



## **SUBMISSION OF THE PUBLIC ASSOCIATION “SPRAVEDLIVOST JALAL-ABAD HUMAN RIGHTS ORGANIZATION TO THE UN UNIVERSAL PERIODIC REVIEW**

Public Association “Spravedlivost Jalal-Abad Human Rights Organization” (“Spravedlivost”) welcomes the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Kyrgyzstan at 35<sup>th</sup> session.

Spravedlivost is a non-profit, non-governmental organization based in Jalal-Abad (southern Kyrgyzstan) aiming to promote the rule of law, reinforce and safeguard human rights and combat torture through legal assistance; monitor places of detention and human rights violations; and conduct advocacy for the reform of policies, laws and practices to conform to international human rights standards. The mission of the organization is the protection of human rights and establishment of justice and the protection against torture. In 2014 Spravedlivost was named the 2014 winner of the Max van der Stoel Award, for its outstanding work in improving the position of national minorities in the OSCE area.

*Contact information:*

*Erkindik 30, Jalal-Abad city, Kyrgyzstan,*

*tel/fax: +99637221718; +996372221015*

*e-mail: [spravedlivost.hro.kg@gmail.com](mailto:spravedlivost.hro.kg@gmail.com)*

*website: <https://spravedlivostkg.wordpress.com/>*

*facebook: @spravedlivost.hro.kg*

## **DISCRIMINATION AGAINST ETHNIC MINORITIES**

### ***Legal Framework on Equality and Non-discrimination***

The Constitution of Kyrgyzstan states that everyone is equal before the law and that everyone is entitled to enjoy human rights and fundamental freedoms without any discrimination, including on the basis of ethnic or religious backgrounds.<sup>1</sup> This provision falls short of international standards in a number of respects.<sup>2</sup> Moreover, it is well-recognised that states must pass comprehensive anti-discrimination legislation, if the right to non-discrimination is to be protected effectively in practice.<sup>3</sup> Without such legislation, Kyrgyzstan is unable to meet its obligations under international human rights law to prevent discrimination on the basis of ethnicity and other grounds, and is ill-equipped to address the patterns of discrimination against ethnic minorities highlighted in this submission.

The adoption of comprehensive anti-discrimination law has been recommended by a number of UN treaty bodies and was repeatedly recommended during the last UPR review of Kyrgyzstan. Kyrgyzstan, in its second UPR cycle in January 2015, received from Australia, Philippines, France, Brazil, Uruguay, Finland, Argentina, Czech Republic, Poland, Canada, Chili, Switzerland, USA recommendations to take all necessary measures to fight effectively against all forms of discrimination and strengthen anti-discrimination laws and policies, and intensify the implementation of measures to protect all from discrimination<sup>4</sup>.

### ***Inter-ethnic conflict and law enforcement***

Kyrgyzstan's recent history has been marred by inter-ethnic conflict with large-scale clashes taking place in June 2010. The causes of these conflicts are complex, with their roots in the historical and cultural differences between Kyrgyz and Uzbek, as well as actual and perceived socio-economic and political inequality between them. The investigatory process and the disproportionate prosecution of ethnic Uzbeks for criminal offences committed during the conflict demonstrated a pattern of discriminatory conduct by law enforcement agencies against ethnic Uzbeks during and after the conflict.<sup>5</sup> As a result, the selective investigations and prosecutions which have since been conducted have disproportionately targeted Uzbeks and have resulted in few prosecutions of anyone else. Moreover, dozens of trials related to the June 2010 violence were seriously flawed due to violations of the defendants' rights from the time of detention through to conviction, including law-enforcement officials' use of torture on a widespread basis in their investigations, denial of the right to

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<sup>1</sup> Article 16 of the Constitution

<sup>2</sup> For a discussion of the shortcomings of Article 16, see: Equal Rights Trust, *Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 2016, pp. 37-46, available at: <https://www.equalrightstrust.org/resources/looking-harmony-addressing-discrimination-and-inequality-kyrgyzstan>.

<sup>3</sup> *Declaration of Principles on Equality*, 2008, Principle 15, which states: "The realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage". See also: Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 37; Committee on the Elimination of Discrimination Against Women, *General Comment No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, Para 31, Committee on the Rights of Persons with Disabilities, *General Comment No. 6: on equality and non-discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para

<sup>4</sup> UN Doc A/HRC/29/4 See: 117.50, 117.94, 117.115, 117.133, 117.135, 117.137, 118.17, 119.27 and 119.28

<sup>5</sup> Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010", para. 287

representation by a lawyer of the detainees' own choosing, or the right to consult with a lawyer in private.<sup>6</sup>

In light of the above, and despite UPR recommendations from Argentina, Finland, Czech Republic, Armenia, Morocco, Sweden, Poland, Norway, USA to promote tolerance and diversity with the aim of protecting the rights of national and ethnic minorities of the country during the last review<sup>7</sup>, Kyrgyzstan has failed to establish an atmosphere of confidence and trust among ethnic minorities in the administration of justice and law enforcement. This hampers efforts to implement the rule of law and promote long-term stability which undermines all reconciliation efforts. For example, instead of initiating or setting up a mechanism to review all cases of persons convicted in connection with the June 2010 events, Kyrgyzstan has issued dozens of extradition requests for ethnic Uzbeks whom the authorities accuse of having organized or participated in the June 2010 conflict. Most of the persons subject to such extradition requests have fled to Russia. The European Court of Human Rights held in several extradition cases against Russia, that, if the applicants, ethnic Uzbek of Kyrgyzstani nationality, were to be extradited to Kyrgyzstan there would be a violation of Article 3 of the European Convention of Human Rights (prohibition of torture or other ill-treatment, including sending people to places where they would face a real risk of treatment in violation of this prohibition). The decisions of the ECHR in Mamadaliyev v. Russia (Application no. 5614/13); R v. Russia (Application no. 11916/15) Gayratbek Saliyev v. Russia (Application no. 39093/13); Turgunov v. Russia (Application no. 15590/14) Kodirjonov and Mamashev (Application no. 42351/13 and 47823/13) demonstrate the risk of torture and ill-treatment that ethnic Uzbeks face if returned to Kyrgyzstan.

In addition, the Kyrgyz law enforcement officers continue to target Uzbeks, threatening to charge them with serious criminal offences, such as murder and violent mass disturbances, in relation to the June 2010 events, in order to extort money from them. Our organization has documented dozens of such cases, though many victims are reluctant to follow-up for fear of reprisals. One case which Spravedlivost documented which clearly demonstrates how the June events are used as a way for law enforcement to extort money is the case of Usmanzhan Khalmirzaev. Usmanzhan Khalmirzaev, an ethnic Uzbek Russian citizen, died on 9 August 2011, reportedly as a result of torture, two days after he was arbitrarily detained in the village of Bazar-Korgon by plain-clothes police officers and taken to the local police station. He told his wife a gas mask had been put over his face and he had been beaten. The police threatened that if he did not pay them US\$6,000, they would charge him with violent crimes in relation to the June 2010 violence. He was eventually released four hours later after his family gave the officers US\$680. He was hospitalized and died the next morning. The prosecutor of Jalal-Abad opened a criminal case against four police officers with several charges, including torture. The case went to trial. In 2015 all defendants were fully acquitted.

The Government of the Kyrgyz Republic had taken some measures to create a peaceful and inclusive society and promote tolerance, reconciliation and understanding between the Kyrgyz majority and the minority ethnic groups. Nevertheless, the development and actual implementation of State Concept of Strengthening People's Unity and Interethnic Relations (2013) did not bring a measurable impact on inter-ethnic situation in the country. There are many examples of steps in the wrong direction. For

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<sup>6</sup> UN Special Rapporteur on Torture, Report on Mission to Kyrgyzstan, [UN Doc. A/HRC/19/61/Add.2, para. 53](#). Concluding observations on the second periodic report of Kyrgyzstan UN Doc. CCPR/C/KGZ/CO/2, para. 14. Report of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010", para. 202

<sup>7</sup> UN Doc A/HRC/29/4 See: 117.50, 117.94, 117.115, 117.133, 117.135, 117.137, 118.17, 119.27 and 119.28

example, the discriminatory approach to law enforcement following the June 2010 events described above triggered further inter-ethnic conflicts across Kyrgyzstan. Spravedlivost has documented many other more recent examples of inter-ethnic tension without reconciliation:

- In June 2016, the Mayor's Office of Jalal-Abad authorized the demolition and seizure of 36 households belonging to ethnic minorities (approximately 152 people). The reason for the seizure was the decision of the Mayor's Office to expand the size and utility of the city's main street. Almost all households affected by the demolition belonged to the Uzbek minority who had been relocated to this area following the destruction of their old houses during the June 2010 events. Residents were not provided with adequate information regarding adequate and timely compensation for loss of land, housing structures, assets or small businesses.<sup>8</sup>
- In January 2018, the election campaign for members to the Rural Council in Aleksandrovka village (Chui region of Kyrgyzstan) led to clashes between the Kyrgyz majority and the Dungan ethnic minority. The clash was triggered when representatives from the Kyrgyz majority demanded that the Dungan candidates withdraw their candidacies.<sup>9</sup>
- In March 2019, a conflict occurred along the Kyrgyzstan-Tajikistan border in respect of the construction of a road. Tajik residents wanted to prevent the construction and clashes erupted with Kyrgyz law enforcement officials. At least three persons were killed and more than a dozen injured among local residents from both sides.<sup>10</sup> The situation between the two groups improved in April 2019 as a result of meetings of the government delegations from Kyrgyzstan and Tajikistan on the demarcation of the state border. However, the situation illustrates how a border conflict can transform into inter-ethnic tension and increased nationalistic rhetoric and hate speech.
- On 5 June 2019, tension between ethnic Turks and Kyrgyz youths in Orok village of Chui region shifted into inter-ethnic violence with Kyrgyz local residents breaking windows of 15 houses and burning down a shed belonging to ethnic Turks.<sup>11</sup> According to the local police, 32 people were arrested as a result, but all of them were released. While the police took steps to stop the violence, true reconciliation between the parties has not taken place and there is a risk that violence may flare up again as a result.<sup>12</sup>

Discrimination against ethnic minorities in the context of state efforts to prevent and counter extremism continues. The overwhelming majority of those prosecuted for crimes of a terrorist and extremist nature are ethnic Uzbeks from the south of the country.<sup>13</sup> At the same time, discriminatory laws and practices that remain unchanged reduce the likelihood for victims of discrimination to obtain a remedy. In particular, there is a remarkably low quantity of relevant case law on discrimination in all fields of legal relations.

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<sup>8</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3214>

<sup>9</sup> [https://rus.azattyk.org/a/kyrgyzstan\\_election\\_region/29000304.html](https://rus.azattyk.org/a/kyrgyzstan_election_region/29000304.html)

<sup>10</sup> [https://ru.sputnik.kg/trend/konflikt\\_granica\\_rt\\_kr\\_20190313/](https://ru.sputnik.kg/trend/konflikt_granica_rt_kr_20190313/)

<https://news.tj/en/news/tajikistan/politics/20190404/dushanbe-bishkek-resume-border-talks>

<sup>11</sup> [https://24.kg/english/119870\\_Conflict\\_in\\_Orok\\_village\\_Locals\\_break\\_up/](https://24.kg/english/119870_Conflict_in_Orok_village_Locals_break_up/)

<sup>12</sup> <https://rus.azattyk.org/a/29984604.html>

<sup>13</sup> <https://www.hrw.org/ru/report/2018/09/17/322364>

### ***Representation of minorities in political bodies and political life***

Ethnic minorities, who make up more than 25 percent of the population, have remained underrepresented in both elected and appointed government positions, particularly Russians and Uzbeks, the two largest minority groups. Since June 2010, fewer ethnic Uzbeks are represented in decision-making positions.<sup>14</sup>

Even though the Government has acknowledged that the legal framework provides for 15 per cent quotas of different ethnic groups in political representation, the objectives of the law are not achieved and the quota requirements are not properly implemented. In fact, of the 120 members of parliament, only 9 were held by a representative of a national minority – just 7.5%, against a quota target of 15%.

The Kyrgyz government has received recommendations from Germany, Namibia and Sweden during the 2015 session of the Universal Periodic Review on the need to adapt recruitment guidelines of the police and security forces in order to guarantee the proportional representation of ethnic minorities and their integration into public service and law enforcement bodies<sup>15</sup>.

A particularly notable problem is the low rate of representation of ethnic minorities in law enforcement bodies in the southern part of Kyrgyzstan. For example, law enforcement forces and courts rarely employ ethnic Uzbeks<sup>16</sup>. In fact, there is only one Uzbek judge in the southern part of country with large ethnic Uzbek populations. There is an absence of programs which promote the recruitment of national minorities to work in the state bodies and administration, especially in law enforcement bodies. This situation adversely affects the process of inter-ethnic reconciliation, with special attention to the integration of ethnic minorities into public service and law enforcement bodies.

### ***Minority languages and culture in education***

Since June 2010 UN treaty bodies have recommended Kyrgyzstan to strengthen its efforts to promote education in minority languages for children belonging to minority ethnic groups.<sup>17</sup> Despite some actions taken by the government, changes in language policy over the last year suggest that these recommendations on education and minority language rights has not been implemented in practice.

Since 2015, the number of ethnic Uzbek students going to university or college has decreased dramatically due to a government decision to cancel high school examination in their mother tongue. Currently, high school examination is given only in Kyrgyz and Russian. For Uzbek students who attend an Uzbek language school for 11 years, there is a great risk of failing high school examination in Kyrgyz or Russian. As a consequence, for the last four years, many Uzbek students have lost access to higher education.

The Government is gradually converting Uzbek schools into schools with Russian or Kyrgyz as the language of instruction, or mixed schools. According to the State Statistics Committee, the number of Uzbek schools for grades 1 through 11 fell from 141 in 2002 to 43 in 2018.<sup>18</sup> This situation prevents Uzbek youth admission to universities and access to the labour market on equal footing with members of the majority. The use of minority languages is primarily limited to home life and to service-oriented

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<sup>14</sup> <https://www.osce.org/odihr/184061?download=true>

<sup>15</sup> UN Doc A/HRC/29/4 See: 117.115, 118.17 and 117.135

<sup>16</sup> <https://www.osce.org/odihr/184061?download=true>

<sup>17</sup> Concluding observations on the fifth to the seventh periodic reports of Kyrgyzstan UN Doc. CERD/C/KGZ/CO/5-7, paras 12

<sup>18</sup> [https://24.kg/obschestvo/77108\\_tolko\\_216\\_shkol\\_vkyrgyzstane\\_srusskim\\_yazyikom\\_obucheniya/](https://24.kg/obschestvo/77108_tolko_216_shkol_vkyrgyzstane_srusskim_yazyikom_obucheniya/)

careers. Ethnic Uzbeks struggle to find well-paid employment and are underrepresented in the workforce, particularly at government-level<sup>19</sup>.

On 6 March 2019 the Spiritual Directorate of the Muslims of Kyrgyzstan (Muftiyat) issued a controversial fatwa (instruction), according to which Friday sermons in mosques of Kyrgyzstan will be preached in Kyrgyz and Russian only. According to Muftiyat, this is due to the popularization of the state (Kyrgyz) language. The fatwa of the Muftiyat does not provide for exceptions for areas with large ethnic minority populations. At present, the Muftiyat is mostly comprised of persons of Kyrgyz ethnicity.

### **Recommendations:**

- *Adopt comprehensive anti-discrimination law in line with international standards and best practice in line with the previous UPR recommendations and the recommendation by CERD in 2018;*
- *Guarantee access to justice and effective remedies for human rights violations related to the June 2010 events and ethnic tensions and clashes that continue to follow as a result;*
- *Take positive action measures, such as adoption of regulations to ensure the expansion of the number of representatives of different ethnic communities in the personnel of law enforcement agencies;*
- *Take inclusive and longer-term measures with respect to linguistic policy, education and participation in decision-making for minorities; and*
- *Promote education in minority languages, in particular in Uzbek language, without any restriction to enable all groups to express and develop their culture, language, traditions and customs.*

### **INTIMIDATION OF HUMAN RIGHTS DEFENDERS**

In Kyrgyzstan, human rights defenders (HRDs) are victims of threats and intimidation, smear campaigns, harassment, arbitrary arrest and detention, abuse and even imprisonment in retaliation for their activities. Since January 2019, human rights organizations (HROs) have become victims of information attacks and denigrating media campaigns.<sup>20</sup>

In Kyrgyzstan, HROs have been accused of 'artificially provoking peace and security' 'for money from abroad'.<sup>21</sup> Their representatives are portrayed as 'traitors to the motherland', or 'puppets' in the hands of foreign states and other foreign actors.<sup>22</sup> For example, during 21-23 May 2019, the Coalition against Torture in Kyrgyzstan (of which Spravedlivost is a member) held its Working Meeting of human rights lawyers with international experts on current practice in fighting torture at the national and international levels. On 23 May, a group of unknown individuals with video cameras and voice recorders, broke into the conference room, where the working meeting took place. In an aggressive tone, these individuals demanded that the organizers stop meeting on the basis that they considered it

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<sup>19</sup> <https://eurasianet.org/kyrgyzstan-uzbek-language-schools-disappearing>  
<https://enews.fergananews.com/articles/3023>

<sup>20</sup> <https://delo.kg/?p=26905>

<sup>21</sup> <https://delo.kg/?p=24842>

<sup>22</sup> [https://rus.azattyk.org/a/kyrgyzstan\\_npo\\_/25411129.html](https://rus.azattyk.org/a/kyrgyzstan_npo_/25411129.html)

an interference with the internal affairs of Kyrgyzstan. These individuals introduced themselves as members of the Youth Patriotic Movement of Kyrgyzstan with the belief that western countries and international organizations want to destabilize peace and security in Kyrgyzstan. The Coalition against Torture in Kyrgyzstan believes that the intrusion was a coordinated and deliberate action by unidentified individuals to intimidate and pressure civil society.

A similar incident occurred when the Regional Office in Central Asia of the OHCHR in cooperation with AGORA Russian Human Rights Group organized a training for human rights lawyers in Kyrgyzstan in April 2019. The Newspaper “DELO No.” published an article that accused Russian human rights lawyers of destabilizing the situation in Kyrgyzstan by providing training on human rights to young Kyrgyz lawyers.<sup>23</sup>

The authors of this submission consider that these organized incidents and intrusions demonstrate an increasing pattern of organized attempts to discredit the work of HRDs and their organizations. Another dangerous consequence of these campaigns is the creation of negative attitudes towards any international or foreign structures in society. The impunity of such acts clearly demonstrates inability of the authorities to fulfill their obligations to ensure safe and favorable conditions for HRDs. Reluctant response of the law enforcement bodies to these incidents leads to growing number of assaults on human rights movement in Kyrgyzstan.<sup>24</sup>

***Recommendations:***

- *Stop all acts of intimidation linked to the activities of HRDs and HROs, political activists and journalists, and guarantee freedom of expression, without introducing any provisions restricting its exercise;*
- *Take effective measures to ensure a safe and enabling environment for HRDs and HROs without fear of reprisals, intimidation, violence or discrimination;*
- *Investigate and provide redress in cases involving the intimidation, harassment, persecution of journalists, activists and human rights defenders; and*
- *Introduce measures to ensure and promote the freedom and security of journalists, activists and HRDs and refrain from endorsing measures that limit the activity of independent civil society.*

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<sup>23</sup> <https://delo.kg/?p=25846>

<sup>24</sup> <https://www.frontlinedefenders.org/en/case/meeting-coalition-against-torture-aggressively-interrupted-members-youth-patriotic-movement>