as ethnic Kyrgyz began to settle in areas already inhabited by ethnic Uzbeks, putting pressure on local resources.²⁸⁷

1990 Violence

Towards the end of the 1980s, pre-existing tensions were exacerbated by falling living standards across the country and political destabilisation, resulting in greater competition for resources (such as land), housing and power structures.²⁸⁸ Growing unemployment meant greater numbers of ethnic Kyrgyz moving to Uzbek-majority cities like Osh and Jalal-Abad in the search for work.²⁸⁹

The late 1980s saw increasing ethno-nationalism on both sides. In 1989, the Uzbek community in Osh established the organisation “Adolat” and called for an autonomous Osh province and greater representation of ethnic Uzbeks in government.²⁹⁰ In May 1990, the ethnic Kyrgyz organisation, “Osh Aymaghi” was established, focusing on the problems faced by ethnic Kyrgyz, such as land shortages.²⁹¹ The Kyrgyz-dominated local government in Osh responded by allocating plots of land for housing to ethnic Kyrgyz on land owned by an Uzbek-dominated collective farm.²⁹²

286 *Ibid.*, p. 61.

287 Kyrgyzstan Inquiry Commission, *Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010*, 2011, p. 9; Lowe, R., “Nation Building and Identity in the Kyrgyz Republic”, in Everett-Heath, T., *Central Asia: Aspects of Transition*, Psychology Press, 2003, p. 110.

288 Fumagalli, M., “Framing ethnic minority mobilisation in Central Asia: The cases of Uzbeks in Kyrgyzstan and Tajikistan”, *Europe-Asia Studies* Vol. 59(4), 2007, p. 572; Kyrgyzstan Inquiry Commission, *ibid.*, Para 37.

289 See above, note 283, p. 66; Kyrgyzstan Inquiry Commission, *ibid.*, Para 34.

290 *Ibid.*, Rezvani, p. 67.

291 Haghayeghi, M., “Islam and Democratic Politics in Central Asia”, *World Affairs*, 156(4), 1994, p. 191.

292 *Ibid.*, p. 191; note 283, pp. 66–67.

The actions of the Osh local government sparked underlying ethnic tensions, resulting in violence which started on 4 June 1990.²⁹³ As Fumagalli has noted, “while it is safe to argue that the conflict had essentially socio-economic causes, it manifested itself along ethnic lines”.²⁹⁴ The violence lasted for only few days before being “extinguished” on 10 June after Soviet troops intervened and a state of emergency was declared; over 300 people had died during the conflict.²⁹⁵

2010 Violence

The causes of the conflict in 1990 were never effectively addressed, and were possibly exacerbated over the next twenty years by the under-representation of ethnic Uzbeks in public life and the growing force of ethno-nationalism in Kyrgyzstani politics.²⁹⁶

During the 2010 revolution, which saw the resignation of President Bakiyev after he declared a state of emergency following a series of protests across the country, President Bakiyev fled to Jalal-Abad, in the south of the country, where he enjoyed greater levels of support. Bakiyev’s supporters there organised, demonstrated and seized government buildings. The interim government in Bishkek responded by reaching out to the Uzbek population in southern Kyrgyzstan, particularly to Kadyrjan Batyrov, a wealthy Uzbek businessman and former deputy of the Jogorku Kenesh (the Kyrgyzstani parliament), whose supporters helped reclaim a building seized by Bakiyev’s supporters.²⁹⁷

The central role played by ethnic Uzbeks in these events empowered the community, and the announcement that there would be a referendum on a new draft constitution encouraged many to become more politically active. In early May 2010, representatives of the Uzbek community met with the interim government and set out their demands for greater representation of ethnic

293 See Kyrgyzstan Inquiry Commission, above, note 287, Paras 38–39.

294 See Fumagalli, above, note 288, p. 572.

295 See Kyrgyzstan Inquiry Commission, above, note 287, Para 39.

296 *Ibid.*, p. ii, Para. 2.

297 Human Rights Watch, “Where is the Justice?: Interethnic Violence in Southern Kyrgyzstan and its Aftermath, 2010, p. 20.

Uzbeks in government and the civil service and state recognition of the Uzbek language.²⁹⁸ The draft constitution published later the same month did not meet these demands.²⁹⁹ Meanwhile, many ethnic Kyrgyz, who had hitherto dominated politics, were concerned by the increasing presence of ethnic Uzbeks in political activism and discourse.

On 10 June 2010, fights in Osh between ethnic Kyrgyz and ethnic Uzbeks youths escalated into widespread violence. The violence lasted until 16 June, leaving around 470 dead and a further 1,900 requiring medical assistance at hospitals.³⁰⁰ The majority of the victims were ethnic Uzbeks.³⁰¹ Approximately 111,000 people were displaced to Uzbekistan and a further 300,000 were internally displaced within Kyrgyzstan.³⁰² An estimated 2,800 properties were damaged, the majority of which belonged to ethnic Uzbeks.³⁰³

An international inquiry into the violence – the Kyrgyzstan Inquiry Commission (KIC) – was heavily critical of the Kyrgyzstani authorities. The KIC found that, during the violence, many crowds of attackers seized firearms and ammunition from the military and the police, with little opposition. It found that over half of the weapons and thousands of rounds of ammunition were never recovered and criticised a failure on the part of the Kyrgyzstani authorities to carry out criminal and disciplinary investigations into the loss of weapons.³⁰⁴ There have also been allegations that the response of the Kyrgyzstani authorities during the violence differed depending on the ethnicity of those being attacked, with a greater focus on disarming ethnic Uzbeks, even when crowds of ethnic Kyrgyz were attacking Uzbek neighbourhoods.³⁰⁵

In 2013, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern over the failure of the Kyrgyzstani authorities

298 *Ibid.*

299 *Ibid.*

300 See Kyrgyzstan Inquiry Commission, above, note 287, p. ii, Para. 3.

301 *Ibid.*, p. ii, Para. 3.

302 *Ibid.*, p. ii, Para. 3.

303 *Ibid.*, p. ii, Para. 3.

304 *Ibid.*, p. 41–42.

305 For example, see above, note 297, p. 43.

both before and after the conflict to tackle the causes of inter-ethnic tension and violence. It also criticised the government's failure to collect all of the weapons and ammunition that were seized during the conflict. The Committee called on the authorities

*As a matter of urgency, [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.*³⁰⁶

The CERD went on to express its concern that unless action is taken, "the causes of such conflicts may continue to exist and may lead to other clashes".³⁰⁷

Discrimination by Law Enforcement Agencies During and After the 2010 Conflict

It is not only the failure to tackle the root causes of the ethnic divisions, including the actual or perceived disadvantage experienced by ethnic Uzbeks which raises concerns about discrimination against Uzbeks. There is also evidence of discrimination by law enforcement agencies against ethnic Uzbeks during and after the conflict that has caused concern, including in particular the treatment of ethnic Uzbeks during the investigation process and the disproportionate prosecution of ethnic Uzbeks for criminal offences committed during the conflict.

By December 2012, a total of 5,162 criminal investigations had commenced related to the violence in June.³⁰⁸ 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% Kyrgyz and 3% belonging to other ethnic groups.³⁰⁹ Of the 27 individuals accused of murder, 24 were Uzbeks and only 2 Kyrgyz.³¹⁰ The KIC concluded that "[g]iven the number of vic-

306 United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kyrgyzstan*, UN Doc. CERD/C/KGZ/CO/5-7, 19 April 2013, Para 5.

307 *Ibid.*, Para 5.

308 See Kyrgyzstan Inquiry Commission, above, note 287, p. 39.

309 *Ibid.*, p. 39.

310 *Ibid.*, p. 39.

tims, it follows that the Uzbeks are more than 30 times more often accused of murder than the Kyrgyz”.³¹¹

Uzbek participants at an Equal Rights Trust focus group in Osh alleged that Uzbeks had been unfairly targeted by law enforcement agencies for offences committed during the 2010 violence. One woman, F., spoke about her sons’ experience:

*I applied to all state bodies in search for truth but nobody listened to me starting from local government bodies to the governor. Nobody listened to me, let alone gave any assistance. My children are sentenced to life without any evidence, without fingerprints without anything, let alone weapon possession. My son was detained right on the street and right now he is in prison with a fabricated criminal case. That’s it. Even Jeenbekov [governor of Osh Region] said “I cannot help you with anything”.*³¹²

An Uzbek man, M., gave a detailed account of his arrest, prosecution and imprisonment, which he felt was a miscarriage of justice, arising because of prejudice against Uzbeks:

Case Study 3: Testimony of M., convicted for participation in the 2010 violence³¹³

I recently was released from prison. I served the term of four years due to the events [of June 2010]. The prosecutors demanded a life sentence three times.

Why did I go to jail? I was a volunteer. I had an authorization card – the authorities gave me that card. On 7 April 2010, I was given the card of volunteer called DDN based on an order of then president Roza Otunbayeva because I am a lawyer with higher education. We were protecting our neigh-

311 *Ibid.*, p. 39.

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

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

borhood and maintaining public order in our district. We worked hard after the killing of a police colonel. I assisted (...) 61 Kyrgyz girls who lived in our district and sent them home. I had a co-worker who is Kyrgyz. He on the contrary was sending Uzbek girls. We were not dealing with detaining hostages. We protected houses of Uzbek and Kyrgyz people from pogroms.

I met Kursan Asanov [deputy interior minister], I have all documents and photos but nevertheless I was incriminated and accused of killing three Kyrgyz people and was jailed. I was tortured behind the bars, humiliated in any way they wanted, with bruises and bodily injuries I applied to lawyers, human rights defenders but it did not help. I was given a lawyer after three days. But the lawyer said that nobody can help me at that moment. I asked why and he said "Your fault is that you are Uzbek". I was jailed. (...)

Both Kyrgyz and Uzbek people were living in a cell but those days Uzbek people outnumbered Kyrgyz, in other words 99 percent of prisoners were of Uzbek ethnicity (...) But thanks to appeal of those 61 Kyrgyz girls I am today out of prison. There also was an elder Kyrgyz man (...) I also helped him to move away. He helped me a lot. He attended all court hearings despite the fact that Kyrgyz people were calling him names for helping an Uzbek. But he did not give up. Be Allah merciful to him. Today I am out of prison and bring up my children but I do not have assurance that my children will live and work here freely.

M.'s assertion that he was subjected to torture is corroborated by other reports of ethnic Uzbeks being subjected to torture and ill-treatment whilst detained by law enforcement agencies during the investigations into the conflict.³¹⁴ In a 2011 report, Human Rights Watch concluded that, in the aftermath of the conflict, torture was used by law enforcement officials "on a widespread basis in their investigations".³¹⁵ Whilst there are also reports of torture and ill-treatment being inflicted upon a small number of ethnic Kyrgyz suspects, the disproportionate number of ethnic Uzbek suspects alleging torture and ill-treatment combined with the "widespread use of ethnic slurs

314 See above, note 306, Para 7.

315 Human Rights Watch, *Distorted Justice: Kyrgyzstan's Flawed Investigations and Trials of the June 2010 Violence*, 2011, p. 1.

during detention”, resulted in a conclusion that there were serious questions “about ethnic bias in the investigation and prosecution of perpetrators”.³¹⁶

According to Human Rights Watch, the torture and ill-treatment largely took place in the early hours and days of the detention, before the suspect had access to a lawyer or family members.³¹⁷ The methods varied:

*The main methods that police and other agents used were prolonged, severe beatings with rubber truncheons or rifle butts, punching, and kicking. Victims also reported that personnel placed gas masks or plastic bags over their heads in order to suffocate them; burned them with cigarettes; strangled them with a strap; or subjected them to electric shocks.*³¹⁸

The torture and ill-treatment was largely motivated by a desire to obtain confessions to particular crimes with detainees forced to confess that they had committed a particular crime or killed a particular person.³¹⁹ However several ethnic Uzbeks suspected of crimes entirely unrelated to the ethnic violence also reported torture and ill-treatment in the months following June 2010.³²⁰

Moreover, the violation of these suspects’ human rights was not limited to torture and ill-treatment, but often accompanied by the denial of various due process rights, such as the right to a lawyer of one’s choosing and to private consultations.³²¹ There have been allegations from lawyers that they were unable to meet with their clients for long periods of time and, when they could,

316 *Ibid.*, p. 3. See also Amnesty International, *Report 2015/16: The State of the World’s Human Rights*, 2016, pp. 224–225.

317 *Ibid.*, Human Rights Watch, p. 18.

318 *Ibid.*.

319 World Organisation against Torture, *Kyrgyzstan: Address Torture in EU-Kyrgyzstan Human Rights Dialogue*, 18 May 2015.

320 VOA News, “UN: Uzbeks Subject to Torture, Detention in Kyrgyzstan”, *VOA News*, 19 July 2010.

321 Helsinki Foundation for Human Rights, International Partnership for Human Rights and World Organisation against Torture, *Torture in Kyrgyzstan: Current concerns and recommendations*, 2015, p. 9.

they were unable to do so in private.³²² The trials of ethnic Uzbek defendants often failed to meet the standards of international human rights law. Evidence which had been obtained under torture was admitted into proceedings, and “confessions” made following torture and ill-treatment used in order to convict defendants.³²³ The KIC concluded that a number of lawyers representing Uzbek defendants were subject to improper interference and intimidation.³²⁴ As a result, many were fearful of questioning prosecution witnesses, calling defence witnesses or submitting certain arguments. Some of the judges before whom they appeared started proceedings to have the lawyers stripped of their right to practice and security forces attempted to confiscate their documents.³²⁵ These discriminatory actions have been heavily criticised by the United Nations Human Rights Committee (HRC), which urged Kyrgyzstan to ensure all human rights violations related to the ethnic violence were fully investigated and that “victims are compensated without any discrimination based on ethnicity,”³²⁶ and the CERD.³²⁷

One trial that garnered particular international attention was the prosecution of human rights defender Azimjan Askarov for instigating ethnic hatred, inciting disorder and being complicit in the murder of a policeman during the June 2010 violence. Mr Askarov was convicted but submitted an individual complaint to the HRC. In 2016, the HRC found that his detention, treatment and trial had violated several provisions of the ICCPR.³²⁸ Specifically the Committee found that treatment he received during his detention violated the prohibition on torture, cruel, inhuman or degrading treatment, the denial of access to and attacks on his lawyer as well as the handling of the trial violated his right to a fair trial under Article 14. The Committee called for Mr Askarov’s conviction to be quashed and his immediate release. The Supreme

322 See above, note 315, pp. 25–26.

323 Article 19, *Kazakhstan, Kyrgyzstan and Tajikistan: Human rights NGOs under increasing pressure from the authorities*, 2014.

324 See Kyrgyzstan Inquiry Commission, above, note 287, p. 60.

325 *Ibid.*, p. 60.

326 See above, note 227, Para 14.

327 See above, note 306, Para 6.

328 United Nations Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2231/2012*, UN Doc. CCPR/C/116/D/2231/2012, 11 May 2016.

Court refused to order the release of Mr Askarov, instead referring the case to a regional court for re-trial.³²⁹ The re-trial commenced in October 2016. Mr Askarov's lawyer told the Equal Rights Trust that he has applied to the court seeking the immediate release of Askarov under authority of the HRC opinion but has not been successful.³³⁰ Furthermore, he noted that key witnesses in the case continue to be subject to inhuman treatment and harassment by law enforcement officers and that he has heard reports that witnesses have been offered bribes to testify against Mr Askarov.³³¹

Post-2010 Developments and Policies

The intense ethnic nationalism and inter-ethnic tension which precipitated the 2010 conflict has, to some extent, abated. President Atambayev, since his election in 2011, has introduced more inclusive policies and taken action to combat extreme nationalism. In his election campaign, he used slogans such as "Together we are – Kyrgyzstan", appointed moderate members to his team, and, significantly, re-established control over the army and police which had been heavily corrupted and prone to ethnic prejudice under his predecessor.³³²

In order to promote good inter-ethnic relations, in 2013, President Atambayev approved the "Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic" which seeks to improve inter-ethnic relations in the country.³³³ The Concept has a number of bold objectives:

- To improve the legal framework and to develop rules and regulations to realise rights and ethno-cultural needs;
- To create a system of responsible structural subdivisions of executive bodies to implement policies to strengthen civil unity and the

329 Amnesty International, "Kyrgyzstan: Supreme Court leaves 65-year-old Prisoner of Conscience languishing in jail", 12 July 2016, available at: <https://www.amnesty.org/en/latest/news/2016/07/kyrgyzstan-supreme-court-leaves-prisoner-of-conscience-languishing-in-jail>.

330 Equal Rights Trust, Interview with Valerian Vakhitov, 3 October 2016.

331 *Ibid.*

332 Ovozi, Q., "Four Years After Ethnic Violence, A Glimmer of Hope in Kyrgyzstan", *Radio Free Europe / Radio Liberty*, 16 June 2014, available at: <http://www.rferl.org/a/four-years-after-ethnic-violence-a-glimmer-of-hope-in-kyrgyzstan/25423822.html>.

333 Decree of the President of the Kyrgyz Republic "On the Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic", 10 April 2013, № 74.

integrity of the state, as well as to regulate inter-ethnic relations and language policy;

- To strengthen the interaction of state bodies, ministries and departments, local authorities and local government, and civil society in monitoring, early warning of conflicts and peace-building;
- Unifying the role of the state language through creating conditions for its study and knowledge of all Kyrgyzstani citizens, as well as implementing a balanced language policy to develop the country's linguistic diversity, including opportunities to preserve languages of ethnic communication; and
- To form a civic identity, whilst ensuring ethnic and cultural development, and to increase civic patriotism, tolerance and respect for diversity.

The Concept creates an obligation on the government to prepare a more detailed plan of priority measures for the period 2013–2017. The priority measures were published later that year³³⁴ and, at the same time, the government established the State Agency for Local Self-Government and Inter-Ethnic Relations in order to implement them. The 36 priority measures for the period 2013–2017 include measures aimed at increasing the knowledge of civil servants in inter-ethnic relations and tackling inter-ethnic conflict, improving inter-ethnic relations through financial support for local community initiatives, and changing public opinion so as to oppose intolerance, humiliation and discrimination on ethnic grounds.

The Concept has been criticised for being inadequate to address the concerns and issues facing the Uzbek community. Erica Marat, for example, has noted that:

[T]he concept falls short of fully embracing the idea of civic identity and civic rights, particularly for members of the ethnic majority group. The document, for instance, does not clearly indicate which minority groups need assistance in preserving their right to mass media and education in their native languages. The concept thus avoids directly addressing the thorny issue of the

334 Decree of the Government of the Kyrgyz Republic, 30 October 2013, № 430-p.

*rights of ethnic Uzbeks in the aftermath of the June 2010 violence.*³³⁵

G. Abdirasulova an expert in ethnic minority issues, informed the Trust about “public reception rooms” set up under the State Agency for Local Self-Government and Inter-Ethnic Relations which are supposed to be a forum for ethnic minorities to bring complaints. However, these “rooms” have had very little practical impact as they typically just inform the State Agency of problems but do not have powers to follow up on disputes or complaints.³³⁶ Ms. Abdirasulova also suggested that public trust in these reception rooms has been drastically undermined by the creation of a joint plan between the Ministry of Interior’s Extremism Unit and the State Agency on Interethnic Relations.³³⁷

Three years after the adoption of the Concept, there is still much work to be done to improve inter-ethnic relations. The OSCE High Commissioner on National Minorities, in particular, has called for further efforts to be made to address the root causes of the conflict in 2010, noting that it was still “too early to talk about inter-ethnic accord in the country” and that “negative tendencies persist and a sense of insecurity is still prevalent among the ethnic Uzbek community”.³³⁸ Indeed, there are reports of harassment of organisations which advocate on behalf of ethnic Uzbeks by the State Committee for National Security. For example, the Osh-based organisation, Bir Duino, an advocacy group that has engaged in activities addressing the consequences of the June 2010 violence and defending ethnic Uzbeks has faced particular targeting by security service agents, with raids on its offices and lawyers with documents relating to cases involving ethnic Uzbeks seized.³³⁹

335 Marat, E., “Looking for National Consensus in Post-Violence Kyrgyzstan”, *FRIDE Commentary No. 24*, May 2014, available at: http://fride.org/download/Commentary24_Looking_for_National_Consensus_in_Post_Violence_Kyrgyzstan.pdf.

336 Equal Rights Trust, Interview with Kylym Shamy Centre for Human Rights Protection, 2 November 2016.

337 *Ibid.*

338 Organization for Security and Co-operation in Europe, “Reconciliation and integration still needed in Kyrgyzstan, says High Commissioner Thors, five years after the tragic inter-ethnic violence”, *osce.org*, 12 June 2015, available at: <http://www.osce.org/hcnm/164111>.

339 Rickleton, C., “Kyrgyzstan’s Security Agents Intimidating Uzbek Minority, Activists Say”, *eurasianet.org*, 2 April 2015, available at: <http://www.eurasianet.org/node/72836>.

Discrimination in Employment

In the immediate aftermath of the 2010 conflict, there were reports of hostility and discrimination directed towards ethnic Uzbeks, with summary dismissals of ethnic Uzbeks from their positions in central or local government and the forced takeover of Uzbek businesses by Kyrgyz gangs.³⁴⁰ In addition, our research found evidence that even five years after the violence, ethnic Uzbeks can be subject to discrimination on the basis of their association with those convicted for involvement in the 2010 violence. Y., a focus group respondent in Osh, told the Trust that she had lost her job as a result of this discrimination:

*My brother is convicted due to ethnic conflicts. His case was fabricated. I used to work at a medical establishment, after my brother's conviction I was called to the administration of the establishment and I was told that I am fired. The reason is that my brother is convicted and I'm an Uzbek woman.*³⁴¹

Other focus group respondents in Osh stated that finding work is a challenge because of the lack of industry in the region. One man stated that “there are no jobs – there is nothing to talk about”, while another stated:

*We have no industry, no plants and factories as in the north of the country. That is why we look for opportunities and work in the private sector. In the private sector we are not protected – the employer makes the rules.*³⁴²

While none of the people with whom we spoke in Osh alleged discrimination as a factor determining the lack of industry (and therefore jobs) in the region, underdevelopment of a region dominated by an ethnic minority could point to evidence of a failure by the authorities to take positive action.

340 See above, note 306, Para 8. 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>.

341 Equal Rights Trust, Interview with A., a woman, Osh, 22 July 2014.

342 Equal Rights Trust, Interview with B., a man, Osh, 22 July 2014.

Housing

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. Human Rights Watch made a submission to the Committee on Economic, Social and Cultural Rights (CESCR) in October 2014, indicating 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.³⁴³

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.³⁴⁴ 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.

Political and Public Life

Despite constituting 14.6% of the population, ethnic Uzbeks are underrepresented in many areas of political and public life, including the Jogorku Kenesh, executive bodies, the police and the judiciary, leading the CERD to express concerns to the state.³⁴⁵ In the 2007 general election, 6 out of 90 deputies elected (6.6%) were ethnic Uzbek.³⁴⁶ This number fell to 3 out of 120 deputies at the 2010 election (2.5%).³⁴⁷ In response, the Jogorku Kenesh introduced

343 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>.

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

345 See above, note 306, Para 9.

346 Committee on the Elimination of Racial Discrimination, *Fifth to Seventh Periodic Reports: Kyrgyzstan*, UN Doc. CERD/C/KGZ/5-7, 8 June 2012, Table 3.

347 *Ibid.*

legislation in 2011 which, amongst other things, mandated that the lists of candidates put forward by political parties had to contain a minimum of 15% of ethnic minority candidates.³⁴⁸ The first election since the quota was introduced took place in October 2015 and the Organization for Security and Co-operation in Europe, which monitored the election, reported that 15 of the 120 deputies elected were from ethnic minorities, although this information was provided without a breakdown by ethnic group,³⁴⁹ making it difficult to know what impact the quota has had on the representation of ethnic Uzbeks in the Jogorku Kenesh.

In local government, as of 2012, 86% of deputies on local councils were ethnic Kyrgyz with 14% belonging to ethnic minorities. Thus, ethnic Uzbeks and other minorities (who together constitute 27% of the national population) are clearly underrepresented. Some local councils do have better figures such as in Bishkek (where 30% of deputies are from ethnic minorities), Chu (28%) and Osh (18%).³⁵⁰ Nevertheless, representation of ethnic minorities even in Osh, an area with a large Uzbek population, remains unrepresentative of the population as a whole. Moreover, of the chairs of local councils, only 10% are from ethnic minorities.³⁵¹

The proportion of ethnic minorities in the civil service is equally low. As of 2011, 91% of all administrative civil servants in central government were ethnic Kyrgyz,³⁵² with the figure 12% in local government.³⁵³ The government of Kyrgyzstan, whilst not setting out the figures, accepted in its 2012 report to the CERD that “ethnic groups are not adequately represented on the staff of the military, police or security forces”.³⁵⁴ Of all staff in agencies of the Ministry

348 Article 60 of the Constitutional Law of the Kyrgyz Republic “On the Election of the President of the Kyrgyz Republic and the Deputies of the Jogorku Kenesh of the Kyrgyz Republic”, 2 July 2011, Law № 68.

349 Organization for Security and Co-operation in Europe, *Kyrgyz Republic: Parliamentary Elections 4 October 2015: OSCE/OIDHR Election Observation Mission: Final Report*, 2016, p. 20.

350 See above, note 346, Para 99.

351 *Ibid.*

352 *Ibid.*, Para 101.

353 See above, note 333.

354 See above, note 346, Para 92.

of Internal Affairs, less than 8% belonged to ethnic minorities in 2012,³⁵⁵ a figure which fell to 5.4% by 2014.³⁵⁶

In an interview with lawyers based in Osh, they informed us that although there are large numbers of Uzbek lawyers, they are aware of only one judge who is Uzbek, and 4 prosecutors who are Uzbek.³⁵⁷ This is consistent with the low representation of ethnic Uzbeks in other public bodies.

In June 2011, as part of the efforts to address the underlying causes of the June 2010 ethnic conflict, the Jogorku Kenesh issued an order implementing a government staffing policy based on the criteria of professionalism, competence, responsibility and commitment to the ideals of the country's development, and specifically excluding any discrimination based on ethnic, religious, wealth, regional or other grounds.³⁵⁸

Conclusions

Like other states in the region, Kyrgyzstan has a multi-ethnic populace, largely as a result of policies implemented under the USSR. The country's large ethnic Uzbek minority largely resides in the south of the country, where ethnic violence has flared twice in recent decades. It is a cause for serious concern that despite being disproportionately affected by the most recent violence – in 2010 – ethnic Uzbeks were also four times as likely to have been charged with criminal offences related to the events. There is worrying evidence of discrimination by law enforcement agencies in the aftermath of the 2010 violence. Our research also found that Uzbeks convicted of offences related to the violence, and those associated with them, experience direct discrimination in areas such as employment. In the context of these findings, the continued under-representation of ethnic Uzbeks in public life is a cause for serious concern.

355 *Ibid.*, Para 92.

356 Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kyrgyzstan, Addendum: Information received from Kyrgyzstan on follow-up to the concluding observations*, UN Doc. CERD/C/KGZ/CO/5-7/Add.1, 15 May 2014, Para 19.

357 Equal Rights Trust, Interview with V. Vakhitov, 3 November 2016.

358 See above, note 346, Para 92.

3.2.2 Discrimination and Inequality Affecting Smaller Ethnic Minorities

Lyuli

The small Lyuli population is one of the most marginalised communities in Kyrgyzstan. Whilst the Lyuli have lived in Central Asia for several centuries, efforts by the Kyrgyzstani authorities to integrate the community have been unsuccessful. With a different, darker skin tone from ethnic Kyrgyz and Uzbeks, and their own language Lyuli are often targeted and discriminated against by members of larger ethnic groups.³⁵⁹

Many Lyuli families live in the village of Jany-Kyshtak, constituting approximately half of the population of 3,700 people, where they largely live in cramped conditions, with several families forced to share small plots of land and entire families living in a single room.³⁶⁰ Applications to the local authorities for more space, even with the necessary documentation, take years to be granted, if they ever are.³⁶¹ Many Lyuli do not have passports, birth certificates or other forms of identification, leaving them unable to access to state benefits.³⁶²

Due to historic disadvantage and high levels of poverty, Lyuli children are often involved in child labour to support their families. As a result, many Lyuli parents choose not to send their children to Kyrgyz-language schools, resulting in further segregation and a lack of educational opportunities.³⁶³ The UN Committee on the Rights of the Child (CRC) has expressed concern about the lack of educational participation by, and opportunities for, Lyuli children.³⁶⁴ In 2013, UNICEF reported that only around 40% of school-age Lyuli children

359 Erkinov, U., "Kyrgyzstan: For Marginalized Lyuli, Kyrgyz Language is an Antidote to Isolation", *eurasianet.org*, 6 July 2009, available at: <http://www.eurasianet.org/departments/insightb/articles/eav070709a.shtml>.

360 Askarov, J., "Lyuli in Kyrgyzstan: The Process of Integration into Society is not Easy", *Voice of Freedom*, 1 May 2015, available at: <http://vof.kg/?p=23690>.

361 *Ibid.*

362 See above, note 359.

363 *Ibid.*

364 United Nations Committee on the Rights of the Child, *Concluding Observations: Kyrgyzstan*, UN Doc. CRC/C/KGZ/CO/3-4, 7 July 2014, Para 18.

actually attended school and that, in a community numbering around 4,000 people, only 80 had completed the tenth grade and just two had completed higher education.³⁶⁵

There are some efforts being made to tackle this disadvantage. A project funded by the United Nations High Commissioner for Refugees is seeking to support undocumented Lyuli and other ethnic minorities to obtain birth certificates, passports and other forms of identification,³⁶⁶ and the village's school has reported an increase in Lyuli parents seeking education for their children.³⁶⁷

Uighurs

The Uighurs are a Turkic ethnic group, numbering around 54,800,³⁶⁸ concentrated in the southern part of the country near Osh, with a sizeable population also in Bishkek. During the Soviet period, Uighurs in Kyrgyzstan, despite not belonging to the titular ethnic group, fared relatively well and were able to exercise a significant amount of cultural expression.³⁶⁹ In 1989, the Kyrgyz-Uighur Unity Association (ITTIPAK) was established to promote the interests of the Uighur minority. However, since independence and the growth in economic and bilateral ties between Kyrgyzstan and China, the situation has changed notably. The influence of China, where the Uighur minority number between 10 and 15 million and where there are considerable tensions between Uighurs and the Chinese government, has raised concerns amongst many Uighurs in Kyrgyzstan that they may be targeted by the Kyrgyzstani authorities.³⁷⁰

365 UNICEF, *Education Equity Now! A regional analysis of the situation of out of school children in Central and Eastern Europe and the Commonwealth of Independent States – Summary brochure*, 2013, pp. 12–13.

366 Abdrakhmanova, A., "UNHCR project helps ethnic minority in Fergana Valley get Kyrgyz nationality", *United Nations High Commissioner for Refugees*, 5 December 2013, available at: <http://www.unhcr.org/news/makingdifference/2013/12/52a08dc29/unhcr-project-helps-ethnic-minority-fergana-valley-kyrgyz-nationality.html>.

367 *Ibid.*

368 See above, note 280.

369 Maza, C., "Kyrgyzstan's Uighurs Cautious, Still Fear Chinese Influence", *eurasianet.org*, 25 November 2014, available at: <http://www.eurasianet.org/node/71096>.

370 *Ibid.*

Local political analysts have reported that, in recent years, the Kyrgyzstani authorities have started to monitor and restrict the political activities of Uighurs.³⁷¹ Meetings of Uighurs are attended by the authorities. In 2010, agents from Kyrgyzstan's State Committee on National Security attempted to stop a documentary about a prominent Uighur activist from being aired at a human rights film festival on the basis that it could "inflame ethnic tensions".³⁷²

Uighurs from China also face particular problems. According to the United Nations High Commissioner for Refugees, the government applies a discriminatory approach when granting access to state registration and refugee status determination (RSD) procedures.³⁷³ Uighurs from China seeking asylum are excluded entirely from state registration and RSD procedures and are not provided with any documents certifying their legal status in the country. Between 2001 and 2011, around 50 Uighurs seeking asylum were extradited from Kyrgyzstan to China.³⁷⁴ The CERD has expressed its concern that:

[A] discriminatory approach is applied regarding registration procedures and recognition of refugee status with respect to foreign Uighurs (...), placing them in risk of harassment by the police and refoulement".³⁷⁵

There is some, limited, evidence of an improvement in the situation. For example, in 2014, ITTIPAK held its 25th anniversary congress without any problems, while the Assembly of Nations has acknowledged the role that ITTIPAK plays in conflict resolution, seeking to address the concerns of the Uighur population by providing education in the Uighur language and giving financial support where needed.³⁷⁶

371 *Ibid.*

372 *Ibid.*

373 United Nations High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: KYRGYZSTAN*, 2014, p. 3, available at: http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/unhcr_-_united_nations_high_commissioner_for_refugees.pdf.

374 *Ibid.*

375 See above, note 306, Para 17.

376 *Ibid.*

The Kyrgyzstani government has expressed concern about the involvement of Uighur with extremism. For example, in 2014, 11 Uighurs who were crossing the border into Kyrgyzstan were shot and killed by border guards as they were alleged to have been from a Uighur militant group.³⁷⁷ Furthermore, Kyrgyzstan attributed a suicide bomb attack on the Chinese Embassy in Bishkek in August 2016 to Uighur militants.³⁷⁸ However, due to a lack of statistical data and other publically available information, it is not clear whether Uighurs are vulnerable to discrimination as a result of being associated with extremism.

Dungans

The Dungans are a Muslim minority of Chinese origin, numbering around 67,600.³⁷⁹ Whilst less common than clashes with ethnic Uzbeks, there are occasional, isolated, clashes between ethnic Kyrgyz and ethnic Dungans which have resulted in concerns being expressed by the CERD.³⁸⁰ In February 2006, for example, following a fight between ethnic Kyrgyz and Dungan youths in a computer games hall in the village of Iskra, crowds of residents demanded that the Dungans be resettled with some throwing stones at and setting fire to houses belonging to Dungans.³⁸¹ In April 2010, houses, cafes and shops belonging to Dungans in the town of Tokmok were attacked with some individuals being shot.³⁸² A few days later, in the nearby town of Gidrostroy, a café belonging to Dungans was set alight, killing two, and with crowds throwing stones at firefighters when they sought to put out the fire.³⁸³

377 Nechepurenko, I., "Suicide Bomber Attacks Chinese Embassy in Kyrgyzstan", *New York Times*, 30 August 2016, available at: http://www.nytimes.com/2016/08/31/world/asia/bishkek-china-embassy-kyrgyzstan.html?_r=0.

378 *Ibid.*

379 See above, note 280.

380 Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kyrgyzstan*, UN Doc. A/62/18, 2007, Para 384; see also note 306, Para 5.

381 See, for example, IRIN News, "Economic disparities driving inter-ethnic conflict", *irinnews.org*, 15 February 2006, available at: <http://www.irinnews.org/report/33728/kyrgyzstan-economic-disparities-driving-inter-ethnic-conflict>.

382 Radio Free Europe / Radio Liberty, "Dungans, Uyghurs Attacked in Northern Kyrgyz Town", *rferl.org*, 9 April 2010, available at: http://www.rferl.org/content/Dungans_Uyghurs_Attacked_In_Northern_Kyrgyz_Town_/2007251.html.

383 Human Rights Watch, "Where is the Justice?: Interethnic Violence in Southern Kyrgyzstan and its Aftermath", 2010, p. 19.

Conclusions

While not the focus of the research for this report, we nevertheless found concerning evidence of discrimination and disadvantage affecting smaller ethnic minorities. Based on this research, the Equal Rights Trust is deeply concerned by evidence of problems in accessing housing and education affecting Lyuli; discrimination in state registration and refugee status determination (RSD) procedures affecting Uighurs; and examples of discriminatory violence affecting Dungans.

3.3 Discrimination and Inequality on the Basis of Language

As noted above in Part 2, Kyrgyzstan is obligated under international human rights law to prohibit discrimination on the basis of language. In addition, Kyrgyzstan is required by Article 27 of the ICCPR to ensure that persons belonging to linguistic minorities are not denied the right, “in community with the other members of their group, (...) to use their own language”.

According to its Constitution, Kyrgyz is the state language of Kyrgyzstan, with Russian an official language. However, as in many other former Soviet countries where the Russian language displaced the local language as the primary language during the Soviet era, the question of language is both complex and emotive, closely connected to ethnicity and identity.

The 2009 census, which recorded the languages an individual spoke as primary and secondary languages, revealed a complex picture. Amongst ethnic Kyrgyz – who made up 70.9% of the population at the time – 99.9% stated that Kyrgyz was their “mother tongue” and 0.1% that it was Russian.³⁸⁴ However almost 40% of ethnic Kyrgyz were also fluent in Russian.³⁸⁵ Only a very small fraction of ethnic Kyrgyz spoke Uzbek either as their “mother tongue” or as a second language, despite the fact that the two languages share many simi-

384 National Statistical Committee of the Kyrgyz Republic, *Population and Housing Census of the Kyrgyz Republic of 2009, Book I: Main social and demographic characteristics of population and number of housing units*, 2009, Table 4.2, p. 53, available at: <http://unstats.un.org/unsd/demographic/sources/census/wphc/Kyrgyzstan/A5-2PopulationAndHousingCensusOfTheKyrgyzRepublicOf2009.pdf>.

385 *Ibid.*, Table 4.3, p. 54.

larities.³⁸⁶ Amongst ethnic Uzbeks – who made up 14.3% of the population – 98.6% stated that they spoke Uzbek as their “mother tongue”.³⁸⁷ Over 23.0% of ethnic Uzbeks also spoke fluent Kyrgyz and 23.2% spoke fluent Russian (although it is not recorded to what extent these two groups overlapped).³⁸⁸ Only a very small fraction of ethnic Uzbeks considered either Kyrgyz or Russian as their “mother tongue”.³⁸⁹ Finally, amongst ethnic Russians – who made up 7.8% of the population – 99.9% stated that they considered Russian to be their “mother tongue”.³⁹⁰ However, whereas a significant proportion of ethnic Kyrgyz spoke Russian as a second language, only 2.7% of ethnic Russians spoke Kyrgyz as a second language.³⁹¹

Policies

As noted above in Part 3.2, in April 2013, the President approved the “Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic” in order to promote inter-ethnic relations.³⁹² In the Concept, the government considered that an effective language policy had still not been developed and that the role of the state language – Kyrgyz – as a basis for social cohesion, the strengthening of intercultural dialogue, and the expansion of economic, cultural, professional and other opportunities – needed to be strengthened. As a result, one of the three objectives of the Concept is focused on the unifying role of the state language and the development of linguistic diversity. The aim of this objective is primarily to increase the use of the Kyrgyz language in the country and it sets out an extensive list of activities aimed at increasing the number of people who speak and use Kyrgyz; increasing the use of Kyrgyz in the socio-political, economic, cultural and scientific arenas; and increasing the proportion of education at all levels in Kyrgyz.

386 *Ibid.*, Table 4.3, p. 54; Equal Rights Trust, Interview with X., an expert in multi-lingual education, 30 November 2016, Osh and London.

387 *Ibid.*, National Statistical Committee of the Kyrgyz Republic, Table 4.2, p. 53.

388 *Ibid.*, Table 4.3, p. 54.

389 *Ibid.*, Table 4.3, p. 54.

390 *Ibid.*, Table 4.2, p. 53.

391 *Ibid.*, Table 4.3, p. 54.

392 See above, note 333.

The only other languages referenced in the Concept are Russian and English, with one of the objectives being to increase the proportion of the population who, in addition to being able to speak Kyrgyz, can speak Russian and either English or another official UN language. There is nothing in the Concept regarding support for the development and use of minority languages, such as Uzbek, in direct contradiction to the recommendation of the OSCE High Commissioner on National Minorities who called for “any education reforms [to] respect the linguistic and education rights of national minorities”.³⁹³

Uzbek Language

Concerns regarding the Uzbek language tend to be raised over two particular issues: first, education, and specifically the increasing inability of ethnic Uzbek children to be educated in the Uzbek language, and, secondly, the limited availability of media in the Uzbek language, a situation which has deteriorated significantly since the ethnic clashes in 2010. Both of these issues have been raised as concerns by the HRC³⁹⁴ the CESCR³⁹⁵ and the CERD.³⁹⁶

Education

Although the Constitution guarantees the right for minorities to receive education in their own language,³⁹⁷ 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 HRC 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.³⁹⁸ The motivation behind this trend is ostensibly the authorities’ desire to promote

393 Organization for Security and Co-operation in Europe, “OSCE High Commissioner on National Minorities, in Kyrgyzstan, discusses language and education policies”, *osce.org*, 28 November 2013, available at: <http://www.osce.org/hcnm/109037>.

394 See above, note 227, Para 27.

395 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 27.

396 See above, note 306, Paras 12–13.

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

398 For example, see above, note 227, Para 27.

the integration of ethnic Uzbeks and prevent further inter-ethnic clashes.³⁹⁹ 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.⁴⁰⁰

Despite this, the shift towards greater education in the Kyrgyz language has the support of many educators and politicians, including those who are ethnic Uzbek themselves.⁴⁰¹ The shift has also won the support of some parents and Uzbek community groups, either because it will provide a wider choice of higher education for the students and better opportunities for employment⁴⁰² or because it is believed that by being educated in Russian, children will have opportunities to leave Kyrgyzstan and move to Russia.⁴⁰³

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.⁴⁰⁴ 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.⁴⁰⁵

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

399 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.

400 See above, note 386.

401 See above, note 399.

402 *Ibid.*

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

404 *Ibid.*

405 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>.

by statements from politicians who, in promoting the use of the Kyrgyz language, indicate that, eventually, no education will be provided in Uzbek. In 2011, then President Roza Otunbaeva suggested that all teaching should be in the Kyrgyz language, while in 2012, the then Prime Minister, Omurbek Babanov, said that “[e]ducation services at schools should be delivered either in Kyrgyz or Russian, and no other language should be applied”.⁴⁰⁶

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.⁴⁰⁷ This change has the effect of disadvantaging children from the Uzbek minority who were educated, in full or in part, in Uzbek and who do not have proficiency in Kyrgyz. As noted by the CERD, this policy change may lead to greater difficulty in being admitted to university and competing in the labour market with Kyrgyz speakers.⁴⁰⁸

Media

Following the ethnic clashes in June 2010, many Uzbek-language media owners left Kyrgyzstan for security reasons. As has been acknowledged by the government, almost no Uzbek-language media exists in the country, a situation it has described as “somewhat lamentable”.⁴⁰⁹ Before the 2010 conflict, there were three Uzbek-language television stations and two Uzbek-language newspapers.⁴¹⁰ All were owned by ethnic Uzbeks who fled during the violence. One of the television stations never re-opened, while the other and the newspapers were taken over by ethnic Kyrgyz and started using the Kyrgyz language.⁴¹¹ The situation has begun to improve, slowly, with certain regions of Kyrgyzstan receiving television broadcasts from Uzbekistan. By the end of 2012, weekly

406 *Ibid.*

407 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.

408 See above, note 306, Paras 12–13.

409 See above, note 346, Para 182.

410 Eurasianet, “Kyrgyzstan: Language and Media Still Sensitive Subjects in Southern Regions”, *eurasianet.org*, 18 October 2012, available at: <http://www.eurasianet.org/node/66068>.

411 *Ibid.*; see also note 227, Para 27.

Uzbek-language papers were being published in three municipalities, but with limited circulation, and a donor-funded website published news in Uzbek.⁴¹²

Russian Language

There has been increasing political effort in recent years to encourage the population to speak Kyrgyz and to reduce the dominance of the Russian language in the country.⁴¹³ This has often been to the detriment of ethnic Russians and other Russian speakers, although the language remains widely spoken.

The significant increase in the number of schools providing education in Kyrgyz means that less education is available in the Russian language. In southern parts of the country such as Osh and Jalal-Abad where Russian was once widely spoken, the number of schools providing education in Russian is falling, despite demand for education in the Russian language.⁴¹⁴ However, the Equal Rights Trust was informed that this is not the case throughout Kyrgyzstan: in northern parts of the country such as Bishkek, the number of schools teaching in Russian has remained the same, and Russian language schools reportedly remain popular among ethnic Kyrgyz for the quality of the education provided.⁴¹⁵

The Russkiy Mir Foundation, established by the Russian government to preserve and promote the Russian language, operates within Kyrgyzstan.⁴¹⁶ It provides Russian language books to Kyrgyzstani schools and establishes cultural centres within Kyrgyzstan which teach Russian free of charge.⁴¹⁷

412 *Ibid.*, Eurasianet; see also: Committee on the Elimination of Racial Discrimination, *Consideration of reports, comments and information submitted by States parties under article 9 of the Convention*, UN Doc. CERD/C/SR.2215, 22 February 2013, Para 9.

413 See, for example, Najibullah, F., "Language A Sensitive Issue In Kyrgyzstan", *Radio Free Europe / Radio Liberty*, 25 June 2011, available at: http://www.rferl.org/content/language_a_sensitive_issue_in_kyrgyzstan/24246394.html.

414 Eurasianet, "Kyrgyzstan's Russian-Language Teaching Getting Squeezed Out", *eurasianet.org*, 15 December 2014, available at: <http://www.eurasianet.org/node/71376>.

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

416 Russkiy Mir Foundation, "About Russkiy Mir Foundation", available at: <http://ruskiymir.ru/en/fund/index.php>.

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

Although Russian remains a popular language, not knowing the Kyrgyz language remains a considerable disadvantage to ethnic Russians. X., an expert on multi-lingual education interviewed for this report informed the Equal Rights Trust that the significant recent emigration of ethnic Russians has occurred as a result of the state's language policy. She stated that there have been no significant efforts to enable Russian speakers to learn the state language, and that it can be difficult for Russian speaking minorities to access employment opportunities, particularly in state services, without fluency in Kyrgyz.⁴¹⁸ In contrast, Russia has developed a special programme of incentives in employment, land ownership, education and healthcare for ethnic Russians, which has encouraged the young population in particular to emigrate.⁴¹⁹

There is also evidence that links between language and national identity have resulted in increased levels of hostility towards those who speak Russian. In interviews for this report, a number of Russian speakers reported that they faced challenges when trying to speak in Russian in certain situations. Several said that in various state and private services, when they spoke Russian, they were told to "go back to Russia" or that Kyrgyzstan was for Kyrgyz people.⁴²⁰ However, there is conflicting evidence about attitudes towards the Russian language; it maintains its prominence as a widely spoken language, and various media outlets (both television and print media) deliver information in Russian with popular approval amongst the local population.⁴²¹

Conclusions

As in many other post-Soviet states, language is a complex and contentious issue in Kyrgyzstan. Almost all members of the state's two largest ethnic minorities – Uzbeks and Russians – speak their respective language as a primary language; moreover, while approximately 20% of ethnic Uzbeks speak either Kyrgyz or Russian as a second language, less than 3% of ethnic Russians

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

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

420 Equal Rights Trust interview with Anna Kustova, Jalal-Abad, 17 June 2014; Equal Rights Trust, Interview with an anonymous man, Talas, 23 June 2014.

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

speak Kyrgyz. Uzbek speakers (and hence ethnic Uzbeks) have been affected by the state's policy of increasing the proportion of the curriculum provided in Kyrgyz, which has seen a significant drop in the number of schools in which Uzbek is the language of instruction. The state's supposed aim of increasing the integration of the Uzbek minority through providing education to all in Kyrgyz may be legitimate, but the approach which has been taken raises questions about proportionality; in addition, questions arise as to the extent to which the policy is consistent with Kyrgyzstan's international law obligation to protect minority languages. The state's 2014 decision to eliminate the possibility of taking secondary school and university examinations in Uzbek appears disproportionate, given the lack of steps taken to ensure access to education in Kyrgyz or Russian for the ethnic Uzbek minority. In respect of the Russian language, the picture appears mixed: the language remains widely spoken, but research for this report did identify examples of harassment directed at those speaking Russian.

3.4 Discrimination and Inequality on the Basis of Gender

Kyrgyzstan is required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which it acceded in 1997. Kyrgyzstan also has specific obligations under Article 3 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure the equal rights of both men and women to the enjoyment of rights set forth in the Covenants. Further, under Article 26 of the ICCPR, Kyrgyzstan is required to ensure that the law "shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) sex".

When compared to the law in respect of other forms of discrimination, the legal framework designed to combat discrimination on the basis of gender in Kyrgyzstan is stronger. The Constitution both prohibits discrimination on the basis of gender and specifically guarantees equality between men and women.⁴²² Kyrgyzstan also has specific legislation designed to promote gender equality: the Law of the Kyrgyz Republic "On State Guarantees of Equal

422 See above, note 397, Article 16, paragraphs 2 and 4 respectively.

Rights and Equal Opportunities for Men and Women”.⁴²³ The legal framework is analysed and assessed in Part 2 of this report.

In 2012, the government adopted a National Strategy on Achieving Gender Equality by 2020⁴²⁴ and a National Action Plan on Gender Equality for 2015–2017.⁴²⁵ The National Strategy sets out an ambitious aim:

[T]o create an institutional framework to ensure equal rights and opportunities of citizens, regardless of sex, age, social status, disability, gender identity and other grounds of discrimination, for the full realisation of human potential of the Kyrgyz population.

The National Strategy identifies five “key issues” in the field of gender equality:

- 1. The weakness of institutional mechanisms and the lack of coordination in the implementation of gender policies at the national, regional and sectoral levels;*
- 2. The economic dependence and vulnerability of women as a result of the uneven distribution of reproductive and family burdens and an unbalanced labour market, with a predominance of women in the informal economy and in low-paid areas of production, services and trade;*
- 3. The absence of a functional education system which would allow people to acquire the necessary life skills, thus leading to the furthering of inequalities and a reduced quality of life, including health, education and professional development opportunities;*

423 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>.

424 Decision of the Government of the Kyrgyz Republic on the National Strategy on Gender Equality until 2020 and the National Action Plan on Gender Equality in the Kyrgyz Republic, № 443, 27 June 2012.

425 *Ibid.* See also the matrix of key indicators under the National Action Plan on Gender Equality, available at: http://www.kg.undp.org/content/kyrgyzstan/en/home/library/womens_empowerment/follow-your-voice1.html.

4. *Gender discrimination and a lack of access to justice through the legal system; and*
5. *The lack of gender parity in political participation at all levels of decision-making.*⁴²⁶

To address these issues, the National Strategy sets out a series of activities and measures in four priority areas: (i) women's economic empowerment, (ii) the creation of a functional education system, (iii) eliminating gender discrimination and improving women's access to justice, and (iv) promoting gender parity in decision-making and the development of women's political participation.

Although the National Strategy has been welcomed by the Committee on the Elimination of Discrimination against Women (CEDAW Committee), it has raised several concerns regarding implementation. In particular, the Committee has express concern that the Department of Gender Policy of the Ministry of Social Development, which oversees its implementation, lacks the authority and capacity (including human and financial resources) to ensure that gender equality policies are properly developed and fully implemented throughout the work of all ministries and government offices, that the National Council on Gender Development established under the Strategy is only an advisory body and lacks a clear mandate and authority, and that there is no coordinated gender mainstreaming strategy or gender-responsive budgeting.⁴²⁷

Despite these constitutional, legislative and policy measures taken by the government, discrimination on the basis of gender remains a significant problem in Kyrgyzstan, taking a wide variety of forms. Although gender inequality can affect both men and women, it is overwhelmingly women who experience gender discrimination in Kyrgyzstan, and consequently, this chapter focuses on discrimination against women. Just over half of Kyrgyzstan's population of 6.02 million people – almost 3.04 million, or 50.5% – are women.⁴²⁸

426 Decision of the Government of the Kyrgyz Republic on the National Strategy on Gender Equality until 2020 and the National Action Plan for Gender Equality in the Kyrgyz Republic, № 443, 27 June 2012.

427 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kyrgyzstan*, UN Doc. CEDAW/C/KGZ/O/4, 11 March 2015, Para 10.

428 National Statistical Committee of the Kyrgyz Republic, "5.01.00.01 Total population by sex, age group", available at: <http://www.stat.kg/en/statistics/naselenie/> (as of August 2016).

Position of Women in Society

International measurements of the overall disadvantage experienced by women in Kyrgyzstan consistently show that women face discrimination and inequality in many areas of life, albeit with a much greater impact in some areas than others. The United Nations Development Programme's Gender Inequality Index 2015 provides "[a] composite measure reflecting inequality in achievement between women and men in three dimensions: reproductive health, empowerment and the labour market".⁴²⁹ The Index ranks Kyrgyzstan 67th out of 155 countries measured.⁴³⁰ The World Economic Forum's 2015 Global Gender Gap Report, which measures the gender gap in economic participation, political life, education and healthcare, ranks Kyrgyzstan 76th out of 145.⁴³¹

These figures, while somewhat selective, indicate a substantial gap between men and women in various areas of life, though without sufficient detail to make a full assessment of the nature and severity of such patterns. Many of the varied forms of discrimination against women in Kyrgyzstan have a common root in the maintenance of gender stereotypes. The CEDAW Committee has expressed its concern over:

[T]he persistence of deep-rooted patriarchal attitudes and stereotypes concerning the roles and responsibilities of women and men in the family and society, which discriminate against women and perpetuate their subordination within the family and society. Those attitudes and stereotypes are reflected in women's educational and professional choices, their limited participation in political and public life, their unequal participation in the labour market and their unequal status in marriage and family relations. The Committee recalls that such stereotypes are root causes of

429 United Nations Development Programme, *Human Development Report 2015: Work for Human Development*, 2015, p. 227, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf.

430 *Ibid.*, p. 225.

431 World Economic Forum, *Global Gender Gap Report 2015*, 2015, p. 224, available at: <http://www3.weforum.org/docs/GGGR2015/cover.pdf>.

*violence against women and expresses its concern at the high prevalence of harmful practices that discriminate against women, such as child marriage and bride kidnapping, and that to date, the State party has not taken sustained measures to modify or eliminate discriminatory stereotypes, negative traditional attitudes and harmful practices.*⁴³²

Discriminatory Legal Provisions

Article 2(f) of the CEDAW requires Kyrgyzstan “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. As noted above in Part 2 of this report, Article 29 of the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”⁴³³ established a procedure of “gender analysis” of legislation and draft legislation in order to identify any discriminatory provisions and to bring the legislation or draft legislation into line with international law in the field of gender equality. The agency responsible for this work is the Ministry of Justice, but in practice, the provision has been under-utilised. Indeed, the government itself accepts that “the implementation of such gender-based assessments has been hampered by insufficient capacity in the relevant Government bodies, and the absence of regular reports and monitoring mechanisms”.⁴³⁴ Many pieces of legislation which contain discriminatory provisions, such as the Labour Code, have not been assessed at all. The Equal Rights Trust’s review of the assessments conducted to date indicates that even where legislation has been assessed, the resulting recommendations have focused on introducing quotas to ensure more balanced representation in state agencies, or general requirements that “gender equality” be considered in particular fields, rather than the repeal or amendment of provisions which are discriminatory in and of themselves.

432 See above, note 427, Para 15.

433 See above, note 423.

434 United Nations Committee on the Elimination of Discrimination against Women, *Fourth Periodic Report: Kyrgyzstan*, UN Doc. CEDAW/C/KGZ/4, 1 May 2013, Para 21.

A review in 2008 assessed the proposals which had been made as a result of gender assessments conducted at that point,⁴³⁵ and noted that the proposals fell into three broad categories:

The first category was proposals for amendments to legislation which established state bodies so as to encourage gender balance, either through quotas providing for a maximum of 70% of the members to be of the same sex, such as the Board of the Social Fund,⁴³⁶ the Central Commission for Elections and Referendums,⁴³⁷ or simply to require “gender representation”, such as when the Jogorku Kenesh elected Deputy Ombudsmen.⁴³⁸ In September 2016, Equal Rights Trust researchers reviewed those Laws where proposals had been made. This review found that some, but not all, of these recommendations have been implemented, one exception being that there be a maximum of 70% of members of the Chamber of Accounts of a single sex.

The second set of proposals focused on addressing the underrepresentation of women in the civil service and proposed introducing provisions in the laws establishing and regulating the civil service, the diplomatic service, the Chamber of Accounts and the Prosecutor’s Office stating that they should be based on the principle, *inter alia*, of non-discrimination on grounds of sex, race, nationality, language, social origin, property, religion and political opinion. The Equal Rights Trust’s review in September 2016 found that none of these recommendations have been implemented.

435 Presidential Administration of the Kyrgyz Republic, *Гендерная экспертиза законодательства: Тематический бюллетень для государственных и муниципальных служащих № 1, 2008*, available at: <http://gender.mvd.kg/kg/gendernaya-ekspertiza-zakonodatelstva>.

436 Article 9 of the Law of the Kyrgyz Republic “On the Social Fund of the Kyrgyz Republic”, 2 August 2004, № 103, as amended.

437 Article 2, paragraph 3 of the Law of the Kyrgyz Republic “On the Central Commission for Elections and Referendums of the Kyrgyz Republic”, 14 March 1997, № 14, as amended.

438 Article 4, paragraph 15 of the Law of the Kyrgyz Republic “On the Ombudsman (Akyikatchy) of the Kyrgyz Republic”, 31 July 2002, № 136., as amended.

The third and final class of proposals made as a result of the gender assessments conducted by 2008 related specifically to the Law of the Kyrgyz Republic “On the Civil Service” and recommended that advertisements for persons of a particular sex be prohibited, with breaches punishable administratively. Again, the Trust’s 2016 review found that these recommendations have not been implemented, although the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” does, itself, prohibit job advertisements for persons of a single sex.

One significant piece of legislation which has not been reviewed and which contains explicitly discriminatory provisions is the Labour Code, specifically Articles 218 and 303 which prohibit women from undertaking “arduous work, working involving harmful and/or dangerous conditions and underground work with the exception of non-physical work and cleaning and domestic services” as well as “work involving manual lifting or moving loads exceeding the limits prescribed for women”.⁴³⁹ The government is empowered to specify which work women are prohibited from undertaking and, in 2000, acting under the Labour Code 1997, issued regulations with several hundred forms of prohibited work including in manufacturing, chemicals, oil and gas, mining and firefighting.⁴⁴⁰

Irrespective of their intent, prohibitions such as this have been criticised by the CEDAW Committee for “restricting women’s economic opportunities”, as “neither legitimate nor effective as a measure for promoting women’s reproductive health”⁴⁴¹ and as creating “obstacles to women’s participation in the labour market”.⁴⁴²

Other provisions of the Labour Code provide benefits to women and, particularly, women with children, which are not provided to men or men with chil-

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

440 Decision of the Government of the Kyrgyz Republic “On the List of Productions, Works, Professions and Positions with Harmful and (or) Dangerous Working Conditions, from which Women are Prohibited from Working”, 24 March 2000, № 158.

441 United Nations Committee on the Elimination of Discrimination against Women, *Fifteenth Session Report*, UN Doc. A/51/38, 1996, Para. 286.

442 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Ukraine*, UN Doc. A/57/38, 2 May 2002, Para 293.

dren. Article 97 provides that women with children under the age of three can be required to work at night (between 10.00pm and 6.00am) only with their consent. Article 304 provides that women can only be required to work at weekends, bank holidays, overtime or on business trips with their consent. Under Article 134, single mothers with children under the age of 14 are entitled to more flexible annual leave.

While provisions such as these do not constitute a direct restriction on women's employment or economic opportunities, they nevertheless reflect – and may serve to reinforce – stereotypes about the roles of women and men in respect of family life and childcare. Measures which provide additional benefits or protections for parents are, in principle, to be welcomed, but in cases such as this, the limitation of such benefits to women alone may constitute a barrier to employment, as employers may avoid hiring women for fear of having to provide the additional benefits.

Article 307 grants maternity leave for women for 70 days prior to childbirth and 56 days after childbirth (or 70 days if the mother gives birth to more than one child or has a difficult birth). Longer periods of maternity leave are granted for women working in mountainous, remote or inaccessible areas. There is no equivalent right to post-natal paternity leave under this provision. This is not consistent with international best practice in this area, which is moving towards the recognition of equal parental leave rights for men and women, with the exception of the immediate pre- and post-natal periods. Instead, there is a provision in the Labour Code (Article 137) which allows a child's father, grandparent or other relative or guardian to request additional leave without pay to care for a child until the child reaches the age of three years.

Gender-based Violence

While the CEDAW does not explicitly refer to gender-based violence, the CEDAW Committee has interpreted Article 1 of the Convention as including a prohibition on gender-based violence, which it has defined as “a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”.⁴⁴³

443 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38 at 1, 1993, Para 1.

The prevalence of domestic violence in Kyrgyzstan is high. The 2012 Demographic and Health Survey for Kyrgyzstan revealed that 28% of married or formerly married women and girls between the ages of 15 and 49 has experienced physical, sexual or emotional violence by a spouse or partner.⁴⁴⁴ Almost three quarters (71%) of women and girls reported jealousy or anger on the part of their husband or partner if they talked to other men and 68% said that their husband or partner insisted on knowing where they were at all time.⁴⁴⁵ The same Survey found that 56% of women who had experienced domestic violence had sustained some sort of physical injury and 41% of women and girls who had experienced physical or sexual violence never sought help or told anyone about the violence.⁴⁴⁶ An expert on gender discrimination interviewed by the Equal Rights Trust for this report indicated that there are also significant problems involved in accessing healthcare following an incident of sexual violence, with most victims only able to access healthcare or prophylactics three days following the incident.⁴⁴⁷

The CEDAW Committee has expressed concern that despite legislation prohibiting violence against women, the prevalence of such violence remains high, particularly domestic and sexual violence; that cases of violence against women are underreported and dealt with largely by the elders' (aksakals) courts; that there are insufficient victim protection services and enforcement measures; and that there is only one crisis centre for victims of violence funded by the state.⁴⁴⁸

The relevant legislation is the Law of the Kyrgyz Republic "On Social and Legal Protection from Domestic Violence", which was adopted in 2003.⁴⁴⁹ As discussed in Part 2 of this report, the Law places various duties and responsibilities on different state agencies to take efforts to prevent domestic violence,

444 National Statistical Committee on the Kyrgyz Republic, *Demographic and Health Survey 2012*, 2013, Table 14.8, available at: <https://dhsprogram.com/pubs/pdf/FR283/FR283.pdf>.

445 *Ibid.*, pp. 255 and 257.

446 *Ibid.*, pp. 261 and 264.

447 Equal Rights Trust, Interview with D., 31 October 2016.

448 See above, note 427, Para 17.

449 Law of the Kyrgyz Republic "On Social and Legal Protection from Domestic Violence", 25 March 2003, № 62, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1186>.

prosecute instances of domestic violence and provide support for victims.⁴⁵⁰ The Law also contains provisions setting out the responsibilities of social services in supporting people escaping domestic violence and provides for “temporary restraining orders” and “protective court orders” which prohibit perpetrators of domestic violence from contacting the victim.⁴⁵¹ The former may be made by internal affairs agencies where there is a threat of domestic violence and lasts for up to 15 days; the latter can only be issued by a court and lasts for between one and six months.⁴⁵² The penalties for breaching the orders are rather weak: breaching a “temporary restraining order” is punishable by an administrative fine of between five and fifteen calculation indexes (a “calculation index” is a fixed sum of money, specified by the government in secondary legislation, which is used as a basis for determining the level of fines as well as benefits, pensions and other social payments) or administrative arrest for three to five days;⁴⁵³ breach of a “protective court order” is liable to an administrative fine of between ten and twenty calculation indexes or administrative arrest for five days.⁴⁵⁴

The Law is broad in its definition of “domestic violence”:

[A]ny deliberate action of one member of a family against another, if that action infringes on the legal rights and freedoms of the family member, causes him/her physical or psychological suffering and moral loss or poses a threat for physical or personal development of a minor member of the family.

“Domestic violence” thus includes not only physical harm but psychological and emotional harm. “Family member” is also defined relatively broadly, including married couples, unmarried couples and relatives (such as children and their parents) who live together. One significant gap, however, is that it

450 *Ibid.*, Articles 7 to 12.

451 *Ibid.*, Articles 14 to 17 (responsibilities of social services) and Articles 23 to 27 (temporary restraining orders and court protection orders).

452 *Ibid.*, Articles 23 to 27.

453 Article 66-4 of the Code of Administrative Responsibility of the Kyrgyz Republic, 4 August 1998, № 114, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/6>.

454 *Ibid.*, Article 66-5.

does not cover those who do not live with the person perpetrating the violence, thus leaving a gap where a couple does not cohabit or where one partner has left the relationship but the violence continues.

The Law is complemented by the Criminal Code and the Code of Administrative Responsibility, which contain the actual criminal and administrative offences. The Criminal Code does not contain a specific offence of domestic violence, but does contain a number of general offences of violence, including murder, rape and other sexual offences, bride kidnapping⁴⁵⁵ and inflicting serious or minor bodily injuries, and which can be prosecuted in cases of domestic violence. The Code of Administrative Responsibility does contain a specific offence of domestic violence, defined as:

[A]ny deliberate actions (physical, mental, sexual) of one family member against another, if these acts infringe on the constitutional and other rights and freedoms of a family member, causing minor damage to health, physical or mental suffering, harm to the physical or mental development of a family member, regardless of age or sex, and these actions do not contain the aggravating circumstances which would result in criminal liability.⁴⁵⁶

Thus, as with other offences under the Code of Administrative Responsibility, domestic violence is treated less seriously than other forms of violent offences: a prosecution for domestic violence under this Code can be brought only when the harm is “minor” and when the actions would not amount to a criminal offence under the Criminal Code. The punishment is also very weak: an administrative fine of between five and ten calculation indexes or administrative arrest for up to five days.⁴⁵⁷

Whilst the Law of the Kyrgyz Republic “On Social and Legal Protection from Domestic Violence” is positive in many respects, there are notable gaps in

455 Bride kidnapping is a practice, particularly but not exclusively prevalent in Kyrgyzstan, which involves the abduction of a woman or girl who is then forced into marriage. It is discussed in more detail below.

456 See above, note 453, Article 66-3.

457 *Ibid.*

its substance, implementation and enforcement. In particular, the provision of funding for shelters for those seeking to escape domestic violence is seriously inadequate. Whilst it sets out responsibilities for those providing social services, including both state and non-state actors,⁴⁵⁸ the Law does not guarantee support or funding for non-governmental providers. Yet service providers have reported that the government relies almost entirely on the non-government sector to provide services for victims and that only one of these, a shelter in Bishkek, receives any financial or materials support from the government.⁴⁵⁹ The Council of Europe recommends that there should be at least one shelter space per 10,000 people, where shelters are the predominant or only form of service provision,⁴⁶⁰ as is the case in Kyrgyzstan. However, in Bishkek, for example, there is only one shelter which receives government funding and it has just 15 places in a city with a population of almost one million.⁴⁶¹ The lack of shelters is coupled with low levels of referrals for women who have experienced domestic violence to other services such as healthcare facilities, counselling, and legal services.⁴⁶²

In a 2015 report, Human Rights Watch found that where women do report domestic violence, the response from the law enforcement agencies is often found wanting. There are reports of police officers refusing to accept complaints of domestic violence and even pressurising victims to withdraw their complaints.⁴⁶³ The report also highlighted a range of societal factors which inhibit reporting of domestic violence and which may force women to remain in abusive relationships such as “intense pressure to ‘preserve family unity’ at all costs, (...) victim-blaming, stigma, economic dependence on abusers, and fear of abusers”.⁴⁶⁴

458 See above, note 449, Articles 14–17”.

459 Human Rights Watch, *“Call Me When He Tries to Kill You”*: State Response to Domestic Violence in Kyrgyzstan, 2015, p. 17.

460 Council of Europe, *Combating Violence against Women: Minimum Standards for Support Services*, 2008, p. 38, available at: [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf).

461 See above, note 459, p. 37.

462 *Ibid.*, p. 45.

463 *Ibid.*, p. 47.

464 *Ibid.*, p. 21.

Bride Kidnapping and Early Marriage

The practice of “bride kidnapping” (in Kyrgyz, “ala kachuu”, meaning “to take and flee”) remains prevalent in Kyrgyzstan. The practice involves the abduction of a woman or girl, who is then forced into marriage. Bride kidnapping has been called a “harmful practice” which discriminates against women, comparable to child marriage, by the CEDAW Committee.⁴⁶⁵ Following a visit to Kyrgyzstan in 2009, the then UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo described bride kidnapping as follows:

The kidnapping is usually performed by a group of men, who can either be men known to the victim or complete strangers. The woman is then taken to the home of the intended groom, where his female relatives exercise different forms of physical and psychological coercion to get her to “agree” to the marriage, usually indicated by allowing the women to place a marriage scarf on her head. The process can last for hours or days, depending on her level of resistance. During this period, her abductor may rape her, often to shame her into agreeing to the marriage rather than facing disgrace at home.

(...) Interviews reveal that high levels of poverty have been linked to the phenomena of bride-kidnapping. Men or families unable to afford the expenses associated with a wedding or the dowry given to the bride may conspire to kidnap a suitable woman instead. More rarely, the bride’s own family may conspire in the abduction in order to keep her from marrying a man they do not approve of or to receive a bride price from the groom’s parents. Other factors perpetuating this practice include the light penalties imposed for this crime and the fact that there is little or no social stigma attached to abduction among many sections of the population, who view it as an assertion of one’s cultural identity and male authori-

465 See above, note 427, Para 15.

*ty over women. The man's family also benefits from such a marriage since his new bride is expected to take over household duties. Moreover, the girl's parents will often refuse to accept their daughter back and ultimately accept the marriage in order to avoid the shame of having a "tainted" daughter.*⁴⁶⁶

In 2012, the BBC reported that the Akyikatchy (Ombudsman) of the Kyrgyz Republic (the Ombudsman) estimated that at least 8,000 women are kidnapped for marriage each year, while the Women's Resource Centre in Bishkek suggested the figure is closer to 12,000.⁴⁶⁷

Bride kidnapping is criminalised by the Criminal Code, Article 154 of which prohibits forcing a person under 17 into *de facto* marital relations and abducting a person under 17 for the purpose of forcing them into *de facto* marital relations. Article 155 similarly prohibits forcing an adult woman into marriage, preventing an adult woman from marrying and abducting a woman against her will for the purpose of marrying her. However, enforcement of these provisions is weak. Between 2008 and 2012, reported offences⁴⁶⁸ were very low: from 2008 to 2011 there were between 3 and 14 reported offences annually under Article 154 and between 12 and 28 reported offences under Article 155; there were almost no prosecutions; in an almost four-year period from 2008 to September 2012, only one conviction for an offence of bride kidnapping was recorded.⁴⁶⁹

Until 2013, the penalties for these offences were low: up to three years' imprisonment for an offence under Article 154 (or five years where the victim was under the age of 16) and up to five years' imprisonment for an offence under Article 155. In 2013, penalties were increased. The penalty an offence

466 United Nations Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum: Mission to Kyrgyzstan*, UN Doc. A/HRC/14/22/Add.2, 28 May 2010, Paras 29 and 32.

467 Abdurasulov, A., "Bride-kidnapping debate divides Kyrgyzstan", *BBC News*, 12 December 2012, available at: <http://www.bbc.co.uk/news/world-asia-20675101>.

468 It should be noted that the state's report to the United Nations Committee on the Elimination of Discrimination against Women actually uses the term "recorded" offences, rather than "reported" offences.

469 See above, note 343, Para 55.

under Article 154 increased to a maximum of five years' imprisonment (or between five and ten years where the victim is under the age of 17). The penalty for an offence under Article 155 was increased to three years' imprisonment where the offence involves forcing an adult woman into marriage or preventing an adult woman from marrying, and between five and seven years' imprisonment for abducting an adult woman for the purpose of marrying her. Civil society organisations interviewed by the Trust considered that the harsher sanctions imposed by the 2013 amendments have been effective as a deterrent in countering the practice.⁴⁷⁰ However, a recent civil society submission to the most recent UPR process suggested that in rural areas, between 30% and 80% of marriages result from bride kidnapping.⁴⁷¹ Further, in 2015 the CEDAW Committee expressed concern over the continued high prevalence of bride kidnapping, particularly in rural areas, and that it is “socially legitimized and surrounded by a culture of silence and impunity”.⁴⁷²

There are also problems with child marriage in Kyrgyzstan. Child marriage has been recognised by both the CEDAW Committee and the Committee on the Rights of the Child (CRC Committee) as a “harmful practice” with the “overwhelming majority” of children entering marriage – both formal and informal – being girls.⁴⁷³ Although Article 14 of the Family Code sets the minimum age of marriage at 18, in 2014 12.7% of women aged 20–49 surveyed by the National Statistics Agency had married, or entered an unregistered marriage, before the age of 18.⁴⁷⁴ This is supported by the statistics presented in a joint submission to the most recent universal periodic review, civil society organisations estimated

470 Equal Rights Trust, Interview with Y.Votslava, 2 November 2016; Ms Votslava is a lawyer working on behalf of women and children. Equal Rights Trust, Interview with C., Osh, 3 November 2016 C is a civil society activist working to advance the rights of women in Kyrgyzstan. Equal Rights Trust, Interview with N. Djanaeva of the Forum of Women's NGOs, Bishkek, 4 November 2016.

471 NGOs on Child Rights, Kyrgyzstan Joint Submission to the UPR, 2014, Para. 3, p. 6, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKGStakeholdersInfoS21.aspx>.

472 See above, note 427, Para 19.

473 United Nations Committee on the Elimination of Discrimination against Women and United Nations Committee on the Rights of the Child, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014, Para 20.

474 National Statistical Committee of the Kyrgyz Republic and UNICEF, *Kyrgyzstan Multiple Indicator Cluster Survey 2014: Final Report*, 2015, p. 170.

that in Kyrgyzstan approximately 12.2% of women are married before they reach they age of 18 and “in rural areas approximately 14.2% of marriages involved underage girls”.⁴⁷⁵ In its most recent Concluding Observations in 2015, the CEDAW Committee noted “the persistence of child and forced marriages, notwithstanding the setting of the minimum age of marriage at 18 years”.⁴⁷⁶ In 2013, the CRC Committee stated that it was “concerned about the increasing numbers of early marriages of girls forced by parents owing to social and economic difficulties”.⁴⁷⁷

Kyrgyzstan has taken steps to address this problem: in October 2016 the state, passed a new law which imposes criminal sanctions on anyone involved in “organising or officiating at a religious marriage ceremony where one or both of the spouses is under the age of 18”.⁴⁷⁸ At the time of drafting, this law had not yet been signed into law by the President.

Education

There is little, if any, distinction between the education of girls and boys in primary and secondary education, with a near 100% attendance rate for both sexes, and no differentiation in terms of the curriculum.⁴⁷⁹ However there are notable differences between the choices that girls and boys make when selecting the form and subjects of study for secondary and higher education. Subject choices reflect traditional stereotypes regarding “male” and “female” roles in society and the workplace, and hence subjects of study. For example, of those studying courses related to the power industry in secondary vocational education, 83.1% are male and 16.9% female.⁴⁸⁰ Courses for mechanical engineering and metalwork are almost exclusively taken by male students.⁴⁸¹

Within higher education, whilst women made up over 54% of university students in the 2010/11, academic year, they made up only 31.2% of engineer-

475 See above, note 471, Para. 3, p. 5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKGStakeholdersInfoS21.aspx>.

476 See above, note 427, Para 35.

477 See above, note 364, Para 37.

478 Amnesty International, “Important step forward for girls’ rights in Kyrgyzstan”, 5 October 2016, available at: <https://www.amnesty.org/download/.../EUR5849372016ENGLISH.pdf>.

479 See above, note 434, Paras 84 and 88.

480 *Ibid.*, Para 91.

481 *Ibid.*

ing students and 23.3% of architecture students.⁴⁸² In contrast, women were overrepresented in the humanities (making up 61.7% of students), education (84.4% of students) and social sciences (66.2%).⁴⁸³

These statistics have caused the CEDAW Committee to express concern over the:

*“[S]ignificant gender gap in secondary and higher vocational education (...); horizontal segregation which leads to segregation in the labour market; the fact that that women and girls continue to choose traditionally female-dominated fields of education (...); and the fact that women remain underrepresented in technical vocational education”.*⁴⁸⁴

Employment

There are notable differences between men and women in the field of employment. Women are more likely to be unemployed and are paid less than men for work of equal value. In addition, there is horizontal segregation in the employment market, reflecting the segregation in secondary and higher education.

The most recent statistics published by the National Statistical Committee show that, in 2015, a total of 1.4 million men were employed compared to just 950,000 women,⁴⁸⁵ meaning men make up over 59% of the workforce with women comprising just over 40%. This is despite the fact that women make up over 50.5% of the population.⁴⁸⁶ The share of jobs occupied by women has actually decreased from 44% in 2005.⁴⁸⁷

Moreover, as demonstrated below, when employment statistics are broken down by sector, the proportion of men and women in those different sectors

482 *Ibid.*, Para 93.

483 *Ibid.*, Para 92.

484 See above, note 427, Para 23.

485 National Statistical Committee of the Kyrgyz Republic, *1.07.00.05 Employment population by sex and age*, available at: <http://www.stat.kg/en/statistics/zanyatost>.

486 National Statistical Committee of the Kyrgyz Republic, *5.01.00.01 Total population by sex, age group*, available at: <http://www.stat.kg/en/statistics/naselenie>.

487 *Ibid.*

show some stark differences, particularly in fields like transportation, energy and communications where women are grossly underrepresented, and fields like healthcare, education and hospitality where women dominate.⁴⁸⁸

Sector	Men	Women
Health care and social services	16.7%	83.3%
Education	23.1%	76.8%
Hotels and restaurants	36.1%	63.9%
Other community, social and personal services	44.1%	56.1%
Trade; repair of motor vehicles, household goods and personal items	51.2%	48.9%
Manufacturing	52.5%	47.5%
Financial activities	54.2%	45.8%
Agriculture, hunting and forestry	59.6%	40.4%
Real estate	60.7%	39.3%
Public administration	61.0%	39.0%
Provision of housekeeping services	64.6%	35.4%
Mining	82.6%	18.0%
Production and distribution of electricity, gas and water	83.5%	16.5%
Transport and communications	89.3%	10.7%
Building	96.0%	4.0%
Fishing and fish farming	100.0%	0.0%

There is also a significant gender pay gap with women being paid, on average, only 63% of what men are paid.⁴⁸⁹ This is, in part, a result of higher wages in sectors where men are more dominant, such as mining where the average monthly wage is 13,468 som, as opposed to education, where women dominate, and where the monthly wage is 7,318 som.⁴⁹⁰

488 National Statistical Committee of the Kyrgyz Republic, *Employed population aged 15 and over by activity and sex (GKED-2)*, available at: <http://www.stat.kg/en/statistics/gendernaya-statistika>.

489 European Bank for Reconstruction and Development, *Legal barriers to women's participation in the economy in the Kyrgyz Republic*, 2015, p. 4, available at: www.ebrd.com/documents/admin/legal-barriers-gender.pdf.

490 *National Review of the Kyrgyz Republic in the framework of the Beijing Declaration and Platform for Action*, p. 13, available at: http://www.unwomen.org/~media/headquarters/attachments/sections/csw/59/national_reviews/kyrgyzstan_review_beijing20_en.ashx.

Political and Public Life

Women are under-represented in political and public life, with female representation in parliament actually falling in the last decade. After the 2007 general election, 23 of the 90 deputies (25.6%) in the Jogorku Kenesh were female.⁴⁹¹ That proportion has fallen in subsequent elections to 23.3% in 2010 (28 of the 120 deputies)⁴⁹² and 19.2% in 2015 (23 out of 120 deputies).⁴⁹³ The figures for women in local government are equally low: in 2012, just 16% of district and municipal council members were women.⁴⁹⁴

In an attempt to increase female representation in representative bodies, the laws regulating elections to the Jogorku Kenesh and district and municipal council elections state that parties cannot include more than 70% of candidates of the same gender on their electoral lists, and that there can be no more than two places between men and women on the lists (three places for elections to the Jogorku Kenesh).⁴⁹⁵

Women are better represented in the judiciary, with the Supreme Court being gender-balanced for several years.⁴⁹⁶ Within the civil service, while approximately 40% of civil servants are women, there is significant variation in the gender breakdown by post.⁴⁹⁷ Women occupy less than 5% of “political posts” and just over 25% of “political and special posts”.⁴⁹⁸

The situation has been criticised by the CEDAW Committee, who put the causes down to “persistent traditional and patriarchal attitudes, lack of implementation of adequate temporary special measures and insufficient capacity-building and campaign funding for potential women candidates”.⁴⁹⁹

491 See above, note 434, Para 40.

492 *Ibid.*

493 Inter-Parliamentary Union, Women in National Parliament, available at: <http://www.ipu.org/wmn-e/classif.htm>.

494 See above, note 434, Para 41.

495 See above, note 348, Article 60, paragraph 2; Article 49, paragraph 7 of the Law of the Kyrgyz Republic “On the Election of Deputies to Local Councils”, 14 July 2011, Law № 98.

496 See above, note 434, Para 42 and Table 1.

497 *Ibid.*, Para 44 and Table 2.

498 *Ibid.*

499 See above, note 427, Para 23.

Conclusions

Our analysis of gender discrimination in Kyrgyzstan reveals a contradictory situation. The legal and policy framework established to prevent discrimination against women is arguably stronger than that in place in respect of any other group affected by discrimination in Kyrgyzstan. Yet, the maintenance of harmful cultural practices – including the abhorrent practice of “bride kidnapping” – reflects a society in which gender equality is not yet widely accepted. In many areas of life, women continue to experience discrimination and disadvantage, often as a result of poor implementation of protective laws and policies. For example, while the state established a process to review and amend gender discriminatory laws in 2008, little progress has been made: the Labour Code, for example, which contains a number of directly discriminatory, patriarchal provisions, has yet to be reviewed, eight years after the process was established. Similarly, there are significant problems with the substance, implementation and enforcement of the law on domestic violence. In employment, women are more likely to be unemployed and to receive lower rates of pay; there is significant horizontal segregation in the labour market.

3.5 Discrimination and Inequality on the Basis of Sexual Orientation and Gender Identity

Under Article 2(1) of the ICCPR and Article 2(2) of the ICESCR, Kyrgyzstan is required to ensure the enjoyment of all rights under these Covenants without discrimination on grounds which include sexual orientation and gender identity.⁵⁰⁰ In addition, Kyrgyzstan is required, by virtue of Article 26 of the ICCPR, to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including the grounds of sexual orientation and gender identity.

As in many other countries, the number of lesbian, gay, bisexual and transgender (LGBT) persons in Kyrgyzstan is unknown. The “pervasive homophobia”

500 In respect of the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights has stated that the term “other status” used in Article 2(2) includes both sexual orientation and gender identity (see above, note 224, Para 32). In respect of the ICCPR, the Human Rights Committee has interpreted the term “other status” used in Article 2(1) (and Article 26) to include sexual orientation (see, for example, *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 18 September 2003). While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concerns regarding the situation of trans persons in Kyrgyzstan (see above, note 227, Para 9).

and social conservatism in the country means that many, if not a majority, of LGBT persons in Kyrgyzstan keep their sexual orientation and gender identity secret.⁵⁰¹ As a result, it is difficult to give an accurate estimate of the number of LGBT persons in Kyrgyzstan. Estimates from other countries of the number LGBT people, however, suggest that the average proportion of the population falls somewhere between 1.6% and 6.0%⁵⁰² which, in Kyrgyzstan, would represent between 96,000 and 361,000 people.

It is generally accepted that LGBT persons face significant social stigma in Kyrgyzstan, although there has been limited research on public attitudes towards this group. One non-governmental organisation (NGO), Labrys, has undertaken research which found that 35% of lesbian, bisexual and trans (LBT) women believed that their sexual orientation or identity creates problems for them and society, while 56% of those interviewed stated that their families have tried to force them to change their sexual identity or orientation.⁵⁰³ Another NGO, Indigo, considers that “LGBT members are most severely oppressed and discriminated people in Kyrgyzstan” (sic),⁵⁰⁴ with few open about their sexual orientation or gender identity.

Discriminatory Legal Provisions

Same-sex sexual activity, which had been criminalised in the Kyrgyz SSR, was decriminalised in 1998 with the introduction of the new Criminal Code.⁵⁰⁵

501 Human Rights Watch, *“They Told Us We Deserved This”: Police Violence against Gay and Bisexual Men in Kyrgyzstan*, 2014, available at: https://www.hrw.org/sites/default/files/reports/kyrgyz0114_forUpload.pdf, p. 2; Kirey, A., “Kyrgyzstan: Dangerous Attraction”, *Transitions Online*, Vol. 10/22, 2007.

502 See, for example, Office for National Statistics, *Integrated Household Survey, January to December 2013: Experimental Statistics*, 2014, p. 3, which reported that 1.6% of the adult population in the United Kingdom identified as lesbian, gay or bisexual (LGB) (the report did not include identification on the basis of gender identity). The government of the United Kingdom estimates that the total LGB population is actually 6.0%: Govan, F., “Six per cent of population are gay or lesbian, according to Whitehall figures”, *The Telegraph*, 12 December 2005. In the United States of America, 3.4% of the adult population identified as lesbian, gay, bisexual or trans: Gates, G. J. and Newport, F., “Special Report: 3.4% of U.S. Adults Identify as LGBT”, *Gallup*, 18 October 2012.

503 Labrys, *Submission to the Committee on the Elimination of Discrimination against Women*, 2008, pp. 3–6.

504 Labrys, Kyrgyz Indigo and COC, *Desk research: Health and rights of LGBT in Kyrgyzstan*, 2012, p. 70, available at: http://indigo.kg/wp-content/uploads/2016/05/Desk-research_Kyrgyzstan-Ru-En_finalized.pdf.

505 Criminal Code of the Kyrgyz Republic, 1 October 1997, № 68.

However, there remain a number of discriminatory legal provisions, primarily in family law, which affect LGBT persons.

While the Constitution does not provide a definition of marriage (simply stating that “Persons reaching the age of consent shall have the right to marry and create a family”),⁵⁰⁶ Article 2 of the Family Code defines marriage as a “union between a man and a woman” and Article 13, which sets out the conditions for marriage, requires “the mutual voluntary consent of a man and woman”.⁵⁰⁷ With no alternative state recognition of relationships – such as civil unions or cohabitation – there is no means for same-sex couples to obtain legal recognition of their relationship and the benefits that are attached. The Children’s Code, which regulates, *inter alia*, adoption, only permits single people and married couples to adopt.⁵⁰⁸ Thus, whilst single LGBT people can adopt children, same-sex couples cannot jointly adopt a child.

Trans persons face challenges in having their gender recognised. Article 72 of the Law of the Kyrgyz Republic “On Civil Status Acts” is the sole legislative provision relating to gender recognition.⁵⁰⁹ It states that civil registry offices are able to modify the recorded gender in a person’s identity documents if presented with documents relating to gender reassignment “in the prescribed form” from a medical institution.⁵¹⁰ However, no regulations setting out “the prescribed form” have ever been developed, leaving the provision unclear. Whilst a working group, comprising public officials and civil society organisations, was established in 2009 to prepare draft regulations, it was disbanded in 2012 after the government decided that other legislation relating to healthcare required amendment first; these other amendments have still not been made.⁵¹¹

Given the legal uncertainty, different civil registry offices determine what is meant by “the prescribed form” in different ways. According to Labrys, many

506 See above, note 397, Article 36, paragraph 5.

507 Family Code of the Kyrgyz Republic, 30 August 2003, № 201, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1327>.

508 Article 48 of the Children’s Code of the Kyrgyz Republic, 10 July 2012, № 100, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/203700>.

509 Law of the Kyrgyz Republic “On Civil Status Acts”, 12 April 2005, № 60, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1655?cl=ru-ru>.

510 *Ibid.*, Article 72.

511 See above, note 434, Para 55.

registry offices require trans people to undergo full gender reassignment surgery as well as hormonal treatment, which many trans people do not wish, or cannot afford, to undergo.⁵¹² Furthermore, where a trans person presents themselves in the gender with which they identify, but their identification document states that they are of the opposite gender, they are in, practice, forced to “out” themselves as trans whenever they are required to present such identification.⁵¹³ As such, many trans persons avoid disclosing personal documents resulting in problems in registering to vote, opening a bank account and applying for jobs.⁵¹⁴

In addition to Kyrgyzstan’s failure to amend or repeal laws which discriminate on the basis of sexual orientation and gender identity, in recent years, there have been attempts to introduce new legislation which would further discriminate against LGBT persons. In 2014, Draft Law No. 6-11804/14 was submitted to the Jogorku Kenesh by a number of deputies.⁵¹⁵ Similar to many other laws and draft laws in other states in the Commonwealth of Independent States, the Draft Law would criminalise the promotion of “non-traditional sexual relations”. The purpose of the Draft Law, according to its authors, is “the protection and defence of the traditional family, human, moral and historical values of Kyrgyz society.”⁵¹⁶

Specifically, the Draft Law would:

- Amend the Criminal Code to create a new criminal offence of “creating a positive attitude towards non-traditional sexual relations with the use of media”, punishable by a fine of between 20 and 50 calculation indexes (a “calculation index” is a fixed sum of money, specified by the government in secondary legislation and used as a basis for determining the level of fines as well as benefits, pensions

512 Labrys and Bishkek Feminist Collective SQ, *Report on Kyrgyzstan: 21st Session of the Universal Periodic Review – June 2014*, 2014, p. 3.

513 Kyrgyz Indigo and Labrys, *Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan*, March 2014, pp. 5–6, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KGZ/INT_CCPR_CSS_KGZ_16586_E.pdf.

514 *Ibid.*

515 Draft Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts of the Kyrgyz Republic”, Registration Number 6-11804/14, available at: <http://212.112.97.152/lawprojects/lps.aspx?view=projectinfo&id=122027>.

516 *Ibid.*, Background Rationale.

and other social payments) or restriction of liberty for between six months and one year; with enhanced penalties where the offence is aimed at minors or committed by a person with a previous similar offence;⁵¹⁷

- Amend the Administrative Code to create a new administrative offence of “creating a positive attitude towards non-traditional sexual relations”, punishable – where it does not also constitute the corresponding criminal offence – by a fine of between eight and fifteen calculation indexes if committed by a person and between 100 and 300 calculation indexes if committed by a legal entity;⁵¹⁸
- Amend the Law of the Kyrgyz Republic “On Peaceful Assemblies” by prohibiting the organisers of assemblies from “performing any act aimed at the creation of positive attitudes towards non-traditional sexual relations” punishable administrative by a fine of between 10 and 16 calculation indexes;⁵¹⁹ and
- Amending the Law of the Kyrgyz Republic “On Mass Media” by prohibiting media which involves the “creation of a positive attitude towards non-traditional sexual relations”.⁵²⁰

The Draft Law has been widely condemned by, *inter alia*, the CESCR,⁵²¹ the CEDAW Committee,⁵²² a large number of UN Special Rapporteurs⁵²³ and the European Parliament.⁵²⁴ Despite this, the Draft Law was approved by two

517 *Ibid.*, Article 1.

518 *Ibid.*, Article 2.

519 *Ibid.*, Article 3.

520 *Ibid.*, Article 4.

521 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.

522 See above, note 427, Paras 9 and 10.

523 The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: United Nations, Office of the High Commissioner of Human Rights, *Kyrgyzstan: “Don’t condemn LGBT people to silence” – UN rights experts urge Parliament to withdraw anti-gay bill*, 26 November 2014, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15349&LangID=E>.

524 European Parliament, *Resolution on Kyrgyzstan, homosexual propaganda bill*, 15 January 2015, P8_TA(2015)0008.

parliamentary committees: the Committee on Human Rights, Constitutional Legislation and State Buildings and the Committee on Education, Science, Culture and Sport.⁵²⁵ A third, the Committee on the Rule of Law and the Fight against Crime proposed technical amendments but otherwise also supported the Draft Law.⁵²⁶

The Draft Law was passed at its first reading in the Jogorku Kenesh in October 2014, before being sent to the Committee on the Rule of Law and the Fight against Crime, which produced an amended version in February 2015. Changes to the Draft Law included replacing the term “creation” with “propaganda” and a new provision which explicitly defines “non-traditional sexual relations” as sexual attraction and sexual relations between persons of the same sex. The revised Draft Law passed its second reading in June 2015. In summer 2016, the Draft Law was subject to another second reading, during the course of which further restrictions were introduced into the text, including, for example changing the classification of certain offences from administrative to criminal and increasing penalties accordingly.⁵²⁷ The third reading was scheduled for 20 September 2016 but this was postponed as a result of the December 2016 Constitutional referendum.⁵²⁸

Violence and Hate Crimes

In 2014, the HRC expressed its concern over “violence against lesbian, gay, bisexual and transgender (LGBT) persons by both State and non-State actors, and the failure on the part of the State party to address such violence”. The Committee recommended that Kyrgyzstan:

525 Conclusion, Committee of the Jogorku Kenesh on Human Rights, Constitutional Legislation and State Buildings on the Draft Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts of the Kyrgyz Republic”, and Conclusion, Committee of the Jogorku Kenesh on Education, Science, Culture and Sport on the Draft Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts of the Kyrgyz Republic” respectively, both available at: <http://212.112.97.152/lawprojects/lps.aspx?view=projectinfo&id=122027>.

526 Conclusion, Committee of the Jogorku Kenesh on the Rule of Law and the Fight against Crime on the Draft Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts of the Kyrgyz Republic”, available at: <http://212.112.97.152/lawprojects/lps.aspx?view=projectinfo&id=122027>.

527 Equal Rights Trust, Interview with G., Bishkek, 31 October 2016. G. is a qualified lawyer working for an NGO which represents persons with HIV/AIDs and LGBT individuals.

528 *Ibid.*

[E]nsure that violence against LGBT persons is thoroughly investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated and protected against reprisals.⁵²⁹

The Kyrgyzstani government does not produce official statistics collected on hate crimes motivated by the victim's actual or perceived sexual orientation or gender identity, leaving it to NGOs to record such hate crimes. The Equal Rights Trust's review of evidence produced by these NGOs, and our consultations with representatives of these organisations indicate that – given the very small size of the openly gay, lesbian, bisexual and transgender population – violent hate crime is alarmingly prevalent.

In 2010, the Special Rapporteur on violence against women, its causes and consequences, reported accounts of women being subjected to “brutal gang rapes, ‘curative’ rapes and family violence owing to their sexual orientation and gender identity”.⁵³⁰ In 2012, Kyrgyzstani LGBT NGO Labrys reported a total of fifteen hate crimes motivated by the perceived sexual orientation or gender identity of the victim had been committed in that year; these incidents included physical violence such as throwing stones, rape and threats to kill.⁵³¹ Between January and August 2013, Labrys and Kyrgyz Indigo documented eleven attacks on lesbian, gay and bisexual people based on their sexual orientation.⁵³² In 2014, Labrys reported to the UPR on Kyrgyzstan that it had recorded over 30 cases of police violence and abuse towards trans individuals on the basis of their gender identity, including in particular at the hands of state actors: it reported having recorded over 10 cases of trans women being raped, physically assaulted and blackmailed by police officers.⁵³³

529 See above, note 227, Para 9.

530 See above, note 466, Para 37.

531 Organization for Security and Co-operation in Europe, *Hate crimes in the OSCE region: incidents and responses. Annual report for 2012, 2013*, p. 83, available at: http://tandis.odihhr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf.

532 See above, note 501, p. 14.

533 See above, note 512, p. 5.

Between 2011 and 2014, Kyrgyzstani LGBT NGOs even reported a number of murders which appear to have been motivated by the victim's actual or perceived sexual orientation, though in none of the cases was this motive considered by the law enforcement agencies in their investigations.⁵³⁴ One man, Dastan Kasmanyrov, who publicly came out at a press conference for a report by Human Rights Watch into homophobic violence in Kyrgyzstan received over 30 death threats.⁵³⁵

In October 2016, The Equal Rights Trust met representatives of Kyrgyz Indigo, an LGBT organisation, who provided us with information on a number of cases involving violence suffered by individuals they worked with. In September 2014, a 21-year old trans woman met up with a man who she had been talking to online. She was taken by this man, together with two others, to a cemetery. She told Indigo:

I lost consciousness, and woke up to realize I was being beaten, but the car kept moving. I was taken to the cemetery. The driver of the car began to beat me, took off my wig, and pulled me out of the car. After this, he threatened me with a knife and demanded 45000 soms [776 USD], in exchange for my life. He then showed me a hole that had been prepared for me in the cemetery, and told me that was my grave if I did not give him the money.⁵³⁶

She was too scared to file a report to the police as she was afraid of being outed and of further violence from the original assailants.⁵³⁷ In another incident a 21-year old was attacked in the street. He told Kyrgyz Indigo:

They beat me with the words "You're sick!", "You're a disgrace to the Kyrgyz people!", After that, one of the attackers took out his phone and started shooting video. Under the threat of violence, I had to say into the cam-

534 See above, note 513, p. 3.

535 *Ibid.*, p. 3.

536 Kyrgyz Indigo, "News Release: A brief overview of the situation of LGBT people in Kyrgyzstan for 2014", 5 February 2015.

537 *Ibid.*

era: "I'm gay, I'm from Kyrgyzstan, I disgrace Kyrgyz ji-geets [young Kyrgyz men]. If you are caught, you will be beaten up as I have been."⁵³⁸

Another individual told Indigo that in October 2015 a group of individuals burned down his house while he, his mother and daughter were still inside; his mother suffered serious injuries and was hospitalised.⁵³⁹

LGBT NGOs and their staff are also vulnerable to attack. In 2015, Labrys reported an attempted arson attack on its offices.⁵⁴⁰ Just a few weeks later, on International Day Against Homophobia and Transphobia, nationalist youth groups attacked a private LGBT event at a café in Bishkek, threatening the people present and causing one injuries.⁵⁴¹ Although the police arrived and arrested several of those involved in the attack, P., one of those who had been attending the event told an Equal Rights Trust interviewer that many of the LGBT activists were also arrested and detained for nine hours, despite a legal provision imposing a three-hour maximum period for detention without charge. The person involved told us the following story:

Following our arrest, I and the other activists were required to fill in paperwork setting out all our personal information, such as name and address. The police collected this information and then we saw them hand our paperwork to the persons who had attacked us. We felt like we were in a zoo, hundreds of police staff came to just look at us while we were being detained and although we were treated as criminals, the police were cracking jokes with the perpetrators of the attack. Before we were released the police told us that they needed certain individuals to "prove their gender" and a number of activists were escorted into a sepa-

538 *Ibid.*

539 *Ibid.*

540 Labrys, "Kyrgyzstan: Security of LGBTIQ Human Rights Defenders Under Threat", *labrys.kg*, 10 April 2015, available at: <http://www.labrys.kg/en/news/full/683.html>.

541 Labrys, "Disruption of the LGBT Human Rights Events in Bishkek: Chronicle of Events", *labrys.kg*, 19 May 2015, available at: <http://www.labrys.kg/ru/news/full/685.html>.

*rate room to have their genitalia inspected. Although we were the victims, I was made to feel as if I had done something wrong.*⁵⁴²

Although the police charged two individuals with hooliganism and property damage, there has been little progress with the prosecutions.⁵⁴³ The following day photos of the LGBT activists who had attended the event and been attacked were on the front page of the newspaper, one of those photographed told us:

*I was very afraid after my photo appeared in the newspaper. To avoid being recognised, I wore a hat and sunglasses for a long time and one day, as I got on the bus one man said to me "Are you that fag who was in the newspaper?". I denied it and hurried to get off the bus as I was so afraid.*⁵⁴⁴

There is worrying evidence that the situation appears to have worsened in recent years. Labrys have reported an increase in attacks against LGBT human rights defenders since the introduction of Draft Law No. 6-11804/14 in 2014,⁵⁴⁵ and following the passing of a fatwa by the Spiritual Administration of Muslims in Kyrgyzstan authorising violence against LGBT persons.⁵⁴⁶ There have been reports of violent attacks increasing by as much as 300%,⁵⁴⁷ although the Equal Rights Trust was told that this figure may reflect better processes of recording and registering hate crimes.⁵⁴⁸

542 Equal Rights Trust, Interview with P, Bishkek, 1 November 2016.

543 North, A., "We'll cut off your head': open season for LGBT attacks in Kyrgyzstan", *Guardian*, 4 May 2016, available at: <https://www.theguardian.com/world/2016/may/04/kyrgyzstan-lgbt-community-fear-attacks-russia>.

544 Equal Rights Trust, Interview with P, Bishkek, 1 November 2016.

545 See above, note 540.

546 Indigo, Pathfinder and Yug-Antilopa, *Kyrgyzstan: Joint Submission to the UPR*, 2015, available at: <http://ilga.org/wp-content/uploads/2016/02/Shadow-report-15.pdf>.

547 North, A., "Kyrgyzstan's Beacon of Tolerance Under Threat From Manufactured Kremlin Homophobia", *Eurasianet*, 4 May 2016, available at: <http://www.eurasianet.org/node/78631>.

548 Equal Rights Trust, Interview with G., Bishkek 31 October 2016. G. is a qualified lawyer working for an NGO which represents persons with HIV/AIDs and LGBT individuals.

Medet Tiulegenov, Chair of International and Comparative Politics at the American University in Bishkek, has noted that whilst, historically, the LGBT community in Kyrgyzstan were largely left alone, internal and external forces have “dragged the LGBT community into a battle for Kyrgyz identity”.⁵⁴⁹ Indeed, Tiulegenov has put the introduction of Draft Law No. 6-11804/14 and increased homophobia down to the growing influence of Russia in Kyrgyz politics and nationalist groups.⁵⁵⁰

Despite the prevalence of hate crime directed against LGBT people, many are reluctant to report to the police and trust in the police and the judiciary is extremely low.⁵⁵¹ Lawyers acting for LGBT persons who have been victims of violence told the Equal Rights Trust that they frequently advised their clients not to mention their sexuality when seeking to press charges for crimes committed against them.⁵⁵² Moreover, as sexual orientation and gender identity are not considered as aggravating factors or bias motivations for criminal offences, the police will often refuse to take these factors into account when dealing with the allegation.⁵⁵³ Kyrgyz Indigo NGO has reported that “[r]oughly half of the cases of violence against the LGBT community shared with the police never mentioned that they are homophobia or transphobia-driven.”⁵⁵⁴

Discrimination and Violence by Law Enforcement Agencies

In addition to the evidence of inadequate responses by police to reports of homophobic or transphobic violence or other crime, there are several recorded instances of violence and ill-treatment directed towards LGBT individuals by the police and other law enforcement agencies themselves. In 2014, Kyrgyz Indigo NGO reported that half of all cases of violence against LGBT people which it had documented were committed by law enforcement agencies.⁵⁵⁵ A 2014 report published by Human Rights Watch reported instances of psycho-

549 See above, note 547.

550 *Ibid.*

551 See above, note 513, p. 7.

552 Equal Rights Trust, Interview with G., Bishkek 31 October 2016.

553 See above, note 513, p. 7.

554 See above, note 536.

555 See above, note 513, p. 10.

logical, physical, and sexual abuse by police against gay and bisexual men.⁵⁵⁶ The physical abuse included punches to the face and other parts of the body, kicking, pulling hair, and punches to the head with a gun handle.⁵⁵⁷ Six of the men interviewed were raped or subjected to some other form of sexual abuse, and others were threatened with rape, violence or even death.⁵⁵⁸

LGBT NGOs in Kyrgyzstan have also reported multiple incidents of police brutality, such as the case of Mihail Kudryashov, a 22-year old man who in 2010 was detained for over 12 hours on suspicion of manufacturing or selling pornography. Whilst detained, Mr Kudryashov was forced to undress, had his hand stabbed with a pen, was punched and kicked, and then forced to write false confessions to other offences.⁵⁵⁹ Kyrgyz Indigo told Equal Rights Trust researchers about the case of a transgender woman detained by the police in March 2015: she was forced to strip down to her underwear and remove her wig while the police filmed her and published the video on social media.⁵⁶⁰

There are also regular reports of the police blackmailing and extorting individuals because of their sexual orientation. Human Rights Watch has reported several instances of gay and bisexual men being targeted and forced to pay money under different pretexts, such as identity checks or spurious allegations of criminal activity.⁵⁶¹ In some cases, known gay and bisexual men were forced by police officers to provide the contact details of other gay and bisexual men who were then targeted.⁵⁶² In others, police would go to areas known to be frequented by gay and bisexual men such as certain hotels or private apartments.⁵⁶³

Kyrgyzstani NGOs have also reported similar incidents. In one case, a gay man was detained by police officers and told that they would disclose his

556 See above, note 501.

557 *Ibid.*, p. 23.

558 *Ibid.*, p. 21.

559 See above, note 513, pp. 8–9.

560 See above, note 536.

561 See above, note 501, p. 23.

562 *Ibid.*, pp. 25, 31 and 45.

563 *Ibid.*, pp. 47–48.

sexual orientation unless he paid them.⁵⁶⁴ A friend of his, M., brought the money to the police station and left his contact details after being ordered to do so. A month later, M. himself was arrested at his home; the police forced him to strip at the police station and threatened to force him to have sex with another detainee and upload video footage of it unless he paid them \$1,000. Eventually, he paid them around \$520 before being released.⁵⁶⁵ In another case, a 19-year old gay man met another man whom he had met on a dating website. When they met, the other man revealed himself to be a police officer, physically assaulted him and threatened to spread his photograph and dating profile which would reveal his sexual orientation, unless he paid 4,000 som.⁵⁶⁶

There are also reports of the police harassing the employees of LGBT organisations. In April 2008, three police officers forced their way into the premises of Labrys, demanding identification from the people present and searching the organisation's files without a warrant. Two months later, police officers repeated the exercise and threatened to rape the people inside.⁵⁶⁷

Employment

Given the tendency of LGBT persons to not disclose their sexuality or gender identity, there is limited evidence of discrimination in employment, though there have been isolated reports of sexual orientation discrimination in the workplace. In one incident recorded by Kyrgyz Indigo, a young gay man working at a Children's Centre was verbally abused by his Director, was denied pay, and told that if he did not leave the organisation that his parents would be informed of his sexual orientation, forcing him to accept termination of his employment.⁵⁶⁸

Labrys have reported that lesbian, bisexual and trans women are frequently forced to take poorly paid work for which they are overqualified as a result of

564 See above, note 513, pp. 10–11.

565 *Ibid.*, pp. 10–11.

566 *Ibid.*, p. 11.

567 Human Rights Watch, "Kyrgyzstan: Halt Anti-Gay Raids", 16 April 2008, available at: <https://www.hrw.org/news/2008/04/16/kyrgyzstan-halt-anti-gay-raids>.

568 See above, note 513, p. 6.

discrimination against them on the basis of their sexual orientation or gender identity and that they face additional disadvantage in employment as a result of societal expectation that women are expected to be supporting husbands or children, rather than being breadwinners.⁵⁶⁹

Healthcare

LGBT persons face a number of disadvantages and obstacles in accessing healthcare as a result of their gender identity or sexual orientation. The widespread homophobia and transphobia that exists in Kyrgyzstani society includes those working in healthcare. The Open Society Institute has reported that many doctors and healthcare workers are actively hostile towards LGBT persons, or consider LGBT people “abnormal” with some admitting their unwillingness to treat them.⁵⁷⁰

After conducting interviews with doctors at hospitals in Kyrgyzstan and teachers at the Kyrgyz State Medical Academy, Labrys concluded that doctors had insufficient knowledge about the specific health needs of LGBT people as a result of a lack of any accurate information on homosexuality and transsexuality in the medical curricula.⁵⁷¹ Many doctors interviewed reportedly regarded being gay, lesbian, bisexual or transgender as a “deviation from the norm”.⁵⁷²

Labrys has reported the particular challenges faced by trans persons when accessing healthcare. Some doctors refuse to treat patients whose presented gender differs from that on their identification documents, while many endocrinologists are unable to provide treatment for transgender patients seeking hormone therapy as they have little or no knowledge of the issue.⁵⁷³

Civil society actors working with LGBT persons told the Equal Rights Trust that there is also a significant problem in the failure by doctors and other

569 See above, note 503, p. 4.

570 Open Society Institute, *Access to Health Care for LGBT People in Kyrgyzstan*, July 2007, p. 20; see also note 513, p. 5.

571 *Ibid.*, Kyrgyz Indigo and Labrys, p. 5.

572 *Ibid.*

573 *Ibid.*

medical professionals to respect doctor-patient confidentiality in relation to sexual orientation and gender identity.⁵⁷⁴

Conclusions

Kyrgyzstan does not provide explicit protection from discrimination on the basis of sexual orientation and gender identity, and LGBT persons experience significant social stigma. As a result, the LGBT person is exposed to discrimination by both state and non-state actors. The state maintains a range of discriminatory legal provisions, particularly in the area of marriage and family life: gay, lesbian and bi-sexual couples are excluded from marriage and adoption, for example. The law on legal gender reassignment is vague, with the result that some civil registry offices require proof of reassignment surgery before permitting a change to legal identity documents. Moreover, Kyrgyzstan is currently considering adopting new discriminatory legislation, as parliament reviews proposals to enact a law which would criminalise the promotion of “non-traditional sexual relations”. There is substantial evidence of discriminatory violence, by both state and non-state actors; LGBT persons are reluctant to report such cases to police, due to fear of further discrimination and violence. The maintenance of discriminatory laws, social stigma and exposure to violence all contribute to a situation in which many LGBT persons do not disclose their sexual orientation or gender identity; among those who are open, there are reports of discrimination in employment and healthcare.

3.6 Discrimination and Inequality Affecting Persons with Disabilities

As noted above in Part 2, despite the fact that it has not yet ratified the Convention on the Rights of Persons with Disabilities (CRPD), Kyrgyzstan has obligations under the ICESCR, as interpreted by the CESCR, to prohibit all forms of discrimination on the basis of disability in the enjoyment of economic, social and cultural rights.⁵⁷⁵ Our research has revealed that many of the areas where persons with disabilities face discrimination and disadvantage are in the fields

574 Equal Rights Trust, Interview with D., Bishkek, 31 October 2016. D is an expert on gender discrimination and reproductive health; Equal Rights Trust, Interview with G., Bishkek, 31 October 2016.

575 See above, note 224, Para 28.

of economic rights – such as employment and education – demonstrating that Kyrgyzstan is in breach of its existing treaty obligations under the ICESCR.

There is no consensus on the number of persons with disabilities living in Kyrgyzstan. As of 2016, the Ministry of Labour and Social Development estimated that there are approximately 172,800 persons with disabilities in Kyrgyzstan,⁵⁷⁶ equivalent to approximately 3% of the population. This figure includes approximately 28,200 children,⁵⁷⁷ around 2.5% of the child population. The World Health Organization, however, estimates that approximately 15% of all people live with some form of disability, of whom 2–4% experience significant difficulties in functioning.⁵⁷⁸ This would suggest an actual population of approximately 900,000 persons with disabilities in Kyrgyzstan, with between 120,000 and 240,000 of these people with significant difficulties in functioning.

Definition of Disability and Position of Persons with Disabilities in Society

The approach towards disability, and persons with disabilities, in Kyrgyzstan today must be seen in the context of Kyrgyzstan's history as part of the USSR, where disability was largely of interest to the state in relation to its impact upon the capacity of individuals to work. Persons with disabilities who were unable to work or who were less able to work were grouped into hierarchical "categories of invalids".⁵⁷⁹ As Sarah Phillips has noted:

*The state defined what "social contributions" citizens with disabilities would be allowed to make, set the parameters of education and work possibilities for this population, and closely regulated the development of disability consciousness.*⁵⁸⁰

576 Вечерний Бишкек, "Kyrgyzstan is home to 172.8 thousand persons with disabilities", *vb.kg*, 19 May 2016, available at: http://www.vb.kg/doc/340076_v_kyrgyzstane_projivaet_1728_tysiachi_lovz.html.

577 *Ibid.*

578 World Health Organization, *World Report on Disability: Summary*, 2011, pp. 7–8.

579 Phillips, S. "'There are no Invalids in the USSR!': A Missing Soviet Chapter in the New Disability History", *Disability Studies Quarterly*, Vol. 29, No. 3, 2009.

580 *Ibid.*

A similar system of categorisation based on fitness to work continues to be applied in Kyrgyzstan today. Those who are officially registered as persons with disabilities are categorised into one of three groups ranging from category I (the most severely limiting disabilities, often involving complete physical immobility, a total lack of vision or hearing, or the loss of multiple limbs) to category III (the least limiting disabilities such as a partial loss of sight or hearing or a partial loss of mobility in a limb).⁵⁸¹ Categorisation is undertaken by a Medico-Social Expert Committee using detailed criteria set down in government regulations, and based on (i) any health limitations due to permanent disorder of organs or systems; (ii) any full or partial inability to care for oneself, move, communicate, control behaviour or work; and (iii) the need for social protection measures, including rehabilitation.⁵⁸² Approximately 10% of all registered persons with disabilities are in category I, with 68% in category II and 22% in category III.⁵⁸³ The categorisation procedure for children is slightly different, with a single category of “disabled children” and re-categorisation into one of the three groups when the child reaches 18.

S. Dyikanbaeva, a disability rights expert interviewed for this report criticised the Kyrgyzstani definition of disability as being too narrow and being inconsistent with international best practice.⁵⁸⁴ It is hoped that as part of the harmonisation process on ratification of the CRPD that the definition will be amended.⁵⁸⁵

As noted above in Part 2, the Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities”, introduced in 2008, sets out a wide range of guarantees for persons with disabilities. In 2015, the Code of Administrative Responsibility was amended to create various administrative offences for breaches of the Law. Several years after the Law’s introduction, however, its impact remains unclear. Discrimination and disadvantage

581 United Nations Development Programme, *Access to Justice for Vulnerable Groups in Kyrgyzstan*, 2014, p. 16.

582 Regulation on the Recognition of a Citizen as a Person with Disabilities, Approved by Decision of the Government of the Kyrgyz Republic “On Medico-Social Examination in the Kyrgyz Republic”, 31 January 2012, № 68, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/93624?cl=ru-ru>.

583 Ombudsman of the Kyrgyz Republic, *Special Report: The Situation of Persons with Disabilities in the Kyrgyz Republic*, 2014, available at: <http://www.ombudsman.kg/ru/node/361>.

584 Equal Rights Trust, Interview with S. Dyikanbaeva, Bishkek, 1 November 2016.

585 *Ibid.*

faced by persons with disabilities remains widespread. In a thematic report on the situation of persons with disabilities in Kyrgyzstan in 2014, the Ombudsman concluded that persons with disabilities experienced poorer health outcomes, poorer educational outcomes, higher levels of poverty and a lower level of economic activity than persons without disabilities.⁵⁸⁶ The Ombudsman concluded that these inequalities were the result of a number of obstacles:

- Public policies were not always developed taking into account the needs of persons with disabilities;
- Persons with disabilities were more vulnerable when obtaining services such as medical care and rehabilitation;
- Inaccessibility in transport, social infrastructure, education and employment;
- Inaccessibility of information and information technology in the necessary format;
- Persons with disabilities were not always included in decisions directly affecting their lives; and
- The limited funding directed towards implementation of government policies and programmes designed to improve the lives of persons with disabilities.⁵⁸⁷

In 2013, the government adopted a “Set of Measures to Ensure the Rights and Improve the Quality of Life of Persons with Disabilities in the Kyrgyz Republic” for the period 2014 to 2017,⁵⁸⁸ in part, to help prepare for the ratification of the CRPD. The fourteen measures set out in the document cover a range of priority issues, including: reviewing relevant legislation to ensure that they are consistent with the requirements of the CRPD; increasing public recognition and awareness of the social importance of disability issues; and improving access to infrastructure and education.⁵⁸⁹

586 See above, note 583.

587 *Ibid.* This is a direct quote, translated, from the report.

588 Decision of the Government of the Kyrgyz Republic “On the set of measures to ensure the rights and improve the quality of life of persons with disabilities in the Kyrgyz Republic, 2014–2017”, 2 December 2013, № 650.

589 *Ibid.*

Accessibility

The inaccessibility of much of Kyrgyzstan's infrastructure, physical or otherwise, presents a significant barrier to persons with disabilities. The majority of research undertaken to date has focused on physical accessibility, with repeated criticism that public buildings (including schools, hospitals and courts) had not been adapted to include basic accessibility measures such as ramps.⁵⁹⁰ The Ombudsman has criticised the fact that even when adjustments are made, they are not suitable to meet the needs of persons with disabilities, with ramps being too steep and slippery or doors being too narrow for persons using wheelchairs to enter.⁵⁹¹

Criticisms have also been raised over the country's poorly maintained streets, potholes and broken pavements.⁵⁹² In Bishkek, the director of the Bishkek Transportation Authority has accepted that vehicles which are accessible for persons with disabilities are needed, but that they have no budget for them and, in any event, the poor quality of road conditions render such vehicles unsuitable.⁵⁹³ One of the reasons for this, identified by the Ombudsman, is the fact that the law does not impose a requirement that infrastructure be designed to accommodate the needs of persons with disabilities.⁵⁹⁴

Employment

Persons with disabilities face significant disadvantage in the labour market. The CESCR has expressed its concern at "the scale of unemployment (...) mainly affecting (...) persons with disabilities".⁵⁹⁵ Indeed, in its most recent state report to the Committee in 2012, Kyrgyzstan noted that for the working-age-population as a whole, 72% of people were considered as economically

590 See, for example, Tursunov, H., "Kyrgyzstan: Activists Say Government Dithering on Disability Convention", *eurasianet.org*, 16 March 2015, available at: <http://www.eurasianet.org/node/72556>; see also note 581, above, p. 32.

591 United Nations Development Programme, *Promoting the Rights of Persons with Disabilities in Central Asia: Institutional Experiences and the Way Forward*, 2014, p. 26.

592 Berlioux, J., "Kyrgyzstan: Disabled Battle for Acceptance and Access", *eurasianet.org*, 24 September 2015, available at: <http://www.eurasianet.org/node/75241>.

593 See above, note 591, p. 27.

594 See above, note 583.

595 See above, note 521, Para 9.

active, of whom over 66% were in employment,⁵⁹⁶ while among persons with disabilities, just 28% were considered as economically active, of whom only 20% were in employment.⁵⁹⁷ There were also significant differences between men and women: amongst men with disabilities, 40% were considered economically active, of whom 24% were employed, while only 27% of women with disabilities were considered economically active, of whom 20% were employed.⁵⁹⁸ The United Nations Development Programme (UNDP) has estimated that the unemployment rate amongst persons with disabilities may actually be even higher than government statistics indicate, at 90%.⁵⁹⁹

Despite the fact that there are state agencies at the central and local level with responsibility for supporting persons with disabilities, the UNDP has noted that there are no coordinated and focused rehabilitation programs aimed at increasing employment among this group, and that there is no vocational training provided for persons with disabilities.⁶⁰⁰ The state employment service does provide advice for financial support for persons with disabilities who wish to set up a business, but such support is only available for those in group III.⁶⁰¹

Where the state has made efforts to tackle the low levels of employment among persons with disabilities, these have been largely unsuccessful. The Labour Code contains provisions which require the government to set a quota for the number of persons to be employed in the civil service each year,⁶⁰² but these targets have not been met: the quota for 2013 was 755, but only 100 people were hired; for 2014 it was 655, but by the end of the first quarter only 12 persons with disabilities had been taken on.⁶⁰³ Those that are taken on to meet the quotas are often given low-wage, low-skilled jobs.⁶⁰⁴ The Ombudsman has suggested that the primary reason for the low level of recruitment of

596 United Nations Committee on Economic, Social and Cultural Rights, *Second and Third State Party Reports: Kyrgyzstan*, UN Doc. E/C.12/KGZ/2-3, 8 November 2013, Para 36.

597 *Ibid.*

598 Figures extrapolated from Para 36, *ibid.*

599 See above, note 591, p. 33.

600 *Ibid.*, p. 33.

601 *Ibid.*, p. 33.

602 See above, note 439.

603 See above, note 583.

604 *Ibid.*

persons with disabilities is the reluctance of employers to hire persons with disabilities, and that the fact that persons with disabilities are entitled to work reduced hours and have longer holidays at the same wage as employees without disabilities may be a disincentive.⁶⁰⁵

Education

Inequalities in access to education for children with disabilities in Kyrgyzstan have been heavily criticised by the Committee on the Rights of the Child, which has expressed concern at a number of issues:

- The social and economic exclusion of children with disabilities, owing to widespread stigmatisation and negative attitudes towards them;
- The lack of adequate support to allow families with children with disabilities to access care at home;
- Insufficient social benefits for families with children with disabilities; and
- The lack of access to preschool and school education for children with disabilities, owing to a lack of trained teachers, a rigid curriculum and physical and social barriers.⁶⁰⁶

Indeed, the UNDP has reported that children with disabilities face significant disadvantage in both access to education and the quality of education received, when compared to children without disabilities.⁶⁰⁷ One report suggested that approximately 10,000 children with disabilities receive no education at all,⁶⁰⁸ whilst the UNDP estimates that the number may be as much as 16,000.⁶⁰⁹ Physical inaccessibility for persons with disabilities in transport and school buildings present further challenges for the parents of children with physical disabilities.⁶¹⁰

605 *Ibid.*

606 See above, note 364, Para 45.

607 See above, note 591, p. 31.

608 Eurasianet, "Kyrgyzstan: Activists Demand School Access for Children", *eurasianet.org*, 17 May 2012, available at: <http://www.eurasianet.org/node/65414>.

609 See above, note 591, p. 31.

610 See Tursunov, above, note 590.

The Soviet-era system of “special schools” for children with particular disabilities has been maintained, meaning that even when children with disabilities do attend school, they are almost entirely segregated from the rest of the school-age population.⁶¹¹ There is a belief shared by many, including some parents of children with disabilities, that they should either attend a “special school” or not be educated at all, something which is factor both in poor attendance rates and the lack of inclusive educational provision.⁶¹² As has been noted by the Ombudsman, this can result in the situation where young children with disabilities are not identified by the authorities and thus not provided with the early support, assistance and rehabilitation that would allow them to integrate more easily in the education system.⁶¹³ The situation is exacerbated by the shortage of teachers, psychologists, social workers and other professionals with training on working with children with disabilities.⁶¹⁴

Electoral Process

The Ombudsman has noted that persons with disabilities face discrimination in the electoral process and sometimes are unable to vote at all. Information on elections, voter registration procedures and the voting procedure itself is not available in alternative formats such as sign language, Braille or easy read.⁶¹⁵ Polling stations are not always accessible for people using wheelchairs and are located in buildings which are inaccessible.⁶¹⁶

Conclusions

Kyrgyzstan maintains an approach to the classification of disability based on fitness to work which was first established in the Soviet era. This approach does not meet international standards, including the CRPD, which the country recently signed but has yet to ratify. The state enacted the Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities” in 2008

611 See above, note 608; note 591, p. 31.

612 Eurasianet, “Kyrgyzstan: Schools Wrestle with Equal Access Issue”, *eurasianet.org*, 24 October 2012, available at: <http://www.eurasianet.org/node/66102>.

613 See above, note 583.

614 *Ibid.*

615 *Ibid.*

616 *Ibid.*

which provides a number of guarantees for persons with disabilities, but the law is yet to have a demonstrable positive impact: persons with disabilities have poorer outcomes in health, education and employment than the general population. Progress to create an accessible environment has been limited, with many public buildings and much public transportation inaccessible. The CESCR has expressed concern at high rates of unemployment among persons with disabilities, while the CRC has noted a range of problems in access to education.

3.7 Discrimination and Inequality on the Basis of Health Status

Health status is a well-recognised ground of discrimination in international law. The CESCR has recognised that Uzbekistan and other states party to the ICESCR are required to guarantee all of the economic, social and cultural rights in the Covenant without discrimination on the basis of health status, including HIV status.⁶¹⁷ This reflects a consensus position that the term “other status” in both the ICESCR and the ICCPR should be read as inclusive of health status as a protected characteristic.⁶¹⁸ Consequently, Uzbekistan is required to guarantee all of the civil and political rights in the ICCPR without discrimination on the basis of health status, by virtue of Article 2(1) and, by virtue of Article 26 of the ICCPR, it is required to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”, including on the grounds of health status.

3.7.1 Discrimination and Inequality on the Basis of HIV

The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates that in 2015 there were between 6,400 and 10,000 persons living with HIV in Kyrgyzstan.⁶¹⁹ Although Kyrgyzstan has a relatively low prevalence of HIV, the virus is increasing among the general population.⁶²⁰ At present, male

617 See above, note 224, Para 33.

618 See, for example: Commission on Human Rights, *Report on the Fifty-First Session*, UN Doc. E/CN.4/1995/176, 30 January – 10 March 1995, p. 141, Para 1.

619 The Joint United Nations Programme on HIV/AIDS (UNAIDS), *HIV and AIDS estimates (2015)*, available at: <http://www.unaids.org/en/regionscountries/countries/kyrgyzstan>.

620 United Nations Development Programme in the Kyrgyz Republic, *Kyrgyzstan: Reducing Harm from HIV*, available at: http://www.kg.undp.org/content/kyrgyzstan/en/home/ourwork/hiv_aids/successstories/kyrgyzstan--reducing-harm-from-hiv.

injecting drug users are the single largest group within the HIV positive population.⁶²¹ HIV infections are also more concentrated among prisoners, sex workers and men who have sex with men.⁶²² However, the stigma surrounding HIV status leads to underreporting of the condition, meaning that the existing data about the number of persons living with the virus may be inaccurate. It is estimated that 30% of all people living with HIV in Kyrgyzstan have yet to be diagnosed, with the World Health Organization noting the limited number and geographical diversity of HIV testing facilities as being a key driver of underreporting.⁶²³

Negative cultural attitudes towards persons living with HIV in Kyrgyzstan are widespread. When a person's HIV status is known within their local community, they may be the victim of public heckling, social isolation, forced removal from the family home and discrimination in areas such as employment and education.⁶²⁴ There is evidence that stigmatisation may cause persons living with HIV to avoid seeing doctors about their condition in order to prevent their health status from being disclosed, sometimes with fatal consequences.⁶²⁵ The International Centre for Research on Women found that HIV-related stigma may also result in loss of income and livelihood, loss of marriage and childbearing options, withdrawal of care-giving in the home and loss of hope and feelings of worthlessness.⁶²⁶ The Deputy Minister for Health confirmed in 2016 that such stigmatisation has led to the late identification of those living with HIV, low commitment to treatment and high mortality rates.⁶²⁷

621 World Health Organization, *HIV/AIDS Programme in Kyrgyzstan Evaluation Report*, 2015, p. 1.

622 *Ibid.*

623 *Ibid.*

624 Abdumomunov, S., *Stigma Surrounds HIV in Kyrgyzstan*, The Institute for War & Peace Reporting, 2009, available at: <https://iwpr.net/global-voices/stigma-surrounds-hiv-kyrgyzstan>.

625 UNICEF, "A Mission to Live and Help Others Live a Full Life", available at: https://www.unicef.org/kyrgyzstan/reallives_13511.html.

626 International Centre for Research on Women, *Common at its Core: HIV-Related Stigma Across Contexts*, 2004, available at: <http://www.icrw.org/publications/common-at-its-core-hiv-related-stigma-across-contexts>.

627 United Nations General Assembly, *Eradicating AIDS by 2030 Requires Balanced Prevention, Treatment, Care Policies, Speakers Say as High-Level General Assembly Meeting Continues*, 9 June 2016, available at: <http://www.un.org/press/en/2016/ga11788.doc.htm>.

Legal and Policy Framework

The first substantial law related to the prevention of HIV and AIDS in Kyrgyzstan was the 1996 Law on AIDS prevention, which contained some key protections, including the right to dignity and freedom from humiliation, the right to patient confidentiality and a guarantee of free, comprehensive medical care.⁶²⁸ The main law governing setting out Kyrgyzstan's response to HIV, the Law of the Kyrgyz Republic "On HIV/AIDS in the Kyrgyz Republic", was enacted in 2005.⁶²⁹ It sets out the state's strategy for preventing HIV transmission and provides legal and social security guarantees for people living with HIV or AIDS.⁶³⁰

There is also has a policy outlining the five strategic goals for responding to the HIV epidemic: the State Programme on Stabilisation of the HIV Epidemic in the Kyrgyz Republic for 2012-2016.⁶³¹ The goals are to reduce HIV infection among persons who inject drugs; to prevent the sexual transmission of HIV; to ensure access to treatment, care and support for people living with HIV; to strengthen and ensure the sustainability of the healthcare system in response to the HIV epidemic; and to improve strategic coordination and programme management. The Programme contains specific objectives, expected outcomes and defined priorities for each action.⁶³² In addition, the Den Sooluk National Health Reform Programme in the Kyrgyz Republic for 2012-2016 details a number of barriers that prevent effective HIV infection control and identifies methods for strengthening the country's health system function to overcome the barriers.⁶³³

Discriminatory Laws

Despite these legal and policy developments – and the guarantee of non-discrimination in the Constitution – aspects of the legal and policy framework remain discriminatory. For example, there are a number of very broad

628 Law of the Kyrgyz Republic "On AIDS in the Kyrgyz Republic", 19 December 1996, № 62, Article 11.

629 Law of the Kyrgyz Republic "On HIV/AIDS in the Kyrgyz Republic", 13 August 2005, № 52.

630 World Health Organization, *Kyrgyzstan Summary Country Profile for HIV/AIDS Treatment Scale-Up*, 2005, available at: http://www.who.int/hiv/HIVCP_KGZ.pdf.

631 Decree of the Government of the Kyrgyz Republic, "State program on the stabilization of the HIV epidemic in the Kyrgyz Republic for 2012-2016", 29 December 2012, № 867.

632 UNDP, *NGO Social Contracting: Factsheet Kyrgyzstan*, 2016, p. 2.

633 Decree of the Government of the Kyrgyz Republic "On the National Health Care Reform Programme of the Kyrgyz Republic, "Den Sooluk", for 2012-2016", 24 May 2012, № 309.

exceptions to the right to medical confidentiality.⁶³⁴ Thus, it is permitted to disclose a patient's medical information without their consent if there is a risk of transmission of an infectious disease and harm to others, or if there are grounds to believe that harm to the health of the person resulted from illegal actions.⁶³⁵ These exceptions are especially relevant to the situation of injecting drug users, as it creates a disincentive for those seeking treatment for HIV given the possibility that a medical professional may disclose illegal drug use to the police.⁶³⁶ Although there are public policy justifications for seeking to make disclosure in the situations outlined above, the International Guidelines on HIV/AIDS and Human Rights require that the prior informed consent of the patient is obtained before their health status can be disclosed to a third party.⁶³⁷ In accordance with best practice, "[i]nformed consent entails proper counselling as to the reasons for sharing and with whom the information will be shared, as well as the consequences of denying consent".⁶³⁸ In exceptional circumstances where there is a real risk of HIV transmission to another individual, disclosure of health status without the patient's consent may only be authorised (but not required) based on an individual assessment of the case, ethical considerations, and subject to comprehensive precautionary criteria.⁶³⁹

The Law "On HIV/AIDS in the Kyrgyz Republic" and Government Resolution No. 296 impose a requirement that individuals working in certain occupations undergo physical testing to verify their HIV-negative status in order to secure and retain employment.⁶⁴⁰ People living with HIV/AIDS may not be employed as healthcare workers, or in professions where there is an opportunity to develop tuberculosis or other infections.⁶⁴¹ There are two

634 Law "On health protection in the Kyrgyz Republic", 9 January 2005, №. 6, Article 91.

635 *Ibid.*

636 *Ibid.*

637 UNAIDS, *International Guidelines on HIV/AIDS and Human Rights (2006 Consolidated Version)*, 2006, p. 28, Para 20(f).

638 United Nations High Commissioner for Refugees (UNHCR), *Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern*, 2006, Para 33.

639 Such criteria are outlined in Para 20(g) of the International Guidelines on HIV/AIDS and Human Rights, above, note 637.

640 See above, note 629, Article 8; Government Resolution of the Kyrgyz Republic, "Professions, trades and posts which are subject to obligatory physical examination", 25 April 2006, № 296.

641 *Ibid.*

aspects of this provision: the restriction on people living with HIV/AIDS from being employed as health care workers and the restriction on such persons from being employed in professions which create a risk of further infection for them. The health care roles which require physical testing for HIV are set out in detail in a list contained within Government Resolution No. 296,⁶⁴² but there is a concerning lack of specificity surrounding which professions fall within the 'risk of further infection' category.⁶⁴³ Without limitations on the number and types of professions that can make HIV testing a mandatory part of their recruitment process, the law can be used to sanction unnecessary interferences with individuals' right to work and right to a private life.⁶⁴⁴

The prohibition on persons living with HIV/AIDS from being employed as healthcare workers appears intended to limit the risk of infection for the general public. While the protection of public health is a legitimate aim, the imposition of a blanket ban may be either unnecessary to meet that aim, or disproportionate as a means of achieving the aim. Indeed, practice from other countries indicates that with appropriate safeguards in place, it is possible to safeguard public health without denying people living with HIV the opportunity to work. In the UK, for example, the medical ban on healthcare professionals living with HIV performing exposure prone procedures (EPPs) was lifted in 2014. Provided that they are (i) on an effective combination antiretroviral therapy; (ii) have a plasma viral load <200 copies/ml; (iii) are subject to plasma viral load monitoring every three months; (iv) are under joint supervision of a consultant occupational physician and their treating physician; and (v) are registered with the UKAP Occupational Health Monitoring Register; healthcare workers living with HIV may perform EPPs.⁶⁴⁵ Rather than prohibiting all persons with HIV/AIDS from being employed as healthcare workers, a less restrictive solution would be to

642 See Government Resolution of the Kyrgyz Republic, *ibid.*

643 See Government of the Kyrgyz Republic, "List of professions and positions in which persons with HIV/AIDS may not be employed", 26 June 2006, approved by Government Resolution № 296 (*ibid.*), available at: <http://cbd.minjust.gov.kg/act/view/ky-kg/57395?cl=ky-kg>.

644 See above, note 637, Paras 105 and 149.

645 Public Health England, *The Management of HIV Infected Healthcare Workers who Perform Exposure Prone Procedures: Updated Guidance*, 2014, p. 6, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333018/Management_of_HIV_infected_Healthcare_Workers_guidance_January_2014.pdf.

impose sufficient safeguards, such as those imposed in the UK, to eradicate the risk of infection.

The prohibition on persons living with HIV/AIDS from being employed in professions deemed to put their own health at risk is particularly troubling. It is a clearly established principle of international law that discrimination does not require intention.⁶⁴⁶ Thus, irrespective of intention, legal provisions which restrict freedom of choice in employment on the basis of a protected characteristic are directly discriminatory.⁶⁴⁷ Indeed, as noted above, the CEDAW Committee has criticised states which retain laws which prohibit the employment of women in certain fields, ostensibly on the basis of their health.⁶⁴⁸ Moreover, such limitations are likely to violate Article 6(1) of the ICESCR, which guarantees “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”.

Individuals living with HIV may also be disadvantaged in other areas of life as a result of discriminatory laws. For example, people with serious chronic infectious diseases are not lawfully permitted to adopt children.⁶⁴⁹ In addition, prisoners living with HIV are segregated from the rest of the prison population, and have their freedom of movement restricted to a greater degree than prisoners who do not have the disease.⁶⁵⁰ In addition, foreign citizens and stateless persons are required to undergo mandatory HIV testing upon arrival in Kyrgyzstan, with failure or refusal to attend testing resulting in administrative deportation.⁶⁵¹

Discrimination in Healthcare

In 2007, a Kyrgyz court affirmed the right of persons living with HIV to keep their health status confidential (the plaintiff had been identified in the media

646 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, p. 7.

647 Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 33.

648 See above, note 442, Para 293.

649 Government Resolution of the Kyrgyz Republic, “Regulations on Rules of Handover of Children Left without Parental Custody for Adoption by Citizens of the Kyrgyz Republic and Foreign Citizens”, 22 February 2006, № 121.

650 Kyrgyzstan Penal Code, Articles 68(2) and 69(3).

651 See above, note 629, Article 8.

as an HIV-positive patient without his consent.)⁶⁵² Despite this ruling, and the legislative guarantee of patient confidentiality,⁶⁵³ concerns have been raised over the poor observation of patient confidentiality among health professionals in Kyrgyzstan.⁶⁵⁴

As well as the aforementioned effects which such disclosures can have on a person's private and social life, they can compromise the medical care that the individual is able to access. The Government's AIDS Centre has highlighted that discrimination against persons living with HIV is common among healthcare professionals, pointing to cases where doctors had refused treatment to HIV-positive patients because they were afraid of becoming infected themselves.⁶⁵⁵

In addition, persons living with HIV who are not covered under obligatory medical insurance must pay privately for health care services or rely on free emergency health care.⁶⁵⁶ This means that financially vulnerable persons, such as homeless and unemployed individuals living with HIV, may be left unable to access the health care services that they need to treat their condition.⁶⁵⁷

Conclusions

While Kyrgyzstan has a low prevalence of HIV, the population of persons living with HIV is increasing. The government has enacted legislation which

652 The doctor who breached patient confidentiality pled guilty to an offence under Article 145 of the Criminal Code of the Kyrgyz Republic. See Bashmakova, L. and Kuvatova, J., *Kyrgyzstan: Protecting the privacy and dignity of people living with HIV and AIDS*, available at: http://www.undp.org/content/undp/en/home/ourwork/hiv-aids/Projects-initiatives/Kyrgyzstan_protecting_the_privacy_and_dignity_of_people_living_with_HIV_and_AIDS.html.

653 See above, note 629, Article 3.

654 See above, note 624; Equal Rights Trust, Interview with A. Sultangaziye, 31 October 2016 A. Sultangaziye is a health expert working for an NGO which seeks to advance the rights of drug users, TB sufferers and persons living with HIV/AIDS.

655 *Ibid.*, Abdumomunov, S.

656 Law "On medical insurance of citizens in the Kyrgyz Republic", Law No. 112, 18 October 1999; for more detail, see Canadian HIV/AIDS Legal Network et al, *Submission to the Human Rights Council Universal Periodic Review Working Group (Eighth Session): Review of Kyrgyz Republic*, 2010, footnote 5, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/J55_CHIVAIDSLN_UPR_S08_2010_CanadianHIVAIDSLegalNetwork.pdf.

657 *Ibid.*, Canadian HIV/AIDS Legal Network et al, Para 4.

provides legal and social security guarantees for persons living with HIV, but negative cultural attitudes and stigma remain widespread. The state maintains a number of discriminatory legal provisions, including broad exceptions to the principle of medical confidentiality, and discriminatory restrictions on access to employment which cannot be justified. There is also evidence of discrimination in access to healthcare, with reported cases of medical professionals refusing treatment.

3.8 Conclusions

Research for this report has found evidence of discrimination on the basis of religion, ethnicity, language, gender, sexual orientation and gender identity, disability, and health status.

It finds that despite undergoing a range of democratic reforms in 2010, Kyrgyzstan has largely failed to address many long-standing patterns of discrimination and inequality. Moreover, recent years have seen equal rights for religious, ethnic and sexual minorities come under renewed attack. Constitutional amendments, endorsed in a referendum in December 2016, weaken the position of international human rights law, strengthen the power of the executive and reduce judicial scrutiny, putting equal rights at further risk.

One clear conclusion arising from our assessment of patterns of discrimination is that while the state has taken positive steps to safeguard the rights of certain groups, notably women and persons with disabilities, progress has been limited, and uneven.

Kyrgyzstan has not done enough to address historic tensions and long-standing inequalities between ethnic Uzbeks and the Kyrgyz majority. Six years after inter-ethnic violence in Uzbek-dominated Osh left almost 500 dead and more than 400,000 displaced, our researchers found members of the Uzbek population feeling aggrieved. The government's own data indicate that, while the majority of the victims of the violence were Uzbek, Uzbeks were also more likely to be arrested and convicted for crimes associated with the violence. Those with whom we spoke alleged discrimination by law enforcement agencies during and after the violence, leading to miscarriages of justice. There is evidence that those convicted – and those associated with them – experience discrimination in areas such as employment, years after the conflict. Finally,

we find that the state has not done enough to address the economic and political inequalities which were among the causes of the violence itself.

We also found evidence of a more general failure to include the country's ethnic minority communities. There are concerns that, under pressure from China, the state has targeted the Uighur minority and discriminated against Uighur refugees from China. There are reports of occasional violence between ethnic Kyrgyz and the Dungan minority and evidence that the Lyuli suffer significant disadvantage, particularly in education.

We also conclude that the state has taken insufficient action to address gender inequalities. Patriarchal and paternalistic social norms persist and women experience discrimination and disadvantage in all areas of life. Domestic violence remains prevalent, and there is evidence that women feel pressured to remain in abusive relationships. The horrific practice of bride-kidnapping continues, affecting thousands of women each year. Labour law contains paternalistic provisions which limit women's opportunities to undertake certain forms of work, the labour market is highly segregated by gender and there is a sizeable gender pay gap. Women also remain severely under-represented in political life, with the proportion of women in the Jogorku Kenesh actually decreasing in recent years.

Similarly, persons with disabilities continue to face barriers in a wide range of areas of life, despite legislation which provides a wide range of guarantees. Many schools, hospitals and courts remain inaccessible, as do roads and public transport networks. The unemployment rate amongst persons with disabilities is far higher than that for the general population, despite quotas for employing persons with disabilities both in the public and private sector. A significant number of children with disabilities, between 10,000 and 16,000, receive no form of education and those that do are often segregated and taught in "special schools" rather than inclusively in mainstream education, further embedding inequality and disadvantage once children reach working age.

Beyond the failure to address these long-standing problems, this report also notes recent developments which put equal rights for religious, linguistic and sexual minorities under renewed threat.

Over the last decade, the country has increasingly limited religious activity which conflicts with the narrow conceptions of Islam and Christianity en-

dorsed by the state. A 2008 law on religious established a system of registration which indirectly discriminates against smaller religious groups, such as the Bahai, Ahmadiyya and Jehovah's Witnesses. In the absence of registration, religious activity is unlawful and there is evidence of harassment and discrimination against members of unregistered religious groups by law enforcement agencies. In addition, despite the fact that the majority of the Kyrgyzstani population is Muslim, there is evidence of growing trend of intolerance towards more overtly religious groups and individuals, primarily Muslim men with beards and women who wear the hijab or headscarf.

The rights of LGBT persons are under attack, with attempts in the Jogorku Kenesh to criminalise the "propaganda of a positive attitude towards non-traditional sexual relations". If enacted, such a law would become part of a legal framework in which discrimination on the basis of sexual orientation and gender identity is not prohibited, where transgender rights are not guaranteed and where a number of laws discriminate against same-sex couples. This framework creates conditions in which homophobic and transphobic violence and hate crimes are largely unchecked and where LGBT individuals face harassment, abuse, physical attacks and blackmail from police officers.

We also conclude that the rights of linguistic (and hence ethnic) minorities are at risk, largely as a consequence of a political drive to increase the status and use of the Kyrgyz language. There are fewer and fewer opportunities for children to receive an education in Uzbek and no opportunities at all in higher education. Of greatest concern is a decision in 2014 to remove the ability for students to take entrance exams for university in the Uzbek language, depriving Uzbek children who have studied in that language of the opportunity to complete further education.

The findings of this research give rise to a deeply worrying conclusion. The democratic reforms of 2010 did not result in an equality dividend for groups exposed to discrimination. The state failed to act to address long-standing patterns of discrimination and inequality, and in some cases took measures which entrenched inequalities and exacerbated disadvantage. As the country moves forward with a new Constitution which diminishes the role of international law and strengthens executive power, Kyrgyzstan must take immediate action to ensure that it does not further undermine the rights to equality and non-discrimination.

4. RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Kyrgyzstan. These recommendations are offered in order to enable Kyrgyzstan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by improving the legal and policy framework with respect to equality and through other means.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on the conclusions reached at the ends of Parts 2 and 3 of this report.

The recommendations are presented below:

Recommendation 1: Strengthen International Commitments Related to Equality

Kyrgyzstan should ratify the following United Nations human rights instruments which are relevant to the rights of equality and non-discrimination:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Rights of Persons with Disabilities;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- The Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure); and
- The International Convention for the Protection of All Persons from Enforced Disappearances.

Kyrgyzstan should also make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination so as to allow individual complaints.

Recommendation 2: Reform of Discriminatory Legislation

Kyrgyzstan should undertake a review of legislation in order to (i) assess its compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party, and (ii) amend, and where necessary, repeal existing legislative provisions that conflict with the right to equality either by being inherently discriminatory, or which result in discrimination in their application. The following provisions have been highlighted in this report as being either discriminatory in and of themselves or applied in a discriminatory manner, and so should be amended as a priority:

Family Code of the Kyrgyz Republic

- Articles 2 and 13 which limit marriage only to different-sex couples and provides no alternative means of recognition of same-sex relationships.

Children's Code of the Kyrgyz Republic

- Article 48 which limits adoption to married couples and thus prevents same-sex couples from adopting.

Labour Code of the Kyrgyz Republic

- Article 97 which provides that women – rather than parents – with children under the age of three are only required to work at night with their consent;
- Article 134, which grants single mothers with children under the age of 14, but not single fathers, more flexible annual leave;
- Articles 218 and 303 which prohibit women from undertaking “arduous work, working involving harmful and/or dangerous conditions and underground work with the exception of non-physical work and cleaning and domestic services” as well as “work involving manual lifting or moving loads exceeding the limits prescribed for women”;
- Article 304 which provides that women – rather than parents – with children under the age of three can only be required to work at weekends, bank holidays, overtime or on business trips with their consent; and

- Article 307 which provides only maternity leave and not paternity leave.

Law of the Kyrgyz Republic “On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic”

- Article 8 which prohibits religious organisations from undertaking religious activity unless they have registered with the State Commission on Religious Affairs.

Law on HIV/AIDS in the Kyrgyz Republic

- Article 8 which imposes a requirement that individuals working in certain occupations undergo physical testing to verify their HIV-negative status in order to secure and retain employment and which provides that people living with HIV may not be employed in certain professions.

Law on Health Protection in the Kyrgyz Republic

- Article 91 which provides significant exceptions to the right to medical confidentiality.

**Recommendation 3:
Introduce Comprehensive Equality Legislation**

Kyrgyzstan should adopt appropriate legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law.

The enactment of comprehensive equality legislation should give effect to the principles of equality under international law. Such equality legislation should aim at eliminating direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Comprehensive equality legislation could either take the form of:

- (a) A single equality law, which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or
- (b) A coherent system of laws which together address all grounds of discrimination in all areas of life regulated by law.

Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

**Recommendation 4:
Reform, Implementation and Enforcement of Existing Laws
Aimed at Prohibiting Discrimination**

The government of Kyrgyzstan should introduce reforms to improve existing pieces of legislation which aim to prohibit discrimination. For this purpose:

- The government should undertake a comprehensive review of all legislation which prohibits discrimination including (i) the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, (ii) the Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities”, (iii) the Law of the Kyrgyz Republic “On HIV/AIDS in the Kyrgyz Republic” and (iv) standalone non-discrimination provisions in other pieces of legislation;
- The review should ensure that such existing legislation is harmonised, as far as possible, to ensure a consistent level of protection with respect to both the material scope (the different areas of life covered by the laws) and the personal scope (the grounds upon which discrimination is prohibited);
- The review should also ensure that all victims of discrimination are able to access effective access to justice including, as necessary, by amending the Civil Code and Code of Administrative Responsibility to provide clarity to courts on how to apply and enforce the laws, and ensuring legal aid is available for those would not otherwise be able to bring their claim;

- The government should also introduce amendments to the Criminal Code such that provisions prohibiting the incitement of hate motivated violence on specific grounds and which set out aggravating factors for offences can be enforced in respect of offences motivated by hatred on the basis of other characteristics for which there is evidence that they motivate hate in Kyrgyz society, including sexual orientation and gender identity; and
- In order to further ensure the effective implementation and enforcement of these laws, the government should also ensure that (i) the Ombudsperson (Akyikatchy) is reformed to bring it in line with the Paris Principles, and that it has sufficient financial and material support for it to fulfil its duties as a national human rights institution to combat discrimination, and (ii) the Prosecutor's Office has clear legislative direction and sufficient capacity to enforce laws prohibiting discrimination.

Recommendation 5: Actions to Address Discrimination against Specific Groups

Kyrgyzstan should take specific actions in order to address the discrimination and disadvantage faced by different groups, including all of those highlighted in Part 3 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on Recommendations 2 and 3. These steps should include, but not be limited to, the following:

Religion

- As noted above in Recommendation 2, the government should review and amend the Kyrgyz Republic "On Freedom of Conscience and Religious Organisations in the Kyrgyz Republic" to ensure that it does not result in its discriminatory application against smaller religious organisations; and
- The Ministry of Internal Affairs should investigate allegations of harassment by law enforcement agencies and introduce training for these agencies to ensure that all hate crimes against religious minorities are properly investigated.

Ethnicity

- The government should continue to implement, in full, the recommendations of the Kyrgyzstan Inquiry Commission;
- The government should introduce temporary positive action measures to address the significant under-representation of ethnic Uzbeks, and other ethnic minorities, in political and public life, including the Jogorku Kenesh, local government, the civil service, the police and other internal affairs agencies, and the judiciary;
- The government should ensure full implementation of the Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic, ensuring sufficient funding and resources, and with regular reviews and reporting of progress; and
- The government should, upon completion of the Concept on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic, review the progress made and outstanding concerns, and, in consultation with representatives of ethnic Uzbek and other minority groups, develop follow-up programmes of work with actions on language, education and political participation.

Language

- The Ministry of Education and Science should review its policy regarding the provision of education in the Kyrgyz, Russian and Uzbek language – and regarding the administration of tests in Kyrgyz and Russian – so as to ensure that Uzbek and Russian students are not disadvantaged by policies seeking to increase the status and use of the Kyrgyz language; and
- The Ministry of Culture, Education and Tourism should provide support for Uzbek-language media where this was displaced during the 2010 June conflict, including Uzbek-language television, radio and newspapers.

Gender

- The government should consider informational and awareness-raising campaigns, including education in schools, aiming to eliminate gender stereotypes regarding the role of men and women in society amongst the population at large;

- The government should amend all legislative provisions set out in Recommendation 2 above which discriminate on the basis of gender and fully utilise Article 29 of the Law of the Kyrgyz Republic “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” which provides for gender assessments of legislation and legislative proposals;
- The government should take urgent steps to tackle the high levels of domestic violence against women as well as its underreporting, including through appropriate training for police officers and prosecutors;
- The government should also ensure adequate funding for specialist services for victims of domestic violence, including shelters, and that women are referred to healthcare, counselling and legal support where needed;
- The government should take specific action to tackle the practice of bride-kidnapping, including rigorous enforcement of provisions which criminalise the practice;
- The government should take measures to ensure the effective enforcement of the prohibition on non-discrimination against women in education and employment, and adopt specific positive action measures in those sectors of education and employment where women are underrepresented;
- The government should take steps to tackle the persistently high gender pay gap; and
- The government should regularly review the effectiveness of existing positive action measures designed to increase the participation of women in political and public life, and introduce stronger measures where existing ones are failing to ensure equality.

Sexual Orientation and Gender Identity

- The Jogorku Kenesh should reject all attempts to introduce legislation which discriminates on grounds of sexual orientation or gender identity, including Draft Law No. 6-11804/14 and any other proposed legislation which would prohibit the “propaganda of a positive attitude towards non-traditional sexual relations”;
- The government should introduce regulations under Article 72 of the Law of the Kyrgyz Republic “On Civil Status Acts” enabling trans individuals to modify the recorded gender in their identity documents;

- The Ministry of Internal Affairs should introduce training for all law enforcement agencies on working with lesbian, gay, bisexual and trans persons so as to prevent all forms of discrimination, violence, harassment, blackmail and extortion by these agencies. Any law enforcement agent found to have discriminated against a person on the basis of their sexual orientation or gender identity, including through violence, harassment, blackmail or extortion, should face appropriate disciplinary proceedings; and
- The Ministry of Health should similarly introduce training for all public servants working in the health sector on working with lesbian, gay, bisexual and trans persons.

Disability

- The Prosecutor General’s Office and other relevant agencies should rigorously enforce both the Law of the Kyrgyz Republic “On the Rights and Guarantees of Persons with Disabilities” and the relevant provisions of the Code of Administrative Responsibility to ensure that the guarantees for persons with disabilities are practically realised, including obligations on both the public and private sector ensure that the physical and social infrastructure – including buildings, roads, transport and the provision of information – is fully accessible to persons with disabilities;
- The government of Kyrgyzstan should ensure that the “Set of Measures to Ensure the Rights and Improve the Quality of Life of Persons with Disabilities in the Kyrgyz Republic” is fully implemented, ensuring sufficient funding and resources, and with regular reviews and reporting of progress;
- The Ministry of Education and Science should increase its efforts to ensure that all children with disabilities receive a full education, in mainstream schools wherever possible, including by ensuring that schools are fully accessible and that teachers receive appropriate training; and
- The Ministry of Labour and Social Development should increase its efforts to ensure that persons with disabilities are able to participate in the labour market on an equal basis with others, by reviewing legislation and policies which potentially act as disincentives to hiring persons with disabilities, enforcing legislative provisions which re-

quire employers to make reasonable accommodation for employees with disabilities.

Health Status

- The government should ensure that Article 91 of the Law on Health Protection in the Kyrgyz Republic, which provides significant exceptions to the right to medical confidentiality, is not applied in a way which exposes people living with HIV to discrimination, particularly in access to healthcare;
- The government should take all measures necessary to ensure access to the healthcare required by people living with HIV; and
- The government should review the operation of Article 17 of the Law “On Protection of the Population from Tuberculosis” to ensure that coercive medical treatments are applied only where strictly necessary for public health reasons.

Recommendation 6: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Kyrgyzstan. State authorities and the National Statistical Committee of the Kyrgyz Republic should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Kyrgyz society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Kyrgyzstan should further ensure that such information is not used in a manner that violates human rights.

Recommendation 7: Education on Equality

Kyrgyzstan should take action to raise public awareness about equality, and to ensure that all education establishments provide suitable education on

equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

**Recommendation 8:
Prohibition of Regressive Interpretation**

In adopting and implementing laws and policies to promote equality, Kyrgyzstan should not allow any regression from the level of protection against discrimination that has already been achieved.

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

The Peremena Public Foundation is a non-governmental organisation which aims to promote the development and formation of democracy and an open society in the Kyrgyz Republic.

In 2010, Kyrgyzstan became the first Central Asian state to transition to parliamentary democracy. In December 2016, a referendum on constitutional reforms reversed many of these democratic gains. Yet this report finds that, while these changes present a new threat to equality and non-discrimination, this is not the whole story.

Since 2010, Kyrgyzstan has failed to repeal discriminatory laws and policies and to tackle long-standing inequalities. This report presents evidence of discrimination against ethnic Uzbeks by law enforcement agencies during and after the inter-ethnic violence in 2010, and notes the state's failure to address the inequalities which precipitated those events. We find that women still experience inequality in all areas of life, while horrific practices such as "bride kidnapping" remain prevalent. Inequalities affecting persons with disabilities persist, despite legislative reform.

Moreover, in the last decade, equality has come under renewed threat. The state has established a religious registration regime which indirectly discriminates against minority religions. Changes to language policy – notably a 2014 decision to end university entrance exams – have disadvantaged ethnic minorities. There are ongoing attempts to criminalise the "propaganda of a positive attitude towards non-traditional sexual relations".

The equality law framework provides evidence of missed opportunities. The constitutional non-discrimination provision is limited and there is no comprehensive equality legislation.

We conclude that, while the 2010 reforms failed to deliver an equality dividend, the 2016 constitutional amendments are only the latest in a line of negative developments. If Kyrgyzstan is truly looking for the harmony to which its constitution aspires, it must change course.



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