**Submission from the Osh branch of the Public Association "IC Interbilim" to the UN Committee on the Elimination of Racial Discrimination (CERD)**

**95th session (23 April to 11 May 2018)**

**Kyrgyzstan**

**28 March 2018**

**Authors:** Gulgaky Mamasalieva, Alexander Bekmurzin, Kyrgyzstan

**NGO:** Osh branch of Public Association "International Center Interbilim",

e/mail: interbilim.osh@gmail.com

*Dear Committee members we wish to draw your attention to cases of discrimination ethnic minorities in the south of Kyrgyzstan related with eviction, seizure their houses and land plots by state and municipal authorities for the purposes of city development, and in relation of ethnic minorities appeals to state and municipal bodies and their accessing to information.*

***Brief description of the situation:***

1. In 2012-13 years in Osh city (city in the south of Kyrgyzstan) after an inter-ethnic conflict in June 2010, local authorities launched a campaign of demolishion and seizure (redemption) 22 houses and land plots of ethnic minorities on Monueva street, where 132 people suffered from violence during above mentioned conflict lived. The seizure was initiated on the basis of city kenesh (council) deputies decision and the master plan of Osh city in order to regulate traffic in the city. The process of seizure (redemption) was initiated in post-conflict period, what is not recommended by international standards, especially toward groups of people affected during the conflict.
2. In 2016, in Jalal-Abad city (second biggest city in the south of Kyrgyzstan), along the central Lenina street, parts of land plots of 38 households of ethnic minorities were subjected to forced seizure by Mayor`s office. As a result rights 185 inhabitants of the street were violated. In both cases, citizens were not able to restore households equivalent to the previous ones. When applying to local authorities in order to voice their interests, people belonging to ethnic minorities were subjected to various types of discrimination.
3. In the south of Kyrgyzstan, it was property and households of ethnic minorities that were mainly subjected to the demolition and expropriation, and this process were accompanied by threats, intimidation, lack of dialogue and access to information.
4. Women, children, youth, elderly and other vulnerable groups are particularly affected by the practice of forced eviction. The basis for many problems is the lack of respect for human rights, minority rights, accountability of authorities which leads to the feelings of desperation, outrage, alienation, isolation and injustice. Studies of international organizations show that discrimination of ethnic minorities also includes exclusion from public affairs and opportunities in public sphere[[1]](#footnote-1). Forced seizure of households in Osh city (in 2012) and in Jalal-Abad (in 2016) shows inaction of state bodies in preventing and combating racial discrimination and building sustainable peace. Injustice and insecurity have a negative impact on whole society. Negative and criminal groups can use such a tense situation for their political and racist benefits.
5. Violations in Osh city were mentioned in the report of the Norwegian Refugee Council to the Committee on the Elimination of Racial Discrimination regarding the situation of discrimination in Kyrgyzstan in 2013[[2]](#footnote-2). In 2015 NGO “IC Interbilim” submitted an alternative report to the UN Committee on Economic, Social and Cultural Rights[[3]](#footnote-3) on the demolition and expropriation of houses and land plots of ethnic minorities in the south of Kyrgyzstan[[4]](#footnote-4). In its concluding observations the Committee with concern noted the lack of appropriate consultations and compensations in case of forced eviction (paragraph 19 of the Concluding Observations of the Committee on Economic, Social and Cultural Rights to the combined second and third periodic reports of Kyrgyzstan).
6. In 2016, Kyrgyzstan received a joint letter from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the right to non-discrimination in this context, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues on the violation of the rights of ethnic minorities in expropriation in Jalal-Abad city[[5]](#footnote-5).

Despite the recommendations of international bodies to bring legislation and practices in the Kyrgyz Republic in line with international standards in the field of the right to adequate housing, laws and practices have not been changed and expropriations with violation rights of ethnic minorities to housing and property continue. Demolitions in the Lenin street of Jalal-Abad city in 2016 can serve as an example.

***I. Demolitions houses and expropriations land plots of ethnic minorities in Osh city***

Monitoring of expropriation (redemption) 22 houses belonged to ethnic minorities on Monueva street in Osh in 2012 brought out the following violations:

1. Ethnic minorities were confined in getting necessary information timely and in understandable language. Notifications about expropriation (redemption) houses were not provided timely to the dwellers in order to negotiate the terms of the redemption, to challenge questions in case of disagreement and to find alternative houses. The local authorities of Osh city provided notifications two months prior to the demolition, specifying the terms of the expropriation, sum of redemption and decision of the local authorities on the reconstruction of the street. Notifications were provided to dwellers in Russian, which is not the native language of Uzbek minorities. This limited dwellers in understanding details and confused them. Although the redemption agreements were concluded in official Russian language, authorities ought to have provided translation of the proposed contract into native Uzbek language for accessibility to ethnic minorities.

2. In notification letters of expropriation from Mayor`s Office, the amounts of redemption were specified, what limits the right of homeowners (ethnic minorities) to participate in establishing the redemption price of their property. The dwellers were not provided with the protocols of the authorities on the approval of assessed value, methods for appraising of the firm hired by the authorities that determined the cost of land plots and houses. When citizens applied for information, local authorities did not provide it to them, were rude to them and threatened with forced demolition of houses in case of their disagreement. The Office of Municipal Property under the Osh city mayor`s office prepared a contract on the transfer of the land plot to municipal ownership. Contracts did not specify obligations of the local authorities to assist in finding alternative housing and preventing homelessness.

3. Osh city mayor`s office did not want to pay compensation to those whose houses were not properly documented in Architecture organs. Due to the transition of Kyrgyzstan from the Soviet socialist system to a market economy, many construction regulations, construction authorization procedures have been changed and citizens are not informed about new procedures. Most of people have not brought their documents in line with the new regulations. Only after several appeals of "IC Interbilim" to the local authorities commission for appraisal buildings without technical passports was established. The commission included representatives of dwellers and NGOs. Lawyers of NGO "IC Interbilim" were also able to advocate the rights of ethnic minorities and induce local authorities to allocate another land plots for building individual houses. However, these land plots are far from the city center, without access to drinking water and with remote access to social facilities (kindergarten, school, polyclinic). On the land plots provided by Osh Mayor office City for new houses, only 1 family out of 22 has built house so far. This indicates nonequivalence and unattractiveness of the proposed land plots.

*During the expropriation houses of ethnic minorities on Monueva Street in Osh, in 2011- 2012 local authorities violated Article 2, Article 5 p E.3. of the International Convention on the Elimination of All Forms of Racial Discrimination.*

***II. The situation regarding expropriation houses of ethnic minorities in Jalal-Abad city in June 2016.***

In 2016 local authorities of Jalal-Abad city initiated widening of the central Lenin Street and expropriation parts of land plots and the buildings of 38 homeowners, ethnic minorities, for unloading vehicle traffic. In 38 houses 185 ethnic Uzbeks lived.

1. Notifications to dwellers about expropriation land plots and demolition of buildings were not provided in advance to negotiate terms of redemption, to dispute issues in case of disagreement. Jalal-Abad city mayor`s office provided notifications about demolition 5 days prior to demolition. Notification letters were provided to dwellers of Uzbek ethnicity in Russian without translation into their native language.

2. Notification letters specified sums of redemption. Dwellers did not participate in the appraisal of their property, were not provided with Minutes of the independent appraisal firm that determined the cost of the property to be redeemed.

3. Dwellers wrote an official letter to Jalal-Abad Mayor's office with a refusal of the redemption conditions. However, on 2 June 2016 the Mayor`s office, without consent of the owners and without conclusion of redemption contract, with heavy construction machines started demolishing fences and buildings of 38 households belonged to ethnic minorities. Mayor office involved militia (police) to demolition for intimidation dissenters. Actions of Mayor`s Office violated laws of the Kyrgyz Republic[[6]](#footnote-6) and rights of ethnic minorities to housing. The local self-government of Jalal-Abad deliberately destroyed the households of ethnic minorities in order to put them in an even more vulnerable and discriminatory position. In the absence of house fences, it could not take too long for ethnic minorities to resist and not to agree with the redemption price proposed by the mayor`s office which was five times lower than the market price (per 1 square meter authorities offered 18 USD). Although Article 68 of the Land Code of the Kyrgyz Republic provides that redemption price of a land plot must include market value of the right to land and of buildings and structures located on the land, and the damages inflicted on the land owner/user by termination of the right to land plot, including the damages related with early termination of his obligations to third parties. Also, legislation of the Kyrgyz Republic prohibits the expropriation of land, for maintenance of a dwelling house and personal subsidiary plot [[7]](#footnote-7). However, despite these rules, land plots of ethnic minorities for maintenance of a dwelling house were expropriated and without adequate compensation. This fact indicates illegal actions of the Jalal-Abad`s local self-government organs against ethnic minorities. Unfortunately, none of Jalal-Abad mayor`s office officials were punished for their illegal actions, which demonstrates the vulnerability of ethnic minorities and the impunity of the authorities when it comes to minorities.

4. Three homeowners filed a lawsuit in court for low compensation. NGOs "IC Interbilim" and "Justice" represented their interests in litigations free of charge. Legislation of Kyrgyzstan does not provide special remedies for protection rights to housing. This puts victims, in particular low-income ethnic minorities, in an even more vulnerable position. Dwellers are forced to pay at their own expenses for an independent appraisal of property in order to bring the illegal actions of the authorities before the court and to pay for a lawyer. During the trial, two of the three who went to the court withdrew their complaints from the court and signed a disadvantageous contracts with the mayor`s office. Dwellers of houses were forced to agree with conditions of local authorities for avoiding confrontation with them and not to get into an even more difficult situation while using other local social services such as electricity, gas, medicine, education. Representatives of the local authorities threatened to cut off electricity in case of disagreement with them.

5. Lawyers of the non-governmental organization PA "Justice" and director of the Osh branch of the NGO "IC Interbilim", who defended the rights dwellers (ethnic minorities) of Lenin Street in Jalal-Abad, were subjected to persecution, abuse and insult from authorities, particularly from the State Committee of National Security and Jalal-Abad Mayor office. The insults were of a public nature. Mayor of Jalal-Abad city publicly insulted the director of Osh branch of NGO “Interbilim” Gulgaky Mamasalieva during the provision of legal advice to dwellers, calling her the enemy of the city[[8]](#footnote-8). After this incident, many dwellers had to receive consultations from NGOs behind closed doors. Supporters of state and local authorities, representatives of the titul ethnic group, in social networks publicly mocked and censured actions of NGO leaders, saying that they are traitors of their nation. Mayor’s illegal actions were appealed against to President and Government offices of Kyrgyzstan, but unfortunately no reaction followed from them. Lawyers of the human rights organization "Justice" in Jalal-Abad also were subjected to several threats in oral form from authorities. Officers of the State Committee of National Security addressed them during the provision of legal assistance to residents and accused them of provoking conflict between authorities and Uzbek population. State and pro-governmental mass media showed NGO`s representatives in a unfavorable light. Taking into account the recent interethnic conflict in June 2010 in the south of Kyrgyzstan, insults towards NGO`s representatives on sexual and ethnic grounds arouse serious concerns.

*During demolitions and expropriation land plots of ethnic minorities in Jalal-Abad in June 2016 authorities violated articles 2, 5, 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination.*

***III. Restriction rights of ethnic minorities’ in access to information***

**1. Facts of concern**

Our public association concerned over restriction of ethnic minorities in Osh city (southern region of Kyrgyzstan), in access to information from state and local self-government bodies in understandable official Russian language and in full participation in public decision-making process, in particular, on matters of local importance.

Osh branch of the Public association "IC Interbilim" itself also periodically faces the barriers from local self-government and State bodiess in providing required information. Our concerns are as follows:

1. In the process of our work, on behalf of Public association “IC interbilim” we regularly communicate with local self- government and state bodies in Osh city. Communications include submission written requests, applications, complaints, appeals from “IC Interbilim”. A significant part of appeals are submitted in official Russian language, but the responses to them in most cases (approximately 90%) are in state - Kyrgyz language.

2. Osh branch of Public association “IC Interbilim” provides legal assistance to ethnic minorities and in this regard receives complaints from them that local self-government bodies (and in some cases to local state bodies) answer written appeals and requests of ethnic minorities in Kyrgyz language, though minorities appeal in official - Russian language. As a result ethnic minorities face the problems in correct and accurate understanding of content of the responses they receive.

3. Osh city kenesh (city council) mainly adopts local normative legal acts in state Kyrgyz language and does not post their translated version on its web site. According to the data from the Osh city kenesh`s website, since 2014 till February 2018, only one third of 165 local normative acts adopted by city kenesh were available on its web site in official Russian language [[9]](#footnote-9). Over the last year, the ratio of local normative acts adopted by Osh city kenesh in official Russian language posted on its web site has decreased by 25 percent.

**2. Legal assessment**

• As indicated in the combined eighth, ninth, tenth periodic report of the Kyrgyz Republic to the Committee on the Elimination of Racial Discrimination, the Russian language is official language in Kyrgyzstan. Official status of Russian language in Kyrgyzstan guaranteed by the Constitution and the law "About official language of Kyrgyz Republic". Article 3 of the law on official language provides that citizens of Kyrgyzstan can appeal to state and local self-government authorities in official language. In addition, article 9 of the Law "On the procedures for consideration of citizens` appeals" states that citizens are entitled to submit their appeals in any language and responses from state and municipal authorities should be in language of appeal. In case, if it is impossible, response shall be given in State or official language. It is clear from the article of the law that to appeals in official Russian language, responses must be in the same official Russian language. But nonetheless, in most cases, when applying to the local self-government bodies of Osh city in official Russian language, responses are provided to citizens in state Kyrgyz language.

To our appeal to the local self-government bodies of Osh city about the necessity of responding in official Russian language, officials claimed that they would continue to respond in state language, referring to the article 13 of the law of Kyrgyzstan "About State Language", which provides that local self-governments and state bodies issue official documents in state language, and, if necessary, in official language. However, authorities do not recognize that the appeals of ethnic minorities is the very case when it is necessary to respond in official Russian language which is understandable to them.

Article 13 of the law "About state language" is in conflict with Article 9 of the law "On the procedures for consideration of citizens' appeals". In this case, the latter is applicable, since it directly regulates this field of legal relations.

It should be noted that legislation of Kyrgyzstan in the field of access to information contains guarantees and principles of the right to access to information. The Law of the Kyrgyz Republic "On access to information held by state and local self-government bodies of the Kyrgyz Republic" provides for principle of "accessibility". This principle implies not only physical accessibility, but also the accessibility of information for the comprehension of all citizens. Therefore, if the information from the State and municipal bodies provided in incomprehensible language, despite the fact that the appeal was in official language, the principle of "accessibility" is violated.

• Lack of local normative legal acts posted in official Russian language on the official web site of Osh city kenesh restricts the rights of ethnic minorities (who make up 50 % of the population of Osh city) in access to information, in participation in public and political affairs of the city.

According to the law of the Kyrgyz Republic "On official language" normative legal acts are adopted in state and official languages, but providing that the adoption of normative legal acts by representative bodies of local self-government exclusively in state language is allowed if on the territory of the respective administrative-territorial unit lives prevailing number of persons who have a command of state language and if there is a relevant decision of the representative body of local self-government.

Osh city kenesh (local council) did not make any decisions on the exclusive use of state language in its regulations-making activities. Moreover, half of the population of Osh city are made up of ethnic minorities[[10]](#footnote-10), for many of whom the Russian language is understandable, accessible tool of expressing their thoughts and opinions.

In this respect, Osh city kenesh (city council of deputies) should take an example from Bishkek city kenesh (Bishkek is the capital of the Kyrgyz Republic), where all adopted resolutions are available, both in state and in official language on its web page.

Kyrgyzstan, as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, does not fulfill its obligations concerning the rights and principles set forth in the Convention, namely, in article 2, paragraph 1 (A), of the Convention: "Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation".

Taking into consideration general recommendations of the Committee on the Elimination of Racial Discrimination adopted at the XX session, which state that the list of rights specified in the article 5 of International Convention on the Elimination of All Forms of Racial Discrimination is not exhaustive we believe that local self-government organs of Osh city, by not providing information to the individuals in a language of their request, particularly in official Russian language, indirectly restrict the right to access to information on language grounds.

**Recommendations:**

1. The Government of Kyrgyzstan and local authorities, jointly with civil society, should monitor the situation of families of ethnic minorities whose houses and lands were subject to forced expropriation (redemption) by the local authorities in Osh (Monuyeva Street) in 2011-2012 and in Jalal-Abad (Lenin street) in 2016, their resettlement and living conditions in new place which must comply with the standards of adequate housing. Representatives of the Government of Kyrgyzstan and local authorities should meet with ethnic minorities who were displaced after demolitions in Osh in 2011-2012 and in Jalal-Abad in 2016 for the purpose of getting feedback on their living conditions and assist them in resolving problems caused by their displacement.

2. To bring officials to account for unlawful actions and violations of the rights of citizens and ethnic minorities, during the expropriation land plots and houses in Osh city in 2011-2012 on Monueva street and in Jalal-Abad in 2016 on Lenin street as well as to restore the rights of citizens by providing commensurate compensation and houses to them.

3. To stop the practices of persecution, threats, insults and intimidation towards the human rights defenders and human rights organizations when they advocate rights of citizens, in particular ethnic minorities.

4. To put an end to the practices of discrediting and portraying activities of human rights defenders and human rights organizations in Kyrgyzstan in a bad light to the society.

5. The state should take measures to simplify procedures for obtaining and formalizing authorization (permit-giving) documents for households, lands and construction of houses, especially for vulnerable groups of citizens.

6. To exclude the practices of expropriation and redemption of individual housing in the Kyrgyz Republic for state, municipal and public needs, until the gaps in the legislation on the procedure of expropriation are filled in accordance with international standards of providing adequate housing or compensation. Grant the right and access to ethnic minorities during the expropriation (redemption) of their land and houses for public needs, to participate in the decision-making process by state and municipal bodies, including when determining the amount of compensation, and to obtain information in a language which is comprehensible to minorities.

7. To introduce amendments and additions into the legislation of the Kyrgyz Republic which would provide for accountability of officials, in case of failure to fulfill the obligation in providing commensurate and fair compensation for lands and houses to be expropriated.

8. To introduce into the legislation of the Kyrgyz Republic the right of the owner to demand the provision of an equivalent land plot and household instead of the one to be expropriated which is the only owner's dwelling.

9. Kyrgyzstan needs to harmonize normative legal acts and eliminate conflicts in normative legal acts in the field of application state and official language that can be ambiguously interpreted by state and municipal officials and can lead to restriction of the rights of ethnic minorities in access to information and to participation in public and political affairs, at the local and the state level;

10. Make amendments to the law “On official language of the Kyrgyz Republic” and the law “On normative legal acts” and take measures to ensure that normative legal acts adopted by local self-government bodies, where on the territory of the respective administrative territorial unit ethnic minorities live, are also translated and published into official Russian language, and are equally available in both state and in official languages on the respective web resources;

11. To take measures to ensure that the responses of state and municipal bodies to citizens' appeals are given in language of the appeal, that is, when submitting in official Russian language the responses must also be given in official Russian language which is accessible to ethnic minorities.

1. United Nations Guide for Minorities [↑](#footnote-ref-1)
2. http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KGZ/INT\_CERD\_NGO\_KGZ\_13719\_E.pdf [↑](#footnote-ref-2)
3. <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fKGZ%2f19879&Lang=ru>

   [↑](#footnote-ref-3)
4. http://tbinternet.ohchr.org/\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fKGZ%2fCO%2f2-3&Lang=ru [↑](#footnote-ref-4)
5. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3214 [↑](#footnote-ref-5)
6. Art.68 Land Code of the Kyrgyz Republic : In case of disagreement of the land owner/user with expropriation (redemption) or its conditions the authorized agency shall have the right to apply to the court. [↑](#footnote-ref-6)
7. Paragraph 6, Article 32 of Land Code of the Kyrgyz Republic [↑](#footnote-ref-7)
8. <http://reporter.akipress.org/news:53693> [↑](#footnote-ref-8)
9. https://www.oshkenesh.kg/session/index [↑](#footnote-ref-9)
10. http://stat.kg/ru/statistics/naselenie/ [↑](#footnote-ref-10)