

**Mandates of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

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(Please use this reference in your reply)

18 December 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Special Rapporteur on the Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 49/5, 50/17, 52/5 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the proposed Bill on the Freedom of Religion and Religious Associations**, which was published for public discussion from 11 November 2023 until 17 December 2023. According to available reports, the Bill was prepared by the State Commission for Religious Affairs (SCRA). Certain provisions in the Bill could fail to meet Kyrgyzstan's obligations under international human rights law.

According to information received:

According to the version shared publicly, the scope of this proposed Bill is to provide "guarantees for the free exercise of religion in the Kyrgyz Republic in accordance with the Constitution and international treaties to which the Kyrgyz Republic is a party, as well as universally recognized principles and norms of international law, establishes the status, rights and obligations of religious associations, regulates relations arising in connection with their activities." Article 2 of the Bill also states that "Legislation on religious freedom and religious associations in the Kyrgyz Republic consists of the Constitution, this Law and other normative legal acts. Laws and other normative legal acts adopted in the Kyrgyz Republic and affecting the exercise of the right to freedom of religion, as well as the activities of religious associations, shall comply with the Constitution and this Law." This provision further states that "[i]n order to stabilize the religious situation, prevent religious extremist disturbances, and ensure state (national) security, it is allowed to establish additional normative acts." This proposed "law on freedom of religion and religious associations", is set to replace the Law of the Kyrgyz Republic "On Freedom of Religion and Religious Organizations in the Kyrgyz Republic" (Vedomosti [Journal] of the Jogorku Kenesh of the Kyrgyz Republic, 2008, No. 10, Article 1110) and related amendments which are currently in force.

Article 8 of the proposed Bill states that religious activities in the Kyrgyz Republic shall mean activities (carried out by religious entities) with the aim of meeting the "religious needs of believers", including "disseminating

religious doctrines, providing religious upbringing and education, conducting religious rituals and meetings, producing and distributing religious items, religious literature and materials, ensuring organizational and material support of religious practice of religious entities, constructing and reconstructing religious facilities.” More importantly, this provision continues to state that activities carried out “without being registered with the authorized state body, or carrying out activities outside the covered territory, or carrying out religious educational activities privately outside religious educational institutions” are “illegal religious activities”.

Article 9 further specifies that entities authorized to carry out religious activities in Kyrgyzstan are religious organizations, religious educational institutions and preachers of foreign religious organizations. According to article 10, a religious organization is an organizational legal form of a religious association established by citizens of the Kyrgyz Republic on a “voluntary basis through the community of their interests to meet spiritual needs and to carry out religious activities after being registered in accordance with the procedure established by this Law”. Under article 11, religious organizations are divided into local (at least 100 capable citizens required as founders, residing in the territory of one district), regional (at least 500 capable citizens as founders residing in one oblast/region or the cities Bishkek or Osh – that have equal status as oblasts) and republican organizations (at least 3,000 capable citizens required as founders proportionally residing in at least 5 oblasts). This minimum number of founders requirement is impossible for several religious communities to meet, in particular minority religions.

Article 16 states that a religious organization shall be the founder and owner of a religious educational institution and that the name of a religious educational institution shall contain an indication of religious affiliation with the inclusion of the words "religious educational institution". Article 17 states that a preacher of a foreign religious organization shall be a foreign citizen or stateless person temporarily carrying out religious activities in the territory of the Kyrgyz Republic on behalf of this organization in accordance with this Law.

#### *Issues pertaining to registration of religious organizations*

##### *Criminalizing unregistered religious activities*

According to article 18 of the proposed Bill, state registration of religious organizations and religious educational institutions allows these religious entities to participate in civil law relations as a civil law subject, to acquire, exercise and protect its civil rights and the right to acquire the legal capacity of a legal entity. As noted above, according to article 8, any religious activity carried out without registration is deemed an illegal religious activity.

##### *Compulsory re-registration every five years*

Article 10 states that while a religious organization may be established for a certain period, after the expiry of five years such a religious organization shall undergo re-registration. In terms of re-registration of religious entities, article 19 states that implementation of religious activities on the territory of

the Kyrgyz Republic without re-registration is not allowed and shall entail liability in accordance with the Code of Offenses.

Further article 47, which provides for final provisions, states that registrations issued prior to the entry into force of this Bill without indication of the period of validity shall be recognized as issued for a period of up to five years.

In terms of re-registration, according to article 21, the registering authority shall refuse to re-register a religious entity if a violation of the procedure has occurred, if a similar name is present in the State Register of religious entities, religious facilities and places of worship of a registered (re-registered) religious entity. Among other grounds such as existence of a court mandated prohibition, re-registration may also be refused on broad grounds such as a negative conclusion of the state religious expert examination or a negative opinion of an authorized state body of internal affairs or national security.

According to article 19, the purpose of registration and re-registration is to ensure freedom of religion of individuals and citizens, to protect the constitutional order and national security, to ensure registration of religious entities, to certify the fact of establishment and termination of operations of religious entities, religious facilities and places of worship and to maintain the State Register of registered religious entities, religious facilities and places of worship and to control and monitor operations of religious entities, religious facilities and places of worship.

Article 19 further states that religious entities shall receive the right to carry out religious activities from the moment of the registration/re-registration by the registering authority and the right to appeal against a negative decision of a registering authority. However, these provisions also enable the registering body to send the applicant's documents to the bodies of internal affairs and national security to obtain a conclusion on possible involvement in terrorist and extremist organizations and terrorist activities. Accordingly, national security bodies shall check founders and religious entities against international and national lists of persons involved in terrorist and extremist activities and legalization (laundering) of proceeds of crime. Article 19 part 10 continues to state that if there are “disputable issues of religious nature”, the registering body shall appoint a “state religious expert examination” with the involvement of independent experts and send the applicant's documents for the said expert examination.

The International Covenant on Civil and Political Rights (ICCPR), which Kyrgyzstan acceded to on 7 October 1994 protects in its article 18 the right to freedom of thought, conscience and religion. International human rights law recognizes freedom of thought, conscience, and religion regardless of the registration status. Thus, the inclusion of “illegal religious activities” which are defined as “activities carried out without being registered with the authorized state body, or carrying out activities outside the covered territory, or carrying out religious educational activities privately outside religious educational institutions” would be contrary to it.

Registration practices should not limit the right of persons to manifest their religion or belief, either alone or in community and in public or private.

Article 18 (3) of the ICCPR states that “freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Further, the Human Rights Committee in its General Comment No. 22 emphasized that article 18 (3) of the Covenant "is to be strictly interpreted... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.” Thus, given that necessity and proportionality are two conditions for limitations, a blanket prohibition placed upon any religious activity without registration infringe upon article 18 (3).

The Special Rapporteur on freedom of religion or belief has stressed that “administrative procedures to obtain legal personality should be enacted in a spirit of servicing the full enjoyment of freedom of religion or belief for everyone and should thus be quick, transparent, fair, inclusive and non-discriminatory” (See A/HRC/19/60, para. 73).

The Special Rapporteur has identified several points to take into consideration with regard to registration, such as registration, “should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits. ... registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed. Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc. No religious group should not be empowered to decide about the registration of another religious group” (See E/CN.4/2005/61, para 58)

In relation to article 2 of the Bill, which foreshadows additional normative acts, we recall that the term "extremism" has no place in binding international legal standards and, when operating as a criminal legal category, it is irreconcilable with the principle of legal certainty; and it is therefore per se incompatible with the exercise of certain fundamental human rights" (A/HRC/43/46, para. 14). Any future legislation which seeks to restrict religion under article 4 of the ICCPR must comply with the principles of legality, necessity and non-discrimination.

In relation to the referral to national security under article 19 of the Bill, we emphasize that there is no universal definition of terrorism or extremism and no universal acceptance of individual terrorist or extremist organizations. Any reliance on listings of individuals or entities must ensure that the legal bases for such listings are consistent with international law. We note further that the mere listing of an individual associated with a terrorist organization or a designation of an organization as a terrorist is not a sufficient basis for refusing registration as a religious organization. Any refusal or registration should be strictly legal, proportional and non-discriminatory.

The involvement in internal affairs and national security bodies has to be subject to due process and national scrutiny based on legal and substantive grounds consistent with international law.

In addition to the above, the proposed Bill appears to have a dual negative effect on the right to freedom of thought, conscience and religion of religious minorities in Kyrgyzstan as first, most communities do not command a large number of supporters as required by the proposed Bill and second, registration requirements do not take into account the characteristics of religious minority communities, who in some cases are also ethnic minorities.

#### *Increased monitoring of religious educational institutions*

Article 6 on religious education prohibits teaching religious disciplines on an individual basis outside a religious educational institution and those who are found guilty of violating this provision will be held liable in accordance with the Code of Offenses. This provision further leaves the procedure for provision of religious education to be developed by the Cabinet of Ministers.

Thereafter, article 16 states that a religious educational institution must be established by a religious organization. The latter will be considered as the founder and owner of a religious educational institution. While article 24 on registration of a religious educational institution provides that documentation such as curricula with a list of religious literature used in teaching, qualitative composition of teachers approved by the founder should be provided for purposes of registration. This requirement appears to be disproportionate and may create considerable hurdles for registration.

Article 16, part 5, also prohibits the use of residential premises for the purposes of religious education. This prohibition may limit the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions as enshrined in article 18 of the ICCPR.

#### *Restrictions on religious literature, materials and religious items*

While article 40 states that religious organizations shall have the right to produce, acquire, store, export, import and distribute religious literature, other religious printed, audio, video materials, including on electronic media, as well as other religious items in accordance with the procedure established by this Bill, it also limits the ability to import such materials into the territory of the Kyrgyz Republic to registered religious organizations.

This legal provision further enables an authorized state body for religious affairs to appoint and carry out a “state religious expert examination” of religious literature, other religious printed, audio, video materials, including on electronic media. The procedure for conducting this state religious expert examination including the procedure for producing, acquiring, storing, importing, exporting and distributing religious materials and items in the Kyrgyz Republic is to be determined by the Cabinet of Ministers.

Thereafter article 40, prohibits the distribution of religious literature, other religious printed, audio, video materials regardless of the media in public places, as well as by visiting residential premises, state and municipal organizations, pre-school educational and general education organizations, except for religious educational institutions. It continues to state that those found guilty will be liable under the Code of Offenses. Such a blanket

prohibition may negatively affect a range of rights of religious communities and their members, including those who wish to disseminate materials among their own members. In this context, we reiterate that relying on the definition of extremism or terrorism does not satisfy the principles of legality, proportionality, necessity and non-discrimination.

*Restrictions on public religious rites, meetings and other religious mass events*

Article 39 limits religious rites and meetings held by religious entities to religious facilities, in places of pilgrimage, and cemeteries. The right to hold the above events in places not designated for these purposes, or in other words, public spaces is subject to notification of executive bodies of local self-government and the authorized state body for religious affairs. This notification on holding the mentioned religious events by religious entities has to be sent five business days prior to the event, indicating the place, date and brief description (program) of the event.

This provision may restrict freedom of peaceful assembly and association of members of religious communities. Moreover, this provision appears to be discriminatory as under the existing [Law of the Kyrgyz Republic “On Peaceful Assemblies”](#) notification is not required for holding peaceful assemblies. Organizers of peaceful assemblies may decide to submit a notification if they require the state to facilitate the planned event.

We recall article 21 of the ICCPR, which protects the right to freedom of peaceful assembly. As stated in the Human Rights Committee’s General Comment No. 37: ‘A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences’ (CCPR/C/GC/37, para. 71). The Human Rights Committee also stated: ‘Any notification regime should exclude assemblies for which the impact of a gathering on others can reasonably be expected to be minimal, for example because of its nature, location or limited size or duration. Notification must not be required for spontaneous assemblies for which there is not enough time to provide notice’ (CCPR/C/GC/37, para. 72).

*Control over activities of a religious organization, religious educational institutions, religious facilities and places of worship*

Article 44 part 5 enables the authorized state body for religious affairs and its territorial bodies to exercise control over compliance of the activities of religious entities, as well as their religious facilities, with the purposes stipulated by their charter (statute) and the legislation on freedom of religion and religious associations.

The authorized state body for religious affairs and its territorial bodies shall have the right to request from the governing bodies of a religious organization, religious educational institution their administrative and financial documents; to request and receive information on financial and economic activities of a religious organization, religious educational institution from state statistical bodies, tax authorities and other bodies of state supervision and control, as

well as from banking institutions and other financial organizations and to send their representatives to participate in events organized by religious entities.

The above legal provisions have the potential to curtail the space available to religious or belief organizations to exercise the right to freedom of religion or belief in worship, observance, practice and teaching, including persons belonging to minority religious groups as per articles 18 and 27 of the ICCPR. For instance, measures such as empowering the state authorities to ensure their physical presence and surveillance of religious meetings and services and requirement of submission of information on the activities for religious education would intensify the degree of surveillance and monitoring that religious organizations are subject to. The practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications (See general comment no.22, para. 4). Thus, subjecting such religious material to a state religious expert examination could result in practice in undue limitation to the right to freedom of religion or belief and rights of minorities.

We also recall article 22 of the ICCPR, which protects the right to freedom of association, including the right to form and participate in religious associations. In interpreting article 22 of the ICCPR, the Human Rights Committee has confirmed that “the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association to freely carry out its statutory activities”<sup>1</sup> While States may have a legitimate interest in establishing reporting requirements for civil society organizations to ensure compliance with the law, these requirements ‘should not inhibit associations’ functional autonomy and operation’.<sup>2</sup>

In addition to the above, it must be noted that though the draft Bill provides for several provisions where it states that those found guilty will be liable under the Code of Offenses, a separate draft Law with amendments to the Code of Offences or the Criminal Code was not presented alongside this Bill as per usual practice. Thus, the exact identification of offences with regard to each type of “illegal religious activity” which will be invoked remains unclear.

**In light of the above comments, which the Special Rapporteurs wish to share for consideration, we respectfully encourage your Excellency's Government to review and reconsider certain key aspects of the Bill to ensure that it complies with Kyrgyzstan's obligations under international human rights law.**

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.

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<sup>1</sup> Belyatsky et al. v. Belarus (CCPR/C/105/D/1296/2004).

<sup>2</sup> Human Rights Council Resolution A/HRC/RES/22/6.

2. Please explain how the provisions flagged above are compatible with international human rights standards regarding the right to freedom of religion or belief, and the rights to freedom of peaceful assembly and freedom of association as provided for in the ICCPR, which Kyrgyzstan has acceded to.
3. Please provide information on measures your Excellency's Government has taken or is planning to take, to ensure freedom of religion or belief with a particular focus on religious minorities.
4. Please provide information on measures your Excellency's Government has taken, or is planning to take, to ensure the compliance of the Bill with Kyrgyzstan's obligations under international human rights law and to bring its legislation on freedom of religion or belief into compliance with international human rights law.
5. Please explain how the procedure under article 19 of the Bill is consistent with the principle of legality, due process and judicial safeguards under international human rights law.
6. Please provide information on positive measures undertaken to facilitate a meaningful dialogue on the Bill with all stakeholders, including religious or belief groups and religious or belief minorities in the country, after the Bill has been posted for public consultations on the government draft legislation portal (<http://koomtalkuu.gov.kg/>) on 11 November 2023, in line with the [OHCHR Guidelines](#) on the effective implementation of the right to participate in public affairs related to article 25 of the ICCPR

While awaiting a reply, we respectfully urge that all necessary interim measures be taken to review that Bill, to ensure that all the matters analyzed in this letter are carefully considered, and not to rush the process of promulgating that law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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