

KYRGYZSTAN:
UNIVERSAL PERIODICAL REVIEW OF HUMAN RIGHTS PERFORMED
BY NON-GOVERNMENTAL ORGANIZATIONS

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I. Right to access information

(1) Citizens are restricted in accessing important public information unless it affects their personal interests due to outdated internal departmental norms, which do not conform to the current legislation. There is no mechanism to ensure real access to information.

(2) According to the Law on the Protection of state secrets, the classification expediency for public benefit must be based on experts' opinions. In reality, the majority of information is unreasonably classified as secret. For instance, the whole budget including expenses for food, family appliances and medical facilities of the Main department responsible for carrying out punishment is a State secret.

(3) In information disclosure cases, the courts make decisions based on subordinate acts on classification and do not examine the basis for the classification or they ignore the legal significance of "public interest". They deny applicants' requests by claiming that "the information asked for does not affect the interests of the beneficiaries".

(4) State bodies do not fulfill their obligations to publicize information, which represents public interests. For instance, in August 2007 the Government passed the draft national budget for 2008 to Parliament (Jogorku Kenesh). However, no measures for involving the public in discussions and publication were undertaken. In October 2007 a Referendum was held on amending the Constitution and in December Parliamentary elections were held. Yet no official results of the Referendum and the Parliamentary elections, with data from district polling stations, were published.

(5) Departmental norms do not conform to the current law On access to information managed by state and local self government bodies. For example, agenda regulations of the Bishkek City Council and Jogorku Kenesh (Parliament of the Kyrgyz Republic) contradict the law of the Kyrgyz Republic On Access to information.

(6) There are no procedures for public access to sessions of state bodies. For example, on October 31, 2007 the special session of the Bishkek City Council, where the dismissal of the ex-chairperson Ms. N. Baibolova was discussed, was held behind closed doors. On April 16, 2008 a group of people observing a meeting of the Ak-Jol party in connection with lawmaking initiatives on energy, was forcibly removed by the police.

Recommendations

1.1. To reconsider the outdated way of classifying information in state bodies, taking into account the public interest.

1.2. Ensure full publication of election results.

1.3. Set up a national agency supervising implementation of the legislation on access to information (a National Commissioner on access to information) in accordance with the Paris principles.

II. Freedom of speech

(7) In Kyrgyzstan there is pressure on the mass media through fiscal and other authorities. In 2008 Azattyk and BBC radio were off the air for several months, and two independent newspapers, Alibi and De Facto were closed down. Journalists are subject to pressure, prosecution and violence. In 2007 the journalist Alisher Saipov was killed and in July 2009 Almaz Tashiev was also killed. Since 2006 there have been more than 40 attacks on journalists.

(8) Investigation of murders and violence against journalists is ineffective. Journalists are subject to criminal prosecution and in 2008 more than 50 court cases against the mass media and journalists were recorded.

(9) In most cases (95%) the mass media and journalists are prosecuted under the Protecting the Honor and Dignity of a Citizen and Business Reputation of a Legal Entity article of the Civil Code or under articles of the Criminal Code of the KR for libel and slander.

Recommendations:

2.1. Exclude the provision on prosecuting journalists for libel from the Criminal Procedural Code of the Kyrgyz Republic;

2.2. That the authorities speedily, efficiently and openly investigate cases of attacks on journalists;

III. Rights to freedom of association and peaceful assembly

(10) The authorities have adopted laws restricting freedom of association and peaceful assembly. In June 2008 the state attempted to restrict NCO/NGOs from being involved in the political and electoral processes by including relevant norms in the Tax Code. In February 2009 the draft law on amending the Law *On Non-Commercial Organizations* that restricts the activities of NGOs was initiated by deputies of the Jogorku Kenesh (Parliament of the Kyrgyz Republic). The draft law

grants the state authorities supervisory powers and also prohibits the participation of non-commercial organizations in political activity.¹

(11) A permit is now required for peaceful assembly under the Law *On Peaceful Assembly, of the KR* that significantly intrudes on citizens exercising their right to freedom of peaceful assembly.

(12) The authorities prevent peaceful assembly in every way possible by arresting participants of peaceful actions. Punishment for participating in peaceful actions has been tightened from a fine to 15 days in prison. On December 20, 2007 demonstrators were arrested for 5-7 days and on July 29, 2009 in Issyk-Kul oblast, more than 50 participants in a peaceful demonstration were detained and arrested.

Recommendations

3.1 Prevent amendments to the existing Law *On Noncommercial Organizations* from being adopted.

3.2 Ensure effective protection of rights to peaceful assembly and to stop civil society activists, political parties, journalists and their family members and participants and organizers of peaceful assemblies, being subjected to pressure and prosecution.

3.3 Bring the Law *On Peaceful Assembly* into compliance with the Constitution of the Kyrgyz Republic and international standards, following the notification procedure for organizing and holding peaceful meetings.

IV. Rights of citizens to freedom of movement

(13) The existing provision on registration prevents people who change their place of residence within the country from exercising their social rights. In Kyrgyzstan, it is impossible to receive pensions and social benefits and use social and health services outside the area where people are registered. It is also difficult for children to be enrolled in school.

(14) Citizens changing their place of residence in the country are obliged to get temporary registration. Receipt of temporary registration is not a reportable event.

Recommendations:

4.1. Introduce legislation giving citizens free access to social services based on place of residence, rather than place of registration.

¹ Analysis of amendments to the Law of the Kyrgyz Republic *On Non Commercial Organizations*, March 10, 2009, prepared by the International Center for Not-for-Profit Law in Kyrgyzstan (ICNL)

4.2. Introduce legislation requiring internal migrants to register.

V. Electoral rights

(15) Numerous violations were noticed during the elections, in the pre-election period and on polling day. Interference with and the direct subordination of the electoral commissions to the authorities, changing the reports of the actual results and falsifying voting results by electoral commissions were noted. Members of Precinct Electoral commissions hindered the work of the observers.

(16) On the threshold of the presidential elections additional amendments to the Election Code of the Kyrgyz Republic were introduced that were used to exclude opposition candidates and reduce public control of the voting process. The amendments are as follows: cancellation of inking, the elections were held on a working day, the list of documents verifying personality was expanded and it allowed the authorities to organize multiple voting. Amendments to the Electoral Code shortly before the elections meant that the opposition parties were prevented from working with the electorate. For instance, political parties were obliged to get 5% countrywide and 0.5% of the number of voters included on the electoral roll in each oblast and pass an examination on knowledge of the state language and a person, who does not know the state language cannot run for president. Central Electoral Commission of the Kyrgyz Republic excluded two candidates for president from the list during the run up to the presidential election campaign in July 2009.

(17) The state did not provide equal conditions for candidates to run their campaigns. The authorities deliberately prevented opposition candidates and parties from running their campaigns and there were cases of peaceful demonstrations being dispersed. Candidates from the government and the President's own party used administrative resources throughout the election campaigns. Threats and pressure on media representatives and independent observers were recorded.

(18) The artificial complication of the appeals procedures against election results and cases of violation of said procedures.

Voters could not get unbiased information. For instance, the official results of the referendum on amendments to the Constitution and the parliamentary elections held in 2007 were not published with data from precinct polling stations.

Recommendations:

5.1. Remove artificial barriers in the electoral legislation: Electoral Code and the Law on the Central Electoral Commission of the Kyrgyz Republic and bring the normative-legal base of the Kyrgyz Republic into compliance with the international electoral standards of the OSCE.

5.2. The Central Electoral Commission of the Kyrgyz Republic should ensure that the election process complies with the national legislation and accepted international obligations.

VI. Torture and brutality

(19) Torture and brutality is widely practiced in the Kyrgyz Republic and moreover there is no adequate punishment for officials for practicing it. Human rights activists have recorded more than 300 cases of brutality since March 2007, 92% of which took place within bodies of the Ministry of Interior. In spite of numerous public allegations of torture by state officials, not a single court case has been brought so far. Judges frequently ignore defendants' allegations of torture considering them to be just a defence against being convicted. According to the law, victims of torture cannot get compensation unless the judge acknowledges that torture took place.

(20) In practice officials of law enforcement bodies frequently use illegal arrests, detaining a person without filling out an arrest sheet, depriving him/her of contact with the outside world and access to a lawyer. Torture and brutality are applied at this stage, which leads to serious injury and sometimes even death.

(21) According to data of the Special Commission of the Ombudsmen of the Kyrgyz Republic, in 2008 32 people, including women and minors, who were detained during the mass riots in Nookat on October 1, 2008, a Muslim holiday, were tortured and assaulted. During the investigation religious people were ill-treated, forced to drink vodka and hit on the genitals and minors were tortured using electricity. Women were shaved twice. A pregnant woman, named Zaripa, was forced to hold a heavy object then they hit her fingers and placed her in a cold cell filled with water and bleaching powder, which lead to her having a miscarriage on November 12, 2008. The court decision is noteworthy for its severity and disproportionate punishment.

(22) The practice of investigating torture cases in Kyrgyzstan does not meet the international legal standards of efficiency, impartiality and thoroughness. Torture is classified as a minor crime, which mitigates the punishment and entails an amnesty for the person, who commits this crime.

Recommendations:

6.1. Develop an effective national preventive mechanism in compliance with OPCAT in collaboration with other human rights organizations and make arrangements for the systematic independent monitoring of closed institutions.

6.2. Introduce norms, increasing liability for torture in the legislation of the Kyrgyz Republic.

6.3. Set up an alternative independent judicial – medical examination service.

6.4. Officially investigate all allegations of torture. Hold an official investigation into the alleged abuse against 32 people convicted of mass rioting in Nookat in October 2008.

VII. Rights of ethnic and religious minorities

(23) The Legislation of the KR does not contain a precise definition of the term “discrimination” and there are no effective mechanisms for protecting a person from discrimination, intolerance and enmity for ethnic or religious reasons.

(24) The Law of the KR *On Religion* prohibits the distribution of the religious material in public places, obliges religious organizations to provide detailed financial information to the authorities, that is interference in their affairs and restricted registration to 200 people that is disproportionate for religious minorities.

(25) School curricula and textbooks do not reflect the cultural diversity of society.

Recommendations:

7.1. Develop a Law *On Preventing Discrimination* based on the UN Model Law *On Preventing Racial Discrimination*.

7.2. Develop ethnic and religious tolerance by including the cultural diversity of Kyrgyzstan in educational programs.

7.3. Exclude provisions restricting freedom of religion from the Law *On Religion*.

VIII. Refugees’ rights

(26) Kyrgyzstan does not meet its obligations under the UN Convention of 1951 on the status of refugees, the Protocol of 1967 relating to the status of refugees and the national law *On Refugees*.

(27) Access is not given to the procedure for registering a petition for refugee status. 33% of those seeking an asylum in Kyrgyzstan have no opportunity to apply for this status.

(28) There are infringements of the rights to legally stay and register while appealing in court against decisions to deny refugee status. In 2009 34 cases were recorded.

(29) The number of recognized refugees among the people seeking asylum was less than 2% in 2008. In 2009 only 4 people were granted refugee status, less than 1% of total applicants.

(30) People seeking asylum still disappear and are extradited. In 2006, the authorities extradited 4 registered refugees at the request of the Uzbek authorities. In 2008 Mr. Kholikov, a citizen of Uzbekistan, was extradited and his registration was refused and in autumn 2008 Mr. Djuroboev, a registered refugee disappeared whilst in a mosque.

(31) The principle of confidential treatment of private information is infringed.

(32) The problem of refugees is solved by moving them to other countries. In 2008 183 and on August 1 2009 another 73 refugees were moved out of Kyrgyzstan.

Recommendations

8.1. That the Government of the KR observes the rights of people seeking asylum in the KR to be allowed entry into the country and endorses a fair procedure for determining refugee status and the right to legally stay in the country during any court appeals against their status and preserves the principles of confidentiality of personified information.

8.2. Recommend the government of the KR strictly follows the “non refoulman” (sic) principle of international law.

8.3. That the Government of the KR strictly follows the recommendations of the earlier decision of the Committee in accordance with procedure 1503 2008.

IX. Children’s rights

(33) There is no effective and transparent management system of institutions for orphans and homeless children in Kyrgyzstan. For instance, data on the number of institutions for orphans and homeless children for 2008 varies depending on which state department you ask. According to the data of the Ministry of Education there are 50 institutions², whereas the National Statistical Committee of the KR reports that there are 82³ institutions. According to the data of the above-

² Answers of the Ministry of education and science of the Kyrgyz Republic dated 09.01.2009 №03-2/22, and 05.03.2009 №03-2/913 to the queries of the Youth Human Rights Group Public Association.

³ Answer of the National Statistic committee of the Kyrgyz Republic dated 20.03.2009 №18-1/186 to a query of the Youth Human Rights Group Public Association.

mentioned two state bodies there are 89 institutions for orphans⁴ in Kyrgyzstan. Only four of them operate as children's homes (foster families) according to the Regulation on children's houses of the Kyrgyz Republic. This data shows that there are no private child adoption institutions, as opposed to state institutions. Kyrgyzstan is aware of the need to revise the guardianship system and deinstitutionalization and to develop alternative familial forms of guardianship of orphans both at national and international level. However, no effective measures have been undertaken to date.

(34) Granting a child the right to a family environment is not the basis of the state policy on orphans. There are number of children, who have parents or relatives (hereinafter social orphans) in the orphanages. The State Support to Families and Children Department is very ineffective in preventing social orphans from being placed in state institutions, working with families and returning social orphans to their families. Both biological orphans (12%) and social orphans (88%) are placed in institutions for children deprived of a family environment.

(35) The living conditions and treatment of children in state institutions do not comply with national legal standards: children suffer from malnutrition since there are insufficient funds for their food or it is spent inefficiently. There is an acute lack of hygienic items, clothes and shoes.

(36) In most of the guardianship institutions employees use violence against children⁵. There is no definition of "violence against children" in the legislation of the KR, no actions are specified as violence against children and there is no punishment laid down. There is no mechanism for complaining in these institutions, therefore in cases when children are abused as a form of punishment they do not know where to complain to.

(37) The majority of juvenile delinquents are sentenced to jail on reaching the age of 14. There are almost no other alternative forms of punishment besides deprivation of liberty. Male juvenile delinquents aged between 11 and 14 are sent to the special school for children in Belovodsk, who are kept in special conditions and their life and activities are recorded by the institution's administration and controlled by its personnel. By a decision of the Commission on children's affairs, male delinquents are sent to the special school for children in Belovodsk, where they are deprived of their liberty. However, the investigation procedures do not conform to the standards of

⁴ These institutions consist of children's house, boarding schools for orphans, common boarding schools (orphans can also be kept in these schools), family children's homes (foster families), shelters under public associations and charity foundations, adopting orphans.

⁵ Monitoring of the implementation of human rights in institutions for orphans and children deprived of parental guardianship.– Bishkek, 2008.

a fair trial: it was not defined in the law and is based on a by-law⁶ and there are no provisions for the presence of a lawyer, the right of presumption of innocence, the right to know what they are charged with and the right to object to giving testimony against oneself.

(38) The worst forms of child labor still exist, such as working in abandoned coal mines and on radioactive tailing dumps. According to the data given by human rights activists⁷, in Sulukta town teenagers load coal onto lorries by hand for 100 som per ton. Every day about 1500 children aged between 7 and 18⁸ work on the Buura tailing dump and radioactive waste tips in Orlovka village of the Kemin Region in Chui oblast looking for silicon. Minors work without any masks, gloves and protective breathing apparatus. According to the research carried out by the Positive Help NGO almost all the children working on radioactive waste tips complain of dizziness and back pain. It was revealed that the majority of children have gastro-intestinal problems, enlarged livers and other diseases of the internal organs⁹.

Recommendations:

9.1. Draft a National program on the deinstitutionalization of state guardianship institutions and develop alternative forms of familial forms of guardianship.

9.2. Develop special measures and procedures for detecting, notifying, investigating and preventing cases of child abuse in children's institutions and mechanisms for filing complaints and protecting children in children's guardianship institutions.

9.3. Define the term "violence against children" and lay down a special norm on liability in the legislation.

9.4. The activities of the Commissions on children's affairs in regard to decisions on the placement of children under 14 in the Belovodsk special school must be regulated at the legislative level and must comply with the UN Minimum standard rules on juvenile's trials (Beijing rules).

9.5. Set out alternative forms of punishment to the deprivation of liberty for juvenile delinquents in the national legislation.

⁶ Sample Regulation of the Commission of children's affairs from June 2008№285

⁷ Voice of Freedom: The cheapest labor force in Batken. Sagynbek Seidaliev - 6.03.2007.

⁸ Human rights obligations of Kyrgyzstan. Material of parliamentary hearings. September 13-14 2006. – Bishkek. – 2007

⁹ Human rights obligations of Kyrgyzstan. Report of the NCO network on protecting children's rights. Material of parliamentary hearings. September 13-14 2006.

9.6. Undertake immediate measures to protect and isolate tailings dumps, deserted mines and radioactive waste tips from children, rehabilitate children involved in this work and provide social help to the families of these children.

X. Women's rights and gender equality

(39) The representation of women at high levels of executive power is still inadequate: 3 women (out of 19 members of Parliament) are members of the Government.

(40) Most men are engaged in sectors with high salaries, whilst women are in the majority in social areas ¹⁰, where salaries are much lower at 86% of the minimum consumer budget.

(41) Early marriage, bride kidnapping and violence against women, all exist. Annually 11-12 marriages, where a bride is under 16, and about 300 cases, where a bride is under 17, are registered officially, while in fact the number of these cases is much higher¹¹.

(42) The social position of women is getting worse and their vulnerability is increasing due to the frequent marriages that take place in accordance with religious Muslim traditions without official registration in state marriage registration bodies.

Recommendations

10.1. Fulfill the obligations of the country on the MDG and recommendations of the CEDAW committee as a benchmark in prioritizing gender policies;

10.2. Make punishment for bride kidnapping harsher and provide legal, health and social aid to victims of violence;

10.3. Prohibit the promotion of discriminating traditional and religious views in the mass media.

10.4. Hold wide-scale information campaigns aimed at overcoming gender stereotypes.

10.5. Introduce legislation prohibiting religious wedding ceremonies in accordance with Muslim customs in mosques and churches or other forms marriage in accordance with other religions without official marriage registration and a certificate of marriage registration.

¹⁰ Women and men in the Kyrgyz Republic, National Statistics Committee, Bishkek, 2008, p. 26-27

¹¹ Report to the CEDAW committee and materials on implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in the Kyrgyz Republic. NGO Council. Bishkek, 2008, p.15-19

XI. Rights to life in punishment institutions

(43) Minimum standards of keeping prisoners are not well regulated as funding comes from the national budget and accounts for only 40% of that required due to the high level of corruption among officials in penitentiary institutions. There is a shortage of domestic appliances, medical and sanitary facilities for prisoners. Illness and death rates are rising.

(44) Norms of local and international legislation on the separate placement of women and female juveniles are violated. Female minors are kept with adult female prisoners in the institutions for convicted women.

(45) Fusion between the authorities and the criminal world reflect the low level of control in institutions, which results in disobedience and open struggles for power among prisoners, including killings. There have been 26 murders since 2005: among the prisoners are three officials of the institutions, including the head of the State department for punishment execution of the Ministry of Justice of the Kyrgyz Republic, three civilians, including a member and officials of the Parliament of the Kyrgyz Republic. In July 2009 during a mass fight in the institution for minors, one inmate was killed and three convicted minor delinquents were severely injured.

(46) The authorities have not solved the problem of building a prison for lifers. Since the abolition of capital punishment several prisoners are still being kept in 2m x 3m unventilated cells in cellars. According to the existing legislation these prisoners can only appeal to the President for an amnesty after 30 years. This is a long period of time and prisoners often die before they can exercise this right. Since 1998, when the moratorium on capital punishment was adopted, more than 70 of 204 prisoners in this category have died.

(47) Decision-making authorities in the government are raising the question of reinstating capital punishment and on September 23, 2009 during a session of the Security Council of KR examining measures against religious extremism, some high-ranking officials stated they would support the return of capital punishment.

Recommendations:

11.1. Provide minimum standards of maintaining prisoners in compliance with the international obligations of the Kyrgyz Republic and follow the recommendations of the UN Special Rapporteur on human rights on providing detainees, prisoners and those on remand with effective defence lawyers.

11.2. Hold fair trials, review life imprisonment cases And look at humanization the legislation in terms of lowering the term after which appeals for amnesty can be made by lifers and substituting life imprisonment with fixed term sentences with the possibility of a review of the case after 5 years.

11.3. Introduce national preventive mechanisms in closed institutions.

11.4. Send an open invitation to all Special Rapporteurs of the UN Council on Human Rights.

11.5. Separate female juvenile delinquents from adult female prisoners.