ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS BY THE KYRGYZ REPUBLIC

(in terms of protection of the rights of the child)

February 1st, 2014.

The report is presented by the Public Foundation “Child’s Rights Defenders League”, Kyrgyz Republic. This report uses data gathered in the course of researches conducted in 2010¹, 2011² and 2013³. The report was prepared with the support of the Netherlands Helsinki Committee.

Compilation of the report was implemented by Dmitry Kabak and Nazgul Turdubekova. The following people took part in the preparation of the report: Aigul Kyzalakova, Elena Gavrilova, Cholpon Kudaiberdieva, Natalya Efimenko, Elena Halitova, Burul Makenbaeva, Nazgul Tashpaeva, Anara Niyazova.


Executive Summary:

Discrimination, the right to use all rights and freedoms regardless of age (Article 2) as applicable to children is expressed in, for instance, the lack of implementation of the right of children under 14 years of age⁴ to turn to state bodies, which becomes urgent when violence is committed in families and child welfare agencies. The right of the child to freedom of thought, conscience and religion as well as the rights of parents who implement supervision over their child while using these freedoms are not taken into account in amendments that have repeatedly been tried to be added to the Code of Administrative Liability (in 2012 and 2013)⁵. It was suggested to set administrative liability, including liability of parents, for involvement into a religious organization and choice of religious affiliation. The right of a child to form her/his own attitude to religion or beliefs cannot always be implemented by the child under the pressure of society. The Law of the KR “On Peaceful Assemblies” adopted on May 23, 2012 has limited the right to a peaceful assembly (Article 21) by a

³ State policy of the Kyrgyz Republic on the support of families, motherhood and protection of children from economic exploitation, 2013, “Child’s Rights Defenders League”. Prepared in partnership with the Netherlands Helsinki Committee with financial support of the Ministry of Foreign Affairs of the Netherlands.
⁵See individual message to the Special Rapporteur on the Freedom of Thought, Conscience and Religion submitted in 2013 by the ‘Interfaith Council’ Public Association and the ‘Open Viewpoint’ Public Foundation on attempted amendments to Articles 395, 395-1, 395-2 of the CoAl.
The territory of 100 meters within educational and healthcare establishments, which limits children and their parents in expressing demands to the administrations of establishments.

The Kyrgyz Republic has not ensured security – protection measures (Article 2) and the protection of the right to life (Article 6) in conditions of an interethnic conflict in the south of Kyrgyzstan in June of 2012, which developed after the shift in power in 2010. The lack of effective programs on supporting families in difficult life situations leads to violence and lethal outcomes among children. Children are subjected to torture and cruel treatment (Article 7) during investigations. Indicative of this are clashes between the police and the population that took place on October 1st, 2008 in the town of Nookat (Osh Province) during a celebration of a religious holiday – Orozo Ait (Eid al-Fitr), during the investigation of which adults and children were subject to torture and cruel treatment (Article 7); children were also subject to discrimination on the basis of religious affiliation, faced violations of guarantees of the presumption of innocence and collective responsibility. After the shift in power in 2010, an interethnic conflict arose in the south of Kyrgyzstan; in the course of it the state failed to ensure security and protection of citizens, including children (Article 2) who died in the result of weapon use on behalf of both powers controlled by the authorities and volunteers summoned by the Interim Government.

In Kyrgyzstan, engaging children into labor often develops into labor exploitation (Article 8), as a result of which children do not attend school and lose opportunities to obtain education. Forced labor and exploitation of children (Article 8) in residential establishments is not controlled by the state bodies in an effective manner. Bodies of internal affairs and social services periodically carry out ‘Teenager’ and ‘Street Children’ raids (detentions, limitation of freedom of movement) (Article 9) that are followed by detentions and violations of rights and freedoms and also do not guarantee a fair trial (Article 14).

Children placed into foster homes are not always provided with humane treatment and respect of dignity (Article 10). Although citizens can enjoy the freedom of movement (Article 12), no possibility for implementing guarantees of social protection and managing accumulated funds has been provided in order for parents and children to receive services. The binding of the system of rendering medical assistance, social assistance, access to education and other services and guarantees to ‘registration’ (Russian: propiska) is a barrier to using services while implementing the right to movement.

Raids for detaining children raise an issue of observing minimal guarantees of a fair trial and the presumption of innocence. They also touch upon an issue of recognizing legal personality (being subject to legal rights) of the child. Legal personality is also mentioned in the right of children to turn to state bodies for protection. In 2013, deputies of Jogorku Kenesh (Parliament) wanted to limit the right to travel abroad for women under 21 years of age.

Special educational boarding schools (closed establishments) function in the Kyrgyz Republic with the aim of re-educating children that are in conflict with the law. In practice, placement into these

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6 See message by Dmitry Kabak on behalf of ZaripaAbdikarimova and other people prosecuted for the events of October 1, 2008 in Nookat to the Special Rapporteur on Torture and Cruel Treatment, 2011.

schools can be carried out on the basis of a decision by both an administrative body – Commissions for Children’s Affairs functioning under local state administrations and by court. Placing children into closed establishments should be ensured by the control on behalf of the court. Sometimes, courts consider the case of a child’s placement into a specialized school after the child has already been placed into a closed establishment, although judicial control over deprivation of liberty and the availability of bases for such actions should be considered before the placement. In accordance with the Regulation of the Ministry of Education and Science, these establishments should admit children not younger than 11 and not older than 14 years of age. In practice, there have been court decisions on the placement of children of 8 and 10 years into a specialized school. For instance, Andrei Strarostenko and Moldomusa Tashbulatov. In the third case, Marlen Raimbekov was placed into the Belovodsk Special Comprehensive School without a court decision, only on the basis of a decision by the Commission for Children’s Affairs.

According to the outcomes of an investigation of the interethnic conflict in June 2010, courts have made decisions on the compensation of damage and confiscation of property without taking into account the interests of children, spouses, and protection of their property share (Article 16);

The courts should revise the 2013 verdicts on June events. Facts of torture and cruel treatment (Article 7) in Nookat town as a result of clashes on the 1st of October, 2008 between bodies of internal affairs and religious population were left without investigation (impunity) and, consequently, without compensation.

Violations of a fair trial and imposing criminal liability on persons, whose guilt according to filed charges and affiliation with the prohibited religious organization ‘Hizbut -Tahrir’ were not proven took place in the course of the proceedings on the clashes in Nookat town on October 1st, 2008.

Local self-government bodies of the Nookat district in Osh province (municipalities – local councils) have formed lists of entire families, calling them members of a prohibited ‘Hizbut-Tahrir’ party, without appropriate evidence of the affiliation of families with the prohibited party.

Lists of local government bodies were formed by the composition of families (collective punishment of families) – head of family, spouse, children. The youngest ‘extremist’ has reached the age of 3. These lists became a justification for reaching verdicts by courts without the provision of any other evidence. ‘Open Viewpoint’ Public Foundation brought the cases of 32 convicted adults to the Supreme Court of the KR; in May of 2009, the court did not repeal the decisions of courts of first and second instances –Nookat district court and Osh provincial court, which were taken with the violations of fair trial standards. In May of 2010, 32 convicted persons were released by amnesty act based on the decision of the Interim Government. The court has not revised the decisions on their

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8 Regulated by the Statute Provision on special comprehensive schools for children and teenagers in need of special conditions of education.
9 Decisions by two courts in 2013: Panfilov district court with regard to Andrey Strarostenko (judge Shugalskiy I.S.) and Osh city court with regard to Moldomusa Tashbulatov (judge Matisakova K.)
10 Decision as of August 1st, 2013 (protocol of the Commission for Children’s Affairs №5).
11 According to the information of ‘KylymShamy’ Public Foundation and the ‘Open Viewpoint’ Public Foundation.
12 See concluding remarks by the Committee on the Elimination of All Forms of Racial Discrimination with regard to the Kyrgyz Republic for year 2013.
13 See individual message on behalf of Zaripa Abdikadirova, submitted by the ‘Open Viewpoint’ Public Foundation and Dmitry Kabak in 2009.
punishment. Neither the court, nor the prosecutor’s office have considered the issue of bringing persons who used torture against people detained for Nookat events (32 of them were convicted) to responsibility.

*Private and family life (Article 17)* was under the threat of interference in the case of clashes in Nookat, since local authorities (kehesh /councils and local councils) formed registers of all members of families, listing them as criminals and calling them members of *Hizb-utTahrir*. In 2013, it was twice attempted to set administrative liability for a choice of confession (for missionary work – proselytism), for engaging children into a religious organization without specifying the rights of parents to bring up children in accordance with the beliefs of parents.\(^\text{14}\)

*Freedom of thought, conscience and religion (Article 18)*. Children have freedom of thought, conscience and religion. Responsibility for carrying out supervision over the child with him/her implementing the freedom of conscience and religion is placed on parents. Unfortunately, children placed into foster homes do not always preserve their identity in terms of confessional affiliation of parents and connection with their community. On the other hand, deputies of Jogorku Kenesh (Parliament) and some state programs do not ensure protection of religious diversity. In particular, the draft version of the Law “On Religious Education and Religious Educational Establishments” presumes that the state will set for confessions standards of teaching their own beliefs. This contradicts the principles of independence and self-administration of religious organizations. Amendments to the Code of Administrative Liability for involving children into activities of religious organizations, proposed by the Ministry of Justice and the Government of the KR in 2013 are de-facto entrenching on the rights of parents to bring up their children in accordance with their own beliefs.

*The right to seek, gather, store and impart information (Article 19)*. These freedoms need an adequate mechanism for protecting children from information that is undesirable depending on the age of a child. With the goal of observing interests of adult people, it is necessary to separate, for instance, video materials into a detached section of video stores. For consideration of arguments about the violation of ethical norms by journalists and mass media and the spread of information harmful to the interests of the child, it is required to create a respective body (under the Parliament or Ombudsman) that is functioning on the basis of the law and has the power to adjudicate disputes with regard to journalists and mass media, to place administrative fines for violating ethical norms and misusing the freedom of speech. Special attention should be given to publications in mass media that advocate hatred and incite discrimination, hostility or violence.

*The right to freedom of assemblies (Article 21)* was limited for children and parents by a distance of 100 meters within educational and healthcare establishments in the Law “On Peaceful Assemblies” adopted on May 23\(^\text{rd}\), 2012. Thus, children studying in educational establishments and their parents are, first and foremost, limited in their ability to express their position in front of an establishment, with the decision of which they may not agree.

*Protection of family relations (Article 23)*. Some financially unstable families in Kyrgyzstan placed their own children into children’s boarding schools, as a result of which children lost family

\[^{14}\text{See reports of the ‘Open Viewpoint’ Public Foundation in 2011, 2013 as well as the Alternative Report to the Committee on Human Rights in 2013.}\]
ambience and which led to a loss of social skills for living in society and family (connection to economic, social and cultural rights).

The system of national and international adoption needs to be reformed and needs to ensure transparency and clarity of procedures. The priority should be given to preserving the child in a biological family, if this is not possible – to a transfer to relatives. Further on, a revision of the system of national adoption is needed to eliminate corruption and non-transparency of the decision-making process. Transparency of international adoptions can be ensured through a reform of the national system. From 2009 to 2011 a moratorium on international adoption was functioning in the Kyrgyz Republic in order to exclude corruption.

The system of healthcare in the KR is not able to ensure effective and high-technology medical assistance and rehabilitation for children with genetic diseases and complex congenital defects when they are placed in children’s foster homes. Due to the deficit of work places, many families become involved in external migration, as a result of which families fall apart and children are put into foster homes, losing family ambiance.

Protection of the interests of the child (Article 24). Obtaining a child’s birth certificate is bound to property and registration by address. If parents do not have passports, then there is no possibility to receive a birth certificate for the child, which leads to problems with receiving medical assistance and entering educational establishments. An increase in the number of homeless persons necessitates a revision of the requirements for issuing passports, so that people without a home can receive passports and be recognized as full-fledged citizens. In the case of non-possession of property, people are deprived of the opportunity to obtain a passport and, consequently, are limited in implementing many rights and freedoms.

Linguistic, ethnic and religious minorities (Article 27) are not provided with the freedom to implement all of their civil and political rights together with the members of their community, to use their mother language and culture. Accordingly, they cannot implement their rights as parents, depriving children of identity. The conflict that took place in June of 2010 has negatively affected the situation of ethnic minorities. Guarantees of free activities of religious minorities on the territory of the KR are constantly shrinking due to introduction of bureaucratic requirements for registration or the number of members.

Due to the allegations of the officials’ involvement in corruption connected to international adoptions, a moratorium on the adoption by foreign persons was functioning in the Kyrgyz Republic. From 2009 to 2013 the issue of international adoption is being discussed in the Kyrgyz Republic. In the course of work by a parliamentary commission of Jogorku Kenesh with the involvement of experts on healthcare and public organizations, it was found that children with congenital malformations are treated with the help of international experts.
1. Violation of the principle of non-discrimination when implementing civil and political rights of each child

1.1. Discrimination, the right to use all rights and freedoms regardless of age(Article 2) as applicable to children is expressed in, for instance, the non-observance of the right of children under 14 years of age to turn to state bodies, which is urgent when violence is committed in families and child welfare agencies.

1.2. Non-discrimination with regard to the right of the child to freedom of thought, conscience and religion as well as the rights of parents to implement supervision over their child while using these freedoms are not taken into account in amendments that one has repeatedly tried to add to the Code of Administrative Liability (in 2012 and 2013)\(^{17}\). It was suggested to set administrative liability, including liability for parents, for involvement in a religious organization and choice of religious affiliation. The right of a child to form her/his own attitude to religion or beliefs cannot always be implemented by the child under the pressure of society.

1.3. Non-discrimination in the context of the right to peaceful assemblies. The Law of the KR “On Peaceful Assemblies” adopted on May 23\(^{\text{rd}}\), 2012 has limited the right to a peaceful assembly (Article 21) by a territory of 100 meters within educational and healthcare establishments, which limits children and their parents in expressing demands to the administrations of establishments.

2. The right to take necessary measures for ensuring rights. Provision of security (Article 2)

2.1. The Kyrgyz Republic failed to ensure security – protection measures (Article 2) and protection of the right to life (Article 6) in conditions of an interethnic conflict in the south of Kyrgyzstan in June of 2010 that had developed after the shift in power in 2010. Civilians were dying from weapon use on behalf of both the powers controlled by authorities and volunteers summoned by the Interim Government citizens seized weapons in divisions controlled by the state (military division, police departments).

2.2. Lack of effective programs on supporting families in difficult life situations leads to violence and lethal outcomes among children. Children are subject to torture and cruel treatment (Article 7) during investigations. Indicative of this are clashes between the police and the population on October 1\(^{\text{st}}\), 2008 in the town of Nookat (Osh province) during a celebration of a religious holiday – Orozo Ait (Eid al-Fitr); during the investigation of which adults and children were subject to torture and cruel treatment (Article 7). Children were also subject to discrimination on the basis of religious affiliation, which is a violation of guarantees of the presumption of innocence and collective responsibility\(^{18}\) (See the “Case of Nookat”)\(^{19}\).

Recommendations:

1. It is necessary for courts to revise the 2013 verdicts on June events\(^{20}\), revise decisions on the confiscation of property distinguishing property rights of family members. Investigate facts of torture and cruel treatment (Article 7) in the town of Nookat as a result of clashes between bodies of internal affairs and the religious population on October 1, 2008.

3. The right to life (Article 6)

Security and protection of citizens. After the shift in power in 2010, an interethnic conflict arose in the south of Kyrgyzstan, the state did not take necessary measures for ensuring security and protection of citizens (Article 2), as well as the right to life, including children who died due to

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\(^{17}\)See individual message to the Special Rapporteur on the Freedom of Thought, Conscience and Religion submitted in 2013 by the ‘Interfaith Council’ Public Association and the ‘Open Viewpoint’ Public Foundation on attempted amendments to Articles 395, 395-1, 395-2 of the CoAl.

\(^{18}\)See message by Dmitry Kabak on behalf of Zaripa Abdikarimova and other people prosecuted for the events of October 1, 2008 in Nookat to the Special Rapporteur on Torture and Cruel Treatment, 2011.


\(^{20}\)See concluding remarks by the Committee on the Elimination of All Forms of Racial Discrimination with regard to the Kyrgyz Republic for 2013.
weapon use on behalf of the powers controlled by the authorities and volunteers summoned by the Interim Government.

3.1. As a result of clashes over 400 people were killed and over 200 wounded. Separate settled areas were subject to destruction. According to the data do the Office of Prosecutor General of the KR, in the course of tragic events, 15 children died in the south of Kyrgyzstan; and according to Kylым Shamy Center for Protection of Human Rights – 24 children\(^{21}\). Criminal charges were filed on the case of one child’s murder only and the case was brought to court. 400 thousand children suffered directly or indirectly. As a result of the conflict, 3433 children lost one of their parents, three children lost both parents.

3.2. In accordance with the norms of criminal legislation of the Kyrgyz Republic, committing a crime against a minor is an aggravating circumstance.\(^{22}\)

3.3. Cases of murders and infliction of bodily harm to underage children by their parents are becoming more frequent in the Kyrgyz Republic. Along with the economic factor, one of the causes is the lack of appropriate social assistance and support on behalf of the state\(^{23}\). Oftentimes, social workers of authorized bodies are not equipped with necessary knowledge and resources; professional preparation and social work skills are needed so their work would not be tokenistic.

3.4. Example: Elnara Karybaeva, born in 2010. Her father inflicted multiple stab wounds in the facial and neck area in a state of strong alcoholic intoxication, tried to rape her. In a serious condition, Elnara was hospitalized to the rehabilitative ward of CCHEFR № 3 of Bishkek city. This family was not identified by social services as disadvantaged in a timely manner. After the incident, employees of the Department for Social Development and Division of Family and Children’s Support provided a ‘positive portrait’ to the investigation and protected the interests of parents and not the affected child.

3.5. For 9 months of 2013, 79 cases of suicide among teenagers were registered in Kyrgyzstan.\(^{24}\) Economic instability, lack of adequate preventive measures in educational establishments, the problem of shortage of youth liaison officers. In remote districts there are 7-8 schools per one YLO, lack of knowledge and skills of children’s officers lead to a growth in crimes among the underage.\(^{25}\)

3.6. There is no sufficient legislative regulation with regard to activities of authorized state bodies on the prevention of crimes among minors in the Kyrgyz Republic. In the Law of the KR ‘On the prevention of crimes in the Kyrgyz Republic” all persons with antisocial behavior appear as subjects. Despite the fact that Articles 98-102 of the Children’s Code provide for protection of teenagers who are victims of violence or crime, until the present time no sub-legislative regulatory and legal acts have been adopted for regulating activities of authorized bodies in this area.

3.7. The right to life within the framework of social protection. Small amount of benefits: as of January 1, 2014, benefits for a child from a low-income family composed 478 KGS per month (9.8 US dollars, as of 01.02.2014 1 US dollar = 50 KGS), which composes around 11 % of the minimum living wage needed for a child. The amount of benefits does not ensure the right of the child to decent life and full-scale development (physical, moral, spiritual and social development). Allocated resources are not enough for adequate nutrition. The line of extreme poverty in Kyrgyzstan is 1286 KGS (26.2 US dollars) per one person and is estimated at 2100 calories needed to maintain vital functions of a human organism. The size of benefits in the amount of 478 KGS is around 36% of the

\(^{23}\) See: http://kant.kg/2011-12-13/troe-materej-osuzhdeny-ubijstvo-popytku/
\(^{24}\) See: http://kabar.kg/rus/incident/full/64836
\(^{25}\) See: http://kabar.kg/rus/law-and-order/full/23873
Extremely poverty rate (1286 KGS), which indicates a shortage of resources for maintaining life activities of the child.

3.8. **The right to life through access to effective palliative care** implies an inclusion of active care of children with incurable progressive diseases. The tasks include control of pain and other manifestations of disease, provision of psychological, social and moral support. At the present time, necessary measures in the Kyrgyz Republic are carried out at a very low level. The situation is stipulated by the lack of qualified specialists on palliative care, corruption in the system and by the fact that programs for the promotion of palliative care are financed exclusively by donor organizations (e.g. by Soros Foundation - Kyrgyzstan). For children in child welfare agencies such assistance can be inaccessible at all. The establishment can provide children who have progressing congenital hydrocephaly with medical care only. Social, psychological and moral support to the child with an incurable disease depends on the availability of volunteers at that moment in the establishment who have appropriate qualification. Only oncologists have a limited list of anesthetic medications and the power to prescribe narcotic preparations, which significantly limits pain control.

**Recommendations:**
1. Stop involving volunteers and persons not subject to the state by an oath in any actions that allow weapon use.
2. Raise the amount of benefits for children from low-income families to the rate of extreme poverty.
3. Ensure the adoption of programs of effective palliative care.

4. **Prohibition of torture and cruel treatment (Article 7)**

4.1. Children are subject to torture and cruel treatment (Article 7) during investigations. Demonstrative of this are clashes between the police and the population on October 1st, 2008 in the town of Nookat (Osh province) during a celebration of a religious holiday – Orozo Ait (Eid al-Fitr), during the investigation of which adults and children were subject to torture and cruel treatment (Article 7) and children were also subject to discrimination on the basis of religious affiliation, faced violations of guarantees of the presumption of innocence and collective responsibility (See the “Case of Nookat”).

4.2. Facts of torture and cruel treatment (Article 7) in the town of Nookat according to the outcomes of clashes of October 1, 2008 between internal affairs bodies and the religious population were left without an investigation (impunity) and, subsequently, without compensation.

4.3. Information about cases of sexual violence is not ensured with effective protection (secrecy of private life, official secrets) in the course of work by law enforcement agencies. Example: A girl, 9 years old, was sexually abused by a taxi driver. The following day, the taxi driver and two police officers came to the mother of the girl with the aim of “settling the matter in peaceful way”.

4.4. Statements about facts of violence and cruel treatment are not provided with effective court proceedings (initiation of criminal case as well as its examination in court is delayed) which makes it possible for the offender to avoid responsibility for the committed crime. In practice, there are cases when investigators lose criminal case materials due to which facts of violence against children are left without consideration (impunity). The public prosecutor (prosecution offices) should maintain

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26 See message by Dmitry Kabak on behalf of Zaripa Abdikarimova and other people prosecuted for the events of October 1, 2008 in Nookat to the Special Rapporteur on Torture and Cruel Treatment, 2011.
28 From the experience of lawyers of the League of Child Rights Defenders in DIA of Lenin district of Bishkek city (investigator – Aliya Sadykova) and the prosecutor's office of Lenin district, Bishkek city (case on the loss of materials was investigated by prosecutor Ernest Asakeev).
accusation, however, in practice, prosecutors do not defend the rights of the injured party effectively.

4.5. Investigators of law enforcement agencies do not have the necessary special skills for working with victims of sexual violence, especially with children. Attention needs to be paid to the correspondence of the sex of the victim to that of the investigator. The legislation of the KR does not establish, in contradiction with international standards, that the child – victim of sexual violence and the investigator should be of same sex.

4.6. Forensic medical expertise in the Kyrgyz Republic in the case of violence against children does not correspond to international standards; there are no separate, specially equipped facilities for examining children, psychologists are virtually not involved in the expertise for working with and preparing the child. The time of carrying out expertise is delayed until the disappearance of physical evidence of experienced violence; results of expertise are distorted and, since forensic expertise is often taken by courts as the ‘main evidence’, such cases are often closed due to lack of evidence. Introduction of a new law in 2013, which regulates forensic activities in the KR, greatly limits the development and possibilities for effective work by alternative subjects - non-governmental organizations and experts, as well as the involvement of independent international experts for conducting expert studies in the KR. This complicates obtaining an independent alternative conclusion for children - victims of violence and torture.

4.7. There is no procedure for transferring children to temporary families and crisis centers in the Kyrgyz Republic, as is required by the interests of the child, for example, in case of violence in the family.

4.8. The legislation of the Kyrgyz Republic stipulates punishment for lewd acts, intercourse with persons known to be under 16 years of age, and for forcing into sexual intercourse. However, the legislation allows to escape responsibility for all above-listed cases on the basis of a reconciliation of sides (receipt of remuneration by parents from an accused party) in cases of misdemeanors and crimes of little gravity. In such cases, parents represent the child victim and the opinion and interests of the child are not taken into consideration. It is necessary to prohibit applying Article 28 of the Criminal Procedure Code (Paragraph 12 of Article 28) to cases, in which children act as the injured party.

4.9. De-facto there is no possibility for the child to independently turn to the state bodies for protection in the case of violation of her/his rights or commitment of a crime or misdemeanor with regard to the child. This is connected to the fact that parents or persons replacing them serve as legal representatives of the interests of children aged 14 - 18. Legal representatives and the person who committed unlawful acts against children can reach reconciliation contrary to the interests of the child.

4.10. Suppression and concealment of the problem of violence in educational, medical establishments and authorized bodies for the protection of children is one of the reasons for an increasing amount of violence against children. Often employees, who make school problems public, protecting the child from violence in the school or in the family, become subject to condemnation and pressure for disclosing this information. Such an approach to the problems of violence on the part of the system of education complicates rendering assistance to a child who needs to be protected from all forms of violence, including sexual violence.

4.11. Procedures, regulatory activities of authorized bodies for the protection of children from violence and cruel treatment are not effective when enforced. Taking measures for the protection of the child in a dangerous situation lasts for weeks, which can pose a threat to his/her health and life.

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29 In the criminal case against offender Muratbek Kenjeshev (Prosecutor’s office of Lenin district of Bishkek city) the prosecution did not uphold charges of rape, despite the testimony of the affected girl, and evaluated these actions as voluntary sexual intercourse.


31 According to the materials of GPO in Oktyabrskiy DIA of Bishkek city.
4.12. No clear mechanisms have been developed for identifying and protecting children who are victims of violence or other unlawful acts. There are no regulatory and legal acts that oblige personnel in organizations of healthcare, education and social protection to carry out systematic registration or reporting of cases of cruel treatment and neglect of children’s needs; no algorithm of transferring information about each case of violence to territorial divisions of authorized agencies on children’s protection has been developed.

**Recommendations:**

1. Provide children-victims of violence with qualified protection and accompaniment during investigative actions and in court through the creation of Centers for rendering free social, psychological and legal services in all regions of the Kyrgyz Republic.

2. Strengthen responsibility of employees of law enforcement bodies and prosecution offices for not implementing the legislation of the Kyrgyz Republic on the protection of children from violence by introducing appropriate amendments to the legislation.

3. Develop mechanisms for implementing and controlling withdrawing and transferring children to temporary families and crisis centers in case of violence in the family, as well as a mechanism for bringing people, who conceal facts of violence against children, to responsibility.

4. Introduce amendments to the CPC of the KR so that Art.28 p.1. p. 12 would not be used in cases, where children who experienced violence are the injured party.

5. Strengthen the responsibility of authorized agencies on the protection of children for not fulfilling their functions by introducing appropriate amendments into the legislation of the KR.

6. Ensure for alternative medical comment which recorded traces of physical violence to have the same evidentiary force as conclusion of forensic experts.

5. **Prohibition of slavery and forced labor (Article 8)**

5.1. In the families of Kyrgyzstan **engaging children into labor** often develops into **labor exploitation** (Article 8) due to which children do not attend school and lose opportunities to obtain education, face many negative consequences for their health (growth disorders, development disorders, etc.) **Forced labor and exploitation of children** in residential establishments are not ensured by effective control on behalf of the state bodies.

The work of state bodies on fighting child exploitation is not sufficient, has a formal character; there is no systematic approach to the problem. Legislative restrictions introduced in the Code on Children and the Labor Code of the Kyrgyz Republic come into power only in the case of an official employment of a teenager due to his/her emancipation, but oftentimes children become employed illegally and become fully unprotected. In the south, children are forced to work in coal mines to help parents to earn for the food for family, in summer time – in resort homes and cafes of the Issyk-Kul region.

5.2. There are cases of children being sold into slavery in child establishments. As well as exploitation of the underage by employees of law enforcement agencies when they deliberately seek out victims-girls from disadvantaged families, who will not be missed; these girls then have “sexual intercourse prohibited by the law” with wealthy men and police officers, in turn, ‘detain’ such offenders and offer to release them in exchange for a certain monetary compensation.

**Recommendations:**

1. Develop effective mechanisms of identifying working children by authorized bodies on the protection of children.

2. Adopt a list of types of hazardous work for children;

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32See: http://www.paruskg.info/2012/12/25/72230
33See: http://news.mail.ru/inworld/kyrgyzstan/incident/15637040/
3. Strengthen control and monitoring over the prevention of using children in the worst forms of child labor.
4. Take measures for ensuring access of working children to education and medical care;
6. For local bodies for the protection of children and education to carry out constant control over the prevention of child labor in families and residential establishments.

6. The right to freedom and personal inviolability (Article 9)
6.1. Bodies of internal affairs and social services periodically carry out “Teenager”, “Street children” raids (detentions, limitation of freedom of movement) (Article 9) that are linked to detentions, the lack of implementation of rights and freedoms, and violations of guarantees of a fair trial (Article 14).
6.2. Placement of children, who are in conflict with the law and in need of re-education, into special educational boarding schools (closed establishments) needs to be controlled by court on the subject of adherence to appropriate guarantees of a fair trial and the legitimacy of deprivation of liberty.
6.3. In practice, placement into these schools can be carried out on the basis of a decision by an administrative body – Commissions for Children’s Affairs functioning under local state administrations and also by court.
6.4. There are court decisions on the placement into specialized school of children of 8 and 10 years of age – Andrey Strarostenko and Moldomusa Tashbulatov34. In the third case, Marlen Raimbekov was placed into the Belovodsk Special Comprehensive School by the decision of the Commission for Children’s Affairs without a court decision35.
6.5. Despite the clearly set legislative norms, there is a practice of arbitrary arrests and detentions in the KR, when officers of law enforcement agencies take children away under false pretenses with the goal of obtaining information without the presence of legal representatives, deprive them of liberty and use threats and violence.

Example: Polyanskiy Vladimir Romanovich, born in 2004; Polyanskiy Stepan Romanovich, born in 2002; Abdylabekov Ruslan Alisherovich, born in 2004; Vysotin Konstantin Nikolaevich, born in 2001 were detained by the officers of law enforcement agencies on the basis of a complaint of a robbery in the amount of 5000 KGS filed by the Director of the Bishkek Experimental Plant. The underage children were taken to the Pervomayskiy district department of internal affairs of Bishkek city, were held there for over two hours, were forced to write explanatory statements and give testimonies without the presence of legal representatives.

Recommendations:
1. Stop the practice of placing children into specialized children’s establishments of closed type without a court.
2. Strengthen articles (provisions) on the work of the Commissions for Children’s Affairs by a norm that prohibits taking responsibility for placing children into special closed establishments.

34Decisions by two courts in 2013: Panfilov district court with regard to Andrey Strarostenko (Judge Shugalskiy I.S.) and Osh city court with regard to Moldomusa Tashbulatov (Judge Matisakova K.)
35Decision as of August 1st, 2013 (protocol of the Commission for Children’s Affairs №5).
7. The right of people deprived of liberty to humane treatment and respect of dignity (Article 10)

7.1. Special school in Belovodskoe village for juvenile offenders. Pupils of the establishment complained about the school administration and employees, who used physical violence against them – hit and kicked them, insulted and humiliated them. The director of the establishment forced pupils to work on his personal land plot and in his home. He released pupils from studies so they would work in the field. One of the pupils lived on the director’s household plot for several months, working and not attending school.

Recommendations:

1. For prosecutor’s offices, Ombudsman and the National Center against Torture to carry out monitoring of closed children’s establishments with the goal of preventing unlawful placement of children into specialized schools.

8. The right to free movement and freedom to choose residence (Article 12)

8.1. Freedom of movement is directly connected to the opportunity of implementing such basic human rights as the right to labor, education, obtaining medical services, etc., which ultimately affect the quality of life. In the Kyrgyz Republic, registration serves as one of the conditions for access to all guaranteed social services. According to the Constitution, the absence of a registration cannot serve as a basis for limiting the rights and freedoms of citizens, but the reality shows that the provision of basic services in Kyrgyzstan depends directly on the availability of registration by residence.

8.2. Of particular concern is the connection of registration to the issuance of passports. Thus, a child whose parents have moved cannot obtain a passport because for this one must provide a certificate of registration. In the absence of registration the child is deprived of access to basic services. A special category of problems exists with regard to children from orphanages, who simply have nowhere to register after leaving the orphanage; consequently, they have no opportunities to obtain a passport, find employment, receive medical care and are forced to be excluded from the social sphere, which leads to an increase of crimes in society.

8.3. According to the requirements of the legislation of the KR, when an underage child is leaving the country, the parent should have a notarized consent for departure of the child from the second parent; also, when the child is crossing the border with other persons (relatives, etc.) or independently - a child should have a notarized consent for departure from both parents. Special problems with receiving such consent are experienced by mothers who have a difficult relationship with the father of the child. According to the requirements of the Family Code of the KR, disputes between parents related to upbringing and development of children are settled in court proceedings. As a rule, such disputes are considered according to the order of action proceedings, which entails a risk of delaying the court process, as well as a quite long period for the judicial decision to come into effect (30 days), which negatively affects the implementation of child’s rights and interests.

Recommendations:

1. Replace the institute of registration with registration at the place of stay.

2. Introduce changes to the civil procedural legislation of the KR, directed at regulating the order of consideration (in the order of cases of special categories, special timeframes for consideration and the

36See.: http://www.fergananews.com/articles/7134
coming into legal force of a decision, the order of submitting and disclosing evidence) of such disputes in the best interests of the child.

9. **Equality before court, presumption of innocence, procedural rights (Article 14), prohibition of condemnation for actions that were not recognized as criminal at the time they were committed (Article 15)**

9.1. *Violations of fair trial and imposing criminal liability for actions that were not proven to be criminal or were not proven* took place in the course of an investigation of the clashes in Nookat town on October 1, 2008.

9.2. Local self-government bodies of Nookat district of Osh province (municipalities – local councils) formed lists of local residents by families, calling them members of a prohibited ‘Hizbut-Tahrir’ party, without appropriate evidence of the affinity of families with the prohibited party. Lists of local government bodies were formed by the composition of family (collective punishment of families) – head of family, spouse, children. The youngest ‘extremist’ has reached the age of three. These lists became a justification for reaching verdicts by courts without the provision of any other evidence.

9.3. From 2009 to 2010 ‘Open Viewpoint’ Public Foundation provided lawyers and brought the cases of 32 convicted adults to the Supreme Court of the KR. In May of 2009, the Supreme Court did not repeal the decisions of courts of first and second instances – Nookat district court and Osh provincial court; reached decisions were made with the violations of fair trial standards. Defenders provided by the prosecution (state) did not fulfill their functions in an adequate manner, which became the reason of complications for further defense, since these lawyers stated that all formalities were observed.

9.4. In May of 2010, after the shift in power, 32 convicted persons were released by the amnesty act of the decision of the *Interim Government*. No revision of decisions and no investigation of facts of torture took place, thus, the right to the re-examination of the case was ensured.

9.5. Reviewing cases in the supervisory instance (in Supreme Court) of the Kyrgyz Republic does not guarantee personal presence of the convicted person, leaving the hearing in the responsibility of defense and prosecution.

9.6. *Facts of torture and cruel treatment (Article 7) in the town of Nookat as a result of clashes between bodies of internal affairs and the religious population on October 1*, 2008 were left without investigation (impunity) and, consequently, without compensation.

**Recommendations:**

1. Eliminate the practice of profiling and forming lists of families by their religious affiliation or beliefs, membership in associations, to ensure respect for the principle of the presumption of innocence.

2. Eliminate the list of ‘destructive’ and ‘totalitarian’ organizations due to the fact that this list was compiled without observing the presumption of innocence and without court proceedings.

3. Remove the requirement of having 200 members as a condition for registration from the Law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic”. Also remove obtaining consent of local councils as a condition for activities of religious associations.

4. Introduce amendments to the Law “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic”, bringing it in line with the Constitution of the Kyrgyz Republic and the obligations of the Kyrgyz Republic under the ICCPR, ensure the right of believers to enjoy all civil rights and freedoms, revise excessive requirements for registration and activities of organizations, using the principle of the presumption of innocence.

37 See individual message on behalf of ZaripaAbdikadirova, submitted by the ‘Open Viewpoint’ Public Foundation and Dmitry Kabak in 2009.
10. The right to recognition of legal personality (Article 16)

10.1. A child under 14 years of age cannot independently file charges to state bodies if his/her rights are violated, which limits his/her right to effective protection. This touches upon legal personality of the child (subject to legal rights).

10.2. Raids for detaining children raise an issue of observing minimal guarantees of a fair trial and presumption of innocence. They also touch upon the issue of recognizing legal personality of the child (subject to legal rights).

10.3. In 2013 deputies of Jogorku Kenesh (Parliament) stepped forth with an initiative to limit the right to departure of women under 21 years of age (supposedly, as protection from going to other countries with the aim of prostitution), this touches upon the right to the recognition of legal personality on the basis of sex (women), and also infringes upon legal personality by age (adult people), after reaching the age of 18.

10.4. Non-recognition of legal personality is characteristic in the example of the case of clashes of law enforcement bodies in the town of Nookat on October 1, 2009. See Section on torture and cruel treatment of the League of Child Rights Defenders to the Committee on the Rights of the Child, reviewed in October of 2013.

10.5. According to the outcomes of an investigation of interethnic conflict in June 2010, courts have made decisions on the compensation of damage and confiscation of property without taking into account the interests of children, spouses and protection of their property share; courts must revise the 2013 verdicts on June events.

Recommendations:

1. With the goal of excluding discrimination on the basis of age, introduce amendments to the legislation removing the prohibition for children under 14 years to turn to state bodies.

2. Recognize children as having the full list of rights and freedoms according to the ICCPR, take into account specific features of children in view of the Conventions on the Rights of the Child.

11. Prohibition of interference with private and family life, inviolability of home and correspondence, and protection from unlawful attacks on honor and reputation (Article 17)

11.1. Private and family life (Article 17) was under the threat of interference in the case of clashes in Nookat, since local authorities (keheshs/councils and local councils) formed registers of all members of families, listing them as criminals and calling them members of Hizb-utTahrir.

11.2. In 2013, it was attempted twice to set administrative liability for a choice of confession (for missionary work – proselytism), for engaging children into a religious organization without specifying the rights of parents to bring up children in accordance with the beliefs of parents.

Recommendations:

38 According to the information of the ‘KylymShamy’ Public Foundation and the ‘Open Viewpoint’ Public Foundation.

39 See concluding remarks by the Committee on the Elimination of All Forms of Racial Discrimination with regard to the Kyrgyz Republic for 2013.

40 See reports of the ‘Open Viewpoint’ Public Foundation in 2011, 2013 as well as the Alternative Report to the Committee on Human Rights in 2013.
1. Ensure protection from the introduction of liability for enjoyment in universal human rights and freedoms, in particular the right to freely choose religious beliefs (proselytism), the right to seek, obtain or impart information alone or together with others, in a public or private manner.

12. The right to freedom of thought, conscience and religion (Article 18)

12.1. The right of the child to freedom of thought, conscience and religion, as well as the rights of parents who are entitled to conduct supervision over their children with the use of these rights are not taken into account in amendments that have several times been tried to be added to the Code of Administrative Liability (in 2012 and 2013). It was proposed to set administrative liability for involvement into a religious organization and the choice of religious affinity.

12.2. Children placed into foster homes do not always preserve their identity in terms of confessional affiliation of parents and connection with their community. Deputies of Jogorku Kenesh (Parliament) and some state programs are spreading a stereotype that the citizens of Kyrgyzstan are representatives of only one ethnic group and belong to only one religious group.

12.3. In particular, the draft version of the Law “On religious education and religious educational establishments” presumes that the state will set for confessions standards of teaching their own beliefs. This contradicts the principles of independence and self-administration of religious organizations. Amendments to the Code of Administrative Liability for involving children into the activities of religious organizations, proposed by the Ministry of Justice and the Government of the KR in 2013, are de-facto entrenching the rights of parents to bring up their children in accordance with their own beliefs.

12.4. Girls, who under the influence of parents or religious communities, wear headscarves (a trend that has developed in recent years), are not allowed to enter schools in headscarves: there is a resistance to the community that imposes on children clothes that were previously not typical for citizens of the Kyrgyz Republic. School administration and employees are trying to ensure neutrality of children in school and the absence of religious symbols. As a result, the ones who suffer are children, some of which do not obtain access to education.

12.5. Increasingly more children do not attend school due to the spread of a behavioral model in the society, according to which girls supposedly should not obtain secondary and higher education, referring to piety. In some communities, one tries to make girls into house workers and citizens who do not participate in public life.

Parents enroll their children into religious schools under mosques (madrasah) where teaching conditions and sanitary and nutrition norms are not controlled (children are forced to search for food on their own, or subsist on contributions given during religious holidays); protection from violence is not provided as well. At the same time, the government initiated a draft law “On religious education and religious educational establishments” in 2008, and then later in 2013 (author – Kanybek Osmonaliev), according to which the state wants to impose a standard of confessional education onto confessions.

Recommendations:

1. Ensure respect for the rights of parent to carry out supervision over their child with the child using her/his freedom of thought, conscience and religion. Ensure preservation of identity of the child when he/she is placed in residential institutions, as well as in the course of educating children in educational institutions. Ensure neutrality of public schools in order to avoid conflicts and confrontations on the basis of practiced religion or beliefs.

41See individual message to the Special Rapporteur on the Freedom of Thought, Conscience and Religion submitted in 2013 by the ’Interfaith Council’ Public Association and the ’Open Viewpoint’ Public Foundation on attempted amendments to Articles 395, 395-1, 395-2 of the CoAl.
2. Ensure that children obtain sufficient education and training as an important condition for the enjoyment of all rights and freedoms and being an active citizen of the society.
3. Eliminate interference of government into matters of religious beliefs and upbringing, except in cases of unlawful acts subject to restrictions stipulated by the ICCPR.

13. The right to seek, gather, store and impart information. The freedom of expression (Article 19). Prohibition of advocacy of hatred and incitement to discrimination, hostility or violence (Article 20).

13.1. These freedoms need an adequate mechanism for protecting children from information that is undesirable depending on the age of a child. With the goal of implementing interests of adult people, it is necessary to separate, for instance, video materials into a detached section in video stores. For consideration of arguments about the violation of ethical norms by journalists and mass media and the spread of information harmful to the interests of a child, it is required to create a respective body (under the Parliament or Ombudsman) that is functioning on the basis of the law and has the power to adjudicate disputes with regard to journalists and mass media, to place administrative fines for violating ethical norms and misusing the freedom of speech. Special attention should be given to publications in mass media that advocate hatred and incite discrimination, hostility or violence.

13.2. It is necessary to ensure that mechanisms for protecting children from undesirable information do not deprive adult persons of the opportunity to implement their interests in access to information that is appropriate for their interests and age.

Recommendations;
1. Ensure revision of legislation with the goal of non-admission of crimes, committed on the basis of hatred. Introduce appropriate qualifying features into elements of crime.
2. With the goal of implementing interests of adult people, it is necessary to separate, for instance, video materials into a detached section in video stores. For consideration of arguments about the violation of ethical norms by journalists and mass media and the spread of information harmful to the interests of a child, it is required to create a respective body (under the Parliament or Ombudsman) that is functioning on the basis of the law and has the power to adjudicate disputes with regard to journalists and mass media, to place administrative fines for violating ethical norms and misusing the freedom of speech. Special attention should be given to publications in mass media that advocate hatred and incite discrimination, hostility or violence.

14. Freedom of assemblies (Article 21)

14.1. The right to freedom of assemblies (Article 21) was limited for children and parents by a distance of 100 meters from educational and healthcare establishments in the Law “On peaceful assemblies” adopted on May 23rd, 2012. Thus, children studying in educational establishments and their parents are, first of all, limited in their ability to express their demands and position in front of an establishment, with the decision of which they may not agree.

Recommendations:
1. Ensure the possibility of children and parents to use the right to peaceful assemblies in front of establishments, in which children study. Also, ensure the possibility to implement the right to peaceful assemblies for users of healthcare establishments.
15. The right to enter marriage. The right to the protection of a family (Article 23)

15.1. The definition of a family and its composition differs in various regulatory and legal acts (RLA); there is also a difference between sociological and legal definitions. The model, structure and composition of a family changes significantly under the influence of socio-economical and other factors. The society is not ready to accept different models of families and relationships that are appearing in the KR (due to migration, choice of a partner and other).

15.2. A system of supporting specific categories of families exists in the Kyrgyz Republic in the form of “monthly low-income benefits” (MLB) and “monthly social benefits” (MSB), which are limited by budgetary capacities. Families in a difficult life situation need not just material/financial support.

15.3. There are many definition in the legislation that stigmatize families on the basis of material or social situation; ‘low-income family’, ‘family with many children’ and others.

15.4. The right to marry is ensured by the provisions in the Family Code of the KR on setting a marriage age for men and women and in the Criminal Code of the KR -- responsibility for kidnapping a woman with the goal of marriage and forcing her into a factual marital relations before marriage age. The state does not take preventive measures, does not bring one to responsibility for violating the law, in fact, recognizing not the judicial, but the factual marriage before marriage age, including that carried out in a religious order without official registration.

15.5. The agreement to enter marriage and voluntary consent – are key conditions for marriage in accordance with the Family Code of the KR. In 2013, the penalty for kidnapping has been strengthened. The practice of bringing one to responsibility for kidnapping with the aim of marriage is not developed, because the pressure of the socio-cultural norms force the girl to come to terms with her kidnapping and to suppress the fact of kidnapping.

15.6. Equality of rights and responsibilities of spouses in marriage, particularly with regard to property, is not ensured by the state. Reproductive labor, carried out mainly by women, does not hold value and is not recognized. Women who care for children, the elderly, children with disabilities, women engaged in private farming and farms cannot count on receiving pensions. Domestic work is not included in the work experience. In 2014, it is planned to recognize and remunerate parents for caring for children with disabilities.

15.7. Some financially unstable families in Kyrgyzstan placed their own children into children’s boarding schools, as a result of which children lost family ambience: also, children in foster homes(developed taught helplessness) lost loss social skills for living in society and family (connection to economic, social and cultural rights). The system of national and international adoption needs to be reformed and needs to ensure transparency and clarity of procedures. The priority should be given to preserving the child in a biological family, if this is not possible – to a transfer to relatives. Further on, a revision of the system of national adoption is needed to eliminate corruption and non-transparency of the decision-making process. Transparency of international adoptions can be ensured through a reform of the national system. From 2009 to 2012 a moratorium on international adoption was functioning in the Kyrgyz Republic in order to exclude corruption.

15.8. The system of healthcare in the KR is not able to ensure effective and high-technology medical assistance and rehabilitation for children with genetic diseases and complex congenital defects when they are placed in children’s foster homes. From 2009 to 2013 the issue of international adoption is being discussed in the Kyrgyz Republic. In the course of work by a parliamentary commission of JogorkuKenesh with the involvement of experts on healthcare and public organizations, it was found that children with congenital malformations are treated with the help of international experts.
woman with the goal of forcing her into marriage, the problem of ‘child marriages’ connected to bride kidnapping remains severe\textsuperscript{43}.

**Recommendations:**

1. It is necessary to ensure religious rites of marriage with registration in state bodies in the official order.
2. In the laws it is necessary to:
   a. provide a definition of a ‘difficult life situation’ (also in the Children’s Code, but from the perspective of children, and with regard to family- acc. to AH)
   b. targeted state aid should not only include the issuing of benefits, but also psychological and social skills habilitation and other types of support.
   c. review the concept of vulnerability, as well as the definition of vulnerable groups in the legislation (in the context of our country's terminology "vulnerability" and " DLS" are used as equivalents), so that the policies are aimed at removing these categories of families from vulnerability, rather than at survival in the existing circumstances.
3. The category of criminal cases involving kidnapping of persons (and also brides), needs to be transferred to public prosecution cases. Thus, the very fact of kidnapping should be the basis for criminal charges, not the statement.

16. Protection of children’s rights (Article 24)

**16.1. Protection of children's rights (Article 24).** Obtaining a child’s birth certificate is bound to property and registration by address. If parents do not have passports, then there is no possibility to receive a birth certificate for the child, which leads to problems with receiving medical assistance and entering educational establishments. An increase in the number of homeless persons necessitates a revision of the requirements for issuing passports, so that people without a home can receive passports and be recognized as full-fledged citizens. In the case of non-possession of property, people are deprived of the opportunity to obtain a passport and, consequently, are limited in implementing many rights and freedoms.

16.2.

**Recommendations:**

1. With the goal of ensuring non-discrimination on the basis of age, introduce changes that remove prohibition for children under 14 years of age to turn to state bodies.

17. Rights of ethnic, religious and linguistic minorities (Article 27)

**Linguistic, ethnic and religious minorities (Article 27)** are not provided with the freedom to implement all of their civil and political rights together with the members of their community, to use mother language and culture. Accordingly, they cannot implement their rights as parents, depriving children of identity. The conflict of June 2010 has negatively affected the situation of ethnic minorities. Guarantees of activities of religious minorities on the territory of the KR are continually shrinking.

**Recommendations:**

1. Provide linguistic, ethnic and religious minorities with the right to implement their civil and political rights together with other community members.

\textsuperscript{43} See: Bulletin on human rights in the Kyrgyz Republic №3 (9)/2013