LIST OF ISSUES RAISED BY THE CIVIL SOCIETY ORGANIZATIONS IN TERMS OF COMPLIANCE OF THE KYRGYZ REPUBLIC WITH ITS COMMITMENTS RELATED TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 2013

ARTICLE 2. EQUALITY AND EFFECTIVE JUDICIAL REMEDIES

(1) The Government imposes unjustified practical obstacles for hearing of cases in court

In accordance with the Decree of the Provisional Government of the Kyrgyz Republic No 2 dated April 12, 2010 the Constitutional Court of the Kyrgyz Republic was abolished. As per the Constitution of the Kyrgyz Republic adopted by the referendum on June 27, 2010 (article 40 part 3) each individual has the right to judicial remedy in respect of his/her rights and freedoms. The Constitution also provides that the Constitutional Chamber should be created within the Supreme Court (article 93 part 3), this Chamber being a body exercising constitutional oversight (article 97 part 1). Despite the abovementioned provisions of the law, the Constitutional chamber has not yet been established. Absence of such institution deprives citizens of their right to judicial protection. More specifically, citizens of the Kyrgyz Republic as well as foreign individuals whose assets on the territory of the Kyrgyz Republic were confiscated by the Decrees of the Provisional Government for the benefit of the state, still cannot appeal against such decisions in the Constitutional Chamber.

Questions for the state:

1. What kind of measures were implemented in the country since 2010 to ensure the formation of the Constitutional Chamber? What are the reasons for the Government to postpone the creation of the Constitutional Chamber with the Supreme Court of the Kyrgyz Republic, as in accordance with the Constitution, this Chamber must be operational? When the Constitutional Chamber will become created and operational?

2. What are the provisions in the national legislation that regulate the concept of a “Decree”, what is the legal force of this document and what is the position thereof in the hierarchy of normative and legal acts of the Kyrgyz Republic?

(3) Implementation of decisions of the UN Human Rights Council related to the Kyrgyz Republic based on the review of individual communications as per the Optional Protocol to the ICCPR

Eighteen years have passed since the date of enforcement of the Optional protocol to the ICCPR for the Kyrgyz Republic. Since 2003, as this was the year of receipt of the first individual communication from the Kyrgyz Republic to the UN Human Rights Committee, this Committee has made 14 decisions in respect of the Kyrgyz Republic recognizing the violations of various provisions of the ICCPR. But since that time none of the considerations of the Committee has been implemented. The country lacks procedures for the implementation of decisions made by the international human rights bodies. At the same time, article 41 of the Constitution of the Kyrgyz Republic provides that “everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures

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to their restoration and / or compensation of damage."
None of the decisions of the Committee has been made public to make the society aware. Moreover, there is a fact of non-delivery of the decision of the UN Human rights Committee to the author of the communication sentenced to life imprisonment (the case of Mr. Ahmet Gunan). The individual mentioned above became aware of the decision of the UN Committee recognizing the Government liable for the violation of his rights as per the certain provisions of the ICCPR by chance as he received such information from a member of an NGO conducting monitoring of the institution where he was detained.

Questions for the state:

1) What are the procedures in the national legislation to ensure the constitutional rights for the remedy and compensation of damage in the event that the UN Human rights committee confirms the violation of human rights on the basis of review of individual communications?
2) In what way does the Government implement the considerations of the UN Human rights Committee? What is the number of cases in respect of which the victims of violations of the ICCPR provisions were granted judicial remedies and received compensations?
3) How does the Government ensure awareness of the public of the considerations and comments of the international bodies, more specifically, the UN Human rights Committee?

(2) Absence of effective access of minors – the victims of crimes to effective judicial remedies

The access of children – victims of crimes to justice is significantly limited by their complete dependence on the actions of their legal representative. The criminal and procedural legislation envisages that the following persons or entities may act in the capacity of the legal representative: parents, adoptive parents, guardians or trustees of a suspect, convict or victim as well as the civil plaintiff as well as the representatives of organizations and persons who maintain care of guardianship of a suspect, convict or victim (article 5 of the Code of criminal procedures of the Kyrgyz Republic). Only the legal representative of a child may act as the party to the process i.e. represent the interests of a child - victim of the crime during the investigation as well as during the court process. The legislation does not provide for the right of a child to select his / her representative. The provisions of the law (Article 397 part 4 of the Code of criminal procedures of the Kyrgyz Republic), related to the removal of the legal representative due to the conflict of interest during investigation or court procedures relate only to the cases of protecting the under-aged children in conflict with the law, who are accused of having committed a crime. The law of the Kyrgyz Republic also fails to envisage similar procedural safeguards for the children victims of violence or ill treatment. Therefore in the event that a legal representative of a child does not want to act in his / her protection or in the event that the legal representative is liable for having committed a crime in respect of a child, the children will have no access to judicial remedies and justice. Even the close relatives wanting to protect a child without the official status of a guardian or an adoptive parent, have no opportunity to effectively act for protection and represent child’s interests during the investigation or in court process. The competencies to represent the interests of a child during investigation or in courts are assigned to the prosecution bodies as well as to the Family and children support units, while the officers of these units are social workers of pedagogues as per their qualification and are not skilled in the area of law. The cases when the officers of the prosecution acted as defenders of children - victims of violence are unique and such protection was ineffective and of a formal nature. According to the data of the Office of the prosecution during the period of 2010 until 2012 there had been only 22 criminal cases related to protection of children from cruel treatment (4 cases in 2010, 7 cases in 2011 and 11 cases in 2012). According to the Ministry of Internal

2 Reply letter from the Office of the Prosecutor General of the Kyrgyz Republic No 17-9 dated May 10, 2012
Affairs, there were no allegations of cruel treatment of children received by this agency. At the same time, the survey conducted by the UNICEF in 2010 highlights the high level of violence in respect of children in the Kyrgyz Republic i.e. 37.3% of children were victims of domestic offences.

Questions for the state:

1) How many allegations of crimes in respect of children were received by the Prosecution or the Ministry of internal affairs from the Family and children support units?
2) How many criminal cases were initiated based on these allegations?
3) How many criminal cases were initiated during the reporting period in respect of cruel treatment or criminal negligence of the interests of children in residential care?
4) Who, except for the legal representative, can protect the interest of a child – victim of cruel treatment, represent his / her interest and effect his / her protection during investigation or during the court process in the event that the legal representative of a child was the violator of his / her rights?
5) What measures are taken to ensure adequate training to the staff of the Family and children support units in order to ensure the legal support of this state institution?
6) What special procedures are envisaged in the national legislation to protect children – victims or children – witnesses? What institutional arrangements are in place to ensure effective protection in this respect?

ARTICLE 6. THE RIGHT TO LIFE

(4) Arbitrary executions

In 2006 the Kyrgyz Republic has adopted the strategy of combating terrorism and extremism, the practical realization of this strategy resulted in many violations of fundamental rights and freedoms of citizens. On July 23 and 27 of 2008 the special services of the Kyrgyz Republic conducted a special operation under the title “On annihilation of terrorists”, according to the data from the State Committee for National Security (SCNS), nine persons were killed during this operation. In accordance with article 36 of the Law of the Kyrgyz Republic “On terrorism”, the corpses of these persons were not handed over to their relatives. The operation was conducted in the Southern regions of the country i.e. in Jalal-Abad and Uzgen cities. Nevertheless, the guilt of these killed persons was not proven neither by the investigation, nor by court. No investigation was conducted in respect of the legality of using firearms by the special forces. Actually the death of nine people can be qualified as arbitrary execution. When making a decision to conduct special operations related to the combating of terrorism and extremism, the special services of the Kyrgyz Republic failed to develop a clear plan to protect the security of peaceful civilians, their habitation and assets.

(5) Lack of investigations in respect of cases of seizure and distribution of weapons in the course of inter-ethnic conflict of 2010

On June 11-14, 2010 the southern regions of the country suffered from events which were characterized by the media, international and domestic NGOs as well as political leaders as an armed inter-ethnic conflict causing multiple casualties. The official figures of the casualties varies from 418 persons (the Ministry of Healthcare) and 426 persons (the Office of the Prosecutor General), more than 50 % of deaths were registered in Osh city on June 11-12, 2010. According to the data from the Ministry of Healthcare, more than 60 % of persons

3 Reply letter from the Ministry of Internal Affairs of the Kyrgyz Republic No 1/2504 dated May 2, 2012
4 Cruel treatment of children and disrespect of their family needs in the Kyrgyz Republic. UNICEF – Bishkek, 2010
5 This title of the operation of special services has been voiced out during all speeches of officials from the State Committee for National Security in 2008
requesting medical aid during the conflict had bullet wounds. This inter-ethnic conflict was accompanied by wide scale looting and arsons of trading outlets and residential houses; during the conflict there were registered cases of seizure of weapons (18 cases)\(^7\) and distribution of weapons by the authorities to the civilian population (7 cases)\(^8\). The authorities have launched a campaign to return the weapons but it failed to bring any significant result: out of the total number of 282 pieces of firearms and weaponry only 136 were returned which makes 46%. Until now the Government has failed to conduct the investigation to determine the circumstances of using firearms as well as verify the location of remaining stocks\(^9\).

(6) **Absence of proper investigations in respect of allegations of the use of firearms by the military**

The relatives of those killed and injured during the inter-ethnic conflict in the south in 2010 filed nine petitions to the Office of the Military Prosecutor of the Kyrgyz Republic claiming initiation of proceedings in respect of the following persons who had been killed in injured during the conflict: Mr. Temurmali Joroev, Mr. Isroil Nomanov, Mr. Albek Ibragimov, Mr. Tursinbay Unarjanov, Ms. Aigul Begisheva, Mr. Azam Gulamov, Mr. Abdumalik Tulanov, Mr. Dildorbek uulu Azizillo, Mr. Jumabai Sharipov. The authors of petitions claimed that their relatives were killed or injured by shots made by the military from armored personnel carriers. On November 16, 2012 the Military Prosecutor sent an official reply to these petitions. The reply stated that it had been impossible to determine witnesses confirming the fact of death of these persons from shots made by the military or the armored personnel carriers; in respect of 7 cases of discovery of corpses referred to the petitions, the inter-agency investigation group had initiated criminal cases and the causes of death would be explored within the framework of these criminal cases. This official report of the Military Prosecutor also stated that in respect of two cases of bullet wounds, namely those inflicted on Mr. Osmanjon Nomanov and Ms. Aigul Begisheva, these two persons had never made any complaints to law enforcement agencies before and during the investigation both had filed cross-petitions stating the absence of any claims in respect of anybody and requesting the termination of investigation regarding their petitions. At the same time according to the official report from the chief of staff of the military unit No 52870\(^10\), on June 11, 2010 this unit used 3 armored carriers and 42 servicemen under the command of lieutenant-colonel A. Kulmurzaev and captain R. Kidebaev to “disperse the crowd”\(^11\) in the districts which were mentioned in nine petitions of the victims referred to above.

**Questions for the state:**

1. **What measures were taken by the state in order to determine the necessity, commensurateness and legality of using firearms during operations conducted by special services in 2008 as well as the military during the inter-ethnic conflict in 2010?**
2. **How many cases on the illegal use of firearms by the special services or military were initiated? How many of such cases were referred to court?**
3. **What measures are currently taken to determine the location of firearms seized and distributed to the population during the conflict?**
4. **When the official list of those killed during the events of June will become available to the public? How many criminal cases related to deaths and injuries of people were suspended? Please also indicate the reasons for suspending the investigation of these criminal cases.**

\(^7\) Role of authorities during the events of June 2010 in Kyrgyzstan // Kylym Shamy“ Public Foundation, Bishkek, 2012, p. 13
\(^8\) Role of authorities during the events of June 2010 in Kyrgyzstan // Kylym Shamy“ Public Foundation, Bishkek, 2012, p. 13
\(^9\) Findings of documentation of data in respect of seized / distributed firearms and ammunition during mass disorder in the South of the Kyrgyz Republic // Kylym Shamy“ Public Foundation, 2011
\(^10\) Official report of the of the Chief of staff of the military unit No 52870 A. Kulmurzaev, certified by signature of the head of personnel and registration unit T. Samiev
\(^11\) Official wording in the text of the report of the Chief of staff of the military unit No 52870 A. Kulmurzaev
ARTICLE 7. PROTECTION FROM TORTURE

(7) Impunity for the use of torture

Since the criminalization of torture in the Kyrgyz Republic in 2003, no convictions have been registered in the country despite the multiple and recurrent nature of allegations of torture. In practice many allegations of torture are left without proper investigation and only during the last two years (2011 – 2012) criminal cases were initiated in respect of some manifestation of this crime. According to the official statistics from the Office of the Prosecutor General, in 2012 there were 371 registered allegations of torture, of which only two related to the torture of under aged children. After the review of these allegations, the criminal prosecution of 340 cases was denied. In respect of 31 cases criminal investigation was initiated; of which six were suspended, two cases were dropped, three cases are still under investigation and two cases were referred to court. At the same time according to the data from the Supreme Court, the courts have reviewed only two cases of torture during the entire period of criminalization of this offense in 2003. Burt in all cases the suspected persons were acquitted due to insufficient evidence. The period of consideration of such cases in courts are too lengthy, some cases have been under review since 2010, while the provisions of the criminal procedural legislation envisage the period of review of such cases in courts within two months.

In practice the civil society organizations which are united in the NGO coalition against torture (“Voice of Freedom” Public Foundation, “Justice” Public Association and “Kylym Shamy” Public foundation etc.) registered many communications on the lack of response on behalf of judges and prosecutors on allegations of torture during the selection of restraint measures. The NGO coalition against torture is aware of only one case when the court responded to the allegation of torture, the victim was released and the police officer was brought to criminal account.

Mr. Azimjan Askarov, human rights activist and an ethnic Uzbek, continues to suffer from torture and cruel and degrading treatment on behalf of law enforcement and investigating bodies. The authorities which initiated criminal prosecution of Mr. Askarov in relation to inter-ethnic conflict in June 2010, continue to exert pressure on him. This is manifested by various types of cruel treatment of the detainee: he is denied the access to justice, he is also subject to additional and unjustified prohibitions, the refusal to provide necessary medical aid as well as psychological tortures aimed at destruction of his personality and elimination of his human dignity.

Questions for the state:

1. What is the number of cases initiated in respect of articles of the Criminal Code of the Kyrgyz Republic 305-1 (torture), 305 (abuse of official authority) and 324 (illegal detentions) in all courts of the Republic? How many of such cases deal with protection of the under age children – the victims of torture and illegal detention?
2. What is the time period of consideration of torture cases in courts? What are the reasons for the long period of court review of torture cases?
3. What is the number of convictions in respect of police officers in relation to articles of the Criminal Code of the Kyrgyz Republic 305-1 (torture), 305 (abuse of official authority) and 324 (illegal detentions)? How many of them do concern the protection of under aged children?
4. How many victims of illegal actions of officials have received moral compensation from the state to recover the damage?
5. What rehabilitation measures are offered by the governmental agencies (the Ministry of Healthcare, the Ministry of Social Development) for the victims of illegal actions of the police officers?
6. What measures will the state undertake to ensure the access of famous human rights activist Mr. Azimjan Askarov to fair trial in view of new circumstances of the case: evidence of witnesses who
are ready to contribute to the restoration of justice in respect of victims of torture and illegal detentions related to this criminal case?

(8) **Torture in respect of the LGBTI community**

According to the information provided by local LGBTI organizations there have been multiple cases of discrimination and violence towards LGBTI individuals by the police. The LGBT community representatives are subjected to mass detentions, extortion, physical and psychological abuse by the police because of their sexual orientation or gender identity. Police use sexual orientation and gender identity of people for extortion; they threaten to tell about sexual orientation or gender identity of extorted people to their families or at their workplace or they threaten to place them in detention center with other detained people and tell them about their sexual orientation and gender identity so other detained people may rape or beat them.

**Questions for the state:**

1. What is the State doing to protect individuals from physical and mental torture, and degrading treatment on the grounds of their real or perceived sexual orientation or gender identity?
2. How does the State plan to ensure that LGBTI people are free from police violence and intimidation?

**ARTICLE 9. THE RIGHT TO PERSONAL IMMUNITY**

(9) **Human rights violations in the process of fighting against extremism. Illegal detentions.**

In October 2008 the authorities under the pretext of fighting against religious extremists have conducted illegal detentions of 32 citizens of Nookat district, among them being women and under aged children, these detentions were made with violations of procedural norms. The officers of law enforcement agencies were using various forms of physical violence and torture as well as threats of reprisals in respect of relatives of the detainees, thereby trying to make them confess in the membership in a religious and extremist party and incitement of an inter ethnic conflict. All 32 suspects since the moment of their detention were actually deprived of defense by a lawyer; independent international and local observers as well as media were not allowed to attend at the proceedings at court, the court rejected the allegations made by the defendants concerning the facts of torture inflicted by the officers of the Ministry of Internal Affairs and the State Committee of National Security, they were finally sentenced to 9 to 20 years of imprisonment. In accordance with the Decree of the Provisional Government of the Kyrgyz Republic “On amnesty” dated April 26, 2010 VP No 32 all convicts related to events in Nookat were released from criminal liability and punishment (article 1 part 11 of the Decree). There was no judicial review of their cases, no investigation has been conducted of the facts of illegal detention and torture so far.

**Questions for the state:**

1. What measures were taken by the state party to investigate the facts of illegal detention and use of torture in respect of 32 persons in Nookat in 2008? What measures were taken by the state in order to restore the rights of 32 persons, who were detained and convicted with the violation of procedural norms?
2. What legislative and administrative measures were initiated by the state in order to prevent such violations in the future?
In the Kyrgyz Republic under aged children in conflict with the law and aged 11 – 14 years may be sent to Belovodsk special boarding school for the minors in need of special conditions of care – this institution is unique in the country and has all features of the place of detention. In accordance with article 33 of the Law of the Kyrgyz Republic “On education” placement of under aged children aged 11 – 14 years in this specialized boarding school is allowed only on the basis of a court verdict and only in cases when an under aged child has committed a socially dangerous offence. In breach of this law, during the period of 2003 until 2013 under aged children have been placed in this boarding school on the basis of vouchers issued by the Ministry of Education and resolutions of the district public administration. The Office of the Prosecutor of the Moscow district, having recognized the fact of violation of the law and the violation of rights of 44 under aged children institutionalized in this boarding school, refused to initiate a criminal case on the grounds of “lack of judicial prospects of the case”. In April 2013 the Moscow district court considered the appeal against the decision of the office of the prosecutor to initiate a criminal investigation on the fact of illegal deprivation of freedom of under aged children while placing them in the Belovodsk special boarding school. The Moscow district court also admitted the violation of the provisions of article 33 of the Law “On education” but failed to determine the constituents of the crime in the actions of the staff of the Ministry of education and district public administration. The court rejected the appeal leaving the decision of the prosecution in force. Therefore both the prosecution and the court, having admitted the violation of legal proceedings of referring under aged children in the Belovodsk special boarding school, in fact denied the right of such children to adequate remedy and protection of their rights to personal immunity. These children, in respect of whom the violation of law was registered, are still in the institution.

Questions for the state:

What measures are taken or shall be taken for the restoration of rights of all under aged children (placed in the boarding school without the verdict of the court since 2003) in respect of whom the prosecution and the court admitted in April 2013 the fact of illegal placement in the Belovodsk special boarding school for children in need for special conditions of care?

ARTICLE 12. RIGHT TO THE FREEDOM OF MOVEMENT

The Constitution of the Kyrgyz Republic enshrines the right of each individual for the freedom of movement, the selection of the place of stay and residence in the Kyrgyz Republic in accordance with the international agreements. But the national legislation in the area of migration and registration of citizens imposes a number of requirements and administrative barriers due to which the registration system is based not on notification but on authorization. Absence of registration deprives citizens from access to social, medical and legal services. The internal affairs agencies of the Kyrgyz Republic may detain persons without registration or without identity documents for the period of up to 15 days which actually is the deprivation of freedom. According to the data of the Public Oversight Council (hereinafter referred to as the POC) established with the Ministry of Internal Affairs, during 2012 very many persons were subject to administrative detention in Bishkek and Osh cities due to the absence of identity documents. People registered in Issyk-Kul, Naryn and Osh provinces are often subject to illegal detention in Bishkek despite the fact that in 99 per cent of cases they have identity documents. In Osh city 100 per cent of detentions by the Provincial Police department were due to the absence of relevant documents.

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12 Data presented by the Public Oversight Council with the Ministry of Internal Affairs of the Kyrgyz Republic during the meeting of POCs created with public institutions held on March 22, 2013 in Bishkek
Questions for the state:

1. For what reason the registration of citizens is mandatory and is based on authorization while the absence of such registration results in the violation of their rights, limiting their access to social, medical and legal services?
2. What measures are envisaged by the state to align to the international standards the provisions of the domestic legislation regulating the registration of citizens?

ARTICLE 14. THE RIGHT TO FAIR TRIAL

(12) Violation of procedural norms in criminal justice and violation of the presumption of innocence

According to information contained in item 11 of the second periodic report of the state in terms of compliance with its commitments with the ICCPR, on April 7, 2010 the revolution in the Kyrgyz Republic resulted in subsequent change of the state power. All powers were assumed by the Provisional Government. After the events of April 7, 2010 the process of arraignment and subsequent proceedings in court in respect of majority of criminal cases were held in absentia of the accused. Many verdicts were pronounced by the courts of the Kyrgyz Republic in the absence of the accused persons – these cases include, inter alia, the criminal case of shooting the participants in the demonstration of April 7 in Bishkek, the case of “Chakan Hydro power plant” JSC as well as the case of the murder of the former head of presidential administration Mr. M. Sadyrkulov. The Code of Criminal Proceedings of the Kyrgyz Republic lacks provisions envisaging criminal prosecution of a person in absentia. Despite this fact the courts of the Kyrgyz Republic continue the violation of procedural norms.

There were many procedural violations in relation to criminal cases on events of April the 7th; the participants in the process were not granted the right to appeal against procedural actions and decisions of the investigating officers, prosecutors and court (in breach of provisions of articles 25 and 339 of the Code of Criminal Procedure of the Kyrgyz Republic). During the investigation the defense lawyers and the accused were not given the opportunity to get acquainted with the materials of the case (over 60 volumes), the case was referred to court and all petitions of the accused were repealed. The investigation officers justified their actions by instructions they had received from the curator of judicial system and law enforcement agencies in the provisional government Mr. A. Beknazarov.

Before the commencement of the trial on the case of shooting at the participants in the demonstration of April 7, 2010 Ms. R. Otunbaeva, the President in transition, expressed her negative attitude to the accused and explicitly stated that they were guilty and those defending them were the enemies of the Kyrgyz people. Such statement made by the person in official capacity is the violation of the presumption of innocence envisaged in the Constitution of the Kyrgyz Republic (article 26). The officers of the State Security Service of the Kyrgyz Republic, who were accused on the case of April 7, were suspended.

Questions for the state:

1. We ask the state to clarify what provisions of the national law envisage accusation in absentia with subsequent criminal prosecution in absentia?
2. What are the provisions of the national law that establish the position and define competencies of the “curator of law enforcement and judicial bodies”?
3. What measures were taken by the state to investigate the facts of interference of the Provisional Government during the whole its term of office in the process of investigation and pressure on judicial bodies? How many criminal cases were initiated against officials in respect of such facts?
Violation of equality of parties in the process. Absence of measures to ensure security of defendants and their lawyers.

After the revolution of April 7, 2010 there were more facts of attacks and assaults of defense lawyers. Regarding the criminal case of shooting at the participants in the demonstration of April the 7th, the authorities failed to ensure order in the courtroom allowing objective judicial proceedings: the defendants and their lawyers were subject to psychological pressure and physical violence. The victims and their representatives shouted at the defendants and their lawyers, threatening them with reprisals in respect of them and their relatives as well as putting on fire their houses. The process was accompanied with insulting statements of nationalistic character in respect of defense lawyers from among the ethnic minorities.

More than 5000 criminal cases were initiated in respect of the crimes committed in June 2010 in the south of the country and some of them were referred to court. Based on the findings of the monitoring of judicial proceedings in 2010 – 2012 conducted by local non-governmental organizations13, the absolute majority (80 per cent) of defendants in this category of cases are ethnic Uzbeks.

According to human rights organizations, during trials considering the criminal cases related to the tragic events in the south of the Kyrgyz Republic, gross violations of the basic principles of fair trial were registered, namely the obligation of the court and the prosecutor to conduct thorough and impartial investigation of allegations of torture, to disregard evidence received under torture, to ensure conditions for adequate defense, to ensure the right of the defendant to question the witnesses of the prosecution and to summon and question the witnesses of the defense. According to the defense lawyers, their clients were systematically denied their procedural rights including the right to have a defense lawyer at their own choice and to have private communications with the lawyer.

The defendants, their relatives and lawyers were subject to physical and psychological pressure both during the investigation as well as during trial. During trial the accused and the defendants made statements to court concerning the use of torture and ill treatment. None of such allegations were subject to effective investigation. Out of fear of reprisals by the relatives of the victims and in view of failure of the state to ensure security during trial the witnesses of the defense abstained from participating in the process which created uneven conditions to the parties thereto.

In 2012 the Supreme Court has delivered its verdict on the so called “SANPA case”14. Despite non-observance of fair trial principles (failure to ensure the equality of parties to the process, the violation of the right to summon and question witnesses and the right to be free from torture and ill treatment) 18 persons out of 19 defendants for this case were sentenced to life imprisonment and one person was sentenced to 25 years in jail. One of the convicts has already died in prison.

In 2012 Mr. Shamshidin Niyazaliev, the citizen of the Russian Federation, was detained as a suspect for the case. The Suzak district court sentenced him to life imprisonment, but on the basis of the appeal of his defense lawyers the provincial court have reversed the verdict of the district court and replaced life imprisonment by a fine in the amount of KGS 150 000 for having participated in mass disturbances (article 233 of the Criminal Code of the Kyrgyz Republic), on other episodes he was fully acquitted due to the absence of constituents of crime in his actions. On April 2, 2013 his defense layers Ms. Tatiana Tomina and Mr. Ulugbek Usmanov were beaten in the premises of the Supreme court during the review of the case. The Supreme Court cancelled the

13 See reports on monitoring of trials by “Independent Human Rights Group” and “Kylym Shamy” Public Foundations drafted in 2010 – 2012
14 During the tragic events in the south of the Kyrgyz Republic on June 12-13, 2010 16 ethnic Kyrgyz citizens were killed and two are missing in the conflict near SANPA cotton refinery plant in Jalal-Abad province
acquittal of the court of appeal and sent back the case for new review to the new panel of judges of the same court.

**Questions for the state:**
1. How many criminal cases were initiated on article 305-1 of the Criminal Code of the Kyrgyz Republic in respect of officials who had used torture and ill treatment in relation to the events of 2010 in the south of the country, how many and what kind of judicial decisions were made?
2. What measures are taken by the relevant authorities to ensure the security of parties to the process during trial?
3. How many persons guilty of harassing defense lawyers and other parties to the process during trial related to shooting of participants in the demonstration of April 7 and tragic events in the south of the country in June 2010 were subject to judicial decisions and what was the punishment for these offences?
4. What is the percentage of accused / convicted persons belonging to various ethnic groups in respect of cases related to tragic events in the south of the country in 2010?
5. What is the reason for evident excess of percentage of accused / convicted persons belonging to one ethnic group (i.e. Uzbeks) compared to other ethnicities in this group of criminal cases?

**ARTICLE 24. GUARANTEES OF SPECIAL PROTECTION OF CHILDREN**

(14) **Violation of guarantees of birth registration**

The Kyrgyz Republic has a multiple record of absence of birth registration of children. According to the data from the NGO Association to promote rights and interests of children in the Kyrgyz Republic, during the period of January 2010 until September 2011 30-35% of children (more than 150) were not officially registered in the relevant state agencies as born. Absence of mother’s passport is a ground for the denial to issue a birth certification in maternity homes, while in accordance with the legislation of the Kyrgyz Republic such certification is mandatory for the registration of a child birth. In the absence of such written certification mothers later face serious difficulties in getting official documents for their newly born children.

**Questions for the state:**

What measures will be implemented by the state to align the practice of registration of births in maternity homes to the international standards? When will the registration of childbirth become dependent solely on the fact of his / her birth?

(15) **Exploitation of child labor in educational institutions**

According to the survey of the child labor conducted by the National Statistical Committee of the Kyrgyz Republic jointly with the International Program on the Elimination of Child Labor ILO – IPEC in November – December 2007, the general level of child labor in the country makes 40.3%. The exploitation of child labor in educational institutions of the Kyrgyz Republic is a widespread phenomenon and is interpreted as "education by labor", which regularly takes extreme forms and often can be regarded as the worst forms of child labor as it violates the educational process and is manifested by impossible and forced types of work (for example, carrying heavy weight objects, cleaning streets or working in agriculture instead of learning). The educational system lacks clear criteria for "education by labor" which leads to such forms of abuses. The Constitution of the Kyrgyz Republic prohibits the exploitation of the child labor. At the same time despite serious problems in this area, the Criminal Code of the Kyrgyz Republic does not distinguish exploitation of child labor as a separate

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15 Information provided by the Association of NCOs for the promotion of rights and interests of children in the Kyrgyz Republic. Statistics of communications for 2010 – 2011 (September).
offense, imposing the liability for such kind of abuses within the article of the Criminal Code on “human trafficking”. In accordance with the data from the Judicial Department of the Kyrgyz Republic during the period of 2008 - 2012 local courts have never reviewed cases of exploitation of child labor\(^{16}\), as per the official letter from the State Inspectorate on environmental and technical safety with the Government of the Kyrgyz Republic only 0.1% of all violations of labor legislation are related to the under aged children\(^{17}\).

Questions for the state:

What measures does the Kyrgyz Republic make to eliminate the exploitation of child labor in educational institutions? What criteria are envisaged in the national legislation in respect of labor education in schools to ensure clear provisions excluding exploitation and the worst forms of child labor?

\(^{16}\) Early and forced marriages

In 2011 there were 1214 cases of childbirth among girls aged 15-17 (1.2 % of the total number of childbirths) and 10543 cases of childbirths among women aged 18-19 (8.5% of the total number). 91 % of women aged 15-19 had their first child, 8.7% had two children (1028 cases), 31 women had three children by age of 19. There are cases when women had four children at the age of 19\(^{18}\). Early marriages, early pregnancy and childbirth are serious causes of drop out of such girls from school therefore they are left without education and specialty. Abduction of brides and forced marriages are the phenomena still persistent in the country.

Questions for the state:

What steps are implemented by the Government of the Kyrgyz Republic to study the reasons of early maternity and its elimination as well as to ensure all rights of young mothers including their right to education? What are the links between the problems of abduction of brides and early marriages in the Kyrgyz Republic?

ARTICLE 18. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

\(^{17}\) Prohibition of activity of religious organizations. Labeling them as “destructive” and “authoritarian” without court decision. Violation of neutrality and equal treatment of all religious groups\(^{19}\).

The Law “On freedom of belief and religious organizations” adopted in 2008, was not aligned with the Constitution of the Kyrgyz Republic adopted in 2010. When in 2011 “Open Viewpoint” Public Foundation conducted a survey of the freedom of belief in the Kyrgyz Republic\(^{20}\), it discovered that the State Commission on religious affairs have compiled a list of religious

\(^{18}\) From the report of “Bir Duino – Kyrgyzstan” Human rights movement: Analysis of early marriages and early childbirth in the Kyrgyz Republic, April 2013.

\(^{19}\) This section was drafted by Mr. Dmitry Kabak, “Open Viewpoint” Public Foundation, dmitry.kabak@gmail.com, OpenVP@gmail.com, http://prava.kloop.kg) and Ms. Galina Kolodzinskaya, “Interfaith Council”, kolodzingai@mail.ru.

\(^{20}\) Reply letter from the Judicial Department of the Kyrgyz Republic No 02-2/2561 dated August 21, 2012 to the letter from the Association of NCOs for the promotion of rights and interests of children in the Kyrgyz Republic No443/12 dated August 15, 2012.

\(^{17}\) Reply letter from the State Inspectorate on environmental and technical safety with the Government of the Kyrgyz Republic No02/998 dated September 05, 2012 to the letter from the Association of NCOs for the promotion of rights and interests of children in the Kyrgyz Republic No 429/12 dated July 18, 2012.
organizations naming them “authoritarian” and “destructive”. Such definitions were not envisaged in the legislation and the existence of such list created difficulties for religious organizations and violated the principle of presumption of innocence. The following religious organizations were referred to as “authoritarian” and “destructive”: Unification Church of Sun Myung Moon, International Society for Krishna Consciousness, Church of Jesus Christ of Latter-day Saints (the mormons), Sri Chinmoy, Dolnara Hannong, Falun Gong, Aurobindo Ghosh, White Brotherhood and Satanists. Inclusion of organizations in this list is not supported by effective control by the court: the initiating institution is not required to prove legal grounds and guilt of the organization for having committed illegal actions. The procedure of appeal and exclusion from the list, for example, of the International Society for Krishna Consciousness, is unclear.

The issues of legality of compiling this list by the State Commission on religious affairs as well as the consequences of using this list by other agencies – i.e. internal affairs bodies, national security institutions as well as agencies of justice are of concern. Using this list the State Commission on religious affairs refuses to register the organizations making it impossible for them to subsequently apply for the registration with the agencies of the Ministry of Justice and resulting with the prohibition of their activity on the territory of the Kyrgyz Republic. Any activity without the state registration is punishable.

The state therefore violates its neutrality and demonstrates unequal attitude to all religious groups acting on the territory of the Kyrgyz Republic. For example, the small Ahmadiyya Muslim community (Qadiani) was initially registered in the Kyrgyz Republic but later on its registration was not prolonged by the State Commission on religious affairs under the pressure of the Muslim majority group, i.e. the Sunnis. Under the pretext of “spiritual security” the officials of state agencies create obstacles for the free choice of confession. More specifically, state authorities use the term “traditional religions” opposing them to “sects” to which they refer small groups which do not belong to the majority confessions.

There is a pressure on the ethnic Kyrgyz, which are often referred to as the Muslims without asking for their personal opinion, there is a lack of effective protection to the freedom of conscience for the Kyrgyz people who profess Christianity as well as other less popular beliefs. Recently there has been an observed trend of forcing to conduct religious (Islamic) rites; there were also registered cases of evictions of religious minorities under the pressure of the Muslim majority. Law enforcement agencies are usually represented by the ethnic Kyrgyz people who traditionally refer themselves as Sunni Muslims therefore they do not react to such violations.

Questions for the state:

1. How does the state ensure the implementation of rights and freedoms of religious minorities as well as protect them from eventual discrimination from the religious majority?
2. Have the judicial bodies considered the issue of labeling a certain number of religious groups as destructive and totalitarian? What are the legal grounds and reasons for the State Commission on religious affairs to refer certain religious groups to “destructive and totalitarian”?
3. Have the judicial bodies considered the legality of attaching the characteristics of being “totalitarian and destructive” to religious groups without due legal process and in violation of the presumption of innocence? How will the Kyrgyz Republic remove the negative consequences and stereotype attitude caused by such labels on behalf of authorities (the police, the SCNS, the Apparatus of the President, the Defense Council and the Jogorku Kenesh (both the members and staff) and the local self-governance bodies)?
4. How will the state guarantee that each citizen, foreigner and stateless person can implement the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in
community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching? More specifically, how will the state protect the right to freedom of choice of confession for the Kyrgyz people converted to Christianity?

**ARTICLE 26. EQUALITY BEFORE THE LAW AND NON-DISCRIMINATION**

(18) **Violation of rights and manifestations of discrimination towards the LGBTI communities**

Although Kyrgyzstan is considered to be the most democratic state in the Central Asia, its human rights record is not any better towards lesbian, gay, bisexual, transgender and intersex (LGBTI) communities, the attitude to which is influenced by traditionalist and cultural prejudice and lack of understanding. According to research conducted by local and international human rights organizations (OSI/SHARP, Human Rights Watch, Labrys Kyrgyzstan and Youth Human Rights Group), there is a high level of external transphobia and homophobia and low level of LGBTI human rights protection in the legislation and a lack of information on LGBTI issues in the Kyrgyz Republic. This leads to basic human rights violations in social, economic and political domains, characterized by stigma and discrimination, domestic and street violence, violence by police against LGBTI people, obstacles in changing name and gender marker on personal identification documents for transgender people and difficulties with family and employment which result in a low standard of life and mass violations of the LGBTI communities’ human rights by society and government.

Despite these continuing problems, Kyrgyzstan’s state report fails to mention these violations even though Kyrgyzstan has a duty to protect them from these violations under the ICCPR.

**Questions for the state:**

1. What is the state doing to legally recognize sex and name that reflect the individual’s gender identity in the case of transgender people?
2. What is the state doing to address discrimination on grounds of sexual orientation and gender identity?
3. Why has the state failed to mention any issues regarding discrimination and other ill treatments against individuals on grounds of their sexual orientation and gender identity in its state party report?
4. What is the state doing to address hate speech and homophobic statements by public officials, which are detrimental to the full exercise of the right to freedom of expression?
5. What is the government doing to ensure that state actors are being educated, trained, and sensitized to issues of LGBT rights?