

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review: 3<sup>rd</sup> Cycle, 35<sup>th</sup> Session

#### THE KYRGYZ REPUBLIC

### I. BACKGROUND INFORMATION

The Kyrgyz Republic acceded to the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol in 1996 (hereinafter jointly referred to as the *1951 Convention*). Kyrgyzstan is not a party to the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention*) or the *1961 Convention on Reduction of Statelessness* (hereinafter the *1961 Convention*).

The Kyrgyz Republic adopted the *Law on Refugees* in 2002, which was last amended in 2012.<sup>1</sup> It contains an extended definition of a refugee that includes those who flee from civil wars and inter-ethnic conflicts. The State Migration Service (SMS) is the state entity responsible for refugee status determination. Overall, refugee issues remain low on the agenda of the Government. In addition to the abolishment of territorial structures of SMS in 2016, the SMS Refugee Unit was significantly downsized and merged with another unit dealing with ethnic returnees (*kairylmans*) in the beginning of 2018, thus affecting implicitly the quality and prioritization of processing of asylum applications.

As of January 2019, the Kyrgyz Republic hosts 333 refugees. 187 refugees were recognized by the State under the *1951 Convention* and the *Law on Refugees*, whereas 146 refugees were recognized on an individual basis under UNHCR's mandate. The majority of the refugees originate from Afghanistan (223), with smaller numbers from Syria (77), Ukraine (19) and other countries (14). Among the 333 refugees, 137 are female, while 196 are male. The Kyrgyz Republic hosts 109 asylum-seekers. The majority of asylum-seekers originate from Afghanistan (34) and Turkey (31), with smaller numbers from Syria (14), Uzbekistan (10) and other countries (20). 70 asylum-seekers are male and 39 are female.<sup>2</sup>

The majority of the refugees have lived in the country (almost all in Bishkek) for more than five years. Fluent in a local language, nearly all refugees are socially and culturally well-integrated in the local community. Only the refugees recognized by the government enjoy basic rights including the right to work and access to health care and education; those who were recognized by UNHCR do not enjoy these rights as they lack legal status in the country. UNHCR has actively explored pathways to regularize their status in consultation with the relevant authorities in the Kyrgyz Republic.

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<sup>1</sup> Law on Refugees, available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=447edc5d4&skip=0&query=law%20on%20refugees&coi=KGZ>

<sup>2</sup> UNHCR Annual Statistical Reports, available at [popdata.unhcr.org](http://popdata.unhcr.org).

The refugee status determination (RSD) process conducted by the Government is heavily influenced by national security considerations. The Government increasingly views the granting of asylum as a political act, not as a humanitarian act. Asylum applications lodged by certain nationals (from China, Turkey and Uzbekistan) have been kept pending for years without an opportunity of interviews. UNHCR has no role to play in the state RSD procedures.

As for statelessness, the Kyrgyz Republic is the only country in Central Asia that has undertaken a nation-wide registration campaign to measure the scale of statelessness and reach out to stateless people and those who are at risk of it. Since 2014 when the registration campaign was launched, 13,707 persons under the UNHCR's mandate on statelessness have been identified in the country. As of January 2019, all but 548 persons were assisted to acquire or confirm a citizenship.

Nationality and citizenship issues are governed primarily by the *Constitution of the Kyrgyz Republic*<sup>3</sup> and the *2007 Law on Citizenship*, which was last amended in 2016.<sup>4</sup> The State Registration Service (SRS) and its territorial units in the respective provinces are responsible for registering stateless persons and deciding on citizenship applications. The SRS is currently in the process of revising the national registry system and bringing it in compliance with international standards.

The *2007 Law on Citizenship* provides Kyrgyz nationality to children born to stateless persons or children born in the Kyrgyz Republic and whose parents are unknown. Children born to parents with undetermined nationality can acquire the Kyrgyz nationality only once their parents' statelessness status is formally confirmed and they obtain relevant documentation. Nonetheless, according to UNICEF data,<sup>5</sup> 97.7 per cent of births of children under age five in Kyrgyzstan have been registered. It is estimated, however, that over 18,000 children under the age of five lack birth registration<sup>6</sup> which places them at greater risk of not having their fundamental rights fulfilled. In January 2019, UNICEF and UNHCR jointly organized a roundtable for Parliamentarians in Bishkek to advocate for legislative changes to ensure that all children born in Kyrgyzstan are registered immediately after birth irrespective of the legal status of their parents.

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 117.138:** “Adopt norms and procedures to ensure the implementation of the principle of non-refoulement as established by the 1951 Convention relating to the Status of Refugees” (Argentina)

UNHCR commends Kyrgyzstan for having passed new legislation governing criminal procedure and penal enforcement that removes penalization for illegal stay. The new legislation came into force on 1 January 2019.

### **Additional positive developments**

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<sup>3</sup> Constitution of the Kyrgyz Republic, adopted on 27 June 2010, available at [www.legislationline.org/documents/id/5045](http://www.legislationline.org/documents/id/5045)

<sup>4</sup> Law on Citizenship of Kyrgyzstan, available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=40fe4f3e4&skip=0&query=law%20on%20citizenship&coi=KGZ>

<sup>5</sup> Kyrgyzstan: Multiple Indicator Cluster Survey (MICS) carried out in 2014 by the National Statistics Committee with the support of UNICEF; available at <https://www.unicef.org/kyrgyzstan/reports/kyrgyzstan-multiple-indicator-cluster-survey>

<sup>6</sup> UNICEF: In Kyrgyzstan as much as 18,000 children are invisible, <https://www.unicef.org/kyrgyzstan/press-releases/kyrgyzstan-much-18000-children-are-invisible>

UNHCR commends the steps taken by the Kyrgyz Government to address the problem of statelessness in the country. UNHCR appreciates the collaboration within the Inter-Agency Working Group comprised of key ministries, NGO partners and UNHCR as it undertook an extensive gap analysis of the national legislation governing statelessness and nationality issues. This analysis revealed a number of legislative gaps on issues related to birth registration and safeguards to prevent children born and living in its territory from becoming stateless. The findings of the analysis were presented to the Parliament and Government. As a result, several legal reforms including the *Law “On Civil Acts”*, *Law “On Legal Status of Aliens in the Kyrgyz Republic”* and the civil registry are in progress in the area of birth registration and prevention of statelessness. Moreover, UNHCR welcomes the Government’s support to the registration campaign launched in 2014 whereby 13,707 persons under the UNHCR’s mandate on statelessness were identified in the country with the absolute majority of them being resolved (as of July 2019).

### III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

#### **Challenges linked to outstanding 2<sup>nd</sup> cycle UPR recommendations**

##### **Issue 1: Fair and non-discriminatory asylum procedures, in particular to ensure non-refoulement**

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 117.138: “Adopt norms and procedures to ensure the implementation of the principle of non-refoulement as established by the 1951 Convention relating to the Status of Refugees” (Argentina)**

The *Law on Refugees* states that an asylum-seeker “shall be provided a real opportunity” to present his refugee claim to the competent authority (Article 4). According to paragraphs 8 to 15 of the Provision on Work with Refugees, this process includes immediate registration of an asylum application with issuance of an asylum-seeker’s certificate valid for three months with further extension for the period of RSD, including appeal. UNHCR notes that, despite some progress being achieved in recent years, there are several areas where the authorities could make further improvement, including in respect to allocation of resources, use of the country of origin information, gender considerations, and interpretation of the refugee definition. Moreover, the referral mechanism of the asylum-seekers from the border authorities to the competent authorities for refugees is inadequate. Delays in registration or even cases of non-admission of asylum claims without proper inquiries in individual cases are frequent and may put individuals at risk of *refoulement*. As per the national legislation, asylum-seekers can appeal negative RSD decisions. However, none of the negative asylum decisions has been overturned in the judiciary in 2018.

#### **Recommendations:**

UNHCR recommends that the Government of the Kyrgyz Republic:

- (a) Ensure timely registration of all asylum applications with issuance of respective state documentation;
- (b) Assess all asylum applications fairly and without discrimination irrespective of their country of origin, ethnic background or manner of entry in the Kyrgyz Republic;
- (c) Strengthen the referral mechanism of asylum-seekers from the border entry points to the State Migration Service;

- (d) Enhance efforts to ensure that the competent authorities, judges, prosecutors and lawyers are trained and have adequate resources in order to enable them to properly apply the *1951 Convention* in refugee cases;
- (e) Consider inclusion of UNHCR in an advisory role to state RSD process in line with the *1951 Convention* to strengthen the implementation of the national asylum law; and
- (f) Allocate sufficient financial and human resources targeted at the implementation of the refugee procedures.

### **Additional protection challenges**

#### **Issue 2: Access to social security for refugees and asylum-seekers, in particular health care**

In the Kyrgyz Republic, health services to refugees and asylum-seekers are available for a fee. The health insurance premiums that refugees and asylum-seekers need to pay are several times higher than those for nationals, making it beyond reach for the most of UNHCR's persons of concern. UNHCR therefore continues to purchase annual insurance policies from the Mandatory Health Insurance Fund (MHIF) for Mandate refugees, asylum-seekers and a number of Convention refugees with specific needs and vulnerability so that they can receive adequate health care. Refugees recognized by the Kyrgyz government are not allowed to contribute to the national pension system. Moreover, asylum-seekers do not have the right to work. There is no financial support or public accommodation provided by the Kyrgyz Government while asylum claims are pending consideration.

#### **Recommendations:**

UNHCR recommends that the Government of the Kyrgyz Republic:

- (a) Ensure that the national legislation governing matters of social services (access to pension, health care, social benefits) are in line with the *1951 Convention*; and
- (b) Ensure that the national legislation provides refugees and asylum-seekers access to medical assistance on an equal basis with nationals of the Kyrgyz Republic.

#### **Issue 3: Deprivation of citizenship**

Following the amendment to the *Constitution of the Kyrgyz Republic* in December 2016 that permitted deprivation of nationality (Article 50), the Government initiated drafting a new *Constitutional Law on Deprivation of Citizenship* which prescribes the possibility of deprivation of citizenship on the grounds of participation in acts related to terrorism, funding terrorist activities, treason, espionage, separatism, extremism, and fighting as mercenaries.

According to the draft Law, the decision on deprivation of citizenship is to be made by courts as part of the criminal proceedings. The decision is implemented by SRS. In view of seriousness of the consequences for the person concerned, UNHCR underlines that any decision on the deprivation of citizenship should be made on the condition that no person is rendered stateless, also ensuring the right of a person to challenge the decision in court and to a fair trial with adequate due process safeguards.

#### **Recommendations:**

UNHCR recommends that the Government of the Kyrgyz Republic:

- (a) Ensure that the new draft Constitutional Law on Deprivation of Citizenship includes effective safeguards against statelessness and provides for due process and the right to fair trial.

#### **Issue 4: Accession to the Statelessness Conventions**

The Kyrgyz Republic expressed a commitment in the outcome document of the third High Level Steering Meeting on Prevention and Reduction of Statelessness in Bishkek on 15 December 2017 to continue work on accession to the two *Statelessness Conventions* and to establish a formal status determination procedure for stateless persons, with a view to facilitating timely resolution of statelessness in the country.

The *1954 Convention* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance. The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights instruments that stipulate the right to a nationality. An increase in the number of State parties to the two *Statelessness Conventions* is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

#### **Recommendations:**

UNHCR recommends that the Government of the Kyrgyz Republic to:

- (a) Expedite the ongoing endorsement of the Stateless Status Determination Procedure to ensure the protection and enjoyment of rights of stateless persons until such time as they acquire a nationality; and
- (b) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

July 2019  
UNHCR

## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

### KYRGYZSTAN

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to KYRGYZSTAN.

#### I. Universal Periodic Review (Second Cycle – 2015)

Recommendation <sup>7</sup>	Recommending State/s	Position <sup>8</sup>
<b>Refugees, asylum-seekers, internally displaced and stateless persons</b>		
117.138. Adopt norms and procedures to ensure the implementation of the principle of non-refoulement as established by the 1951 Convention relating to the Status of Refugees;	Argentina	Supported
<b>Prevention of torture and ill-treatment</b>		
118.25. Transparently investigate allegations of ill-treatment committed by law enforcement officers during and after the June 2010 events and take clear steps to combat the arbitrary detentions and torture of detainees, especially of the ethnic Uzbek population in the southern regions;	Norway	Noted
<b>Children`s Rights</b>		
117.100. Simplify the procedure for birth registration and ensure that all children born in its territory are registered and provided with birth certificates, irrespective of the availability of their parents' identity documents or residence permits;	Albania	Supported
117.101. Take the necessary measures for the proper civil registration of migrant children and birth registration of children of migrantsswdsdr5;	Mexico	Supported
<b>Freedom of religion and freedom of expression</b>		
117.108. Guarantee freedom of assembly and association in line with ICCPR;	Germany	Supported

<sup>7</sup> All recommendations made to Kyrgyzstan during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Kyrgyzstan" (9 April 2015), A/HRC/29/4, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/074/40/PDF/G1507440.pdf?OpenElement>.

<sup>8</sup> Kyrgyzstan's views and replies, in English, can be found in: *Addendum* (22 June 2015), A/HRC/29/4/Add.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/131/40/PDF/G1513140.pdf?OpenElement>.

117.110. Ensure that attacks on journalists are promptly investigated and the perpetrators held accountable, as recommended in the first cycle;	Slovenia	Supported
119.21. Refrain from adopting any legislation, such as the draft law on “foreign agents” and the draft law on “dissemination of information about non-traditional sexual relations” that will limit the fundamental rights to freedom of expression, association and assembly;	Denmark	Noted
<b>Non-discrimination</b>		
117.106. Ensure that its legislation protects the rights of everyone, regardless of their sexual orientation and gender identity, minority status or any other basis, to freedom of expression and assembly, freedom from discrimination and equality before the law;	Finland	Supported
117.137. Adopt additional measures to protect religious, cultural and ethnic minorities subjected to discrimination;	Argentina	Supported
118.24. Adopt and implement legislation ensuring effective protection of LGBT people, inter alia on the prohibition of discrimination and hate crimes, a confidential complaints mechanism and protection of LGBT minors;	Netherlands	Noted

## II. Treaty Bodies

### Committee on the Elimination of Racial Discrimination

Concluding Observations, 2018, [CERD/C/KGZ/CO/8-10](#)

#### **Stateless persons and asylum seekers**

29. The Committee, while noting the measures taken to reduce the number of stateless persons in the State party, remains concerned that more than 800 cases of individuals with undetermined nationality remain unresolved. It is also concerned that existing procedures for determining statelessness do not conform to international standards. The Committee is further concerned that provisions on the deprivation of citizenship included in the draft law on citizenship lack safeguards to protect against statelessness. The Committee is concerned about information received that, under the amended provisions of the Law on External Migration, forcible deportation may be carried out without a court order if the person concerned is repeatedly charged with illegal stay (art. 5).

**30. The Committee recommends that the State party continue and strengthen its efforts to resolve the remaining statelessness cases. Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens, and No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention, the Committee also recommends that the State party:**

- (a) Establish a formal and simple statelessness determination procedure to enable all stateless persons, without discrimination, to have their status ascertained;**

- (b) Ensure that the new draft law on citizenship include safeguards against statelessness in the event of deprivation of citizenship, and provide for due process guarantees, including the possibility to appeal against decisions to remove citizenship;**
- (c) Amend the Law on External Migration to ensure that the provisions on the removal of non-citizens from its jurisdiction do not discriminate on the grounds of race, colour or ethnic or national origin and that non-citizens have equal protection against refoulement;**
- (d) Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

### **Committee on Economic, Social and Cultural Rights**

Concluding Observations, 2015, [E/C.12/KGZ/CO/2-3](#)

#### **Access to social security**

15. The Committee is concerned about the lack of universal social security coverage in the State party. The Committee is also concerned that the amounts of old-age pensions are particularly low. Furthermore, the Committee is concerned that refugees and asylum seekers do not have access to adequate social assistance or basic health care (arts. 9 and 11).

**The Committee recommends that the State party step up its efforts to establish a social protection floor as an initial step towards a universal comprehensive social security system. In this regard, the Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security, and its 2015 statement on social protection floors (E/C.12/2015/1). The Committee also recommends that the State party progressively increase the amounts of old-age pensions so as to ensure that pensioners and their families enjoy a decent standard of living. The Committee further recommends that adequate social assistance and basic health care are extended to refugees and asylum seekers.**