

# Central Asian Network on Statelessness and Institute on Statelessness and Inclusion

## Joint Submission to the Human Rights Council at the 35th Session of the Universal Periodic Review

### Kyrgyzstan

#### Introduction

1. The Institute on Statelessness and Inclusion (ISI) and Central Asian Network on Statelessness (CANS) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Kyrgyzstan.
2. This submission focuses on former USSR passport holders in Kyrgyzstan, so-called “Border Brides”, Refugee Status Determination Procedures, Deprivation of Citizenship and Birth Registration.
3. ISI<sup>1</sup> is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 34<sup>th</sup> UPR Sessions.
4. CANS is a network launched in June 2016, with a membership of 11 NGOs and activists working in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. CANS works to prevent and reduce statelessness through: Legal aid and protection, in particular by pursuing landmark legal precedents for the entire country; advocacy efforts for legislative amendments and closing legislative gaps in order to prevent any new cases of statelessness from occurring; and actively contributing to and promoting good practices for the protection of stateless people in the Central Asia region.

#### Kyrgyzstan's Universal Periodic Review Under the First and Second Cycle

5. Kyrgyzstan was previously reviewed during the 8<sup>th</sup> session in 2010 and the 21<sup>st</sup> session in 2015.
6. In its State Report before its previous Universal Periodic Review in 2015,<sup>2</sup> Kyrgyzstan provided the following examples of action taken to protect stateless persons:
  - I. Paragraph 33 of the State Report provides that:

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<sup>1</sup> For more information about the Institute on Statelessness and Inclusion, see: [www.institutesi.org](http://www.institutesi.org).

<sup>2</sup> A/HRC/WG.6/21/KGZ/1

*"Citizens, stateless persons and foreign nationals in Kyrgyzstan all have the constitutional right to judicial protection of their rights and freedoms."*

II. Paragraph 43 of the State Report provides that:

*"A Parliamentary Committee on Human Rights, Constitutional Law and State Structure has also been established, with responsibility for electoral law, notaries and the legal profession and the basic constitutional and human rights and freedoms. During 2013, it reviewed 86 bills aimed primarily at regulating the legal status of citizens, guaranteeing human rights and freedoms, democratizing the political system and modernizing the fundamental principles governing the organization of State power."*

III. Paragraphs 94 and 95 of the State Report provide that:

*"Given the vulnerable situation of internal migrants who, under the existing registration system, do not have access to the full range of health and education services, measures have been taken to make it easier for them to obtain identity documents. New passport, visa and registration offices were opened during the reporting period, their tasks including issuance of the documents required to obtain a passport, as well as of passports to persons registered in other regions of the country. Internal migrants, persons without a permanent place of residence, foreign nationals, Stateless persons and refugees can apply for primary health-care provision if resident in one place for more than three months. Different provisions apply to pregnant women and children under the age of 5, who receive medical care regardless of their length of residence in the area concerned. As regards access to education for the children of internal migrants, a three-month period of grace is allowed for documents to be recovered for any child entering an educational establishment who does not have a birth certificate."*

7. Only two State Parties made recommendations related to legal identity, the right to nationality and statelessness in Kyrgyzstan. Both recommendations were accepted by Kyrgyzstan.

I. Albania recommended that Kyrgyzstan:

*"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".<sup>3</sup>*

II. Mexico recommended that Kyrgyzstan:

*"Take the necessary measures for the proper civil registration of migrant children and birth registration of children of migrants".<sup>4</sup>*

8. In the Report of the Working Group on the Universal Periodic Review,<sup>5</sup> the delegation of Kyrgyzstan provided an example of action taken by the State to protect stateless persons. Paragraph 25 of the Working Group Report provides that:

*"In 2014, the Government had updated the National Action Plan on the Prevention and Reduction of Statelessness, which included specific actions for the ratification of*

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<sup>3</sup> <https://www.upr-info.org/database/>.

<sup>4</sup> Idem.

<sup>5</sup> Report of the Working Group on the Universal Periodic Review: Kyrgyzstan, A/HRC/29/4.

*the Convention on the Reduction of Statelessness and for harmonization of the legislation with the relevant international standards. The Government had been jointly implementing a project with the Office of the United Nations High Commissioner for Refugees to register stateless persons and persons without identity documents. More than two dozen mobile units had been operating in rural areas, providing legal advice on how to apply for citizenship or for obtaining relevant documents free of charge."*

## **Kyrgyzstan's International Obligations**

9. Kyrgyzstan, as a member State of the United Nations (UN), is obliged by the UN Charter to promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.<sup>6</sup> These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR), including Article 15 on the right to a nationality, many of which are also recognised as principles of customary international law.<sup>7</sup>
10. Kyrgyzstan is not a party to the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness.
11. Nevertheless, Kyrgyzstan has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include the International Covenant on Civil and Political Rights (Art. 24.3), the International Covenant on Economic, Social and Cultural Rights (Arts. 2.2 and 2.3), the Convention on the Rights of the Child and its first and second optional protocols (Arts. 2, 3, 7 and 8), the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5(d)(iii)), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 9) and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Art. 29), and the Convention Against Torture and its Optional Protocol.<sup>8</sup>
12. The Committee on the Rights of the Child recommended to Kyrgyzstan in 2014 that it accedes to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>9</sup> The Committee on the Elimination of Racial Discrimination also recommended to Kyrgyzstan in 2013<sup>10</sup> and 2018<sup>11</sup> that it consider acceding to these two Conventions.
13. In its 2018 Concluding Observations, the Committee on the Elimination of Racial Discrimination also recommended that Kyrgyzstan:<sup>12</sup>

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<sup>6</sup> *Charter of the United Nations*, art 55(c). According to Article 56 of the Charter, it is the obligation of all member states of the UN to take "joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".

<sup>7</sup> Draft Articles on Diplomatic Protection with commentaries' (2006) II(2) *Yearbook of the International Law Commission* 49.

<sup>8</sup> United Nations General Assembly Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Kyrgyzstan*, UN Doc A/HRC/WG.6/21/KGZ1 (Report, 5 December 2014) [7].

<sup>9</sup> *Concluding observations on the combined third and fourth periodic reports of Kyrgyzstan*, Committee on the Rights of the Child, 7 July 2014, CRC/C/KGZ/CO/3-4, [27].

<sup>10</sup> *Concluding observations on the fifth to seventh period reports of Kyrgyzstan*, Committee on the Elimination of Racial Discrimination, 19 April 2013, CERD/C/KGZ/CO/5-7, [22].

<sup>11</sup> *Concluding observations on the combined eighth to tenth period reports of Kyrgyzstan*, Committee on the Elimination of Racial Discrimination, 30 May 2018, CERD/C/KGZ/CO/8-10, [30].

<sup>12</sup> *Concluding observations on the combined eighth to tenth period reports of Kyrgyzstan*, Committee on the Elimination of Racial Discrimination, 30 May 2018, CERD/C/KGZ/CO/8-10, [30].

- I. *“establish a formal and simple statelessness determination procedure to enable all stateless persons, without discrimination, to have their status ascertained;*
- II. *ensure that the new draft law on citizenship includes safeguards against statelessness in the event of deprivation of citizenship, and provides for due process guarantees, including the possibility to appeal against decisions to remove citizenship; and,*
- III. *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.”*

14. Over the reporting period, Kyrgyzstan was also reviewed by Committee on the Elimination of Discrimination against Women (2015), the Committee on Migrant Workers (2015) and the Committee on Economic, Social and Cultural Rights (2015), however no relevant recommendations were made.

## Overview of Kyrgyzstan's Legal Framework for Nationality and Statelessness

15. According to Article 2 of the *Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic*, 21 March 2007<sup>13</sup> (Law on Citizenship), citizenship in the Kyrgyz Republic is regulated by:
- I. the Constitution of the Kyrgyz Republic, 2010 (Constitution);<sup>14</sup>
  - II. international treaties to which the Kyrgyz Republic is a party and which have been entered into force in accordance with relevant legal procedures;<sup>15</sup> and
  - III. the Law on Citizenship and regulations adopted in accordance with it.

### Constitution

16. Article 19 of the Constitution provides that:

*"19.1 Foreign citizens and stateless persons in the Kyrgyz Republic shall enjoy rights and perform obligations equally with the citizens of the Kyrgyz Republic except for cases defined by law or international treaty to which the Kyrgyz Republic is a party.  
19.2 In accordance with international commitments the Kyrgyz Republic shall grant asylum to foreign citizens and stateless persons persecuted on political grounds as well as on the grounds of violation of human rights and freedoms."*

17. Under Article 50.3 of the Constitution, the procedure and conditions for granting citizenship of the Kyrgyz Republic shall be defined by law.

### Law on Citizenship

18. Article 11 of the Law on Citizenship sets out the grounds for obtaining citizenship in Kyrgyzstan. Under Article 11, citizenship of the Kyrgyz Republic is obtained:
- I. as a result of birth;
  - II. as a result of being granted citizenship of the Kyrgyz Republic;
  - III. as a result of revival in citizenship;
  - IV. in accordance with the procedure envisioned by interstate agreements which became

<sup>13</sup> <https://www.refworld.org/docid/4693a5e514f.html>.

<sup>14</sup> [https://www.constituteproject.org/constitution/Kyrgyz\\_Republic\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Kyrgyz_Republic_2016.pdf?lang=en).

<sup>15</sup> The relevant treaties are discussed above at [0] - [Error! Reference source not found.].

legally effective.

19. Citizenship as a result of birth is regulated under Article 12 of the Law on Citizenship, which provides that:

- I. a child whose parents, at the moment of birth, are citizens of the Kyrgyz Republic, is a citizen of the Kyrgyz Republic regardless of his/her place of birth;
- II. if one of the parents of a child is a citizen of the Kyrgyz Republic and the other parent is a citizen of another country, the citizenship of the child, regardless of his/her place of birth, will be determined by the written consent of his/her parents;
- III. if one of the parents of a child is a citizen of the Kyrgyz Republic and the other parent is a person without citizenship, the child is a citizen of the Kyrgyz Republic regardless of his/her place of birth;
- IV. if a child is born in the territory of the Kyrgyz Republic, and the parents of that child are persons without citizenship permanently residing in the Kyrgyz Republic, the child is a citizen of the Kyrgyz Republic; and,
- V. a child that is located in the territory of the Kyrgyz Republic, whose parents are unknown to him/her, is a citizen of the Kyrgyz Republic.

20. Under Article 13.1 of the Law on Citizenship, foreign citizens and persons without citizenship who have reached the age of 18 have the right to apply for citizenship in accordance with the general procedure if they:

- I. have continuously and uninterruptedly lived in the territory of the Kyrgyz Republic for the last five years at the moment of filing the application. The term of residence is considered uninterrupted if a person left the Kyrgyz Republic for no longer than three months during any one year;
- II. can speak the state or official language of the Kyrgyz Republic for sufficient communication; the procedure for identifying the level of knowledge of the state or official languages is set out in the regulations;
- III. undertake to comply with the Constitution and legislation of the Kyrgyz Republic; and
- IV. have a source of subsistence.

21. Under Article 14.1, certain foreign citizens and persons without citizenship who have reached the age of 18 may apply to be granted citizenship of the Kyrgyz Republic in accordance with a simplified procedure, where the time period of their residence in Kyrgyzstan is reduced to one year.

22. Under Article 14.2, Persons of Kyrgyz ethnicity having foreign citizenship, or without citizenship, former citizens of the Kyrgyz Republic returning to the Kyrgyz Republic for permanent residence, as well as female foreign citizens and stateless persons married to a Kyrgyz citizen, and coming to the Kyrgyz Republic for permanent residence will be granted citizenship of the Kyrgyz Republic without having to serve a period of residency and without having to comply with the conditions in clause 1 of Article 13.

23. Pursuant to Article 14.2, the following persons will be granted citizenship in accordance with the simplified procedure set out in Article 14.3:

- I. a child, one of whose parents is citizens of the Kyrgyz Republic – by application of this parent and with the written consent of the other parent;
- II. a child, whose only parent is a citizen of the Kyrgyz Republic – by application of this parent;

III. a child or a stateless person, being under custody or trusteeship, - by application of the custodian or trustee having citizenship of the Kyrgyz Republic.

24. Article 17 provides that a child without citizenship who is adopted by a Kyrgyz citizen or is taken under the custody or trusteeship of a Kyrgyz citizen will be granted citizenship.

## **Exchange of Soviet passports for Kyrgyz passports**

25. All USSR passport holders in Kyrgyzstan, including those who lost them, who had USSR citizenship and have lived in Kyrgyzstan for 5 years or more and have not accepted foreign citizenship, are automatically recognized as citizens of the country in accordance with paragraph 2 of Article 5 of the Kyrgyz Citizenship Law.<sup>16</sup>

26. The Government is commended for having taken positive steps towards resolving the statelessness cases. In 2014, the Kyrgyz Republic started a "door-to-door" Campaign, the first pilot in the Central Asian region, with civil society partnership supported by UNHCR on registration and documentation of stateless persons. During the Campaign in Kyrgyzstan a total of 13,707 stateless persons were identified and 13,447 persons were granted citizenship and obtained proper documentation. As of 1 May 2019, there were 258 pending cases.

27. The United Nations High Commissioner for Refugees, on 4 July 2019, announced that Kyrgyzstan brought its stateless population down from over 13,000 to zero in the last five years.<sup>17</sup>

28. This group comprised people who could or did not renew their Soviet identity documents after Kyrgyzstan and Uzbekistan became independent states in 1991 (they had until 2003 to do so). The majority of this group has resided in Kyrgyzstan for several years and maintain close familial, social and cultural ties with Kyrgyzstan. They are now able to enjoy the right to a nationality.

## **"Border Brides"**

29. The so-called "Border Brides" of Kyrgyzstan are women from Uzbekistan who married ethnic Uzbek men in southern Kyrgyzstan and do not possess nationality documentation of either country.<sup>18</sup> Until recently, there was no legislation in Kyrgyzstan to assist these "Border Brides" and without valid documentation they could not return to Uzbekistan.<sup>19</sup>

30. In 2014, Kyrgyz Presidential regulation No. 174 with Regulations #23-2 provided an option and access to simplified procedures to acquire Kyrgyz citizenship (without requiring a period of residence, proof of income and language proficiency) for stateless persons and foreign spouses (without valid passports). This was primarily due to civil society advocacy for changes and improving legislation to address statelessness, which opened access to the naturalisation of a large number of stateless persons (the so-called "amnesty campaign").

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<sup>16</sup> <https://www.legislationline.org/documents/id/20125>.

<sup>17</sup> UNHCR, *Kyrgyzstan ends statelessness in historic first* (2019):

<https://www.unhcr.org/news/press/2019/7/5d1da90d4/kyrgyzstan-ends-statelessness-historic-first.html>.

<sup>18</sup> EurasiaNet.org, 'Kyrgyzstan and Uzbekistan: Stateless "Border Brides" Caught in Between' (online, 14 February 2012).

<sup>19</sup> EurasiaNet.org, 'Kyrgyzstan and Uzbekistan: Stateless "Border Brides" Caught in Between' (online, 14 February 2012).

## Access to Refugee Status Determination Procedures

31. 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 accede 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.
32. Following the CERD's 2018 Concluding Observations,<sup>20</sup> Kyrgyzstan continues to apply a discriminatory approach in granting access to State registration and refugee status determination (RSD) procedures. Uighurs from China who seek asylum are not issued any documents by the Government certifying their legal stay in the country. They are therefore at heightened risk of denial of their rights, police harassment and *refoulement*.<sup>21</sup>
33. Asylum-seekers arriving from Uzbekistan are also discriminated against. They may only register their asylum claim in Kyrgyzstan, and are issued an asylum-seeker certificate, but no further assessment and decision on their refugee claim is undertaken.<sup>22</sup>
34. The recognition rate for applicants to the State RSD procedures is also low. The low recognition rate is often justified on the basis of national security concerns, and political and migration control considerations of the Kyrgyz authorities. This prevents persons with international protection needs from effectively accessing their basic rights under international law.<sup>23</sup>

## Deprivation of Citizenship

35. Concerns related to deprivation of citizenship were raised in the Concluding Observation of the Committee on the Elimination of Racial Discrimination (30 May 2018, CERD/C/KGZ/CO/8-10), which recommended that the Kyrgyz Republic ensures that the new draft citizenship law 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.
36. Following the amendment to the Constitution of the Kyrgyz Republic in December 2016 that permitted deprivation of nationality (Article 50), the government has initiated drafting of a new Constitutional Law on Deprivation of Citizenship which prescribes citizenship deprivation on the grounds of participation in acts related to terrorism, funding terrorist activities, treason, espionage, separatism, extremism, and fighting as mercenaries.
37. According to the draft Law, the decision on deprivation of citizenship is to be made by the court as part of the criminal proceedings and is sent to the State Registration Service (SRS) for implementation, while the President makes decisions on granting citizenship.

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<sup>20</sup> *Concluding observations on the combined eighth to tenth period reports of Kyrgyzstan*, Committee on the Elimination of Racial Discrimination, 30 May 2018, CERD/C/KGZ/CO/8-10, [30].

<sup>21</sup> United Nations High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees - Universal Periodic Review: Kyrgyzstan* (Report, 2014).

<sup>22</sup> United Nations High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees - Universal Periodic Review: Kyrgyzstan* (Report, 2014).

<sup>23</sup> United Nations High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees - Universal Periodic Review: Kyrgyzstan* (Report, 2014).

38. The deprivation of nationality as a national security measure is a deeply problematic practice, that is unlikely to meet international law standards of the prohibition of the arbitrary deprivation of nationality, the prohibition of discrimination, the avoidance of statelessness. Given the inherently punitive and permanent nature of citizenship deprivation, it is also likely to impinge on other rights including the freedom from torture, cruel, inhuman or degrading treatment or punishment, the right to private life and the prohibition of refoulement.

## Birth registration

39. According to UNICEF, 97.7% of births of children under the age of five in Kyrgyzstan have been registered.<sup>24</sup> While generally this registration rate is high, over 18,000 children under the age of five lack birth registration. As a party to the CRC, every child born in Kyrgyzstan has an enshrined right to be registered immediately after birth, pursuant to Article 7. Whilst the lack of birth registration does not amount to statelessness, it contributes to the risk children will be left without a nationality.<sup>25</sup>
40. In 2016-2017, an extensive gaps analysis of the national legislation governing statelessness and nationality issues conducted by the Inter-Agency Working Group comprised of key ministries, NGO partners and UNHCR, revealed a number of legislative gaps that need to be addressed, including 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 the result, several legal reforms (Law “On Civil Acts”, Law “On Legal Status of Aliens in the Kyrgyz Republic”, civil registry reform) are in progress in the area of birth registration and prevention of statelessness.

## Recommendations

41. Based on the above analysis, the co-submitting organisations would like to ask reviewing States to commend Kyrgyzstan for its efforts taken to address statelessness as a result of the break-up of the Soviet Union.
42. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Kyrgyzstan:
- I. Ensure the correct implementation of Kyrgyz Presidential regulation No. 174, so that all so-called “Border Brides” have access to valid documentation.
  - II. 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.
  - III. Review its draft Constitutional Law on Deprivation of Citizenship and ensure that there is no legal regression, which will result in persons being deprived of their nationality for the purported reason of safeguarding national security.
  - IV. Continue the efforts, among others through the pending legal reforms on civil registration, to ensure universal birth registration in Kyrgyzstan.  
*Accede to the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.*

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<sup>24</sup> EEAS, 'In Kyrgyzstan as much as 18,000 children are invisible' (online, 1 February 2019).

<sup>25</sup> EEAS, 'In Kyrgyzstan as much as 18,000 children are invisible' (online, 1 February 2019).