

JOINT UN COUNTRY TEAM'S IN THE KYRGYZ REPUBLIC SUBMISSION FOR THE UPR PROCESS

Introduction

The Universal Periodic Review (UPR) of the Kyrgyz Republic (KR) will take place during the 8th Session of the Human Rights Council's Working Group in May 2010. The Joint Submission by the UN Country Team in the Kyrgyz Republic (to the attention of the UPR Unit of OHCHR) was compiled by the OHCHR Regional Office for Central Asia (ROCA) with input from the following UN agencies: UNDP, UNICEF, UNHCR, UNIFEM, UNFPA, UNOCD, UNESCO, WHO and ILO. Given the effective exercise of the One-UN approach by the UNCT in the Kyrgyz Republic, the document aims at providing an overview of key areas that are addressed through the work of the UNCT.

I. BACKGROUND AND FRAMEWORK

A. SCOPE OF INTERNATIONAL OBLIGATIONS (INTERNATIONAL HUMAN RIGHTS LEGAL OBLIGATIONS ETC.)

Cooperation with special procedures

There is no standing invitation issued by the Kyrgyz Republic. The latest visits and mission reports are: Special Rapporteur (SR) on Violence against Women (November, 2009); SR on Toxic Wastes (October 2009); SR on Independence of Judges and Lawyers (2005); Visits agreed upon in principle: SR on Adequate Housing.

Visits of special procedures recommended by ROCA: SR on Freedom of Religion and Belief, SR on Torture, SR on human rights and Anti-Terrorism; SR on Education, SR on human rights defenders. The importance of a standing invitation to the Human Rights Council's (HRC) Special Procedures could be underlined during the UPR procedure.

Treaty bodies

The Kyrgyz Republic has ratified most of the core UN human rights treaties. Initial reports have been submitted under all ratified treaties, and the Government is now engaged in the second to third reporting rounds.

Engagement with the UN

In addition to the legally binding UN human rights treaties, the Kyrgyz Republic has supported inter alia the Beijing Platform for Action (BPA) (1995) and Millennium Development Goals (MDGs) (2000); UNGA Declaration on HIV/AIDS (July 2001) and every two years submits a progress report to UNAIDS. Establishment in June 2008 of the OHCHR Regional Office for Central Asia¹ (ROCA, based in Bishkek) increases the UN family's capacity to assist the Kyrgyz Republic in fulfilling its human rights obligations.

¹ It should be noted that legal status of ROCA, currently regulated by the Memorandum of Understanding (MoU) signed by Deputy High Commissioner and the Deputy Minister of Foreign Affairs on 10 June 2008 in Bishkek, is yet to be ratified. The MoU is due to expire in June 2010 and the Government should be encouraged to ensure automatic prolongation of the existing MoU and its prompt ratification in 2010.

B. CONSTITUTIONAL FRAMEWORK

A new version of the Constitution of the Kyrgyz Republic was adopted on 23 October 2007 through a public referendum². Article 12.3 of the Constitution proclaims that “international treaties which have been ratified by the Kyrgyz Republic and other norms and common principles of the international law shall be a constituent part of the legal system of the Kyrgyz Republic”. The Kyrgyz Republic contains a separate chapter on human rights encapsulating key fundamental rights and freedoms usually contained in the bill of rights.

NHRI

The function of the National Human Rights Institution (NHRI) is vested with the Ombudsman institution of the Kyrgyz Republic. Its activities are regulated by the Law on the Ombudsman³. The first six years of the work of the Ombudsman institution did not effectively impact on the strengthening of the rule of law and protection of human rights. In February, 2008 the Kyrgyz Parliament did not renew the terms of the first Ombudsman and elected a new Ombudsman (a former human rights activist). In May/June 2008 OHCHR/UNDP arranged for an evaluation of the Kyrgyz Ombudsman institution, which was carried out by two independent experts. The evaluation recommended that the UNCT resume the provision of technical assistance to the Kyrgyz Ombudsman. In December 2008, the Kyrgyz Ombudsman Institution published its new strategic plan for 2008-2013. The Ombudsman institution and implementation of the strategic plan is assisted through a Joint UN Technical Assistance Programme.⁴

The Ombudsman has indicated the intention to bring the institution fully in line with the Paris Principles and to obtain the accreditation with the International Coordination Committee (ICC). A draft law (elaborated by a national consultant supported by ROCA) identifies the Ombudsman as the National Preventive Mechanism (NPM) under the UN OP-CAT, following the so called “Ombudsman Plus” model (whereby the involvement of civil society in monitoring activities is seen as part of the NPM). Under its new leadership, the Ombudsman institution is active in the promotion and protection of human rights and provides a constructive reminding voice to the government about its human rights obligations and implementation record. It cooperates with civil society through its Council of human rights defenders, providing a vital link for citizens to raise their concerns.

C. LEGISLATIVE FRAMEWORK CHARTERS, LAWS AND REGULATIONS

A Law on International Treaties in its Article 13 states that “a decision on ratification of international treaties by the Kyrgyz Republic is made by the Parliament in a form of a law that is then promulgated by the President”. A new Law on Normative Legal Acts adopted on 20 July 2009 excluded a previously existing provision (Article 8) that stipulated that international treaties and commonly recognized norms of international law prevailed when there were discrepancies between these standards and provisions of national legislative acts. Article 6 of the new Law that provides for the hierarchy of normative-legal acts does not refer to international treaties. Other provisions of this Law also do not stipulate for the procedure of application of international treaties, therefore, this omission may result in non-implementation by national authorities of the ratified international treaties. At the same time supremacy of international law is still recognized in a number of legislative acts, for

² The original text of the Constitution was adopted on 5 May 1993.

³ The Law on the Ombudsman is from 31 July 2002, last amended on 18 July 2008.

⁴ Timeframe of the Assistance Programme is April 2009-December 2011. Agencies involved UNDP/OHCHR/UNICEF/UNHCR.

example, Article 2 paragraph 3 of the Criminal Procedure Code (CPC)⁵ stipulates that “international treaties ratified by the Kyrgyz Republic shall have priority over this Code and shall be applied directly, except for the cases when the international treaty provides issuing law for its application”. This discrepancy between various legislative acts leads to the lack of legal certainty and unforeseeability of the procedure of application of international treaties.

Several domestic laws address gender equality, including the «Law on state guarantee of equal rights and equal opportunities for men and women» (2003, 2008), «Law on social and legal protection against domestic violence» (2003), «Law on reproductive rights of citizens», Tax Code Articles 76 and 181 (providing tax exemptions for female heads of households with many children). However, a wide range of basic laws remains gender-blind, e.g. the Land Code, the Tax Code, the Banking Law and the law on privatization. UNFPA and WHO indicated that a law on HIV/AIDS adopted in 2005 is the latest and comprehensive document that stipulates state’s guarantees in terms of HIV/AIDS; rights and responsibilities of citizens and persons living with HIV (PLHIV); social security of people affected by epidemic and PLHIV and positive children. The Aarhus Convention informs several pieces of domestic legislation, including inter alia the Law “Law on Access to Information Handled by State Authorities and Local Self Government Bodies” (from 28 December 2006), “On Procedures of Processing Proposals, Appeals and Complaints by Citizens” (from 4 May 2007, last amended on 26 February 2008). Between 2008-2009 the Kyrgyz Republic adopted the law on flour fortification, Code of substitutes of breast milk and the law on mandatory preschool.

D. POLICY MEASURES (NATIONAL ACTION PLANS, STRATEGIES AND HUMAN RIGHTS EDUCATION ETC.)

A Country Development Strategy 2009-2011 (the CDS) sets out the national goals in the short and mid-term. Together with local development strategies, the CDS is focused on increasing the quality of population life, poverty reduction, creating opportunities for adequate jobs and considers monitoring of MDG indicators (including on health care, education, environment and poverty level). The CDS recognizes the need to adopt special measures aimed at increasing economic opportunities for women and address vertical as well as horizontal gender segregation on labour market. However, the CDS considers the matter of gender equality in the economy in a rather fragmented way.

In response to the Concluding Observations to the first initial report to the UN CRC, a State Programme on realization of children rights “New Generation” for 2001-2010 was adopted. In January 2008 the Government adopted the State Program of Actions of Social Partners on the Worst Forms of Child Labour in the Kyrgyz Republic for 2008-2011. Since 1996 three National Action Plans have been adopted on gender equality. The current National Gender Action Plan 2007-2010 (NGAP) is the main programming document on gender policy. After ratifying the Aarhus Convention, the Kyrgyz Republic prepared two National Profiles on the Assessment of Country Implementation Capacity (in 2004 and in 2007), and established an official site of the Aarhus Convention.

A roundtable devoted to human rights education organized in October 2009 with support of the UN agencies in the Kyrgyz Republic has demonstrated that currently promotion of the human rights education was primarily undertaken by civil society organizations and with ad hoc assistance from international community. Participants of the roundtable identified a need to ensure mainstreaming of human rights and introducing human rights education throughout the educational system in the Kyrgyz

⁵ Adopted on 30 June 1999 and last amended on 26 October 2009.

Republic. Previous treaty bodies' reports (CAT, CRC, CEDAW) and recommendations of Special Procedures highlighted the lack of institutionalized human rights education in the national curriculum. The task now with the Ministry of Education and the Ombudsman is to elaborate a national concept paper on human rights education, which provides for the possibility to engage with civil society actors and to adopt an effective strategy to be implemented in the near future.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

▪ Equality and non-discrimination

Gender equality

Despite CEDAW recommendations on the establishment of a specialized State institution on gender issues with a clear mandate and adequate financial and human resources, no such institution has yet been set up. The previously existing coordination and consultative agency on implementation of state gender policy – the National Council on Women, Family Affairs and Gender Development under the President of the Kyrgyz Republic (the NC on women, family affairs and gender development) - lacked financial and human resources, and could not cover all levels of governance (including the sectoral policies) thus resulting in uneven implementation of national policies on gender equality. This agency was abolished under the large-scale reform of the Kyrgyz Republic's public administration system announced on 20 October 2009 by President Bakiyev. This public administration system reform was followed by restructuring of the Parliamentary committee's structure, through which the Committee on gender issues set up in 2007 was also abolished. Gender focal points are present in line ministries and agencies, local administrations and local self-government structures.

Low *employment*, lack of income opportunities and structural misbalance between supply and demand are the main characteristics of the *labour market* in the Kyrgyz Republic. Women's employment rate is 48.8%; women's unemployment 9% (it is 7.6% among men)⁶. Although women's representation in managerial positions has increased during the past few years, they still represent a minority (only 9.9%) in such jobs; the *average wage* of women is significantly lower than that of men, and the tendency seems to be for the gender pay gap to increase.⁷ ILO informed that the International Trade Union Confederation (ITUC) asked the Kyrgyz Government to consider amending the Gender Equality Act to better reflect the principle of equal remuneration for men and women for work of an equal value.

Industrial and occupational segregation, one of the causes of the existing gap between average salaries of men and women, is on the increase, as women are mostly concentrated in a number of less paid and less prestigious sectors.⁸ This traditional gender division of labour is linked to a recent trend toward *increased gender sectoral segregation in the education*, whereby women account for the majority of students in the education vocational training programme, and in the humanities; and for less than 25% of students in agriculture and only 7.4% in transportation. In this context the re-orientation of the CDS 2009 – 2011 towards energy, mining and other industrial sectors which results in the re-

⁶ Women and Men in the Kyrgyz Republic, Bishkek, 2008

⁷ It reached 67.3 percent in 2007 Women and Men in the Kyrgyz Republic, Bishkek, 2008.

⁸ Women account for 72.5 percent of employees in the educational sector, and 76.2 percent of employees in the healthcare sector and delivery of social services (¾ of the jobs in education, health care and social services, the hotel and catering industry, the retail trade and the processing industry, and 85% in textile production), while men represent over 90 percent of employees in the mining, construction, transportation, and communications industries; they also dominate in the production and distribution of electricity, gas, and water (77.8 percent). Gender-disaggregated statistics, Bishkek, 2007, p. 24.

orientation of the state towards engineering and technical specialties and the prevalence of gender stereotypes, the number of girls trained in technical specialties will decline, resulting in increased vertical segregation, i.e. further concentration of women in low-paid sectors.

The land legislation went through gender analysis and the amended articles removed the legal impediments for observance of rural women's rights to land, in response to the CEDAW Committee's recommendation (2004) 'to eliminate all forms of discrimination against women with respect to ownership, transfer and inheritance of land'.⁹ Though de jure women have equal rights to land ownership, de facto, the rural women's opportunities for demanding or protecting their rights to land are still restricted by the traditional law of "adat", which along with widespread gender stereotypes, non-registered religious marriages and divorces, limit women's opportunities to exercise their rights. In addition, the poor administrative performance of local governments and non-implementation of existing legislative acts, shortcomings in compiling lists of eligible villagers, and providing legal information and procedural support in obtaining land, often result in unequal opportunities to accessing land by women.¹⁰

Equal treatment in the delivery of medical services

Poor state financing of health care facilities and inadequate quality of medical services leads to the threat of HIV infection transmission in the healthcare facilities and hospitals. Equal access to free medical services (including for the underprivileged, as announced by the Government) has not always been implemented in practice. The accessibility of free medical care by vulnerable groups (injecting drug users, sex workers, migrants and released prisoners) is frequently undermined by strict registration requirements (i.e. a requirement to have a registration in a medical facility and a need to present a passport or a valid residency registration form in order to claim free medical aid). Individuals in pre-trial detention and inmates of penitentiary institutions are also entitled to free medical aid; however, the insufficient level of financial resources currently allocated means that their rights are not always fulfilled due to the poor quality of the services provided.

Discrimination of persons living with HIV

Several UN agencies linked the discrimination against PLHIV and existing misconceptions about HIV/AIDS-related issues to the poor quality of educational and awareness-raising programmes. In 2009, a special UNCT's mission lead by UNICEF evaluated the level of stigma and discrimination of HIV/AIDS-affected people in the Osh oblast and revealed cases of particular vulnerability of rural citizens due to their limited access to adequate information and tendencies among health care workers to refuse treatment to PLHIV. The reported outbreak of HIV in 2007 and 2008 in the southern part of the Kyrgyz Republic (Osh province) highlighted the lack of support for HIV-infected children and their families at the community level and was marred by instances of exclusion of affected women/children from the respective families, the abandonment of infected children and cases of men divorcing their HIV-affected wives. Several incidents of disclosure of confidential medical information by doctors in the South of the Kyrgyz Republic resulted in societal stigmatization and exclusion.

⁹ Given that the Kyrgyz Republic is predominantly agrarian country with over 66 % of the population living in rural areas and about one third of the total population depending on agriculture for its livelihood, the issue of women's *property and inheritance rights*, especially in rural areas is an issue.

¹⁰ UNIFEM analytical overview on "Women's Rights to Land".

Rights of Persons with Disabilities

National legislation prohibits discrimination against persons with disabilities, but in practice there is discrimination in employment, education, access to health care, and the provision of other state services for persons with disabilities. Legal provisions that oblige state authorities to ensure access to buildings for persons with disabilities and provides for access to public transportation and parking for persons with disabilities, subsidies to make mass media available to the hearing or visually impaired, and free plots of land for the construction of a home are generally not enforced in practice. Discrimination of persons with disabilities at the job market results from negative societal attitudes and existing high unemployment among the general population. Moreover, limited economic resources made it difficult for persons with disabilities to receive adequate education and NGOs reported that the right of children with disabilities to education is infringed in practice as they are routinely denied entry into schools for spurious reasons. Parents of such children were forced to set up special educational centers, without receiving any government assistance.

- **Right to life, liberty, security and fair trial**

Right to life and the death penalty

Article 14 of the current Constitution states that ‘every person in the Kyrgyz Republic has an inalienable right to life and nobody can be deprived of life’. The death penalty was abolished by the previous versions of the Constitution adopted on 9 and 30 December 2006. On 25 June 2007 a package of laws aiming at the humanization of criminal justice was adopted. This package contained relevant amendments to the Criminal Code and Criminal Procedure Code that replaced the death penalty with life imprisonment. Currently, Article 50 of the Criminal Code states that “life imprisonment through a clemency procedure can be replaced with 30-year prison term”. As of 25 June 2007 life imprisonment is foreseen under six articles of the Criminal Code, whereas previously only three Articles of the Criminal Code foresaw the death penalty. As reported by NGOs, after the abolition of the death penalty, from January to March 2008, 105 cases in relation to 133 persons on death row were reviewed by the Supreme Court and the death penalty was automatically converted to the life imprisonment. NGOs believe that this automatic replacement of punishments stripped off the lifers of their right to a fair trial, as foreseen by Article 15 para 4 of the Constitution. Moreover, NGOs report that the humanization policy did not result in genuine reform of the criminal justice and life imprisonment is regularly imposed by national courts.¹¹ Conditions of detention of the life-prisoners, in particular a need to construct an appropriate colony for life-prisoners in line with international standards remains a dire concern, and the enforcement of the right of lifers to be considered for an early release on non-discriminatory basis also remains a challenge. As reported by the Minister of Justice on 11 November 2009, there are currently two facilities for life-prisoners under construction in Naryn and Chui regions.

On 23 September 2009, two senior security officials of the Security Council of the Kyrgyz Republic spoke out in support for reinstatement of the death penalty in the Kyrgyz Republic. Even though this position was voiced as their “citizens’ position”¹², civil society and several MPs responded to this statement in a form of a strong public statement criticizing an idea of reintroducing the death penalty. On 11 November 2009 the governmental fraction “Ak Zhol” rejected a draft Law on “Accession to the Second Optional Protocol to the ICCPR” and during the Parliamentary debate various arguments in

¹¹ Number of persons convicted to life imprisonment: 4 - from January to May 2009, 12 - during 2008, 19 – during 2007. To date, there are approximately 200 life prisoners in the Kyrgyz Republic.

¹² As claimed in the Press Release issued by the Security Council on 25 September.

support of reinstatement of the death penalty were voiced by some MPs, references were made to 80-90% of the population being in support of the death penalty and proposals were made to arrange for a nation-wide discussion of the need for a death penalty. Media reported the intention of the Communist party to address President Bakiyev with a request to announce a referendum in order to consider changes to the Constitution, including with the aim of reintroducing the death penalty. International actors should monitor further public debate on this issue and should express their firm stance on unacceptability of reintroducing the death penalty in the country.¹³

Right to liberty and security

On July 2008, the Criminal Procedure Code (CPC) was amended and the judicial powers given to courts in June 2007 to issue search and seizure warrants were returned back to the prosecutors. On 5 September 2008, Article 97 of the CPC was amended, whereby the detention time prior to pressing charges for murder suspects was reduced from 72 to 48 hours. A CPC requirement to inform relatives of the detained persons within 12 hours of detention is often not observed in practice. The maximum duration of judicially authorized pre-trial detention is one year, after which the courts are required to release the suspect. NGOs reports indicate that arrested minors are usually denied lawyers, often held without parental notification, questioned without parents or lawyers and often were intimidated into signing confessions. Moreover, provision of free legal aid and access of detained persons to a lawyer immediately upon detention remains a concern. Commendably, the government plans to adopt a new Law on Free Legal Aid.

During the last years the number of children in residential institutions is increasing. According to the National Statistics Committee of the Kyrgyz Republic in 2007 there were 20,750 children living in the residential institutions. Most of them have either one or both parents. This increase is a result of inadequate efforts made in the development and delivery of child welfare services, poverty and urbanization, whereby residential care in big and centralized institutions is often the only alternative for parents unable to care for their children.

Mental hospitals

NGOs report serious concerns about conditions in psychiatric hospitals, including the lack of state financing to provide basic needs such as food, water, clothing, heating, health care, and sufficient space for each patient. Social integration of people with mental disabilities, in particular children, still remains a challenge. Involuntary placement of people into mental facilities, physical abuse and deprivation of sufficient nourishment are also highlighted by NGOs as areas of concern.

Violation of international standards vis-à-vis asylum-seekers and breach of the principle of non-refoulement

In contradiction with international standards that exclude legal responsibility of individuals seeking refuge for illegal border crossing, in 2008 four Afghan asylum-seekers in the Kyrgyz Republic were

¹³ In December 2007, the UN General Assembly adopted a landmark text calling for a moratorium on the death penalty. The draft resolution on a moratorium on the use of the death penalty (document A/62/439/Add.2) was adopted by a recorded vote of 104 in favour to 54 against, with 29 abstentions. The Kyrgyz Republic voted in favour of a moratorium on the use of the death penalty. It is important to note that the resolution calls on States that have abolished the practice not to reintroduce it.

convicted for such an offence, with two of them being reportedly arrested by the Kyrgyz National Security service directly on the premises of the state asylum authorities in Bishkek.

Kyrgyz law enforcement authorities reportedly share information on asylum seekers and refugees with their counterparts from countries of origin, in particular Uzbekistan. In the summer of 2006, five Uzbek asylum-seekers disappeared in the South of the Kyrgyz Republic - allegedly abducted to Uzbekistan. On 9 August 2006, four Uzbek mandate refugees and a mandate asylum-seeker were refouled to Uzbekistan (in spite of the UN Human Rights Committee's interim measure asking to suspend the extradition until the end of the complaint's consideration). In June 2007 and in May 2008, two more Uzbek asylum seeker were refouled, and in 2007 an Iranian asylum-seeker with a child was refouled from Manas international airport, while a Chinese asylum seeker disappeared after his transfer to the detention facility of the State Committee on National Security. In September 2008, a mandate refugee was reportedly abducted in Bishkek to re-appear in detention in Tashkent where he was reportedly convicted to 13 years of imprisonment.

Freedom from Torture

The ratification by the Kyrgyz Republic in December 2008 of the Optional Protocol to the Convention against Torture (OP-CAT) triggered active public debate and work in the country on drafting legislation that would establish a national preventive mechanism (NPM). The existing Joint UN Technical Assistance Programme for the Kyrgyz Ombudsman Institution also assists in the establishment of the NPM. Provisions of the criminal law also need to be brought in line with the UNCAT requirements (to ensure that the crime of torture is in line with the Convention's definition and adequate punishment is foreseen by the Criminal Code; existing Article 305-1 of the Criminal Code on Torture is invoked by the law enforcement authorities as to date nobody has yet been convicted under this Article; impartial, transparent and effective investigation into allegations of torture is carried out; Istanbul protocol safeguards are foreseen by the law; compensation of victims of torture is ensured and statistics on torture crimes is maintained).

Violence against children

The Kyrgyz Republic's legislation includes several legal provisions for the protection of children from violence, exploitation and abuse as well as from separation from families. However, despite Government's efforts to further improve the legislation in the sphere of children's rights, there is a serious implementation gap. For example, a recent study commissioned by UNICEF and the Vice Prime Minister Office acknowledges the widespread trend of abuse against children within families. 72% of children reported experiencing abuse and/or neglect in the family and the study shows that preventive measures in the local community are very limited.

Violence against women

Cases of domestic violence against women, bride kidnapping, sexual harassment, rapes, forced and early marriages and polygamy are widespread. According to the Human Rights Watch, the proportion of marriages through bride kidnapping varies from 30 to 80 percent depending on the region of the country; and according to the UNICEF survey data, around 1.7 percent of respondents of fertile age (15-49) stated that they were in a *polygamous marriage* or union. There is still no reliable state statistics on domestic violence. A Law on Domestic Violence adopted in 2003 is not widely known, including by state officials and judges, and its provisions are often non-implementable in practice, in particular the issuance of judicial protection orders, due to inherent contradictions of the Law with

other legislative acts and lack of by-laws that could guide state authorities in applying the Law. A current effort to elaborate amendments to the existing Law is commendable and should make the Law more operational.

Administration of justice, including impunity, and the rule of law

Despite the proclaimed independence of the judiciary, there are numerous reports in practice of the executive branch interfering with the judiciary. Moreover, wide-spread skepticism about independence of the judiciary among legal professionals and the population at large further erodes the image and status of the judges. The Constitutional Court is limited to constitutional questions and cannot intervene with other courts except concerning constitutionality, and only upon an appeal from a person who was directly affected by the legal provision at stake.

In general, criminal justice still retains an inquisitorial character with over reliance on pre-trial investigation and little weight given to the presumption of innocence and adversarial procedure of trials. A Law on Jury Trials from 15 July 2009 is not yet in force and will become operational gradually from one region to another starting from 1 January 2012. Significant preparatory work with judges and awareness-raising about significance and principles of the jury trials among the wider population will have to be done before the jury trials are introduced in practice.

Juvenile justice

The existing juvenile justice system in the Kyrgyz Republic does not offer sustainable alternatives either at the phase of criminal investigation or when the child is convicted. In 2006, President Bakiev called for the reform of the Juvenile Justice System (an idea supported also by the Ministry of Justice, Supreme Court and the Parliament) and established a working group to bring legislation in compliance with the UN Convention on the Rights of the Child (CRC) and other relevant international instruments. Available data (from the Ministry of Internal Affairs) indicates that while 90 per cent of offences attributed to 14-17 year old children involve petty robbery without violence in many cases, more than 60% of sentences results in imprisonment.¹⁴ The majority of children in conflict with the law in the Kyrgyz Republic do not receive necessary legal assistance and information about their rights, do not avail themselves of effective defense in courts and are punished by deprivation of liberty. This punitive nature of criminal justice vis-à-vis minors is further exacerbated by undeveloped prevention and rehabilitation services and resulting problems with reintegration of juvenile offenders in the society upon completion of their criminal sentences.

- **Freedom of religion, expression, association, peaceful assembly, freedom of movement and the right to participate in public and political life, including access to information, and protection of human rights defenders**

Freedom of religion

The new Law on "Freedom of conscience and religious organizations in the Kyrgyz Republic" adopted on 6 November 2008 and signed by the President in January 2009 gives the state the responsibility to prevent "religious fanaticism and extremism, as well as actions aimed at confrontation and exacerbation of relationships." It has raised a number of concerns for minority religious groups and imposed undue limitations on the freedom to manifest one's religion or belief. The main concerns

¹⁴ According to international standards, deprivation of liberty should be imposed only as a measure of last resort and limited to the shortest possible period of time.

relate to the prohibition of activities or operations of all religious organizations which are not registered at the State Body on Religious Affairs; an increase of the membership threshold for registration of religious organization from 10 to at least 200 adult citizens, possibility for the authorities to undertake substantial reviews of the registration applications submitted to them; an obligation of religious organizations to provide detailed financial information to the authorities; the prohibition of private religious education at all levels and certain proselytizing activities such as the distribution in public places of religious literature and other materials of religious content and visits to private apartments and schools, as well as the power of local authorities to ban activities of groups registered in another district.

Government officials have long expressed concerns about religious education, and following adoption of the new restrictive Religion Law, a Law on Religious Education has been initiated and prepared by the former State Agency for Religious Affairs (SARA), as of 20 October the State Commission for Religious Affairs (SCRA). In October 2009, this draft law was commented on by OSCE/ODHIR Advisory Panel on Freedom of Religion and Belief. However, comments that were sent to SARA were not shared with the public. During October-November 2009 the draft law was discussed in a hasty and in non-inclusive manner. If adopted in its current form, the Religious Education law would impose sweeping controls on who can open religious educational institutions, would ban all but approved and licensed religious education and ban individuals from seeking religious education abroad without state approval.

A decree of the Government from 2006 allows the teaching of "the history of world religions" and "religion in general, but the teaching of religion (or atheism) in public schools as such is prohibited. The rights of students to wear clothing indicative of their religious preference are generally recognized. However, there are numerous reports of girls in southern areas, particularly in the Jalalabad Oblast, being banned from school or dropping out because of restrictions on wearing the headscarf.

Freedom of expression:

Civil responsibility can be imposed against critical journalists under the Civil Code's article on "Protection of Honour and Dignity of a Citizen, and Business Reputation of a Legal Entity", as well as criminal punishment of up to three years in prison can be imposed under the Criminal Code's article on defamation and insult. These legal provisions are invoked on a regular basis. On 3 June 2008 President Bakiyev signed a Law on "Television and Radio Broadcasting" that kept state control over the State Radio and Television Company, rather than creating a national public interest broadcaster; it placed significant regulations on broadcast companies and established new Kyrgyz-language and local content requirements. These requirements have been assessed by human rights defenders as conflicting with constitutional provisions. Commendably, a new Media Law is currently being elaborated.

Alarmingly, from January until November 2009 there were seven attacks on journalists in various parts of the Kyrgyz Republic, and NGOs are concerned that these were retaliatory attacks for professional activities of the journalists. As reported, a lot of journalists exercise self-censorship or flee the country because of the increase in such targeted acts of violence, compounded by the failure to punish those responsible.

Freedom of association

Generally, the government ensured freedom of association in the country: NGOs are required to have three members to register, and all other organizations require at least 10 members, and the Ministry of

Justice rarely denies any domestic NGOs registration. However, at times law enforcement agencies are used to intimidate organizations. In 2007 and 2008, a number of positive developments took place that enhanced legislative regulation of the freedom of association in the country: a one-window registration system that reduces time and effort required for registration was introduced; territorial differentiation among public organizations that had been imposed as part of the registration process was eliminated; a new law on social contracts/grants providing for public funding of NGO activities was enacted; and a new law on audit procedures restricting timing and scope of audits and applying the same standards to NGOs as to commercial organizations was introduced.

With this general background, in June 2008, the state made an attempt to restrict opportunity for NCOs/NGOs to be involved in political and election processes through inclusion of appropriate norms into the Tax Code. In February 2009, the draft law on amendment to the Law *On Non-Commercial Organizations* that restricts activity of NGO was initiated by deputies of Jogorku Kenesh (Parliament of the Kyrgyz Republic). If adopted, it would have increased government discretion to sanction NGOs, would have restricted foreign funding and also would have prohibited participation of non-commercial organizations in the political activity.¹⁵ These proposed restrictive amendments were defeated as a result of a well-organized campaign by civil society and the international community.

Freedom of assembly

A Law on “Introducing changes and additions to the law of the Kyrgyz Republic on the rights of citizens to gather peacefully and without weapons, freely to conduct meetings and demonstrations” was signed by President Bakiev on 6 August 2008. It has drawn extensive criticism of the country’s civil society because it introduced nationwide restrictions on public assembly similar to those enacted in November 2007 by the Bishkek City Council (which had been overturned on 1 July 2008 by the Constitutional Court on the grounds that the local council did not have the power to make restrictions on issues of national importance). The Council of Europe’s Venice Commission (CoE’s VC), the OSCE/ODIHR and Human Right Watch also voiced their concerns regarding imposed restrictions such as specification of places of assemblies (three remote locations designated as permitted places of assemblies in the capital city of Bishkek; assemblies in the immediate vicinity of the government buildings are prohibited); no spontaneous assemblies are allowed (12 day prior notification is required which in practice is construed as the requirement to obtain authorization – practice that runs contrary to the Constitutional provisions that foresee notification regime for assemblies to proceed); there is no explicit provision allowing an assembly to proceed if the authorities fail to present timely and well-founded objections (no right to assemble by default).

An inter-agency Working Group under the Ombudsman has been tasked by the President to finalize a draft law on Freedom of Assembly that has been elaborated by a group of human rights defenders and positively commented on by the CoE’s VC and OSCE/ODIHR Panel on Freedom of Assembly. If adopted, the new law will ensure free exercise of freedom of assembly in line with international standards and best practices: notification regime of assemblies, a right to spontaneous, counter and parallel assemblies, as well as a number of other progressive provisions.

Authorities regularly prevent peaceful assemblies in practice by interrupting unauthorized assemblies, dispersing assemblies taking place in Bishkek outside of designated areas; imposing administrative

¹⁵Analysis of amendments to the Law of the Kyrgyz Republic *On Non Commercial Organizations*, March 10 *mapma*, 2009, prepared by the International Center for Non-for-Profit Law in the Kyrgyz Republic (ICNL).

sanctions (arrest of up to 15 days or administrative fines) on participants of unauthorized, including spontaneous, assemblies, as a result of court hearings that do not offer full range of safeguards (no access to legal assistance, no adequate time to prepare the defense, denial of public hearing, etc). In the context of the presidential elections held on 23 July 2009, the international community expressed its concerns about the numerous detentions, allegations of ill-treatment at the time of arrest and ensuing lack of due process in the cases of human rights defenders and political activists who were detained as a result of public protests against results of the elections and alleged rigging of the election results.

Freedom of association and ILO standards

The application of fundamental standards and principles on freedom of association and the right to collective bargaining appears to encounter difficulties in the country. In particular, a serious allegation of Government's interference in the internal matters of the Federation of Trade Unions in 2008 and 2009, including in the process of the election of its chairperson, was made by the International Trade Union Confederation (ITUC). The practices of employers interfering in trade union activities and anti-union discrimination are also alleged.

Freedom of movement

The law requires an official residence registration in order to work and live in a particular area of the country. Strict rules and authorization procedure for obtaining permanent/temporary residence status create obstacles to accessing social security, subsidized health care, education and pension by internal migrants: applicants for residence registration must file a request with the local police and be able to prove that they have a place to live in the area.

Refugees are unable to travel abroad as the Government has not yet established any legal basis or procedure to issue Travel Documents under the 1951 Convention relating to the Status of Refugees.

Right to access to information

NGO reports indicate an implementation gap in the case of the Law on "Access to Information Handled by State Authorities and Local Self Government Bodies", in particular with discrepancies between this law and secondary legislation that regulates activities of various state agencies. Access to information is not guaranteed in practice if the query does not pertain to the matter that personally affects the individual seeking information. Therefore public interest litigation can not be carried out in the Kyrgyz Republic.

Political rights of women

In 2005, there was zero women's representation in the Parliament and only one woman occupying a high position in the Government. As a result of the massive lobbying campaigns of women's organizations, the amended Election Code brought in a special affirmative measure that guarantees seats for women in the electoral lists from 30 to 20% in the party slates, and in 2007, the Kyrgyz Republic had the highest number of women in the national Parliament (26.6%) among all other Central Asian states. Women's representation in the local representative bodies (Kenesh), however, remains insufficient (17.1 percent)¹⁶, and there are still no women regional (oblast) governors. Moreover, while 45 percent of all civil servants are women, women are represented only in 17 percent of the top administrative posts.¹⁷

¹⁶ www.gashailoo.gov.kg, Central Election Committee, 2008.

¹⁷ "Gender analysis of civil service", UNDP, 2008.

Elections

Local and OSCE/ODIHR reported "rampant" violations during the constitutional referendum in October 2007. Reported violations included voter fraud and ballot box stuffing and estimated that voter turnout had been significantly lower than the 50 percent needed to make the vote valid. Following the constitutional referendum, the President dissolved the Parliament and called for new elections in December 2007. According to OSCE/ODIHR election observation reports and independent election observers, the December 2007 parliamentary election failed to meet many of the country's international commitments and was marred by significant obstacles for opposition parties and the use of government resources to benefit specific political interests. Three parties are represented in parliament, with the pro-presidential Ak Jol party holding 71 of the 90 seats.

The OSCE/ODIHR Final Report on the 23 July 2009 Presidential election in the Kyrgyz Republic stated that it "failed to meet key OSCE commitments", "in particular the commitment to guarantee equal suffrage, to ensure that votes are reported honestly and that political campaigning is conducted in a fair and free atmosphere as well as to maintain a clear separation between party and state...". The report further concluded that the election was "marred by substantiated instances of obstruction of opposition campaign events as well as pressure and intimidation of opposition supporters", and "the misuse of administrative resources in support of the incumbent President's campaign granted him an unfair advantage vis-à-vis the other candidates". The Report noted that "recent amendments to the Electoral Code removed important safeguards against possible multiple voting, in particular, inking of voters' fingers as well as the previous requirement of a court order to be added to voter lists on Election Day was abolished". As stated in the Report, Election Day "was marred by many problems and violations, including inaccuracies in the voter lists, evidence of ballot box stuffing and some evidence of multiple voting", "interference in the work of election commissions" and "procedural omissions and mistakes".

Right to work and to just and favourable conditions of work

The ILO Committee of Experts on the Application of Conventions and Recommendations pointed to the need to amend provisions of the Labour Code that unduly restrict the exercise of the right to strike – by imposing too high a quorum for a strike ballot, and by prohibiting strike in services that are not actually essential services whose interruption would endanger the life, safety or health of the population. Forced labour issues were also raised by the Committee of Experts, in relation to career members of the armed forces, whose right to leave the service in peace time without undue restriction should be protected. The ratification in 2008 of the Migration for Employment (Revised) Convention, 1949 (No. 97), should encourage the Government in taking further measures to protect migrant workers against recruitment practices leading to exploitative conditions of work abroad, which may amount to trafficking in some cases.

Child labour remains pervasive in the country: the Child Labour Survey carried out by the National Statistical Committee in 2008 estimates that 672,000 children are working and that 592,000 of them are involved in work unsuitable for children. The ILO Committee of Experts joined the Committee on the Rights of the Child in requesting immediate measures to eliminate the practice of requiring children in the state educational institutions to work for the profit of such institutions.

As a consequence of the decreasing governmental registration and recognition of asylum seekers and refugees, by October 2009 over 40% of all refugees lacked required governmental protection, and around 75% of all asylum-seekers exclusively relied on protection by UNHCR. Since only state recognized refugees have access to work permits, asylum seekers and UNCHR mandate refugees cannot secure lawful employment or labour contracts in the Kyrgyz Republic, which further increases their vulnerability to discrimination and exploitation.

Right to social security, adequate standard of living, health, adequate housing, environmental security

The economic growth of the past years in the Kyrgyz Republic did not deliver the expected benefits to poor people, and more specifically to children. Still, 43.3 % of children live in poverty, while 7.7 % live in extreme poverty (data from 2007). Families with three and more children, residing in rural and mountainous areas run almost twice and higher the risk of living in extreme poverty. Regional differences matter as well, where southern regions show higher poverty prevalence.

Since 1996 the nutritional status of children in the Kyrgyz Republic has improved significantly but the problem of inadequate maternal and child nutrition remains a serious public health need, and in 2006 almost 14% of the nation's children under five years old suffered from stunted growth and high prevalence of anemia (~70%) found in recent years among children less than three years of age in parts of the country is another area of concern. While there has been a gradual decline in infant mortality (IMR) and under-five mortality¹⁸, the neonatal mortality is still unacceptably high and there was a worrisome increase in the number deaths of newborns during the past years, indicating that children are dying due to the lack of medical assistance, or because the low quality of medical care.

In 2007 and 2008, there were approximately 90 cases of hospital-acquired HIV registered among children, mostly in Osh province, that highlighted the lack of knowledge and experience in providing care to HIV-infected mothers and children, medical and social support for children with HIV.

Child poverty is widespread with 43,3% of Kyrgyz children suffering and having irreversible impact on their well-being and future perspectives. Although income maintenance schemes are often considered as 'best practice' social assistance, by supplementing household income with cash transfers to a social minimum, the current design and delivery system of social benefits in the Kyrgyz Republic limit their effectiveness to reduce the child poverty. In this regard, the Ministry of Labour and Social Development has started reforming social assistance (with UNICEF technical assistance¹⁹) in order to improve its performance and effectiveness.

Although the Kyrgyz Republic is a party to the Convention on the Rights of Child, access to civil authorities for the purpose of birth registrations is not always guaranteed, in particular for asylum seekers, stateless persons, vulnerable children and those living in rural areas. Such deprivation of birth registration limits their access to education, healthcare and other rights and services. As many, including refugees and stateless persons, are unable to fulfil existing requirements for civil status

¹⁸ (U5MR) rates over the past ten years. In 2007, the IMR was 29.8 by Ministry of Health (MoH) data and 36 according to Multi Indicators Cluster Survey (MICS). U5MR was 36.6 according to MoH data and 41 according to MICS.

¹⁹ UNICEF has been cooperating with the Kyrgyz Ministry of Labour and Social Development in reforming the system and increasing the size of the child benefits with the ultimate shift from means-tested to categorical (universal for children), i.e. targeted at children.

registration, they usually conclude only religious marriages. Since such marriages are not recognized by authorities, foreign spouses are eventually prevented from obtaining residence permits and having parental records being placed into birth certificates of their children.

Right to adequate housing

The right to adequate housing is not fully guaranteed by the Kyrgyz Republic as a result of the shift towards a market economy, the privatization of housing and the inability of the state to provide housing to all those in need. Increasing real estate prices, a lack of adequate legal assistance, a growing number of fraudulent transactions on the real-estate market and the absence of effective safeguards to counter these fraudulent activities, as well as a lack of consistent state policies on housing negatively affect the most vulnerable groups of the population (women, children and the elderly). For example, the Housing Code of the Kyrgyz Republic backdates from the 1980s and all the new emerging issues in the housing sector since independence in 1991 have been addressed through an ad hoc adoption of laws and by-laws, which need to be harmonized and brought in line with international standards.

The number of homeless persons and those living below international standards on adequate housing are drastically increasing. In this respect, homeless persons are in a particularly vulnerable situation, especially in the cold winter periods. In 2007, there were over 100 reported cases of death amongst homeless people from the cold weather conditions and this was in the capital Bishkek alone. In the absence of a legal framework to provide care for the homeless and in the absence of a state agency with a clear-cut mandate to tackle these issues, all the sporadic measures which were undertaken primarily by the municipal bodies in response to the crisis situation in 2007 and beyond were not very effective. According to the recent statistics, more than 70% of families live two times below the minimum housing norms set out by national laws. Each third complaint received by the Ombudsman in 2008 pertained to the issue of adequate housing. The human rights based approach to the issue of adequate housing is yet to be adopted by the government and international assistance in this regard is highly desirable.

Reproductive rights of women (maternal mortality)

The rate of maternal mortality has not decreased significantly over the past ten years and is unacceptably high. While the official rate of maternal mortality has been 53.0 in 2006 and 62.5 in 2007²⁰, the Multi-Indicator Cluster Survey (National Statistical Commission and UNICEF 2006) puts it at 104 - a rate the Ministry of Health (MOH) accepts as being closer to reality. The MOH is working to improve reporting so that the official data moves to be closer to this rate. Therefore an increase in the official data does not necessarily reflect an increase in the mortality rate but rather could be a positive sign of an improvement in reporting due to actions taken by the MOH. However, this high rate of mortality must be addressed with increased effort, and is not due to limited access, but due to poor quality of obstetric and prenatal care, poor infrastructure of maternity houses and medical facilities, insufficient skills of health workers at primary health care level on pregnancy management, shortage of qualified obstetricians and gynaecologists, as well as poverty and related poor nutrition of women and anaemia during pregnancy.

Low levels of reproductive health in the Kyrgyz Republic are linked to the general poverty of the population, women's and adolescents' low awareness about their reproductive rights and gender discrimination in accessing medical care. A high rate of unwanted pregnancies leads to eventual

²⁰ Kyrgyz Republican Medical Information Centre, report 2007.

marginalization of the unwanted children whereby parents do not invest sufficient care and do not ensure adequate education to such children. Unsafe interruption of unwanted pregnancies leads to serious health complications and related medical expenses that negatively impact financial well-being of families. Expensive medical treatment of HIV-affected mothers before and after birth, expensive antenatal care, childbirth procedures and child vaccinations are not provided for free and therefore lead to further impoverishment of households.

Right to education and to participate in the cultural life of the community

During the last five years, studies have shown considerable decline in student achievement, especially at the elementary level (ADB, 2004). According to the Organization for Economic Cooperation and Development “Programme for International Student Assessment” (PISA) results for 2006, the Kyrgyz Republic was ranked last out of the 57 countries that participated in the assessment.²¹ PISA has also revealed a high rate of absenteeism which is one of the reasons for a poor score of students.

Progress in the early education of children has been very slow. 75 to 80 per cent of children aged 3 to 5 years old are not attending any form of organized Early Childhood Education program²². By 2007, public kindergartens are covering 11% of young children mostly 3 to 5 years old, but in rural areas only 3-4 % of children are covered with preschool services. The main issues are related to access, equity, and quality of ECD services together with a need to drastically improve human resources at all levels of pre-school services. The declining and uneven quality of education and a lack of qualified teachers in rural areas negatively affect the rate of enrolment among school age students. The inability to provide good textbooks continues to be a pressing issue, as is the maintenance and development of the school infrastructure.

Refugees, asylum-seekers, stateless persons and IDPs

Although the Kyrgyz Republic ratified both the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* in 1996, adopted national *Law on Refugees* in 2002 and established an administrative body within its government responsible for refugee issues, implementation practices increasingly fall short of international standards. On 1 October 2009, 431 refugees and 448 asylum-seekers resided in the Kyrgyz Republic. As of 2005, the state asylum authority no longer grant access to refugee status determination procedures to asylum seekers from the Russian Federation or Uzbekistan, but kept them registered as asylum-seekers only, while citizens of the PR China were refused even registration as asylum-seekers. As of mid-2008, the state asylum authority started refusing registration also of asylum-seekers arriving or staying in the country illegally, referring to amendments introduced to the *Refugee Law* in 2006. As of August 2008, the state asylum authority started refusing registration of Uzbek asylum-seekers arriving for purposes other than family reunification with already resettled refugees.

National refugee status determination procedures fall short of international standards: In addition to discriminatory access, they suffer under limited use of country of origin information, lack of confidentiality and procedural safeguards and often lead to weak decisions that lack proper reasoning.

²¹ The majority of 15-year-old students (86%) lack fundamental scientific skills. 88 % of Kyrgyz students have not attained baseline proficiency in reading; 89% - in mathematics.

²²UNICEF 2008, National Statistics 2008.

Governmental recognition rates have shrunk from 28% in 2006, over 18% in 2007, to below 2% in 2008.

Human rights, counter-terrorism and fight against extremism

NGO and media reports regularly indicate the disproportionate limitations imposed by national authorities on the exercise of freedom of religion, referring to a need to protect national security and public order and combat religious extremism. The government is concerned about perceived extremist groups with radical religious or political agendas and continues its ban on four organizations it deems to be extremist due to alleged ties to international terrorist organizations: Hizb ut-Tahrir (HT), the Islamic Party of Turkestan, the Organization for Freeing Eastern Turkestan, and the Eastern Turkestan Islamic Party. NGOs report regular arrests and prosecution of persons accused of possessing and distributing HT literature. In the past, most arrests of alleged extremists occurred in the south and involved ethnic Uzbeks, whereas recently media reports indicate an increase in ethnic Kyrgyz being detained for HT-related activity in the north. The majority of those arrested were charged with the distribution of literature inciting ethnic, racial, or religious hatred, with an increasing number of women among those detained. In 2008, the Prosecutor General's Office reported that, during the first 10 months of the year, it opened 43 criminal cases on religious extremism.

During anti-terrorist operations, civilian authorities generally maintain effective control over the security forces, although during the past years there have been several cases of serious human rights abuses. For example, in 2009 there were frequent NGO and media reports about the killing of alleged terrorists in Uzgen, Jalalabat and Batken Provinces. Such anti-terrorist operations are reportedly often marred with the excessive use of force and firearms, and difficulties in claiming compensation for the loss of private property destroyed during respective operations.

Following an October 2008 protest in Nookat, prosecuting and imprisoning a number of HT members, including two women, the government hardened its position on Islamist groups.

Nookat events

On 27 November 2008, the Osh regional court convicted 32 ethnic Uzbek and Kyrgyz Muslims for their involvement in a 1 October protest in Nookat following local authorities' controversial decision to ban a public gathering for the Muslim holiday Orozo Ait (Eid al-Fitr). The protest was forcibly dispersed, and 32 persons were detained and accused of various crimes, which the authorities linked to extremist activities that were allegedly planned and orchestrated by the HT. The investigation and trial held in November 2008 were reportedly marred with a number of serious fair trial violations. All 32 defendants were found guilty (30 men and 2 women ranging from 17 – 50 years old), and issued sentences of imprisonment ranging from 9 – 20 years. The court authorities denied access to observers and family members of the accused until the third day of the five-day trial. Human rights activists claimed that the defendants had inadequate legal counsel. In January 2009, the second instance court in Osh, as a result of proceedings held in camera, reduced the sentence of one minor to nine years but dismissed the overall appeal of the 32. The officials justified their response to the incident by saying that HT had become too militant in its challenge to the state and had to be taught a lesson.

In February 2009, a Commission under the Ombudsman of the Kyrgyz Republic was established to look into the events. In March 2009, it released its findings²³. There has been no official response to this report, even though its findings pointed to the lack of due process during pre-trial and trial stages, the use of torture and extraction of confessions during pre-trial stage, intimidation and blackmailing of people with the aim of extortion of bribes, violation of freedom of assembly principles by local authorities in Nookat, arbitrary formation of lists by local administrations of the alleged HT members; intimidation of relatives of the defendants by local law enforcement officials; arbitrary social exclusion of relatives (refusal by local authorities to pay social benefits to some relatives since 1 October 2008) that amounts to the collective punishment; and discriminatory practices used by the authorities based on ethnicity.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

Achievements:

A number of achievements mentioned throughout the text clearly illustrate overall willingness of the government of the Kyrgyz Republic to live up to its human rights commitments and its responsiveness and openness to assistance of international community and its recommendations. The Kyrgyz Government has ratified numerous international instruments and has submitted a significant number of state reports to relevant treaty bodies, a far-reaching legal reform has been implemented that brought national legal system relatively in line with international human rights standards and there is generally a thriving civil society in the country - these are important achievements at the legal and policy level that can be viewed as some of the indicators that attest to the existence of the political will to ensure respect for the human rights in the country.

As an illustration of this argument, for instance, the second reporting cycle to the CRC gave impetus to a comprehensive legal review and adoption in 2006 of the Children's Code.²⁴ The Children' Code is the first of its kind in Central Asia: it incorporates relevant international standards and good practices; introduces a child protection system that aims at supporting families and reducing institutionalization; stipulates a need to set minimum quality standards for children's services as a vital part of child welfare.²⁵

Another example is amendments to the Citizenship Law in 2007 that brought national legislation much closer to international standards important for the prevention and reduction of statelessness.

While trafficking remained a persistent problem in the country, the Government continued to make significant efforts to address trafficking, including improved assistance to victims, and with financial and practical assistance from various international and NGOs, the Government supported a countrywide information campaign and trained law enforcement and foreign affairs officials on trafficking awareness.

²³ The findings were presented to the Presidential Administration, Supreme Court, General Prosecutor's Office, Ministry of Interior, members of Parliament, journalists, international organizations and the general public.

²⁴ UNICEF provided technical assistance to the Government in elaboration of the Code, and facilitated wide and inclusive stakeholders consultation throughout the process.

²⁵ UNICEF provides multi-track support to the Kyrgyz Government in ensuring effective realization of the Children's Code.

In 2008, the Government adopted a program on the regulation of migration processes and collaborated with the governments of Russia, South Korea, and Kazakhstan to improve the protection of rights of Kyrgyz labour migrants working abroad. Even though the Government was unable to enforce child labour laws adequately due to a lack of resources, the Government supported several social programs to prevent the engagement of children in exploitative child labour. The Ministry of Education, in collaboration with the ILO, continued a program to enable teachers to combat the worst forms of child labour.

In view of large numbers of Kyrgyz citizens migrating for labour abroad and heavy reliance of the domestic economy on remittances, in September 2007 the State Program on Regulating Migration for 2007-2010 was enacted by the Government – with the goal to reduce illegal labour migration and associated trafficking and to provide legal and social support to labour migrants abroad. In March 2007 parliament approved an agreement with Kazakhstan on mutual protection of each country's labour migrants. In March 2007 the State Committee on Migration and Employment (SCME) signed an agreement with the Russian Federation to join efforts in legalizing Kyrgyz labour migrants working in Russia, and SCME officials were sent to several Russian cities to assist Kyrgyz labour migrants, and in cases of violence against Kyrgyz citizens, the SCME concluded agreements with the Russian government to assist the victims and investigate crimes against them.

Challenges:

Notwithstanding the numerous Government achievements and efforts to ensure human rights promotion and protection as well as a high ratification record of the UN human rights treaties, the Kyrgyz Republic's implementation of its human rights obligations and its own national legislation still pose major challenges. Law reform efforts by themselves are insufficient to address the root causes of the human rights violations and to remedy their consequences. To effectively work towards the promotion, protection and fulfilment of the human rights in the Kyrgyz Republic, a commitment of the Kyrgyz Government is also needed for the allocation of adequate human and financial resources (both at the state and non-state levels), the setting up of adequate national mechanisms for addressing human rights violations, the addressing of the lack of accountability for acts of corruption, and also for awareness-raising and training at all levels of society.

With support and assistance from relevant UN agencies based in the Kyrgyz Republic, and in close cooperation with its own civil society, the Government should aim at bridging the gap between its international obligations and national legislative provisions and the actual record of implementing these commitments in practice. Law enforcement practice, adherence to the principles of the rule of law and respect of the human rights standards in the Kyrgyz Republic can be significantly enhanced without major financial expenditure, thus a widely-used reference to the limited financial resources of the Government cannot serve as a legitimate justification for a failure to protect and fulfil human rights obligations voluntarily assumed by the country.

As noted by the UN Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights 2009, who concluded his visit to the Kyrgyz Republic on 9 October 2009, “the lack of adequate financial resources does not assuage the Kyrgyz Republic's obligation of discharging fully its obligations under international human rights law, including the obligation to monitor the extent of the realization of human rights, in particular the right to the highest attainable standards of health, and to devise strategies and programmes for their

promotion. Even where resources are demonstrably inadequate, the obligation remains for a State to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances". The Special Rapporteur underlined "that even in times of severe resources constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes..."

It is regrettable that since the Kyrgyz Republic became a member of the UN Human Rights Council in June 2009 (for the next three years until 2012), its membership was not followed by a visible increase of capacity of the relevant state agencies, in particular, of the former Ministry of Foreign Affairs²⁶.

An illustrative example of a failure to uphold its human rights commitments in practice relates to reports on the rise of "radical extremism" in the Kyrgyz Republic. These reports suggest that growing support for radicalism has partly resulted from a lack of democratic participation and justice that push people to seek redress outside the political system. Human rights defenders note that the Government is adopting a counter-productive approach to the country's growing radicalization: instead of tackling the root causes of the phenomenon it is resorting to heavy-handed police methods that risk pushing people even more towards radicalism. It appears to be a challenge for the Government to ensure that its response to the threat of terrorism and extremism does not unlawfully infringe upon, damage or destroy the very standards, principles and values it is trying to defend and protect in the first place. The Government fails to see that counter-terrorism measures that violate international human rights standards may also be counterproductive, since they undermine public faith in the rule of law, the police and judiciary, compounding social discontent in a manner that diminishes State's long term security.

As noted by the UN Special Rapporteur on Violence against Women after her mission to the Kyrgyz Republic that concluded on 16 November 2009, the prevalent forms of violence in the country are domestic violence, bride-kidnapping, under-age marriages, unregistered marriages, trafficking, polygamy, violence and discrimination against women based on their sexual orientation and gender identity, and, violence committed by law enforcement agents. The causes identified include amongst others: the lack of effective implementation of legislative and policy measures, poverty, unemployment, traditional and religious practice, internal and external migration, and the lack of accountability in relation to state agents who perpetrate human rights violations. The Special Rapporteur noted that formal legal and policy commitments have not been, to a large extent, translated into concrete actions and improvements on the ground and in the lives of ordinary women.

In the area of gender equality, the following challenges still remain: limited political will to fully implement gender equality commitments and ensuing insufficient allocation of resources towards realization of the NAP on gender equality; institutional and operational weakness of national gender machinery; the low capacity of gender focal points; the lack of monitoring system and evaluation of implementation of international and national gender commitments; and limited cooperation between state authorities and women's organizations.

When elaborating a new long-term strategic framework strategy till 2020 which is in close alignment with the Millennium Development Goals, the Government acknowledged that achievement of some of

²⁶ In light of 20 October 2009 announced reform of the state apparatus, the Minister of Foreign Affairs was removed from the Cabinet of Ministers and has been placed directly under the President, whereby the Foreign Minister became the State Minister of Foreign Affairs directly under the Presidential Institute.

the goals requires special attention. These goals include the following: the Kyrgyz Republic is still on its way to achieving targets on child mortality, maternal health and combating HIV/AIDS, TB and other infectious diseases and in providing safe drinking water. Access to early childhood development programmes and pre-schooling is still low; quality of basic education is on decrease. Residential institutions remain the main form of protecting children left without parental care and children from poor families.

Challenges also include a general low level of understanding among the population regarding the practical application of human rights issues, including the human rights based approach. There has been insufficient information available on human rights issues in Russian and Kyrgyz languages. In many cases government priorities are placed in the economic sector and officials do not see the interconnection between economic development and human rights. This sometimes results in institutional resistance to human rights work. In addition, government personnel frequently rotate, making it very difficult to forge long-lasting partnerships and make significant progress. Many civil society organizations often lack sufficient financial and human resources to implement projects in a timely manner, while others lack sufficient independence to pursue their mandates.

Authorities acknowledge that their full implementation of the 2007 Citizenship Law, and other commitments to prevent and reduce statelessness, remain challenging. At the same time, the Kyrgyz Republic still needs to accede to the 1954 Convention relating to the status of Stateless persons and the 1967 Convention on Reduction of Statelessness. Moreover, certain step backs in the implementation of laws has been also observed during the last years. For instance, implementation of the letter and spirit of the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and other obligations related to the protection of asylum seekers and refugees declined since 2005 and again since the summer of 2008.

Remittances constitute a major input into domestic economy. They are generated by possibly one million people, or half of the working-age population migrating to Russia and Kazakhstan annually in the face of widespread unemployment and underemployment in the Kyrgyz Republic. However, the global economic slowdown in 2008-2009 adversely affected remittances and resulted in increased pressure on the Government to fulfil and protect social and economic rights, and provide assistance to the most vulnerable groups in the society. However, lack of reliable data at national and local level on the number of specifically vulnerable households, including homeless adults and children and people without proper documentation is making implementation of the government's duties extremely complicated. This challenge can be overcome only by working with national and local authorities as well as civil society in a transparent, inclusive and accountable manner.

KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

The Government has set the task to analyze the current challenges and obstacles that reflect on the progress towards achieving the MDGs: results of this analysis will assist in identifying priorities for a draft Strategy 2020, in developing social and economic policy and drafting an action plan.

The Kyrgyz Republic is currently working on legal amendments to ensure full compliance of legislative acts with the Law on HIV/AIDS, for instance, amendments to a number of secondary pieces of legislation on social security of PLHIV are currently pending approval. Once approved, these documents will introduce a procedure for obtaining a "disability status" that is required in order to get

timely social support from the state. Furthermore, laws and other regulatory documents aimed at implementing needle and syringe exchange programmes in the penitentiary system are also under development.

ATTACHMENT: RECOMMENDATIONS

In addition to the recommendations featured throughout the text, there is an additional list of recommendations pertaining to some of the thematic areas covered by this submission.

Freedom of religion

Through the Universal Periodic Review mechanism, the Kyrgyz Republic is recommended to ensure respect for the human rights of religious believers, and that they are able to carry out their peaceful activities free from harassment and without threat of detention, imprisonment and other human rights violations

Refugees, asylum-seekers and stateless persons

Through the Universal Periodic Review mechanism, the Kyrgyz Republic is recommended to:

- ensure full compliance with the international standards as laid down in international human rights and refugee laws, in particular the principle of *non-refoulement*;
- ensure that all asylum seekers, irrespective of nationality or country of origin, have indiscriminate access to registration and fair national refugee status determination procedures;
- consider amending national laws and by-laws to ensure effective access to and protection of economic, social and cultural rights of persons of concern, in particular to ensure:
 - a) access to personal documentation, including identity and civil status documentation;
 - b) access to legal employment, including self-employment and entrepreneurship, and protection of labour rights.

The Kyrgyz Republic is encouraged to continue its proactive attention to the prevention and reduction of statelessness, including a soon accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on Reduction of Statelessness.

Gender equality, gender-based violence, right to adequate standard of living and health

The Kyrgyz Republic is recommended to:

- increase access of women to economic resources;
- institutionalize gender education of public and municipal employees at all levels;
- include women's NGOs in elaboration of the development agenda at the national and local levels;
- introduce gender mainstreaming in public service delivery;
- ensure gender mainstreaming in mass media and communication;
- ensure equal opportunities for women and men in the area of entrepreneurship and labour market, inter alia by introducing temporary special measures in the national strategic documents (Country Development Strategy, National Action Plan on Gender Equality) to ensure that women can effectively benefit from all programmes that support the entrepreneurship and the existing wage gap is eliminated;
- improve legislation in the area of women's employment, land ownership and other resources;
- arrange sustained awareness-raising and legal literacy campaigns targeting women, including rural women, as well as educational programmes and campaigns directed at women and men in order to eliminate gender stereotypes;

- develop a comprehensive national multi-stakeholders strategy for addressing the issue of gender-based violence;
- retain temporary special measures and quotas for the national Parliament as foreseen by the Election Code, and introduce quotas for women into laws that regulate elections and appointments to other state bodies;
- establish a special institution for advancement of gender equality and women with a clear mandate, supervisory authority and adequate financial and human resources.

Children's rights

The Government should be recommended to:

- improve nutritional status of children and mothers, and ensure full implementation of the recently adopted Code of breast milk substitutes and the Law on flour fortification.
- undertake measures to ensure quality improvement of healthcare services to increase chances for newborns to survive and therefore, contribute to the reduction of children and maternal mortality;
- strengthen efforts to integrate HIV services into the general medical services, thus guaranteeing for children with HIV better access to good quality treatment and care;
- develop and implement comprehensive ECD national plan and programmes with appropriate funding allocation and intersectoral approach, and ensure mainstreaming of ECD into poverty reduction strategies;
- provide cost effective and affordable solutions to cover all children of preschool age with preschool services starting with the most disadvantaged, in order to reverse the current crisis when almost 90% of preschool age children in the Kyrgyz Republic don't have access to any kind of preschool education and are not ready for school;
- address the lack of social support and social services for vulnerable children and their families at local level, inter alia by creating decentralized continuum of alternative care services close to children and ensuring involvement of local self-government bodies in the provision of services and case management;
- develop policies on de-institutionalization and "gate - keeping" in order to prevent placing of children in the institutions, reintegrate children with their biological or extended families and in a longer term transform big residential institutions into centers where alternative care services, services of social support to families are provided;
- revise legislation in order to bring it in line with international standards and introduce juvenile justice system that prevents unnecessary imprisonment of children in conflict with the law and builds capacity of judiciary and law-enforcement authorities to use alternative penalties to the deprivation of liberty for juvenile offenders;
- increase social assistance spending to at least 1% of GDP.

Right to health and reproductive rights

The Government of the Kyrgyz Republic should be recommended to:

- prioritize the issue of maternal mortality in the current and planned health care policies and programmes, with an obligatory establishment of inter-sectoral cooperation and monitoring of the issue, allocation of the sufficient proportion of the GDP for expanding the availability of maternal and newborn services in the health sector and the use of other financing mechanisms such as poverty reduction strategies;
- launch sustained information campaigns targeting women, especially rural women, about their reproductive rights and reproductive health;

- ensure that decline in government spending for healthcare sector does not result in the increase of informal payments for the medical services that put poor households at a major disadvantage;
- ensure equitable distribution of public health resources among regions in the country and guarantee the right of persons to receive affordable and quality medical assistance, including with regard to the reproductive health, irrespective of the level of income.