

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

This Report has been prepared by the **Open Viewpoint Public Foundation**, with the assistance of the **Interfaith Council Public Association** and religious communities, the members of the Council. The authors of the report are **Dmitry Kabak**, President of the Open Viewpoint, a member of the Public Expert Council on Inter-ethnic and Inter-religious Development under the President of the Kyrgyz Republic, and member of the ODIHR OSCE Advisory Panel of Experts on the Freedom of Religion or Belief, and **Galina Kolodzinskaia**, Executive Director of Interfaith Council Public Association. This Report is inextricably connected with the possibility of implementation of civil and political rights which were noted during the examination of the Kyrgyz Republic on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in March 2014 at the 110th session of the Human Rights Committee. The Open Viewpoint Public Foundation also presented its alternative report on the implementation of the ICCPR¹.

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¹ See the website for the Human Rights Committee, Session 110 (March 10-28, 2014), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en

1. General information about religious diversity in the Kyrgyz Republic

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

1.2. The country has more than 30 religious movements. There are 2,362 mosques and 81 Islamic schools which are included in the structure of the Spiritual Administration of Muslims of Kyrgyzstan (hereinafter, the "SAMK"). In 2014 there were 68 registered Muslim centers, foundations and associations, which have been engaged in education and charitable activities and the construction of places of worship². By 2014, the number of Christian organizations in the country reached 378³. The Bishkek and Kyrgyz Diocese of the Russian Orthodox Church of the Moscow Patriarchate (the ROC) has 49 parishes and one convent; 2 schools and 3 new schools are in the process of registration. Among other Christian religious organizations in the country, officially there have been registered 4 Catholic, 50 Baptist, 20 Lutheran, 56 Pentecostal, 31 Seventh-day Adventist communities, 38 Presbyterian, 43 Charismatic, 41 Jehovah's Witnesses, and 18 other Christian organizations and 26 foreign Protestant missions. Moreover, 1 Jewish Religious Community, 1 Buddhist and 12 communities of the Baha'i Faith are functioning in the Kyrgyz Republic⁴.

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

2. Legislative initiatives affecting the freedom of religion or belief

2.1. On March 2014, the Kyrgyz Republic submitted its periodic report on the implementation of the ICCPR to the Human Rights Committee. During examination of the report, the following questions were raised about a number of violations of human rights and freedoms affecting the religious sphere: the freedom of thought, conscience and religion (Article 18), torture and ill-treatment (Article 7), the freedom of movement (Article 12), the equality before the courts and fair trial proceedings (Article 14), the consciousness objectors (Article 18), the right to seek, collect, store and disseminate information (Article 19), the right of association (Article 22), and the right to form associations of religious organizations (Article 22).

2.2. The Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" (hereinafter, the "Law on Religion") violates the obligations of the Kyrgyz Republic on the ICESCR by

² The concept of State policy of the Kyrgyz Republic in the religious sphere for 2014-2020. - P. 116

http://www.president.kg/ru/news/ukazy/4901_podpisan_ukaz_o_kontseptsii_gosudarstvennoy_politiki_kyrgyzskoy_respublik_i_v_religioznoy_sfere_na_2014-2020_godyi

³ Ibid.

⁴ The concept of State policy of the Kyrgyz Republic in the religious sphere for 2014-2020. - P. 116

http://www.president.kg/ru/news/ukazy/4901_podpisan_ukaz_o_kontseptsii_gosudarstvennoy_politiki_kyrgyzskoy_respublik_i_v_religioznoy_sfere_na_2014-2020_godyi

including a number of limitations related to civil and political rights and freedoms flowing from the obligations under the ICCPR.

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

2.4. Moreover, in practice, there have been initiatives which violate the principle of equality before the law and the prohibition of discrimination on grounds of religion and belief. Among these initiatives, worth mentioning the decision of the Defense Council of the Kyrgyz Republic, dated February 3, 2014⁵ and the Concept of the State Policy in the Sphere of Religion, adopted on November 3, 2014, pursuant to which the State provides preferential financing of certain religious communities, in particular, the SAMK, related to the Sunni Islam (Hanafi Mazkhab of Maturidi school). Moreover, there were attempts made to set the status of traditional religions only for two religious communities - Hanafi Mazkhab of Maturidi school represented by the SAMK, and Orthodoxy, represented by the Russian Orthodox Church of the Moscow Patriarchate.

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

2.6. In 2012-2013, the Ministry of Justice of the Kyrgyz Republic, and then the Government of the Kyrgyz Republic, tried twice to amend the Code on Administrative Responsibility of the Kyrgyz Republic. These amendments included provisions on administrative responsibility in the form of heavy fines for conducting missionary activity, free choice of religious affiliation (proselytizing), religious activities without registration with the SCRA, and the involvement of children in the activities of religious communities. Thus, the amendments actually banned a number of actions related to the implementation of the religious freedom and set the responsibility for these actions (articles 395, 395-1, 395-2 of the Code of Administrative Responsibility of the Kyrgyz Republic)⁶. In October 2014, the SCRA

⁵ See the decree "On the implementation of the decision of the Defense Council of the Kyrgyz Republic on State policy in the sphere of religion,"

http://www.president.kg/ru/news/ukazy/3468_podpisan_ukaz_o_realizatsii_resheniya_soveta_oborony_kyrgyzskoy_respubliki_o_gosudarstvennoy_politike_v_religioznoy_sfere/

⁶ The draft law was approved by the Governmental Decree №527. In the document, the Government stated that the developer of the draft law is the Ministry of Justice of the Kyrgyz Republic.

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

2.7. Religious educational institutions provide reports as religious organizations, which was assigned by the director of the SCRA №116 (according to alternative data, №4) dated December 20, 2012 "On the form and timing of reports by religious organizations on their activities." By this order SCRA, in fact, took the function of several authorities - the Tax Inspection, the Social Fund and the General Prosecutor. In addition, there is interference into the self-administration of religious organizations, in particular on the decisions of governing bodies, including the issues related to internal affairs. Due to the fact that religious educational institutions are under the control of religious organizations, therefore, information on their activities should also be reflected in the financial statements of religious organizations.

2.8. Equality and non-discrimination are offset by such initiatives as the draftlaw "On State Support of Traditional Religions" (initiated in 2014 by deputy Omurbek Tekebayev). It foresees the State financial support to two religious organizations - *the Spiritual Administration of Muslims of Kyrgyzstan* and *the Bishkek and Kyrgyz Diocese of the Russian Orthodox Church of the Moscow Patriarchate*. The current Law on Religion prohibits the State funding of religious organizations⁷. In addition, the government officials often use in their speeches the term "traditional religions", despite the fact that the Constitution of the Kyrgyz Republic, adopted by referendum in 2010 (hereinafter, the "2010 Constitution"), does not set up a State religion. The current Law on Religion includes the term "sect," which has a derogatory connotation.

2.9. After the adoption of the 2010 Constitution of the Kyrgyz Republic in the referendum, the Law on Religion was included in the list of laws that should be brought into line with the Constitution. For this work, the Ministry of Justice established a Working Group. A new version of the draft Law on the Freedom of Conscience and Religious Organizations in the Kyrgyz Republic⁸, which corresponded to the 2010 Constitution and treaties of the United Nations for Human Rights, for unknown reasons, was not submitted by the Government to the Jogorku Kenesh (Parliament). Thus, the Kyrgyz Republic ignores the recommendations of the ODIHR OSCE on the 2008 Law on Religion (see the opinion of the *Venice Commission* and the *ODIHR OSCE Expert Council*)⁹. Accordingly, in the Kyrgyz Republic the Law on Religion, which was adopted in 2008 and has been amended several times, still tightens the State control over religious organizations, and complicates conditions for their activities.

3. The principle of non-discrimination (Article 2, paragraph 2 of the ICESCR)

3.1. The Constitution of the Kyrgyz Republic prohibits discrimination¹⁰, including on grounds of religion or belief¹¹, and guarantees everyone the enjoyment of all human rights and freedoms, including

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

⁸ The Bill, in line with the 2010 Constitution of the Kyrgyz Republic, <http://prava.kloop.kg/?p=627>

⁹ See, the Joint opinion No. 496/2008, dated October 28, 2008, of the Commission for Democracy through Law (Venice Commission) Council of Europe and ODIHR OSCE Advisory Council on Freedom of Religion or Belief CDL-AD (2008)-032, <http://legislationline.org/documents/id/15360>

¹⁰ Paragraph 1 of Part 1 and paragraph 1 of Part 2 of Article 16 of the Constitution of the Kyrgyz Republic.

¹¹ Paragraph 2 of Part 2 of Article 16 of the Constitution of the Kyrgyz Republic, adopted by referendum on June 27, 2010, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913>

freedom of conscience and religion¹² and the right to education¹³. International treaties to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law, are integral parts of the legal system of the Kyrgyz Republic¹⁴. In addition, international human rights treaties, to which the Kyrgyz Republic is a party, shall have priority over other international treaties¹⁵.

3.2. The attitude of the state bodies and officials is various toward different faith communities and is determined by their religious background. Thus, in accordance with the law, religious and educational literature must be purchased and used only in places of worship and in specialized stores¹⁶. Islamic and Christian canonical literature can be found in open trade outside the designated stores, while sales of the canonical literature of other religions is limited to those areas.

3.3. According to the law, any religious activity of foreign citizens¹⁷ as well as religious activities aimed at the dissemination of their faith¹⁸ is considered as missionary activity. The Kyrgyz Republic controls the residence of foreign religious believers. The maximum duration of residence for a foreign citizen registered as a missionary is limited up to a 3-year term. Residing in the country beyond this period is not permitted.

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

3.5. The attitude toward citizens carrying out missionary activity is also different. For example, "da`waatists" (Islamic missionaries) are freely carrying out their missionary activity among the population. They receive only a permit for this activity from the governing body of their religious organization (SAMK). Meanwhile, according to the law, representatives of other faiths are prohibited to disseminate beliefs¹⁹.

¹² Article 32 of the Constitution of the Kyrgyz Republic.

¹³ Article 45 of the Constitution of the Kyrgyz Republic.

¹⁴ Part 3 of Article 6 of the Constitution of the Kyrgyz Republic.

¹⁵ Paragraph 2 of Part 3 of Article 6 of the Constitution of the Kyrgyz Republic.

¹⁶ Paragraph 7 of Article 22 of the Law on Religion.

¹⁷ Paragraph 1 of Article 12 of the Law on Religion.

¹⁸ See, the basic terms and concepts, paragraph 7 of Article 3 of the Law on Religion, <http://cbd.minjust.gov.kg/act/view/ru-ru/202498>

¹⁹ Paragraph 2, of Part 6 of Article 22 of the Law on Religion.

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

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

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

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

3.10. In practice, different approaches have been used in registration of religious educational institutions on the basis of their religious affiliation. For instance, the "Silk Road" Theological College affiliated to the "Kuuday Jamaat" religious organization (Assembly of God, Pentecostals), despite compliance with all regulations of the Law on Religion, has not succeeded in getting re-registration by the SCRA. At the same time, the Theological Islamic Faculty works under umbrella of the Osh State University. These cases raise the question of neutrality and equal treatment by the State²⁰, since the law allows establishing religious educational intuitions to the registered religious organizations only; the Osh State University is not a religious organization.

4. Right to education (Article 13, paragraph 1 of the ICESCR)

4.1. The right to religious education is inextricably connected with the stringent requirements for the registration of religious organizations (*right to association*). A religious educational institution can be created only by a registered religious organization²¹. At the same time for the registration of legal entities in the form of secular foundation, only one founder is necessary, and for secular public association - three founders²², but this approach does not apply to religious organizations²³; for their establishment there must be a minimum of 200 members²⁴ (in the draft law, which was put on the website of the State Commission for Religions for public discussions, 500 persons were required for each object).

4.2. In order to get religious education there is a need in a registered religious organization as a founder of a religious educational institution²⁵. This provision greatly complicates the ability to create religious educational institutions for believers. First, it is almost impossible for an individual to become a founder of a religious educational institution. Secondly, the establishment of religious schools requires

²⁰ The Constitution establishes the principle of separation of religion from the State, part 2 of Article 7 of the Constitution.

²¹ Paragraph 4 of Article 6 of the Law on Religion.

²² Article 19 of the Law on NGOs, as amended by the Law of KR, on May 30, 2014, № 82, <http://cbd.minjust.gov.kg/act/view/ru-ru/274>

²³ Article 1 of the Law on NGOs.

²⁴ Paragraph 3 of Article 8 of the Law on Religion.

²⁵ Paragraph 3 of Article 6 of the Law on Religion.

registration in the SCRA, which enables subsequent registration as a legal entity in the bodies of Ministry of Justice and further obtain a license in the Ministry of Education of the Kyrgyz Republic. In case of amendments to the charter of the organization, it must re-register again with the risk of not passing the re-registration, for whatever reasons (case of the "Silk Road" Theological College).

4.3. The laws of the Kyrgyz Republic prohibit getting of non-confessional (religious studies) education on an individual basis²⁶.

4.4. There have been cases when school teachers collected information about the religious affiliation of student and required it in the public, meanwhile, such information is related to one's private life. It is not known for what purpose and on whose initiative the administration of schools (cases in the cities of Kara-Balta and Karakol) collected such information, in violation of neutrality of the State and its subordinate institutions.

5. The rights of parents to raise their children (Article 13, paragraph 3 of the ICESCR)

5.1. The Law on Religion actually prohibits parents to ensure the religious and moral education of their children in conformity with their own convictions²⁷. Moreover, in 2012-2014, several attempts to establish administrative responsibility for "the involvement of children in religious organizations" were undertaken. Thus, the parents could be deprived of the right to educate their children, including to jointly attend a religious community.

6. Recommendations

6.1. Jogorku Kenesh, the Government, and the Ministry of Justice of the Kyrgyz Republic should initiate bringing the existing Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" in conformity with the provisions of the ICESCR and ICCPR, the provisions of which are reflected in the Constitution of the Kyrgyz Republic. Jogorku Kenesh should take into account that each individual, including a believer is entitled for all the rights and freedoms.

6.2. Jogorku Kenesh, the Government, and the Ministry of Justice of the Kyrgyz Republic should take into consideration the draft law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic," developed by the Working Group under the Ministry of Justice after the adoption of the 2010 Constitution of the Kyrgyz Republic.

6.3. Jogorku Kenesh should ensure proper expertise of laws, including the existing five types of compulsory expertise (legal, human rights, anti-corruption, environmental and gender).

6.4. The matter of the registration of religious organizations and religious educational institutions should be referred to the competence of the Government of the Kyrgyz Republic represented by the Ministry of Justice of the Kyrgyz Republic.

6.5. To conduct in cooperation with civil society organizations and international organizations training programs for employees of government bodies and local self-government bodies in order to improve cooperation with religious organizations and to promote the values of human rights and tolerance.

6.6. The Ministry of Justice, the Government, and Jogorku Kenesh of the Kyrgyz Republic should perform a functional analysis of the powers of the State Commission for Religious Affairs, to eliminate

²⁶ Paragraph 7 of Article 6 of the Law on Religion.

²⁷ Paragraph 5 of Article 4 of the Law on Religion.

duplication of functions of other authorities as well as interference in the self-governance of religious organizations. The presumption of innocence and fair trial standards in the work of the State Commission on Religious Affairs should be ensured and this agency should have liability in the cases of appeal to the court in the case of imposition of penalties and suspension of registration. Judicial control should apply to any government interference in the activities of religious organizations.

6.7. To include information about the history of religions and religious diversity, historically presented in the territory of the Kyrgyz Republic into educational and training programs.

6.8. The Government of the Kyrgyz Republic and law enforcement agencies should take action to change attitudes to the freedom of religion or belief as the positive obligations of the State, and eliminate negative perception of religious organizations. Effective control of the court and prosecutors over the operations to combat extremism should be ensured.