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Equal Rights Trust

Shadow Report submitted to the
Committee on Economic, Social and Cultural Rights
at its 55th Session in relation to the combined
second and third periodic reports submitted by:

Kyrgyzstan

May 2015

Statement of Interest

1. The Equal Rights Trust submits this shadow report to the Committee on Economic, Social and Cultural Rights (the Committee) commenting upon the second and third periodic reports submitted to the Committee by Kyrgyzstan at the Committee's 55th session.
2. The Equal Rights Trust is an international non-governmental organisation whose purpose is to combat discrimination and to promote equality as a fundamental human right and a basic principle of social justice. It focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. The Equal Rights Trust has been actively involved in the promotion of improved protection from discrimination in Kyrgyzstan since 2012, working in partnership with the Kyrgyzstani non-governmental organisation Peremena on a project designed to strengthen the capacity of civil society and the media to combat discrimination and promote equality, including in respect to economic, social and cultural rights. In the course of this work, we have undertaken research and consulted with civil society actors on the main patterns of equality and non-discrimination in the country related to economic, social and cultural rights. In addition, we have conducted a detailed analysis of Kyrgyzstan's laws and policies on equality and non-discrimination, in order to assess the extent to which the state has a legal and policy framework in place which is adequate to meet its obligations under international law.

Introduction

4. This submission focuses on the extent to which Kyrgyzstan has met its obligations to respect, protect and fulfil the rights to equality and non-discrimination. In particular, the submission is concerned with Kyrgyzstan's performance under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (the Covenant). In assessing Kyrgyzstan's adherence to its obligations under Article 2(2), the submission relies on the interpretation of this Article which has been provided by the Committee in its *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)*.¹
5. The submission also relies upon the Declaration of Principles on Equality,² (the Declaration) a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".³ It has also been endorsed by the Parliamentary Assembly of the Council of Europe.⁴
6. This submission is structured in two parts. The first part provides an assessment of Kyrgyzstan's legal and policy framework on non-discrimination and equality, in light of the obligations upon the state under Article 2(2). The second part summarises evidence collated from focus groups reports and interviews undertaken by Equal Rights Trust researchers in different regions and cities in Kyrgyzstan which illustrates patterns of discrimination in respect of Covenant rights. The submission contains a series of recommendations which the Equal Rights Trust invites the Committee to make to Kyrgyzstan as part of its concluding observations.

Part 1: Article 2(2): The Legal Framework on Discrimination and Inequality

7. Under Article 2(2) of the Covenant, States Parties undertake:

[T]o guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

8. The Committee, in its General Comment No. 20, noted that "non-discrimination and equality are (...) essential to the exercise and enjoyment of economic, social and cultural rights".⁵ It also made clear that:

¹ 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.

² Declaration of Principles on Equality, the Equal Rights Trust, London, 2008.

³ *Naz Foundation v. Government of NCT of Delhi and Others WP(C) No.7455/2001, Para 93.*

⁴ *Parliamentary Assembly of the Council of Europe, Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.*

⁵ See above, note 1, Para 2.

*Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2, paragraph 2, requires States' parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights.*⁶

9. The Committee has further noted that the obligation arising under Article 2(2) includes an obligation to prohibit both direct and indirect discrimination,⁷ in both the public and private spheres,⁸ on an extensive list of grounds, including both those listed in the Covenant and those “implied” by the use of the words “other status” in the text of the Article.⁹
10. In October 2014, the Equal Rights Trust submitted Suggestions for the List of Issues for the Committee to consider when requesting further information from Kyrgyzstan.¹⁰ In this submission, the Trust highlighted the weakness of Kyrgyzstan’s legal framework on equality. Legal provisions prohibiting discrimination can only be found in Article 16 of the Constitution and a scattering of provisions in certain statutes which are extremely limited in their scope and rarely, if ever, utilised by courts.
11. As our submission noted, “whilst the broad guarantees proffered by Article 16 [of the Constitution] are laudable, there is a dearth of substantive and effective legislation providing for their practical realisation”.¹¹ Kyrgyzstan has no specific anti-discrimination legislation, despite the Committee’s statement that “[a]doption of legislation to address discrimination is indispensable in complying with article 2, paragraph 2”.¹² Instead, Kyrgyzstan has a gender equality law and a number of general equality provisions in legislation governing different areas of life.
12. As noted in our previous submission, the principal piece of equality legislation in Kyrgyzstan, the Law of the Kyrgyz Republic on State Guarantees of Equal Rights and Equal Opportunities for Men and Women (the Gender Equality Law), suffers from a number of weaknesses, including the failure to prohibit indirect discrimination in a way which is consistent with international standards, and a failure to prohibit multiple discrimination, In addition, the Trust found that the state had not taken effective measures to implement the Law, thus undermining its protections.
13. In addition to the Gender Equality Law, the Kyrgyz Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code and the Law on Education all contain standalone

⁶ *Ibid.*, Para 7.

⁷ *Ibid.*, Para 10.

⁸ *Ibid.*, Para 11.

⁹ *Ibid.*, Para 15.

¹⁰ Equal Rights Trust, *Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 54th Session (pre-sessional working group) in relation to the second and third periodic reports submitted by: Kyrgyzstan*, October 2014, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/KGZ/INT_CESCR_ICO_KGZ_18754_E.pdf

¹¹ *Ibid.*, Para 10.

¹² See above, note 1, Para 37.

equality provisions, though none of these explicitly prohibit discrimination.¹³ The notable exception to this pattern is the Labour Code, Article 9 of which goes beyond a guarantee of “equal opportunity to exercise (...) labour rights and freedoms” to state that “no one may be limited in their labour rights and freedoms, or receive any advantages” on the basis of a list of recognised grounds of discrimination. However, as noted in our previous submission to the Committee:

[T]he Article is problematic in a number of respects. It provides a limited list of explicitly protected grounds, omitting a number of grounds recognised by the Committee, such as sexual orientation, gender identity and disability. It does not specifically define or prohibit the different forms of discrimination such as direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation. In addition, it apparently limits the available remedies to financial compensation.

14. Thus, it is clear that the legal framework in Kyrgyzstan is inadequate to meet the requirements of Article 2(2) of the Covenant, in particular in respect of the obligation to enact specific and comprehensive anti-discrimination law. We note that in its List of Issues, the Committee asked Kyrgyzstan to “indicate what steps have been taken to adopt comprehensive anti-discrimination legislation”.¹⁴ In response, the state party made reference only to its Constitution and to the Criminal Procedure Code.¹⁵ The Equal Rights Trust would therefore suggest the following recommendations to be made to Kyrgyzstan as part of the Committee’s concluding observations:

Suggested Recommendations

- Kyrgyzstan should introduce specific and comprehensive anti-discrimination legislation which prohibits discrimination in the enjoyment of all economic, social and cultural rights protected under the Covenant. Such legislation should: include definitions of the forms of prohibited conduct, including direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation; include all prohibited grounds listed in Article 2(2) and in General Comment No. 20; and prohibit multiple discrimination.
- Kyrgyzstan should undertake an assessment of the Law of the Kyrgyz Republic on State Guarantees of Equal Rights and Equal Opportunities for Men and Women and its effectiveness in eliminating discrimination against women in the enjoyment, *inter alia*, of their economic, social and cultural rights. Such an assessment should include consideration of the cases brought under the Law, judicial interpretation and application of the legislation and the sufficiency of the remedies provided.

¹³ Articles 2(1), 52(1), 56(3) and 223(3) of the Civil Code; Article 7(1) of the Civil Procedure Code; Article 3(1) of the Criminal Code; Article 16(1) of the Criminal Procedure Code; Article 4 of the Law on Education. Further discussion of these provisions is presented in Equal Rights Trust, above, note 10, Para 14.

¹⁴ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the combined second and third periodic reports of Kyrgyzstan*, UN Doc. E/C.12/KGZ/Q/2-3, 9 December 2014, Para 5.

¹⁵ Комитет по экономическим, социальным и культурным правам, Ответы Кыргызстана на перечень вопросов, UN Doc. E/C.12/KGZ/Q/2-3/Add.1, 7 April 2015, Para 8.

- Kyrgyzstan should review and assess the impact of article 9 of the Labour Code, with a view to assessing its effectiveness in fulfilling its obligations under Article 2(2) of the Covenant to ensure the enjoyment of Covenant rights without discrimination, when taken in combination with Article 6 (the right to work) and Article 7 (the right to the enjoyment of just and favourable conditions of work).

Part 2: Evidence of Violations of Article 2(2) in connection with other Covenant Articles

15. The Equal Rights Trust's research in Kyrgyzstan has identified discrimination on various grounds, including gender, religion, ethnicity, economic status, age and disability, in respect of rights protected by the Covenant. This section presents selected evidence of discriminatory violations of: Article 6 (the right to work); Article 7 (the right to just and favourable conditions of work); Article 11 (the right to an adequate standard of living); Article 12 (the right to physical and mental health); and Article 13 (the right to education).

Article 2(2) with Article 6 and Article 7: Discriminatory denial or limitation of the right to work and discrimination in respect of just and favourable conditions of work

16. Focus groups and interviews undertaken by the Equal Rights Trust and Peremena researchers throughout Kyrgyzstan found evidence of discrimination in employment on the basis of religion, ethnicity, age and economic status. This is contrary to Article 2(2) of the Covenant, which, in conjunction with Articles 6 and 7, requires that states guarantee the rights to work and to just and favourable conditions of work, without discrimination on grounds including religion, ethnicity and other status. The Committee has concluded that both age and economic status are forms of "other status" within the meaning of Article 2(2).¹⁶ In addition, such discrimination is contrary to the Kyrgyzstan Labour Code, which states that: "[n]o one may be limited in their labour rights and freedoms, or receive any advantages in their realisation" on the basis of grounds including race, language, property and official status, age and attitude to religion, as well as "other factors not related to the quality and results of their work".¹⁷
17. Equal Rights Trust research undertaken in Bishkek, Batken and Naryn found evidence of discriminatory denial or restriction of the right to work on the basis of religion. In Bishkek, for example, those interviewed by the Trust highlighted several cases in which Baptists were fired from private companies, ostensibly on the basis of their religion. A further reported case involved the State Committee for National Security allegedly forcing a director of a private company to fire a member of the Ahmadiyya religious community in Bishkek. In all three areas, Muslim women who wear the hijab reported experiencing direct discrimination when applying for jobs as well as being subjected to discriminatory treatment when in employment. For example, focus group respondents in both Batken and Naryn indicated that Muslim women were either not hired or were forced to quit their jobs because of their decision to wear the headscarf.
18. According to focus groups reports and interviews carried out in Batken, Jalal-Abad, and Osh, people from ethnic minorities also experience discrimination in employment on the basis of ethnicity. Respondents in both Osh and Jalal-Abad stated that ethnic Uzbeks are subject to direct discrimination in the workplace, with one stating that an Uzbek woman in Osh was fired from her job because of her brother's conviction for involvement in the ethnic conflict in that part of the country. In addition, the Equal Rights Trust found evidence of

¹⁶ See above, note 1, Paras 29 and 35.

¹⁷ Labour Code of the Republic of Kyrgyzstan of 2004, Article 9.

indirect discrimination against ethnic minorities in Batken region, where non-Kyrgyz ethnic groups face difficulties in getting jobs in state bodies because of the legal requirement for them to speak the Kyrgyz language.

19. Participants in an Equal Rights Trust focus group in Jalal-Abad testified to the existence of direct age discrimination in employment. Those interviewed gave examples of job advertisements which specify a desired age, and stated that it is difficult for older people to find jobs or achieve promotion. In Naryn, respondents stated that people over the age of 45 had “no chance” of securing jobs in state bodies, where there are more available opportunities for younger people.
20. Those interviewed by Equal Rights Trust researchers in Batken, Jalal-Abad, Naryn and Talas also indicated potential discrimination in employment on the basis of economic status, largely as a result of corruption. For example, in Batken region, focus group participants alleged that people from more deprived socio-economic backgrounds cannot get jobs in the regional state administration because they are unable to pay bribes and lacked the “connections” required; instead, they find employment in local and village administrations. Similar cases were reported in both Naryn and Jalal-Abad. In one reported case in Batken, a woman stated that though she had achieved the highest scores at a competition for a job, she refused to pay the required bribe and as a result faced regular harassment in her workplace and was not promoted. Similar cases were reported from Talas, where those who spoke with our researchers also reported corrupt employment practices, resulting in disadvantage for people from more deprived economic backgrounds.

Suggested Recommendations

- Kyrgyzstan should take immediate steps to fulfil its obligations under Article 2(2) of the Covenant to ensure the enjoyment of Covenant rights without discrimination, when taken in combination with Article 6 (the right to work) and Article 7 (the right to the enjoyment of just and favourable conditions of work).
- Kyrgyzstan should investigate allegations of discrimination in the area of employment on grounds of religion, ethnicity, age and economic status, with a view to strengthening legislative and policy responses, and enforcing Article 9 of the Labour Code.
- Kyrgyzstan should review and assess the impact of Article 9 of the Labour Code, with a view to assessing its effectiveness in fulfilling its obligations under the Covenant to ensure the enjoyment of the right to work and to just and favourable conditions of work, without discrimination.

Article 2(2) with Article 11: Discriminatory denial of the right to an adequate standard of living

21. As with the rights to work and just and favourable conditions of work, Kyrgyzstan is obligated, under Article 2(2), taken together with Article 11, to guarantee the right to an adequate standard of living without discrimination on a range of characteristics. Similarly, while no specific anti-discrimination legislation exists in Kyrgyzstan beyond the Gender Equality Law, Article 16(2) of the Constitution provides a general prohibition on discrimination on an open-ended list of grounds of discrimination.¹⁸ Yet research by the

¹⁸ Constitution of the Kyrgyz Republic, Article 16(2), which states: “No one may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status as well as other circumstances”. See also

Equal Rights Trust has found evidence of discrimination on the basis of religion and economic status which limits the extent to which all people in Kyrgyzstan are able to enjoy an adequate standard of living, including in particular the right to adequate housing.

22. Equal Rights Trust research in Bishkek found evidence of discrimination on the basis of religion which limits the opportunity for members of some religious communities to enjoy an adequate standard of living. The findings focused on the barriers faced by those professing certain religions to buy property, as well as limitations in access to basic services. For example, representatives of the Ahmadiyya and Kyrgyz Evangelist communities stated that members of these groups experience problems with buying property because of their religion. One representative of the Ahmadiyya community reported that the ministry of justice refuses to register their property purchases, saying:

If our community were registered in an official way with the Ministry of Justice, then we might have had an official permission to buy a property for our community. The property is registered based on a certificate issued by the state registration service on state registration of our community. The Ministry of Justice has information of the state committee for national security which regularly 'bounces' us. We are considered extremists, terrorists or a radical organization which can affect security of the country.¹⁹

And in another testimony from another member of Ahmadiyya religious group:

Officially a court did not acknowledge our community as extremist community, they simply consider as the extremist without evidences. Therefore we are obstructed on buying property and conducting our activities. The state committee for national security says that it is useless to write complaints because we are small in number and the issues is most likely a political one.²⁰

23. Focus group participants in Talas stated that women are also denied access to land and thus to adequate housing. Respondents indicated that women's applications for land plots are not properly considered by local authorities, and that where cases are considered, the woman's marital status will play a significant role in decision-making.
24. Equal Rights Trust research in Batken, Naryn and Talas found evidence of discriminatory denial of the right to an adequate standard of living on the basis of economic status, as a result of corruption. Respondents in all three locations indicated that it is difficult for people with limited economic resources to secure plots of land, as a result of the need to bribe local officials, with an immediate impact on their right to adequate housing.

Suggested Recommendations

- Kyrgyzstan should take immediate steps to fulfil its obligations under Article 2(2) of the Covenant to ensure the enjoyment of Covenant rights without discrimination, when taken in combination with Article 11 (the right to an adequate standard of living), including

the discussion of this provision at: Committee on Economic, Social and Cultural Rights, *Second and Third Reports Submitted by States Parties: Kyrgyzstan*, UN Doc. E/C.12/KGZ/2-3, 8 November 2013.

¹⁹ Equal Rights Trust, Focus Group, 24 November 2014, Bishkek city.

²⁰ *Ibid.*

through the adoption of specific and comprehensive anti-discrimination legislation reflecting international standards.

- Kyrgyzstan should investigate allegations of discrimination in the area of housing on grounds of religion, gender and economic status, with a view to strengthening legislative and policy responses, sanctioning those responsible for discrimination and providing remedy to victims.

Article 2(2) with Article 12: Discriminatory denial of the right to physical and mental health

25. Kyrgyzstan is obligated, under Article 12 when read in conjunction with Article 2(2) to guarantee the enjoyment of the right to the highest attainable standard of physical and mental health, without discrimination of any kind. In addition, as noted above, the Constitution of Kyrgyzstan provides a general prohibition on discrimination which should extend to ensuring non-discrimination in access to healthcare. However, the Equal Rights Trust and Peremena have found evidence of discrimination on the basis of religion and economic status impacting on the ability of vulnerable groups to enjoy the highest attainable standard of healthcare without discrimination.
26. A representative of the Ahmadiyya community in Bishkek told Equal Rights Trust researchers that in one case, health professionals had refused treatment to a member of the Ahmadiyya community, apparently as a result of a conspiracy with the local authorities to frustrate the prosecution of a people who had beaten him because of his religion. The respondent stated:

The doctors did not examine bodily injures of one of our members. The person intended to file a case at court against people who had beaten him (it was a long time ago). The authorities make secret deals with doctors.²¹

27. The Committee has noted that “individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society”.²² However, research conducted by the Equal Rights Trust and Peremena in Batken, Jalal-Abad, Osh and Talas found that corruption and prejudice in the healthcare system can result in difficulties for people from poorer socio-economic backgrounds when accessing healthcare. For example, focus group participants in Batken region stated that access to medical care is much easier for wealthy people as they have resources and connections. Similar assertions were made by interviewees in Jalal-Abad and Naryn city, who stated that people with money and influence are treated differently than those of a lower socio-economic status. In Osh, respondents stated that poor people have to wait in line to get treated and they can even die waiting, while people who can pay money have the possibility of starting their full treatment the next day. Moreover, they stated that poor people are treated badly when admitted to hospital and are required to pay for medicine that should be provided free, while well-off people get much better treatment and get their medicine for free.

²¹ *Ibid.*

²² See above, note 1, Para 35.

Suggested Recommendations

- Kyrgyzstan should take immediate steps to fulfil its obligations under Article 2(2) of the Covenant to ensure the enjoyment of Covenant rights without discrimination, when taken in combination with Article 12 (the right to the highest attainable standard of physical and mental health), including through the adoption of specific and comprehensive anti-discrimination legislation reflecting international standards.
- Kyrgyzstan should investigate allegations of discrimination in the area of healthcare on grounds of religion and economic status, with a view to strengthening legislative and policy responses, sanctioning those responsible for discrimination and providing remedy to victims.

Article 2(2) with Article 13: Discriminatory denial of the right to education

28. As a party to the Covenant, Kyrgyzstan has recognised the right of everyone to education, and that primary education should be compulsory and free to all, while secondary and higher education should be available to all. The state has also undertaken to guarantee that this right shall be exercised without discrimination of any kind. However, focus groups conducted by Equal Rights Trust researchers found evidence of discrimination in respect of the right to education on the basis of religion, ethnicity and economic status.
29. Focus group participants in Naryn, Batken and Talas reported instances of discrimination on the basis of religion affecting access to education for Muslim girls. In Naryn, for instance, participants stated that Muslim school girls who wear the headscarf have been harassed and subjected to discrimination. This included being subjected to various restrictions by the school administration which can sometimes result in denial of access to education. One participant stated that a disabled Muslim student was harassed by the Deputy Principal, who forced her to remove her headscarf. Another participant stated that girls wearing the headscarf in the Ak-Talaa district were prevented from attending school. Similar cases were reported in the Batkan region, with reports of girls being excluded from school for wearing the headscarf. One respondent in Talas, spoke of a case where a Deputy Head of a local hospital threatened to withhold the grades of trainees seeking an internship unless they removed the headscarf.
30. Focus group participants in Osh and Jalal-Abad provided evidence of disadvantages faced by ethnic Uzbek students, as a result of lack of education provision in the Uzbek language. Respondents in Jalal-Abad stated that ethnic Uzbek students were not permitted to take the national exams in the Uzbek language, while in Osh, teaching aids in Uzbek schools – such as textbooks – are in very bad condition, when compared to those in Russian and Kyrgyz language schools.
31. As with the healthcare system, those interviewed by Equal Rights Trust researchers gave evidence of prejudice and stigma against children from poorer socio-economic backgrounds in the education system. In both Jalal-Abad and Talas, for example, interviewees stated that students face differential treatment and harassment by teachers and fellow students on the basis of their clothing, jewellery and economic status more broadly.

Suggested Recommendations

- Kyrgyzstan should take immediate steps to fulfil its obligations under Article 2(2) of the Covenant to ensure the enjoyment of Covenant rights without discrimination, when taken

in combination with Article 13 (the right to education), including through the adoption of specific and comprehensive anti-discrimination legislation reflecting international standards.

- Kyrgyzstan should investigate allegations of discrimination in the area of healthcare on grounds of religion and economic status, with a view to strengthening legislative and policy responses, sanctioning those responsible for discrimination and providing remedy to victims.