
ADVANCE UNEDITED VERSION

Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Kyrgyzstan¹

1. The Committee considered the second periodic report submitted by Kyrgyzstan (CCPR/C/C/KGZ./2) at its 3038th and 3039th meetings (CCPR/C/SR.3038) and CCPR/C/SR.3039), held on 10 and 11 March 2014. At its 3060th meeting (CCPR/C/SR.3060), held on 25 March 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Kyrgyzstan and the information presented therein, although the report has been due since 2004. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KGZ/Q/2/Add.1) to the list of issues supplied in an official language together with a translation into a working language of the Committee which were supplemented by the oral responses provided by the delegation and the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The adoption of Act No. 91 of 25 June 2007, providing for abolition of the death penalty;
- (b) The adoption of the Constitution on 27 June 2010 which contains provisions on the protection of human rights, including the rights stipulated by the Covenant, and on the implementation of findings of international human rights bodies (article 41.2.);

* Adopted by the Committee at its 110th session (10–28 March 2014).

- (c) The establishment of the Human Rights Coordination Council under the resolution of the Government of 18 November 2013, mandated to enforce implementation of international human rights obligations.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty, on 6 December 2010.
- (b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 22 July 2002;
- (c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 12 February 2003, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 13 August 2003;
- (d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, on 29 September 2003;
- (e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, on 29 December 2008;

C. Principal matters of concern and recommendations

Applicability of the Covenant in domestic courts

- 5. The Committee notes that according to article 6 (3) of the State party's Constitution, international human rights treaties are part of the domestic law. However, it regrets the lack of evidence that domestic courts have applied the provisions of the Covenant (art. 2).

The State party should take appropriate measures to raise awareness about the Covenant and the direct applicability of its provisions in domestic law among judges, lawyers and prosecutors to ensure that they are taken into account before domestic courts. The State party should include detailed examples of the application of the Covenant by the domestic courts in its next periodic report.

Implementation of the Views of the Committee

- 6. While welcoming article 41 (2) of the State party's Constitution, which stipulates the obligation to take measures to restore victims' rights and provide compensation in cases of violations found by international treaty bodies, the Committee is concerned about the failure to implement the Views adopted by the Committee in relation to the State party and about allegations that asylum seekers continue to be returned to their home countries notwithstanding the Committee's Views on the matter. Despite the information provided during the dialogue, the Committee regrets the lack of clarity on the role of the newly established Human Rights Coordination Council with respect to the implementation of the Committee's Views (art. 2).

The State party should take all necessary measures to ensure the full implementation of the Committee's Views adopted in relation to the State party. The Human Rights

Coordination Council should also be mandated with monitoring the implementation of the Committee's Views and address this issue as a matter of urgency.

National Human Rights Institution

7. The Committee is concerned about insufficient guarantees of independence of the Ombudsman's Office (the Akyikatchy). The Committee welcomes the State party's efforts to amend the Law on the Ombudsman to ensure its compliance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles, General Assembly resolution 48/134) (art. 2).

The State party should expeditiously bring the mandate of the Ombudsman (the Akyikatchy) into full compliance with the Paris Principles and provide it with the necessary financial and human resources to ensure that it can effectively and independently implement its mandate.

Non-discrimination and equality

8. The Committee remains concerned about a lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as race, language, disability and ethnic origin and the lack of disciplinary sanctions for state officials acting on a discriminatory basis (arts. 2 and 26).

The State party should review domestic legislation in line with the principle of non-discrimination to ensure that it includes a comprehensive prohibition of discrimination on all the grounds as set out in the Covenant. The State party should also ensure that reliable and public data is systematically collected on cases of discrimination and their treatment by the competent judicial authorities.

9. The Committee is concerned about reports of violence against lesbian, gay, bisexual and transgender people (LGBT) by both state and non-state actors, and about the failure to address such violence by the State party (arts. 2 and 26).

The State party should ensure that cases of violence against LGBT persons are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated and protected against any reprisals.

State of emergency

10. The Committee regrets a lack of information on the progress made to review the legislation governing states of emergency to bring it into compliance with article 4 of the Covenant, in particular concerning the power of derogation from specific Covenant provisions (CCPR/CO/69/KGZ, para.12). The Committee is concerned about reports that the state of emergency was imposed in 2010 without complying with the safeguards of article 4 of the Covenant, including failure to take measures to protect certain non-derogable rights, such as the right to life and prohibition of torture (arts. 4, 6, 7).

The State party should ensure that its legislation on states of emergency and its application is fully compatible with the provisions of article 4 of the Covenant.

Violence against women

11. While welcoming adoption of measures to combat violence against women, the Committee notes with regret continuing reports of acts of violence against women, including bride-kidnapping, spousal rape and domestic violence. The Committee is concerned that cases of violence against women remain underreported and that domestic violence is accepted by the society at large (arts. 2, 3 and 7).

The State party should adopt a comprehensive approach to prevent and address all forms of violence against women, including bride-kidnapping, spousal rape and domestic violence and:

- (a) **Reinforce training of police on prevention and combating violence against women, especially bride-kidnapping, spousal rape and other acts of domestic violence;**
- (b) **Guarantee that cases of violence against women are thoroughly investigated, that the perpetrators are brought to justice and, if convicted, punished with commensurate sanctions; and that victims are adequately compensated;**
- (c) **Ensure the availability of a sufficient number of adequately resourced shelters;**
- (d) **Launch awareness-raising campaigns among men and women on the adverse impact of violence on women.**

Trafficking in persons

12. The Committee is concerned that the State Party still lacks proper identification and referral mechanisms for victims of trafficking in persons and that the law enforcement authorities and other officials lack capacity in working with victims. The Committee is also concerned about allegations of the trafficking in new-born children and lack of regulation concerning adoption (arts. 3, 8 and 24).

The State party should continue its efforts to prevent and eradicate trafficking in persons, including by effectively implementing the relevant legislation and by harmonizing the child adoption legislation with the requirements of international law. It should also establish proper mechanisms of identifying victims of trafficking and for referring them to relevant services and continue training law enforcement officials and other relevant professionals in the identification and assistance to victims of trafficking.

Anti-terrorism measures

13. The Committee regrets a lack of information on the content and application of the State party's legislation to combat terrorism. The Committee is concerned at reports of the excessive use of lethal force during special operations, and a failure of the State party to provide information on the applicable legal rules restricting the use of lethal force to extent strictly necessary (art. 6).

The State party should ensure, as a matter of urgency that its anti-terrorism legislation and its application thereof, especially use of force, is in conformity with the provisions of the Covenant, particularly with respect to the right to life. The State party should promptly investigate allegations of excessive use of force by the special services, prosecute perpetrators and provide compensation to victims' families.

Inter-ethnic violence

14. While noting information provided during the dialogue, the Committee is concerned about reports concerning a failure of the State party to investigate fully, effectively and without discrimination human rights violations committed during and in the aftermath of the June 2010 ethnic conflict in the south of Kyrgyzstan, including allegations of torture and ill-treatment, serious breaches of fair trial standards during court proceedings, including attacks on lawyers defending ethnic Uzbeks and discrimination in access to justice based on ethnicity. The Committee is also concerned that the causes of this conflict were not fully addressed by the State party and may continue to persist (art. 2, 7, 9, 14, 26, 27).

The State party should take effective measures to ensure that all alleged human rights violations related to the 2010 ethnic conflict are fully and impartially investigated and those responsible are prosecuted, and victims compensated without any discrimination based on ethnicity. The State party should urgently strengthen its efforts to address the root causes that constitute obstacles to the peaceful coexistence between different ethnic groups on its territory and to promote ethnic tolerance and mutual trust.

Torture and ill-treatment

15. While welcoming legislative and administrative measures aimed at the prevention and eradication of torture, including amendments to the Criminal Code, the Committee remains concerned about: the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty for the purpose of extracting confessions, particularly in police custody; the number of deaths in custody and the fact that none of the cases reported to the Committee led to any conviction; the State party's failure to conduct prompt, impartial and full investigation of deaths in custody; and the lack of prosecution and punishment of perpetrators of torture and ill-treatment and compensation of victims. The Committee also remains concerned about allegations of torture and miscarriages of justice in the case of Azimjan Askharov (art. 6, 7, 10).

The State party should urgently strengthen its efforts to take measures to prevent acts of torture and ill-treatment and ensure prompt and impartial investigations of complaints of torture or ill-treatment, including the case of Azimjan Askarov, initiate criminal proceedings against perpetrators, impose appropriate sentences on those convicted, and provide compensation for victims. The State party should take measures to ensure that no evidence obtained through torture is allowed to be used in court. The State party should also expedite operationalization of the National Centre for the Prevention of Torture through providing necessary resources to enable fulfilment of its mandate independently and effectively.

Liberty and security of person

16. The Committee is concerned about the lack of implementation of basic safeguards to all persons deprived of their liberty, including failure to register all detainees immediately upon apprehension, the lack of access to a lawyer of their choice, the lack of a medical examination immediately after their apprehension and the lack of access to medical assistance (art. 9, 14).

The State party should ensure registration of all detainees immediately following their apprehension in the central register, their medical examination, and access to a lawyer of their choice and to medical assistance.

Conditions of detention

17. The Committee is concerned about extremely harsh conditions in places of deprivation of liberty, including overcrowding, lack of hygiene and insufficient food and drinking water (art. 10).

The State party should strengthen its efforts to improve conditions of detention to bring them into accordance with the provisions of article 10 of the Covenant.

Independence of the judiciary

18. While welcoming efforts aiming at the strengthening of the judiciary, the Committee is concerned about the lack of full independence of the judiciary, including in the process of the selection and dismissal of judges, potential influence of the executive power on the Council for the Selection of Judges and reports of corruption in the judiciary (art. 14).

The State party should pursue judicial reforms to ensure a fully independent and impartial judiciary, including establishment of objective and transparent criteria for the selection and dismissal of judges, in accordance with international standards, notably the Basic Principles on Independence of the Judiciary (1985).

Elders' court

19. The Committee remains concerned that the functioning of the Elders' court (the Aksakals) may jeopardize the right to fair trial, in particular due to the fact that decisions are taken by persons without legal knowledge, on the basis of cultural and moral norms, and that decisions in family matters may adversely affect women (arts. 2, 3 and 14).

The State party should ensure that the Elders' court functions in full compliance with provisions of the Covenant, in particular the safeguard of fair trial guarantees and non-discrimination, and that their members are provided with training on the rights protected under the Covenant.

Military courts

20. The Committee is concerned that military courts continue to exercise jurisdiction in criminal cases where military personnel and civilians are jointly accused (art. 14).

The State party should without further delay remove from military courts the power to exercise jurisdiction over civilians.

Corporal punishment

21. While taking note that violence against children and corporal punishment is legally prohibited in schools and some institutional settings, the Committee notes that corporal punishment remains a concern especially in the home where it traditionally continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

Freedom of conscience and religious belief

22. While noting the planned amendments to the 2008 Law “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic”, the Committee is concerned about the restrictions incompatible with provisions of the Covenant contained in the current law, including with respect to missionary activities, registration procedure and dissemination of religious literature. The Committee is also concerned about reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech (arts. 18, 19, 26 and 27).

The State party should ensure that the legislative amendments to the 2008 Law “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic” remove all restrictions incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process of religious organizations and eliminating distinctions among religions that may lead to discrimination. The State party should take measures, including through public statements and awareness-raising campaigns, to promote religious tolerance and to condemn any act of religious intolerance and hatred. The State party should also investigate all cases of violence based on religion, prosecute perpetrators and compensate victims.

The right to conscientious objection

23. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para.18) about limiting conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and stipulating a shorter period of military and alternative service for persons with higher education. The Committee notes the State party’s initiative to amend the Law “On Universal Conscription of Citizens of the Kyrgyz Republic, on the Military and Alternative Service” (arts. 2, 18 and 26).

The State party should ensure that amendments to the Law “On Universal Conscription of Citizens of the Kyrgyz Republic, on the Military and Alternative Service” provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers, and stipulating periods of military and alternative service on a non-discriminatory basis.

Freedom of expression

24. The Committee expresses concern at reports of persecution of human rights defenders, journalists and other individuals for expressing their opinion, especially for their criticism of State institutions in relation to the June 2010 events. The Committee is also concerned about reports of pressure on individuals and organisations that have provided information to the Committee (art. 19).

The State party should ensure that journalists, human rights defenders and other individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee’s General Comment

no. 34 (2011) on the freedoms of opinion and expression. Furthermore, the State party should ensure that threats, intimidation and violence against human rights defenders and journalists are investigated, prosecuted and punished and victims are provided with compensation. The State party should ensure that any individual or organization can freely provide information to the Committee and protect them against any reprisals for providing such information.

Freedom of association

25. The Committee notes the reports of possible restrictions on non-governmental organizations contained in several legislative proposals, including restrictive reporting obligations to State authorities contained in a draft bill on “Fighting against Legalization (Laundering) of Criminal Revenue and Financing Terrorist or Extremist Activity” (art. 2, 22 and 26).

The State party should ensure freedom of association in accordance with the article 22 of the Covenant and refrain from imposing disproportionate or discriminatory restrictions on the freedom of association.

Birth registration

26. The Committee is concerned at the absence of a registration system for new-born children in the provinces of Osh and Jalal-Abad, as well as at the difficulties faced by women without passports in registering their new-born children (art. 24).

The State party should ensure that every child is registered immediately after birth and take measures, including awareness-raising, to facilitate the registration process with regard to children of parents who may have particular difficulties in providing the necessary documentation.

Minority rights

27. While taking note of the State party’s efforts to integrate minorities into political and public life, the Committee remains concerned about the low level of representation of minorities in political and public institutions both at the national and local level. The Committee is concerned at the reports that several schools have changed the teaching language from minority language to Kyrgyz and that some of the Uzbek-language media were closed, including two independent Osh-based Uzbek language television stations Mezon TV and Osh TV, following the June 2010 events (art. 27).

The State party should strengthen its efforts to ensure representation of minorities in political and public bodies at all levels, including in the judiciary and in law-enforcement to facilitate education in minority languages for children belonging to minority ethnic groups and promote the use of minority languages in the media, including through restoration of Uzbek language TV stations.

Dissemination of information relating to the Covenant and the Optional Protocols

28. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the second periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations

operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its third periodic report, to broadly consult with civil society and non-governmental organizations (art. 2).

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 14, 15 and 24 above.

30. The Committee requests the State party, in its next periodic report, due to be submitted on 28 March 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
