**Local government and human rights**

**QUESTIONNAIRE**

*As part of the consultations undertaken by the Human Rights Council Advisory Committee with* ***governments****,* ***national human rights institutions*** *and* ***non-governmental organizations*** *with a view to preparing a report on the role of local government in the promotion and protection of human rights, pursuant to Council resolution 24/2.*

**Background:**

Human Rights Council resolution 24/2, adopted in September 2013, took note of the research proposals made by the Advisory Committee in August 2012[[1]](#footnote-1), which included a research proposal on local government and human rights, and mandated the Committee to prepare a research-based report on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services, with a view to compiling best practices and main challenges, and to present a progress report thereon to the twenty-seventh session of the Council (September 2014).

The Committee is also requested to seek the views and inputs of Member States, relevant international and regional organizations, the OHCHR and relevant special procedures, as well as national human rights institutions and non-governmental organizations, in order to prepare the above-mentioned report.

It is therefore in this context that the Advisory Committee decided, at its twelfth session held in February 2014, to appoint a drafting group[[2]](#footnote-2) in charge of the preparation of this report and elaborated the hereunder questionnaire for governments, national human rights institutions and non-governmental organizations.

**QUESTIONNAIRE**

1. How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.

Head of the KR Government: Prime Minister Joomart Otorbaev (since 2 April 2014, acting since 26 March 2014); First Deputy Prime Minister - Tayyrbek Sarpashev (since 2 April 2014); Deputy Prime Ministers - Valeriy Dil, Abdyrakhman Mamataliev, Elvira Sarieva (all since 2 April 2014)

Cabinet of Ministers is proposed by the Prime Minister, appointed by the President of the KR; ministers in charge of defense and security are appointed solely by the President of the KR.

The KR Government consists of: Prime Minister, First Dep. Prime Minister, 3 Vice-Prime Ministers, Min. and Chief of the Govt. Apparatus, Min. of Agriculture and Water Management, Min. of Culture, Tourism, and Information, Min. of Defense, Min. of Economy and Antimonopoly Policies, Min. of Education and Science, Min. of Emergency Situations, Min. of Energy and Industry, Min. of Finance, Min. of Foreign Affairs, Min. of Health Care, Min. of Internal Affairs, Min. of Justice, Min. of Labor, Migration, and Youth, Min. of Social Development, Min. of Transportation and Communication, Chmn., State Ctte. for National Security (GKNB), Prosecutor Gen., Chmn., National Bank of Kyrgyzstan.

Kyrgyzstan develops in the framework of a parliamentary representative democratic republic, whereby the President is the Head of state and the Prime Minister of Kyrgyzstan is the Head of the Government. The executive power in the country is exercised by the Government of the Kyrgyz Republic, its ministries, state committees, administrative departments, and local state administrations. Legislative power is vested in both the Government and Jogorku Kenesh (Parliament). Constitution of the Kyrgyz Republic, Constitutional Law of the Kyrgyz Republic “On the Government of the Kyrgyz Republic”, other laws of the Kyrgyz Republic as well as Decrees of the President of the Kyrgyz Republic, Regulations prescribe the procedures for organizing the work of the Government of the Kyrgyz Republic with a view to exercising its authority.

2. Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.

The Government of the KR, within the scope of its competences, ensures the fulfillment of the Constitution of the Kyrgyz Republic, laws of the Kyrgyz Republic, normative legal acts of the President and Government of the Kyrgyz Republic, international treaties entering into force in accordance with the established order and undertakes systematic supervision over their fulfillment by executive bodies, takes measures for the prevention of breach of law of the Kyrgyz Republic.

In accordance to the legislation on the Government of the Kyrgyz Republic, it approves the republic’s budget and ensures its implementation, propose tax and price policies, takes measures to provide the legality, the rights and the freedom of citizens.

The local government legislatively is not called to promote the HR protection work, they are operative in the local budget and social spheres.

3. Is there any cooperation between local government and the central government in your country regarding the implementation of human rights at local level? If yes, please describe the existing cooperation framework.

The governance system is susceptible to breakdowns, both horizontal and vertical. Communication between central and local authorities remains weak and ineffective. The functions and powers of the authorities at the Province and Region levels are blurred and not supported by effective mechanisms of implementation. The resources of most local authorities are limited, which does not allow them to fully implement their respective functions and powers.

The local administration system is in the transition period. As an outcome of multiple reforms, the form of public administration has changed, but the methods used by public authorities in their work, decision-making and implementation have remained unchanged. There is no regular communication within public authorities themselves.

4. Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?

Article 115 of the Regulation on Parliament makes it compulsory for civil society representatives to participate in hearings on draft laws related to the interests of Kyrgyz citizens.

- Public Monitoring Councils involving civil society representatives have been established at each ministry and agency by a Presidential Decree. There is a law that regulates the structure of these Councils, the selection of their members and sets out their responsibilities to ensure civil society participation in the decision-making process. The law, however, does not cover the financing of these bodies. While CSOs are eager to participate in the government decision-making process and new mechanisms have been developed (PMC), access to this process and the effectiveness of CSO input is dependent on the good will of government officials.

- The Kyrgyz Institute of Ombudsman is currently develops the new law “On Ombudsman of the Kyrgyz republic”. The Ombudsman mechanism is now viewed by the majority of NGOs as ineffective one.

- EU – Civil Society Human Rights Dialog is the permanent consultations process, it is relatively new.

5. What initiatives have been taken to include human rights mainstreaming in local administration and public services?

Civil society organizations advocate the legislative amendments to be introduced to reinforce the local administrations with HR protection functions, but currently this niche is filled only by NGOs themselves.

6. What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?

Generally, the state authorities do not understand the nature of NGOs and do not try to use their services. Civil society is continues to be used as a background in the decision-making process rather than as partners. Instead of setting up institutional mechanisms for co-operation, relations between state authorities and civil society are personified.

The working conditions for NGOs in the Kyrgyz Republic are under pressure. There has been taken legislative steps towards restringing NGOs’ possibility to receive funds from outside Kyrgyzstan, and NGO leaders find it harder to organize demonstrations criticizing the government and get insight into government affairs. The situation causes concerns among human rights defenders and civil society activists for their personal security.

In 2013, the right to freedom of association in Kyrgyzstan faced significant obstacles to its implementation.

On September 6, 2013, two MPs of the Jogorku Kenesh, allegedly in order to ensure transparency and publicity of the activities of the NCOs in the Kyrgyz Republic, initiated the draft law "On amendments to certain legislative acts of the Kyrgyz Republic." This draft law also attempted to introduce a new legal status for NCOs that make use of the "foreign funding sources" to bring in the status of a "foreign agent". It was also proposed, that another qualifying attribute for the status of a "foreign agent" might be an NCO's participation in "political activities" "on behalf of the foreign source". At that, the draft law initiators provided an extremely vague wording for the term "political activity".

In a joint opinion of the Venice Commission and OSCE/ODIHR, as well as in the analysis of the draft law by the ICNL, serious concern was expressed regarding the prospects of the use of the terms "foreign agent" and "political activity", regarding the dangerous attack on the implementation of the right to freedom of association in the country, as well as regarding the draft law contradicting the norms of the Constitution of the Kyrgyz Republic.

In the case of the draft law's adoption, the label of a "foreign agent" would be placed practically on almost all Kyrgyz NCOs; additional redundant and unwarranted claims would be made towards the NCO reporting practice; the public authorities would have broad powers to interfere in the internal affairs of NCOs; many of NCOs would cease their activities; provision of social services and deductions of significant amounts in taxes to the State revenue would undergo a significant reduction.

Thanks to the efforts of the members of the NCO, ACSSC and ICNL, initiators of the draft law did not send it in through the formal registration procedure in the JK of KR.

Another test for the civil sector in the past year was the initiation - first by the State Committee for National Security (which later recalled its legislative initiative), and then by the same MPs of the Jogorku Kenesh - of the draft legislation on the so-called "State secret". The proposed additions and amendments to the law were so vague that, if eventually adopted, they would allow the authorities to declare any unfit person a traitor. The NCOs were gravely concerned about the possibility of criminalization of almost all the traditional aspects of human rights defenders' activities, such as round tables and conferences involving donor participation, project reports presentations, and human rights report submissions. Even reports to the UN Committee against torture would fall under the scrutiny of such a law, if it were to be adopted.

Thanks to the consolidated efforts of the non-governmental sector, under the expert guidance of ACSSC and ICNL, this draft law was rejected under very serious circumstances, already in its second reading in the JK of KR.

The year of 2014, unfortunately, no longer is an exception in this chain of assaults on the fundamental rights and freedoms in the Kyrgyz Republic.

There are newer and newer obstacles to the activities of NCOs emerging:

On January 16, 2014, the Ministry of Transport and Communications of the KR, serving the interests of the security structures, with the purpose of conducting the so-called effective OIA (operational investigative activities), initiated a draft law obliging all mobile operators and Internet service providers to purchase and install equipment, with which one can listen and read the correspondence of all Kyrgyz citizens - without the authorization of the supervisory authority .

On January 15, 2014, a draft law was initiated according to which, to conduct an examination of a draft law, individuals and entities will need to get accreditation for any specialized types of expert assessment of draft legal regulatory acts.

On January 13, 2014, the Committee on Legal Affairs and the Rule of Law considered the draft law "On amendments and additions to the Code of Criminal Procedure of the Kyrgyz Republic".

The initiator - MP Kurmantai Abdiev. The draft law provides for the return of a practice whereby the investigative officer is required to compile a bill of indictment. The proponent is of the opinion that this draft law will contribute to the enhancement of the citizens' rights and interests.

On March 26, 2014, Kyrgyzstan’s national parliament (Zhogorku Kenesh) published a draft bill that imposes criminal sanctions for spreading information about homosexuality or LGBT issues. The bill was published online for public discussion, but has not been officially registered for consideration. The provisions in the bill would violate Kyrgyzstan’s constitution as well as international human rights law on nondiscrimination, freedom of expression, association, and assembly.

Despite these obstacles and situation, many NCOs consolidate all possible efforts to continue their operations in Kyrgyzstan.

7. What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?

Civil Partner Platform “Central Asia on the Move” is a coalition of 25 Central Asian and RF civil society actors who share a commitment to promote the rights and dignity of internal and external labour migrants of Kyrgyzstan and Tajikistan, the hundreds of thousands of men and women who each year seek an income outside their own country, in Kazakhstan and Russia. The platform was formally initiated in September 2011.

Our web-sites are: <http://camplatform.org/>

 <http://anticorruption.kg/>

8. What are the main challenges faced by local government in your country in the promotion and protection of human rights?

The appropriate legislation has to be developed to delegate these powers at the local level.

9. Please provide any best practices with regard to the above-mentioned issues.

The Government has taken some steps for CSO's involvement at the level of information sharing, discussions, review and recommendations. However, it should be noted that sometimes the State supports such a dialog just for the sake of formalities or even in a simulation mode.

**Deadline for submission of responses to the questionnaire:**

In order to give the Drafting Group the opportunity to take into account the different contributions, all parties are encouraged to submit their responses as soon as possible and at the latest by **11 April 2014**.

Answers can be submitted via email to the following address:

hrcadvisorycommittee@ohchr.org

OR

Secretariat of the Human Rights Council Advisory Committee

c/o Ms. Meena Ramkaun

Office of the United Nations High Commissioner for Human Rights

Palais Wilson, Room 4-060, Fax: +41 22 917 9011

United Nations Office at Geneva,

CH-1211 Geneva 10, Switzerland

Thank you for your contribution.

For more information on the Advisory’s mandate: <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

1. A/HRC/AC/9/6 [↑](#footnote-ref-1)
2. A/HRC/AC/12/L.5, 28 February 2014 [↑](#footnote-ref-2)