

# MONITORING OF HUMAN RIGHTS



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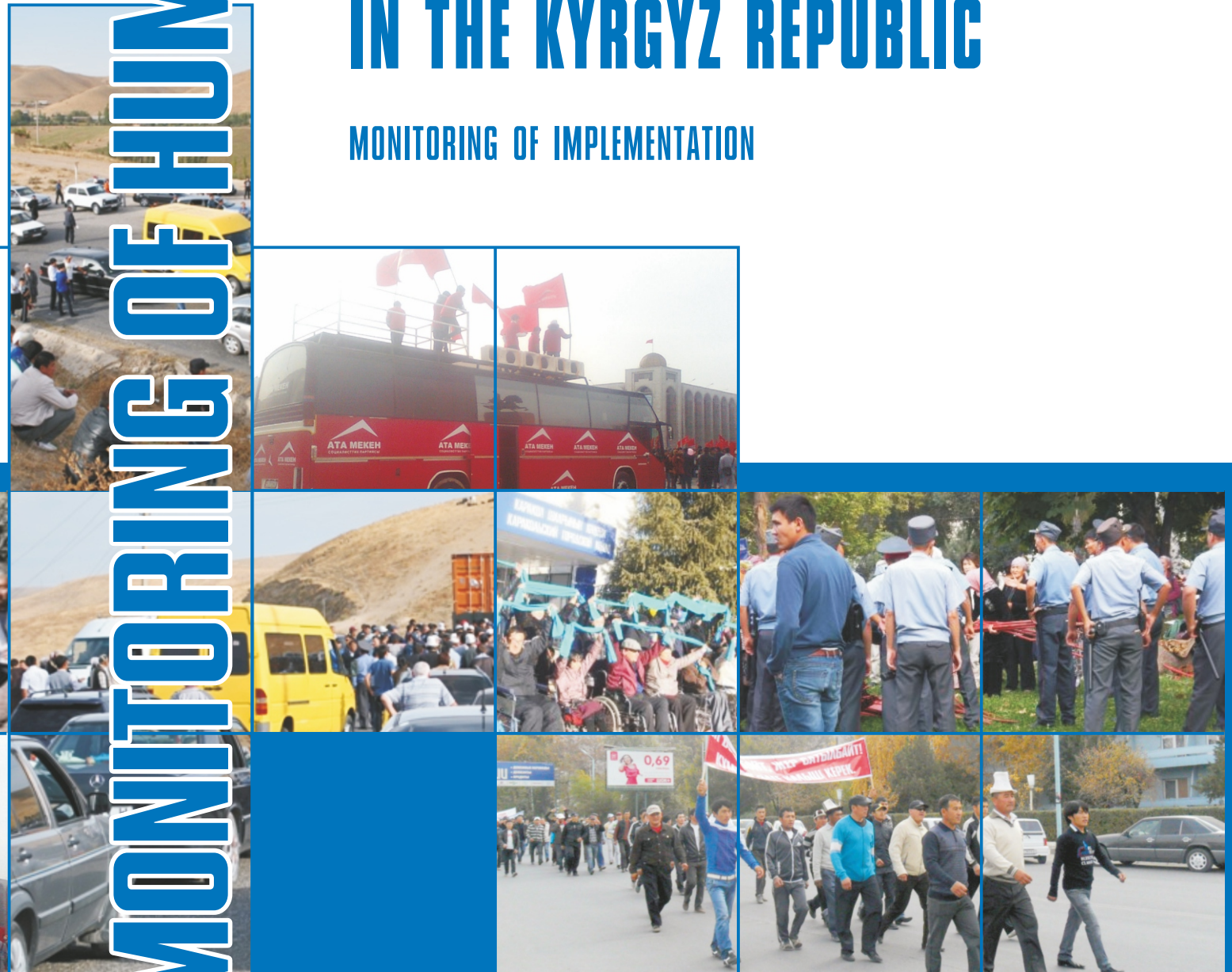


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## THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE KYRGYZ REPUBLIC

### MONITORING OF IMPLEMENTATION



BISHKEK- 2012



Federal Foreign Office



# **THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE KYRGYZ REPUBLIC**

## **MONITORING OF IMPLEMENTATION**

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# 78

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# 78 The right to peaceful assemblies in the Kyrgyz Republic

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This report is intended for the state bodies, non-governmental organizations, human rights defenders, and other persons who express an interest in the challenges of observing the right to peaceful assembly in the Kyrgyz Republic.

#### Disclaimer

All opinions expressed in this report are those of the authors only; they cannot be perceived as those expressing the official opinion of the Organization for Security and Co-operation in Europe (OSCE) and the Ministry of Foreign Affairs of the Federative Republic of Germany.

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## ABBREVIATIONS:

OSCE/ODIHR – OSCE Office for Democratic Institutions and Human Rights

The Universal Declaration – The Universal Declaration of Human Rights

SRTSA – State Road Traffic Safety Authority

The Law on the right of citizens to peaceful assembly – the Law of the Kyrgyz Republic “On the right of citizens to assemble peacefully, without arms, and hold peaceful assemblies and demonstrations”<sup>1</sup>

IMA – Inspection for Minors’ Affairs

AC – the Administrative Code<sup>2</sup>

KR – the Kyrgyz Republic

MOI – the Ministry of Interior of the Kyrgyz Republic

LSA – Local state administration

ICCPR – International Covenant on Civil and Political Rights<sup>3</sup>

NGO – Non-governmental organization

OSCE – Organization for Security and Co-operation in Europe

LSGB – Local self-government body

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<sup>1</sup> Law # 120 as of 23 July, 2002, as edited by Law of the KR #192 as of 5 August, 2008.

<sup>2</sup> Administrative Code of the KR #144 as of 4 August, 1998 made effective by Law of the KR #115 as of 4 August, 1998 as edited by the following laws: #131as of 27 November, 1999, #33 as of 10 March, 2002, #42 as of 20 March 2002, #109 as of 22 June 2002, #36 as of 17 February, 2003, #42 as of 19 February, 2003, #98 as of 11 June, 2003, #100 as of 11 June 2003, #121 as of 28 June 2003, #191 as of 5 August 2003, #192 as of 5 August, 2003, #193 as of 9 August, 2003, #221 as of 14 November, 2003, #13 as of 15 February, 2004, #18 as of 9 March, 2004, #20 as of 11 March, 2004, #71 as of 11 June, 2004, #98 as of 26 July, 2004, #100 as of 27 July, 2004, #102 as of 2 August, 2004, #194 as of 23 December, 2004, #39 as of 25 February, 2005, #43 as of 5 March, 2005, #107 as of 18 July, 2005, #109 as of 18 July, 2005, #121 as of 5 August, 2005, #122 as of 5 August, 2005, #16 as of 27 January, 2006, #35 as of 6 February, 2006, #52 as of 13 February, 2006, #53 as of 13 February, 2006, #127 as of 25 July, 2006, #130 as of 26 July, 2006, #159 as of 8 August, 2006, #174 as of 21 August, 2006, #198 as of 6 December, 2006, #212 as of 28 December, 2006, #29 as of 1 March, 2007, #31 as of 1 March, 2007, #32 as of 5 March, 2007, #33 as of 9 March, 2007, #65 as of 28 April, 2007, #91 as of 25 June, 2007, #130 as of July 31, 2007, #162 as of 9 November, 2007, #64 as of 24 April, 2008, #67 as of 25 April, 2008, #68 as of 25 April, 2008, #102 as of 2 June, 2008, #104 as of 2 June, 2008, #115 as of 11 June, 2008, #136 as of 23 June, 2008, #179 as of 28 July, 2008, #185 as of 4 August, 2008, #199 as of 5 August, 2008, #214 as of 17 October, 2008, #231 as of 17 October, 2008, #239 as of 20 November, 2008, #264 as of 17 December, 2008, #9 as of 19 January, 2009, #20 as of 23 January, 2009, #65 as of 24 February, 2009, #117 as of 30 March, 2009, #140 as of 30 April, 2009, #194 as of 26 June, 2009, #202 as of 3 July, 2009, #234 as of 17 July, 2009, #250 as of 24 July, 2009, #272 as of 13 October, 2009, #308 as of 17 December, 2009, #315 as of 25 December, 2009, #27 as of 10 February, 2010, #35 as of 25 February, 2010, 333 as of 30 May, 2011, #123 as of 22 July, 2011, #141 as of 26 July, 2011, #151 as of 8 August, 2011, #158 as of 5 October, 2011, #177 as of 18 October, 2011, #217 as of 18 November, 2011.

<sup>3</sup> Adopted by Resolution 2200 A (XXI) of the General Assembly as of 16 December, 1966.

SPF – Special Police Force

LEA – Law enforcement agency

PGS – Patrol and Guard Service

RIU – Rayon Interior Unit

The Guidelines on Freedom of Peaceful Assembly – the Guidelines on Freedom of Peaceful Assembly by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission), 2010 (2<sup>nd</sup> edition)

RRT – Rapid Response Taskforce

ISF – Internal Security Force

ID – Interior Department

## 1. INTRODUCTION

During recent years, human rights activists and organizations have viewed the issues of implementing the right to freedom of peaceful assembly in the Kyrgyz Republic as a priority requiring the attention of the public and international community.

This is explained by the practice of underestimating and ignoring the freedom of peaceful assembly by the state bodies and public officials. The freedom of assembly is a fundamental human right and an inherent condition for exercising other human rights, including the right to freedom of expression, which is an important aspect of any democracy.

The repealed law of the Kyrgyz Republic “On the right of citizens to assemble peacefully, without arms, and hold assemblies and demonstrations” initially posed a threat of confrontation between the authorities and civil society.

The lack of professionalism, and in often cases, abuse by public officials posed a threat to the security of participants at peaceful assemblies. One can find numerous examples of administrative arrests of human rights defenders and public activists for violating the procedure of holding assemblies. Such arrests are in conflict with human rights standards.

The Law of the Kyrgyz Republic “On peaceful assemblies”<sup>4</sup> was adopted in May 2012. This Law became a new tool to regulate public relations in the area of implementation of each person’s right to peaceful assembly.

This Law is in full conformity with the Constitution of the Kyrgyz Republic and includes the main principles of the guidelines on freedom of peaceful assembly. The opinions of human rights defenders, representatives of reputable international organizations, such as the OSCE and the European Commission for Democracy through Law (the Venice Commission), and the professional legal community of the Kyrgyz Republic were considered in the process of drafting this Law.

An important aspect of the Law is that the organizers and participants of peaceful assemblies have the right to give prior notification to authorities. It is not permitted to restrict or prohibit a peaceful assembly and to refuse it on the grounds of not giving notification, ignoring the right format and contents of such a notification, and the timeline for making such notification.

The Law clearly stipulates the responsibilities of state bodies and local self-government bodies. It envisages specific interventions to ensure the right to freedom of peaceful assembly, rights and responsibilities of actors and organizers, stipulates the grounds and procedure for restricting and dispersing a peaceful assembly, as well as conditions when force may be used.

There have not been any illusions that the mere adoption of the Law would lead to the complete absence of problems with the citizens’ right to assemble peacefully. Law enforcement and the need to follow the norms strictly still remains a big problem for law enforcement agencies.

An objective analysis and assessment of law enforcement practices in the context of the new Law may be possible based on documented data obtained in the course of actual observations of public assemblies.

Observing an assembly helps create an impartial and objective description of what is going on and document the actions of both the assembly participants and representatives of authorities and law enforcement agencies. The aggregated findings of such observations could lay a foundation for making

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<sup>4</sup> Law of the Kyrgyz Republic #64 “On peaceful assemblies” as of 23 May, 2012.

recommendations to improve legislation and law enforcement practices, which would improve the human rights situation in the Kyrgyz Republic overall.

A monitoring exercise of assemblies in the Kyrgyz Republic took place from 1 August until 30 November 2012 within the framework of the “Promoting freedom of assembly in the Kyrgyz Republic” project implemented through a financial support of the OSCE Centre in Bishkek and the Ministry of Foreign Affairs of Germany.

This report summarizes the findings of the observation of the right to freedom of peaceful assembly during the period after the effective date of the Law “On peaceful assemblies”, and includes recommendations that would help improve the procedure for arranging of and holding peaceful assemblies in the Kyrgyz Republic in full compliance with the Guidelines on Freedom of Peaceful Assembly.<sup>5</sup>

The report is intended for state bodies, NGOs, human rights activists and other stakeholders who have an interest in the issues of observing the right to peaceful assemblies.

Part 1 of the report contains a list of recommendations formulated based on aggregating the data received during the monitoring exercise.

The description of the project methodology, including the overall information about goals and objectives, project’s main components and activities, are included in part 2 of the report.

Part 3 of the report contains findings of the monitoring of peaceful assemblies as compared to the monitoring results of 2011 covering the same period, including general statistics and a review of law enforcement practices in the light of their satisfaction of international human rights standards in the context of the new Law.

The achievement of goals of this survey became possible due to a coordinated effort of the project team formed by representatives from the “Independent Human Rights Group” (which acted as a project coordinator) and a team of the following observers:

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Ikhazov Farhad, “Aman Plus”, Kara-Balta;

Baitikov Barkalbas, “Kylym Shamy”, Kara-Kol;

Koshoeva Mukhabbat, “Next Generation”, Balykchy;

Toktosunova Ryzkul, “ZiOM” Public Foundation, Talas;

Edigeeva Marina, “Soyuz edinenya”, Talas;

Sadybaev Esenbek, “Tagyr”, Naryn;

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<sup>5</sup> Guidelines on freedom of peaceful assembly ([www.osce.org/odihr](http://www.osce.org/odihr)).



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Murzamatova Samara, “Rainbow”, Osh;  
Akmatbekova Assel, a private practicing lawyer, Osh province;  
Jumabaev Taalaibek, a private practicing lawyer, Osh;  
Maseitova Bazarbai, “For international tolerance” CBO, Batken.

The team would like to express appreciation and acknowledgement to:

- The OSCE Centre in Bishkek and the Ministry of Foreign Affairs of the Federal Republic of Germany for the financial support and assistance in holding the monitoring exercise and publishing this report.
- Almaz Esengeldiev, special advisor of Freedom House in Kyrgyzstan, and Dmitry Kabak, President of “The Open Position” Public Foundation, for their expertise in training of observers and development of uniform tools to enable monitoring of peaceful assemblies.

Special acknowledgement is expressed for the heads and staff of local state administrations, self government bodies, and law enforcement agencies of the Kyrgyz Republic for their co-operation in holding this monitoring exercise.

## 2. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the analysis and monitoring of assemblies that were held in 2011 by the same group of observers employing the same methodology, the team formulated some important conclusions and recommendations.

Before producing new recommendations as a result of the 2012 monitoring exercise, the project team reviewed the extent of implementation of the last year's monitoring.

| #  | Conclusions of the 2011 survey  | Relevance of the problem today |
|----|---|--------------------------------|
| 1. | Lack of stability in public and political, social and economic life of the country creates problems provoking protests among the population. Many problems consequently led to many protests. People in Kyrgyzstan realized that a public commotion could be used to solve any kind of problem, even small ones. The official statistics of the MOI speaks for a growing tension of the “commotion democracy”. At the same time the number of commotions with “an aggressive element” is also growing.  | Relevant                       |
| 2  | State bodies, including law enforcement, have a clear understanding that arbitrary restrictions of the right to peaceful assembly are able to lead to a severe confrontation between the power and the civil sector, a situation capable of seriously aggravating the social and political environment in the country generating unpredictable consequences. At the same time one observes passiveness of law enforcement agencies in those cases when it is necessary to undertake actions to stop a breach of law. E.g. to stop the violation of the rights of the assembly by the counter assembly. The police officers, as a rule, are not aware of the procedure to hold up or stop public actions, thus, acting as routine police patrollers to ensure public security. | Relevant                       |
| 3  | The adoption of the new Constitution setting forth legal guarantees to promote the right to free peaceful assembly laid the foundation to prevent a threat of confrontation between the authorities and the civil society, and the consequences of the violated right to peaceful assembly. At the same time there is a persistent need in a new law that could detail constitutional norms and establish the procedure for organizing and holding peaceful assemblies in the Kyrgyz Republic, the rights and responsibilities of the state bodies, organizers and participants of peaceful assemblies, in full compliance with the Guidelines on Freedom of Peaceful Assembly.   | Not relevant                   |
| 4  | A public monitoring of assemblies remains the only mechanism to track to which extent the state bodies and public officials observe the right to peaceful assembly and to provide information about the real state of affairs in this area, indicate existing problems, mobilize and involve civil society activists in proactive advocacy and lobby campaigns to improve the situation.  | Relevant                       |

Despite the fact that the new Law “On peaceful assemblies” establishes the new procedure for regulating relations in the context of the right to peaceful assembly leading to significant improvements, some of the problems mentioned in the 2011 survey findings are still relevant today.

Given the above mentioned, one can make the following conclusions:

- Tensions of “the public commotion-based democracy” are not diminishing. The protesting moods in the society are produced by the problems that are still relevant in the public and political, social, and economic life of the country.

- The introduction of the new Law “On peaceful assemblies” minimized the threat of confrontation between the authorities and the civil society and, thus, the consequences from the violated right to peaceful assembly.
- State bodies and local self-government bodies observe the requirements of the Law “On peaceful assemblies”. There is an understanding that the violation of the right to peaceful assembly may lead to a serious aggravation of the public and political situation in the country followed by unpredictable consequences.
- The work methods of law enforcement agencies in the area of restricting and dispersing assemblies leave much to be desired.
- There is a felt need for ongoing objective monitoring of assemblies by independent observers for the purpose of tracing an extent to which state bodies and public officials observe the right to peaceful assembly, providing objective information about the real state of affairs in this area, identification of existing problems, mobilization and involvement of civil society activists in proactive advocacy and lobby campaigns to improve the situation.

The table below contains information about implementation of the recommendations formulated in the 2011 monitoring report.

| #  | Recommendations of the 2011 monitoring exercise   | Implementation status |
|--|---|-----------------------|
| <b>The Parliament of the Kyrgyz Republic</b>           |   |                       |
| 1  | Within the shortest timeframe, consider and adopt a draft Law “On peaceful assemblies” as initiated by the Government of the Kyrgyz Republic, including recommendations of international organizations and national experts and in taking into account the opinions of civil society.                                   | Implemented           |
| 2  | Ensure an ongoing parliamentary supervision of the compliance of the Kyrgyz Republic with its commitments under international treaties in the area of ensuring the freedom of peaceful assembly.  | Implemented partially |
| <b>The Government of the Kyrgyz Republic</b>           |   |                       |
| 1  | Carry out regular monitoring of human rights and fundamental freedoms, including the right to freedom of peaceful assembly.   | Not implemented       |
| 2  | Ensure timely and quality provision of periodical progress reports about execution of commitments under international treaties to international bodies on human rights and take actions to implement their recommendations.   | Partly implemented    |
| 3  | Ensure wide-scale campaigns to increase awareness of the public about their rights and freedoms, undertake measures to arrange regular trainings of state bodies on human rights and fundamental freedoms by engaging appropriate experts.  | Not implemented       |
| <b>The Ministry of Interior of the Kyrgyz Republic</b> |   |                       |
| 1  | Ensure a strict compliance of the interior officers with laws and other normative acts of the Kyrgyz Republic thus guaranteeing the right to peaceful assembly, and ensuring comprehensive investigations of all facts of violations and ensuring the unavoidability of punishment regardless of positions and merits.  | Partially implemented |
| 2  | Together with appropriate experts, organize regular trainings of law enforcement officers in human rights and fundamental freedoms, the peculiarities of behaviours, and interaction with the organizers and participants of peaceful assemblies aiming at providing services to and protection of peaceful assemblies. | Partially implemented |
| 3  | Revise and constantly improve the system of legal education for law enforcement officers. Special attention is to be paid to their morals and professional qualities.   | Not implemented       |
| <b>The civil society of the Kyrgyz Republic</b>        |   |                       |
| 1  | Engage in an ongoing monitoring in order to trace the extent to which the state bodies and public officials observe the right to peaceful assembly, provision of  | Implemented           |

|   |  |             |
|---|--|-------------|
|   | objective information about the real state of affairs in this area, identify existing problems, mobilize and involve civil society activists in proactive advocacy and lobby campaigns to improve the situation. |             |
| 2 | Ensure effective support to promote the draft Law “On peaceful assemblies” in the Parliament of the Kyrgyz Republic through a complex of advocacy and lobby interventions.                                       | Implemented |

It goes without saying that the impact of recommendations may become tangible only after a certain period of time. In particular, the efforts applied by a state body or a public official to whom these recommendations are addressed are as important as the result itself.

In this respect, the efforts undertaken by the MOI deserve attention. On 26 November 2012 a draft Law “On amending the Law of the Kyrgyz Republic ‘On law enforcement agencies of the Kyrgyz Republic’”, initiated by the MOI was submitted for consideration by the Parliament of the Kyrgyz Republic on the basis of the Government’s Resolution.

As the amendments suggest, the law enforcement officers must demonstrate a respectful attitude to the participants of peaceful assemblies, ensure unhindered work of the media, perform their vested duties, and comply with restrictions as stipulated by the legislation of the Kyrgyz Republic in the area of peaceful assemblies.<sup>6</sup>

The opinion of the project team about whether the recommendation is completed or not, is presented in the table below. Developing an opinion depended on whether there had been positive changes in terms of implementing the recommendation.

The opinion of the project team about the majority of last year’s recommendations being unimplemented does not intend to indiscriminately criticize state bodies and their heads; it rather calls for a greater activation of efforts to achieve whatever has not been successfully achieved as of yet.

All unimplemented or partially implemented recommendations were rolled over to become part of the 2012 monitoring recommendations produced by the project team.

Along with these recommendations it is suggested to pay attention to some new recommendations as well.

The proposed recommendations are based on the Guidelines on Freedom of Peaceful Assembly, recommendations of international human rights bodies, in particular those of the UN Committee on Human Rights, and most recent recommendations received by Kyrgyzstan in the area of the right to free peaceful assembly in the context of the Universal Periodic Review in June 2010.

These recommendations aim at improving the organization and holding of peaceful assemblies in the Kyrgyz Republic in full compliance with the Guidelines on Freedom of Peaceful Assembly.

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<sup>6</sup> АКИpress: “The Government wants to lay the police under obligation to demonstrate a respectful attitude towards the participants and ensure an unhindered work of Mass Media”. 29.11.2012, 12:54.

## RECOMMENDATIONS

### **COMPLIANCE OF THE KYRGYZ REPUBLIC TO OBLIGATIONS UNDER INTERNATIONAL TREATIES IN THE AREA OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

1. Ensure ongoing parliamentary supervision of the Kyrgyz Republic's compliance to its obligations taken under international treaties in the area of human rights and fundamental freedoms, and the timely provision of periodic reports about progress in fulfilling these obligations.
2. Development and adoption by the Government of the Kyrgyz Republic of a plan to implement recommendations, conclusive remarks, and decisions of the Universal Periodic Report (UPR), special procedures of the UN Human Rights Council and UN treaty bodies.

### **RECOGNITION AND IMPLEMENTATION OF DECISIONS OF INTERNATIONAL HUMAN RIGHTS BODIES BY THE KYRGYZ REPUBLIC**

1. Development of an effective mechanism to enable the Kyrgyz Republic's implementation of decisions made by international human rights bodies who had established violations of human rights and fundamental freedoms, including the ones already adopted by the UN Human Rights Council in relation to the Kyrgyz Republic.
2. Development and discussion of a draft law to amend the procedural legislation of the Kyrgyz Republic setting forth that the rulings of international human rights bodies, particularly, the UN Committee against Torture, shall form the grounds to reopen a case on the basis of new circumstances.

### **TRAINING AND RE-TRAINING OF STAFF**

1. Revision and continuous improvement of legal education and training system for law enforcement agencies; in particular, for those officers who are directly involved with the population. Special attention should be paid to their morals and professional qualities.
2. The mandatory inclusion of international standards in the area of human rights and fundamental freedoms, in particular of the right to free peaceful assemblies, into the curricula.
3. Introduction of special training for law enforcement agents in the area of maintaining order during assemblies so that they could acquire skills to prevent an escalation of violence and minimize conflict.

### **STRICT ADHERENCE TO THE LEGISLATION IN THE AREA OF RIGHT TO FREE PEACEFUL ASSEMBLY**

1. A systematic analysis of the practice of compliance to the Law "On peaceful assemblies" by law enforcement divisions and services involved with protecting public order and security. Identification of existing problems; development, and implementation of measures to overcome them.
2. Ensure a strict adherence to the requirements of Article 17, part 4 of the Law "On peaceful assemblies" regulating the use of force as a measure of last resort to disperse an assembly and the provision of a report mentioning the reasons why the law enforcement agency used force to disperse the assembly in order to make a decision about lawfulness and good reasons for using such force.
3. Ensure the unavoidability of liability, as established by the KR legislation, by guilty persons who violate of the Law "On peaceful assemblies" possible.

## **MONITORING OF THE FULFILLMENT OF THE RIGHT TO FREE PEACEFUL ASSEMBLY**

1. Ensure an ongoing public monitoring of how well the state bodies and public officials observe the right to peaceful assembly, provision of objective information about the real state of affairs in this area, identification of existing problems, mobilization and involvement of civil society activists in proactive advocacy and lobby campaigns to improve the situation.

### **3. PROJECT METHODOLOGY**

The project to promote the freedom of assembly in the Kyrgyz Republic was implemented from 1 June till 15 December 2012.

#### **PROJECT GOAL:**

Facilitate the implementation of the right to freedom of peaceful assembly in the Kyrgyz Republic.

#### **PROJECT OBJECTIVES:**

- Provide support to human rights defenders and NGO activists through increasing their knowledge about the standards in the area of free peaceful assemblies and also development of their monitoring and reporting skills in relation to the freedom of assemblies in the Kyrgyz Republic in the light of the Guidelines on Freedom of Peaceful Assembly.
- Ensure the effective functioning of an earlier-created small network of observers in how the constitutional right to peaceful assembly is being observed in all Provinces and Bishkek, involvement of new members, coordination of activities, and information sharing.
- Carry out objective monitoring of peaceful assemblies with a detailed description of observation of, or failure to, observe the norms of the national legislation and those of the Guidelines on Freedom of Peaceful Assembly by local administrations, local self-government bodies, organizers and participants of assemblies.
- Collect reliable information, document cases violations to the right to the freedom of peaceful assembly, if any.
- Analyse and process monitoring findings.
- Comparatively analyse the 2012 monitoring results against a similar monitoring exercise held in 2011.
- Provide monitoring findings and recommendations to stakeholders from state bodies and self-governments, their subsequent discussions aiming at improving the procedure for organizing, holding, and regulating peaceful assemblies in the Kyrgyz Republic in full compliance with the Guidelines on Freedom of Peaceful Assembly.
- Increase awareness of the wider public and international human rights defending organizations about the situation with the right to freedom of peaceful assembly and the identified cases of violations of this right.

As with the 2011 monitoring, the 2012 monitoring focused on how the Guidelines on Freedom of Peaceful Assembly were observed:

- Presumption in favour of holding assemblies;
- A positive obligation of the state to facilitate peaceful assemblies and protect them;
- Legality and proportionality of restrictions of peaceful assemblies;
- Non-discrimination;
- Good administration.

#### **Subjects of monitoring**

All types of assemblies were subjects of the monitoring exercise.

Monitoring covered 220 assemblies that took place in all Provinces of the Kyrgyz Republic and in Bishkek

## **Observers**

Twenty-two people from non-governmental organizations working in the area of promoting human rights and fundamental freedoms, including the right to peaceful assembly, were selected as observers, given their previous experience in the area of monitoring assemblies.

All observers undertook special training in human rights standards in the light of the Guidelines on Freedom of Peaceful Assembly.

## **Project interventions and the sequence of their implementation**

The project plan included the following interventions:

### **Capacity building of human rights defenders and NGO activists, development of monitoring and reporting skills**

On 30 and 31 July 2012, a training course was held for the group of activists selected as observers.

The trainees totalled 16, including 13 from human rights defending organizations from all regions of the Kyrgyz Republic, two private practicing lawyers, and one university student.

Five trainees were previously involved in monitoring with the “Monitoring of peaceful assemblies in the Kyrgyz Republic” project that had been implemented by the Public Foundation “Independent Human Rights Group” in 2011. The other 11 observers were selected through recommendations of partner human rights organizations; they had no previous experience with monitoring assemblies.

Based on the monitoring findings produced within the “Monitoring of peaceful assemblies” project in 2011, the newly involved observers were able to discuss various situations that could come up in the work process, with more experienced observers.

The training program included themes that were of practical use for the monitoring of assemblies. The most important sessions included the following: “General principles behind peaceful assemblies”, “Restrictions of the freedom of assembly”, and “Procedural matters”. Individual sessions were devoted to the ethics of observers, their code of conduct, monitoring planning issues, keeping notes and compiling reports on the findings of observations.

The training was based on OSCE/ODIHR materials designed for the training of observers of free peaceful assemblies. Trainers included Almaz Esengeldiev (special advisor, Freedom House Kyrgyzstan) and Dmitry Kabak (President of the Public Foundation “Open Position”), both co-authors of the existing Law “On peaceful assemblies”.

### **Development of a uniform Observer’s Questionnaire**

In order to systematize various methods and tools available for monitoring of peaceful assemblies by the country’s human rights organizations within the 2011 project, a uniform toolkit was developed to ensure its countrywide use both by state bodies and in the course of a public monitoring.

The training seminar contained a separate session discussing proposals to improve the tools (Observer’s Questionnaire). All trainees received the text of the new Law of the KR “On peaceful assemblies” and the Observer’s Questionnaire used during the 2011 monitoring, in advance. Thus, the trainees had a chance to prepare their proposals to improve the Observer’s Questionnaire with the account of the new law’s provisions.



All proposals of the trainees were analyzed by the project experts and included in the final version of the Observer's Questionnaire for the 2012 monitoring exercise.

### **Collection, analysis, and summarizing monitoring findings**

#### **Development of recommendations to improve the situation**

Aiming at collecting trustworthy information, the observers used the following:

- observation;
- record keeping and documentation;
- report writing.

In the course of monitoring, the observers adhered to the monitoring principles and standards stipulated in the Guidelines for monitoring free peaceful assemblies of OSCE/ODIHR, including the requirement to be aware of legislation on the right to peaceful assembly, preserve independence throughout the whole monitoring exercise, keep neutral, etc.

An important principle of a monitoring observer is the “visibility” of his/her work. Each observer received a badge with the title of the project within which the monitoring was held, name, and a picture of the observer. The observers used their badges in unforeseen situations to ensure safety.

The observers' activities were regulated by the Code of Conduct that was set as the main principles of the observers' monitoring work.

From the 1 August till 30 November 2012, 220 assemblies that took place in the country were subjected to monitoring.

A significant amount of the surveyed material and the nationwide coverage, including Bishkek, makes it possible to note the sufficiently high level of reliability in the monitoring that was carried out in full compliance with generally accepted international monitoring standards and principles.

## 4. PROJECT FINDINGS

### 4.1. FREEDOM OF PEACEFUL ASSEMBLIES

#### 4.1.1. Assemblies

In the course of lengthy discussions regarding the Law “On peaceful assemblies”, a controversial issue became whether it is necessary to list all types of assemblies in the new Law as it was done in the Law “On the right of citizens to assemble peacefully”<sup>7</sup> that ceased to be in force, or rather call all public events using only one term – “assembly”.

As proposed by the majority of experts, it was decided to use one term – “assembly”. As such, in line with Article 1 of the Law “On peaceful assemblies” the term “assembly” means *an intentional and temporary presence of a number of individuals in a public place for a common expressive purpose*.

The use of this term appears to be well justified as in the modern world it would be utterly impossible to list in the Law all potential types and manners of expressing a public opinion. Moreover, as observations demonstrate, it is often the case that the organizers and participants of a public event start it in one manner and finish it in another.

#### ***From an observer’s questionnaire:***

*On 8 October, 2012, a sit-in protest started in Jalal-Abad central city square against the apprehension and arrest of K. Tashiyev, S. Japarov, T. Mamytov, parliamentary deputies of the “Ata-Jurt” party. By the evening, nine women went on a hunger strike.*<sup>8</sup>

The Guidelines on Freedom of Peaceful Assembly say that the national legislation should contain an as-broad-as-possible definition of the types of assemblies that are under protection.<sup>9</sup>

With this in mind, the new Law “On peaceful assemblies” is to a maximum extent approximated to these requirements.

From 1 August till 30 November 2012, the project monitoring exercise covered 220 assemblies, while the 2011 monitoring exercise covered 208 assemblies.

**Table 1. Assemblies covered by monitoring as broken down by Provinces and Bishkek.**

| Province/City       | Total number of assemblies |      |
|---------------------|----------------------------|------|
|                     | 2011                       | 2012 |
| Bishkek             | 94                         | 87   |
| Jalal-Abad Province | 36                         | 53   |
| Osh Province        | 10                         | 42   |
| Chui Province       | 8                          | 12   |
| Naryn Province      | 27                         | 12   |
| Issyk-Kul Province  | 6                          | 8    |
| Talas Province      | 22                         | 4    |
| Batken Province     | 5                          | 2    |
| TOTAL               | 208                        | 220  |

**Figure 1. Assemblies covered with monitoring as broken down by Provinces and Bishkek.**

<sup>7</sup> The Law “On the rights of citizens to assemble peacefully”, Article 2.

<sup>8</sup> Observer’s questionnaire#3/7-7.

<sup>9</sup> Guidelines on freedom of peaceful assembly (<http://www.osce.org/odihr/73405>).

#### 4.1.2. Purposes of assemblies

As per the Guidelines on Freedom of Peaceful Assembly, the latter may serve different purposes, including, but not limited to, the expression of opinions and protection of common interests, celebrations of feasts, remembrance days, picketing, and protesting.

This trend is clearly observed in the Law “On peaceful assemblies” which permits any kind of assemblies regardless the theme which the event organizers and participants are trying to draw attention to.

At the same time the Law enlists the grounds for prohibiting assemblies when a public event pursues illegal objectives, including:

- 1) war propaganda;
- 2) manifestation of ethnic, race, or religious hatred, gender, and other social inferences instigating discrimination, animosity, or violence;
- 3) calls for breaking national security, public order, and rights and freedoms of other persons;
- 4) holding a counter assembly to disrupt another peaceful assembly.<sup>10</sup>

As such, the main requirement is for an assembly to pursue peaceful objectives and to have a peaceful nature. Peaceful assemblies only are to be protected by law and state.

The observers did not note a single case of limiting or stopping an assembly by authorities due to the contents of such assembly, namely, because of the theme which the organizers and participants were trying to draw attention to.

In this respect the assemblies that openly criticized the power and required resignation of highly positioned public officials, were not exceptions. Such practice is in line with international standards on human rights and fundamental freedoms, establishing that a critique of government or public officials *per se* should never be sufficient to restrict freedom of assembly.<sup>11</sup>

As in 2011, to enable the analysis of the purposes of assemblies, all monitored assemblies were split into two categories: public and political, and social and economic.

Public and political assemblies meant political actions of citizens and organizations against political actions of authorities. Social and economic assemblies were those public acts that focused around issues of increased level and quality of life, improvement of labour conditions, increasing qualification and educational capacity of population, strengthening health protection, and other things oriented towards a stronger social and economic policy.

The analysis showed that 180 (81,8%) assemblies covered by monitoring were around the public and political theme and requirements with 40 (18,2%) – around social and economic matters.

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<sup>10</sup> Law “On peaceful assemblies”, Article 15, part 2.

<sup>11</sup> Interpretative Notes to the Guidelines on freedom of peaceful assembly, paragraph 94.

**Table 2. Purposes of assemblies as broken down by Provinces and Bishkek and Osh.**

| City/Province       | Public and political |      | Social and economic |      |
|---------------------|----------------------|------|---------------------|------|
|                     | 2011                 | 2012 | 2011                | 2012 |
| Bishkek             | 71                   | 67   | 30                  | 20   |
| Naryn Province      | 18                   | 10   | 11                  | 2    |
| Jalal-Abad Province | 37                   | 52   | 4                   | 1    |
| Chui Province       | 7                    | 8    | 6                   | 4    |
| Issyk-Kul Province  | 4                    | 5    | 4                   | 3    |
| Talas Province      | 27                   | 3    | 9                   | 1    |
| Batken Province     | 9                    | 1    | 1                   | 1    |
| Osh Province        | 9                    | 34   | 1                   | 8    |
| TOTAL               | 182                  | 180  | 57                  | 40   |

**Figure 2. Purposes of assemblies.**

**From an observer’s questionnaire:**

*Because of construction works in “Bulak” central market of Tokmok city, the vendors had to stop selling their goods. On 10 September 2012, 40 vendors went out to the central market and appealed to the market administration with the requirement to provide them with temporary places to sell vegetables.<sup>12</sup>*

**From an observer’s questionnaire:**

*Ex-employees of “Kyrgyz Temir Jolu,” dismissed by the enterprise’s administration, assembled on 8 October 2012, near the White House building in Bishkek. They demanded the dismissal of Malabaev, Abdyldayev, Zulpukarov, and Nogoibaev as they were involved in corruption, and to reinstate the illegally fired employees to their positions.<sup>13</sup>*

**From an observer’s questionnaire:**

*The protestors demanded to dismiss Sadyr Japarov, an “Ata-Jurt” party leader, and deprive him of immunity. Five to six young men silently attached posters on the fence of the White House, but an unknown man tore them down and started to disperse them.<sup>14</sup>*

This monitoring reconfirmed a bigger role and significance of assemblies during elections, when political parties, candidates, and other groups and organizations strive to put their messages across to their electorate and win their support. The 2011 monitoring coincided with the presidential elections campaign in the Kyrgyz Republic, while the 2012 monitoring covered the assemblies related to deputy elections to local councils (keneshes). Therefore, a certain part of monitored assemblies, specifically 11,5% in 2011 and 35,6% in 2012, were held as part of elections campaigns.

**Figures 3 and 4. Ratio of assemblies, monitored in 2011 and 2012, by purpose.**

2011: Public and political purposes: 88,5%

2012: Public and political purposes: 64,4%

Elections campaign: 11,5%

Elections campaign: 35,6%

<sup>12</sup> Observer's questionnaire #8/13-5.

<sup>13</sup> Observer's questionnaire #1/1-30.

<sup>14</sup> Observer's questionnaire #1/1-21.

**From an observer’s questionnaire:**

The assembly that took place on the 1 October 2012, near the White House demanded the dissolution of the Parliament and the reduction of the number of deputies from 120 to 70 individuals with a view to channel the savings from the state budget to the needs of the general population. Another demand of the assembly was to fight against corruption among public officials.<sup>15</sup>

**From an observer’s questionnaire:**

On 21 November 2012 a demonstration of activists took place including young people, students, and incumbent candidates to Talas city council representing the SDPK party. More than 500 people participated.<sup>16</sup>

**From an observer’s questionnaire:**

Representatives of the “Onuguu” political party chose a vehicle as a means of their elections campaign on 19 November 2012 in Jalal-Abad. For four hours, elections campaigners were driving around the city with a mounted “Onuguu” party flag and using the loud speakers to communicate the message focusing on the development of agriculture.<sup>17</sup>

It should be noted that both types of assemblies do not attract the due interest of state bodies (public officials) unless the situation is aggravated by an incident on the brink of an offence or crime.

**4.1.3. Event organizers and participants**

According to the Law “On peaceful assemblies”, an organizer of a peaceful assembly is a person representing a political party, another organization, or citizens, who is an initiator of this peaceful assembly and performs actions intended to prepare for the aforementioned event and exercises control over the assembly’s actions. A participant of an assembly – is a citizen of the Kyrgyz Republic, a foreign citizen, or a stateless person who partakes in a peaceful assembly.<sup>18</sup>

In 36,0% of cases, private persons acted as initiators of the assemblies under monitoring while in 35,3% of cases the initiators were political parties. Representatives of NGOs organized assemblies in 19,6% of cases.

**Figure 5. Organizers of assemblies.**

| <b>Organizers</b>              | <b>2012</b> | <b>2011</b> |
|--------------------------------|-------------|-------------|
| Mass media                     | 0,0%        | 0,9%        |
| State bodies                   | 5,2%        | 3,9%        |
| Local self-governments         | 0,6%        | 0,0%        |
| Non-governmental organizations | 19,6%       | 19,0%       |
| Political parties              | 35,3%       | 26,7%       |
| Employees of enterprises       | 3,3%        | 27,1%       |
| Private persons                | 36,0%       | 22,4%       |

<sup>15</sup> Observer’s questionnaire #1/1-23.

<sup>16</sup> Observer’s questionnaire #6/14-2.

<sup>17</sup> Observer’s questionnaire #3/7-35.

<sup>18</sup> The Law “On peaceful assemblies”, Article 3, Part 1, para.3,9.

The monitoring showed that most often the assemblies are held in small groups of 2 to 50 people (43,2%). Groups in the amount of up to 100, or between 100 and 300 people, assemble less often (22,3% and 10,4% respectively).

There were two recorded cases of a single-person picketing.

**From an observer's questionnaire:**

N.T., an ex-professor of the Kyrgyz National University, went on a picket on 15 October 2012, in Bishkek on the western side of the White House. His demands were the dismissal of the President of the Kyrgyz Republic because of his lack of legitimacy, his dismissing of judges making illegal rulings, and the confiscation of their property. He informed the City Hall in Bishkek in advance about his sole picketing. Having hung the posters with his demands, N.T. sat on the concrete curb and started to read a book that he had brought along. The sole picketing lasted as long as two hours.<sup>19</sup>

**Figure 6. The number of assembly's participants.**

| Number of participants | 2012  | 2011  |
|------------------------|-------|-------|
| 1001-10000             | 2,7%  | 4,2%  |
| 501-1000               | 10,5% | 3,3%  |
| 301-500                | 10,0% | 5,9%  |
| 101-300                | 10,4% | 17,6% |
| 51-100                 | 22,3% | 23,4% |
| 2-50                   | 43,2% | 45,2% |
| 1                      | 0,9%  | 0,4%  |

**Figure 7. Participants of assemblies.**

| Participants                   | 2012  | 2011  |
|--------------------------------|-------|-------|
| Young people                   | 20,9% | 14,2% |
| Pensioners                     | 4,6%  | 1,3%  |
| Journalists                    | 0,0%  | 1,7%  |
| NGO employees and members      | 35,9% | 30,6% |
| Representatives of national... | 0,0%  | 0,8%  |
| Employees of enterprises       | 1,8%  | 21,7% |
| Private persons                | 36,8% | 29,7% |

According to the Guidelines on Freedom of Peaceful Assembly, children should be given the opportunities to express their opinions and contribute to public life. In the spirit of commitments within the UN Convention on the Rights of the Child, the member States should recognize the children's right to peaceful assembly.<sup>20</sup>

The Law "On peaceful assemblies" does not impose any restrictions for children to participate in peaceful assemblies both as organizers and participants. Over the entire monitoring there has not been a single case of children organizing an assembly. In 52,5% of cases, the observers noted the presence of children in those places where the assemblies took place. These were cases when children accompanied their parents who participated in the assembly, and they watched the assembly out of curiosity.

Children had a special interest in the vehicles decorated with posters that were driving around and stopped in some crowded places for an elections campaign.

<sup>19</sup> Observer's questionnaire #1/1-36.

<sup>20</sup> Convention on the Rights of the Child, Article 15

**From an observer's questionnaire:**

*On the morning of 4 October 2012, about 100 people assembled in Gorky Park. Those in attendance were borrowers of microcredit companies as: "Finca", "Mol-Bulak", "Ayil-Bank", "Kompanion", and "Bai-Tushum". As these companies provided loans for business development and support in remote areas, all of the assembly's participants arrived from different Provinces. At about 13:30 the assembly split into two groups with one of them (about 70 people) directing towards "Finca" and the other one of about 30 people headed towards "Mol-Bulak" with some other people going to "Aiyl Bank". There were about 10 young children among the assembly, including infants held by their mothers. In the beginning the behaviour of the assembled was calm; they were seated around the table discussing and typing something up on the computer. Upon arrival at "Ayil Bank", they started to behave quite aggressively trying to get through to inside the bank's building. About 20 police officers and security service representatives blocked the entrance to the bank preventing the assembled demonstrators from getting in.<sup>21</sup>*

**From an observer's questionnaire:**

*On 5 September, Bishkek saw an action for safety of children in the streets. The Ministry of Interior and school #54 acted as organizers of this action, involving about 50 school-age children.<sup>22</sup>*

**From an observer's questionnaire:**

*Mothers with children who became HIV-infected through medical error assembled on the 12 November 2012 at the White House building demanding an increase in benefits for children who had become disabled. There were a lot of children present during this action.<sup>23</sup>*

The most important principle of free peaceful assemblies is the principle of non-discrimination. The freedom to organize public assemblies and contribute to them should be guaranteed to physical persons, groups of persons, unregistered unions, legal entities, and other types of organizations, representatives of minority ethnic, national, religious, and sexual groups, citizens and non-citizens (including stateless persons, refugees, asylum seekers, migrants, and tourists); children, women and men, law enforcement agencies, and persons that do not possess full legal capabilities (including persons suffering from mental disorders).<sup>24</sup>

The new Law "On peaceful assemblies" established that the state bodies and local self-governments must respect and promote the right to freedom of peaceful assembly regardless of gender, race, language, ethnicity, religion, age, political and other views, origin, social or other status, and other circumstances.<sup>25</sup> In doing so the new Law bridged the gap of the repealed Law "On the right of citizens to assemble peacefully" which had not provided for this norm.

Observers noted a big number of persons with limited capabilities (30%) amongst the participants of assemblies.

In one case the persons with limited capabilities acted as organizers of the assembly. In other cases they were present among other participants.

**From an observer's questionnaire:**

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<sup>21</sup> Observer's questionnaire #1/1-27.

<sup>22</sup> Observer's questionnaire #1/2-9.

<sup>23</sup> Observer's questionnaire #1/2-32.

<sup>24</sup> Guidelines on freedom of peaceful assembly, Principle 2.5.

<sup>25</sup> The Law "On peaceful assemblies", Article 4, Part 1.

About 50 representatives of the Republican Network for the Protection of the Rights of People with Disabilities held an action titled “The city without barriers” on 24 October 2012 at the City Hall’s building.<sup>26</sup>

**From an observer’s questionnaire:**

*In Tokmok, some people with disabilities participated in an assembly organized by the residents of an apartment block demanding to evict a tenant in whose apartment law enforcement had had a searched and found stolen items.*<sup>27</sup>

*The Constitution of the Kyrgyz Republic stipulates that no one can be forced to participate in an assembly.*<sup>28</sup>

*This norm was detailed and strengthened in Part 2 of Article 4 of the Law “On peaceful assemblies”, which says that participation in assemblies is voluntary, and the persons coercing to participate or illegally hindering the assembly shall be held liable according to the legislation of the Kyrgyz Republic.*

*While last years’ survey had identified two cases of coercion to participate in an assembly, this survey did not report such facts. At the same time in three cases there were calls of demonstrators for participation in the assembly.*

**From an observer’s questionnaire:**

*The assembled people were not happy with a judge’s ruling of home arrest for two accused persons, ethnic Uzbeks, who were calling for strangers, ethnic Kyrgyz, to join the demonstration, shouting out nationalistic mottoes.*<sup>29</sup>

Adherence to the principle of voluntary participation is crucial in involving employees of budget organizations into assemblies in the view of lengthy discussions of this issue during many years. At the present moment these debates have continued in the Parliament of the KR which is considering a draft law about this subject matter.

**Press coverage:**

*“Tokon Mamytov, a member of Parliament, demands policy makers to stop involving teachers in demonstrations. It was stated by him during today’s meeting. According to him, a relevant law must be amended to read that teachers must not be involved in acts of protest and must not be used as electioneers during elections. ‘One needs to stipulate it in the Law’, - Tokon Mamytov believes. MP Omurbek Abdyrakhmanov reckons that this proposed amendment by his colleague infringes upon the civil rights of teachers. ‘They also should be able to express their civil position. If they want to participate in a demonstration, let them do so’, - he commented.*

*After a short-lived discussion the people’s deputies decided to support Tokon Mamytov and stipulate it in the Law that teachers must not participate in political demonstrations to support any actor, whether he is a representative of the ruling party or the opposition”.*<sup>30</sup>

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<sup>26</sup> Observer’s questionnaire #1/2-20.

<sup>27</sup> Observer’s questionnaire #8/13-4.

<sup>28</sup> The KR Constitution, Art.34, part 1.

<sup>29</sup> Observer’s questionnaire #3/7-3.



Observation showed that the involvement of teachers from secondary schools in demonstrations is not widely spread. As noted by an observer, in the only case when a Principal and teachers participated in an assembly, it was voluntary.

**From an observer's questionnaire:**

*Unhappy with the unjustified ruling of the Issyk-Ata Rayon court about the removal of a child, the Principal and teachers of the school where this child was a student, and some parents from the parental committee, organized a demonstration in front of the court building. The demonstration dissipated after being seen by the Chairperson of the Rayon court.*<sup>31</sup>

Often during monitoring a question of motivation of assembly participants has been brought up. In some cases the observers could not come up with a solid answer whether the participation was voluntary or forced.

An-interesting-for-the-survey instance is the coercion of women to form so called "special women's taskforce"(SWT) and the legality of payment for their services.

The roundtable "Women's participation in protests and the SWT phenomenon in the Kyrgyz Republic" noted that SWT exists in every village. According to A. Alymkulova, an expert, SWT participate in demonstrations based on negotiated prices frequently being used by other persons as well to help achieve their objectives, whether it is all about political or economic claims. J. Aitmatova, an analyst, mentioned that one of the reasons why women join the ranks of SWT is poverty and unemployment, as well as negligence of local authorities. A "contract" is reason number three.<sup>32</sup>

At the initial state of involving the SWT an agreed price plays a determining role. However, what is to be done when the received money is spent, with the SWT believing that they have worked for the money, but the client thinking otherwise and demanding the protests continue?

This issue is not fully studied; therefore, it requires more attention.

***Press coverage:***

*"People go for demonstrations because they are paid for it. And it is no exception to see guys in the square who do not have any idea why they are there. People need money, and when they are offered five hundred or a thousand som to stand in a demonstration, they are taking the money. On the other hand, the organizers pay all financial expenses of those people who demonstrate as they need to get to the place of demonstration, eat and drink something during the day. It is impossible to state precisely whether it is right or wrong".*<sup>33</sup>

*To the question when the demonstrators will stop receiving money, President Almazbek Atambayev commented, that it could be perceived as a minus, but on the other hand, there are pluses in it too. 'People do not want to demonstrate for somebody. They do not have a soulful purpose for it, and, thus, they go for money. There are those who are following their hearts, of course, however, the situation in the country is changing. I keep saying, if you want power, go to the elections', - he said.*<sup>34</sup>

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<sup>30</sup>"Member of Parliament of Kyrgyzstan demands to stop involving teachers in demonstrations". Bishkek – "24.kg" information agency. 12.12.2012. 12:56. Daria Podolskaya.

<sup>31</sup> Observer's questionnaire #8/13-10.

<sup>32</sup> "In Kyrgyzstan the movement of so-called Special Women's Taskforce (SWT) exists in every village". 13.06.2012. 10:36, Bishkek "24.kg" information agency, Daria Podolskaya.

<sup>33</sup>"Demonstrations in Kyrgyzstan became a good tradition". Polit.kg. 14.09.2011, 18:46. Anna Myagchilova.

<sup>34</sup> A.Atambaev: "From now on no one will prohibit demonstrations and pickets in Kyrgyzstan". Bishkek - "AKIpress". 28.11.2012.

The UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities proclaims that “persons belonging to the minority may exercise their rights [...] both individually and as a group without any discrimination”.<sup>35</sup>

As noted before, the minimum standards of non-discrimination were included in Part 1 of Article 4 of the Law “On peaceful assemblies”.

Over the whole period of monitoring the observers did not register a single case of hindering the right to free peaceful assembly based on the mentioned discriminatory characteristics.

#### 4.1.4. Place and time of holding assemblies

The Guidelines on Freedom of Peaceful Assembly stress the fact that the state should always strive to hold peaceful assemblies in the preferable-to-organizers places, and they should not be moved out to distant locations from the city centre. Assemblies use public places in a legitimate way, same as trade, human or transportation traffic.

Public assemblies are held with the purpose of communicating ideas and messages to a specific person, groups of persons or organization. Therefore, a general rule is about facilitating assemblies within the “visibility and audibility” of their target audience.<sup>36</sup>

The monitoring showed that the organizers of assemblies choose the front of buildings that house state organs for holding their assemblies (39,4%), squares (23,8%), streets (21,8%) and parks (6,2%). It is noteworthy that this year the participants of assemblies “moved out” of squares to the territories in the vicinity of the buildings of state organs. According to the observers, it could be explained that there is a greater understanding that the majority of problems could be addressed quicker with a direct executive state body rather than to shout out general zero-address requirements to the authorities in the squares.

**Figure 8. Locations of holding assemblies.**

| Location                              | 2011  | 2012  |
|---------------------------------------|-------|-------|
| Street                                | 18,0% | 21,8% |
| Square                                | 42,3% | 23,8% |
| Park                                  | 5,9%  | 8,8%  |
| Pavement (pedestrian areas)           | 1,7%  | 6,2%  |
| In front of buildings of state bodies | 28,9% | 39,4% |
| Stadium                               | 2,5%  | 0,0%  |
| Hippodrome                            | 0,8%  | 0,0%  |

It is noteworthy that state organs and local self-government bodies have an understanding that assemblies could take place anywhere, except locations stipulated in the Law.

Rare attempts from their side to change locations of holding assemblies are more about persuading rather than coercing.

#### ***Press coverage:***

<sup>35</sup> The UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities. Adopted by Resolution of the General Assembly: GA Res 47|135, 18 December, 1992, Art.3 (1).

<sup>36</sup> Guidelines on freedom of peaceful assembly, principles 2.2, 3.2, 3.5.

*“We cannot prohibit the installation of yurts by the demonstrators”, - said Alimjan Baigazakov, the first Deputy Mayor to “24.kg”. According to him, the protesting proponents of the arrested members of Parliament still insist on installing yurts in the square near the municipality building. “Yesterday’s negotiations did not yield any results. The City Council made a decision to permit demonstrations and pickets in front of “Semetei” movie theatre. However, the assembly does not like this location, saying that it is far out of the city. We have only one solution: we shall continue to explain and persuade the demonstration to act lawfully. We tell them that rather than go on a hunger strike it is better to start talking to the authorities which would produce a better result”, - said the official.<sup>37</sup>*

Though some exceptions were also noted.

**From an observer’s questionnaire:**

*On 19 September 2012, the third day of an open-ended demonstration of the “Protection of Borrowers’ Rights” initiative group the participants attempted to mount a yurt. The police used force to prevent the demonstrator from installing the yurta in Gorky Park. Responding to this situation, the demonstrating women started to shout out threats and curses with an escalating verbal exchanges between the police and the demonstrators. After trying to disperse the demonstrators to no avail, the yurt was finally installed.<sup>38</sup>*

The new Law “On peaceful assemblies” excludes the residency of the President and the Prime Minister of the Kyrgyz Republic, the parliamentary buildings, and the courts of the Kyrgyz Republic from the list of locations where it is prohibited to demonstrate.

**Table 3. Locations prohibited for holding assemblies.**

| <b>Locations where it is prohibited to hold assemblies</b>   |   |
|--|---|
| The Law “On the right of citizens to assembly peacefully” <sup>39</sup>  | The Law “On peaceful assemblies” <sup>40</sup>  |
| Closer than 30 meters to: <ol style="list-style-type: none"> <li>1. International and important-for-the-state highways;</li> <li>2. Residencies of the President and Prime-minister of the Kyrgyz Republic</li> <li>3. The building of the Parliament</li> <li>4. Buildings occupied by courts of the Kyrgyz Republic</li> <li>5. Territories and buildings of institutions of deprivation of liberty;</li> <li>6. The places of dislocation of military detachments and the Military Forces of the Kyrgyz Republic, and other military regiments of the Kyrgyz Republic and their divisions.</li> </ol> | Closer to (no less than 100 meters): <ol style="list-style-type: none"> <li>1. Dangerous and hazardous production facilities;</li> <li>2. Power plants;</li> <li>3. Railways;</li> <li>4. Oil pipelines;</li> <li>5. High voltage lines;</li> <li>6. Penitentiary institutions;</li> <li>7. State and municipal health institutions;</li> <li>8. Pre-schools;</li> <li>9. Pre-schools and secondary schools;</li> </ol> |
| In the borderline zone unless there is a special permission to it issued by authorized border agencies.  |   |

<sup>37</sup> The City Hall of the southern capital of Kyrgyzstan: we cannot prohibit the demonstrators to install yurts. 12/10/12 07:46, Bishkek – “24.kg” information agency, Asylkan Shainazarova.

<sup>38</sup> Observer’s questionnaire #1/1-16.

<sup>39</sup> The Law “On the right of citizens to assemble peacefully”, Article 4, part 1, para.2-5.

<sup>40</sup> The Law “On peaceful assemblies”, Article 12.

**From an observer's questionnaire:**

*On 8 October 2012, about 2000 demonstrators assembled in the centre of Jalal-Abad at the crossing of Erkindik and Lenin, in the square near the provincial state administration (where, at the moment of protest, construction works were in progress and the square was fenced off) to protest against the apprehension and arrests of K. Tashiyev, S. Japarov, T. Mamytov, deputies of "Ata-Jurt" party. (According to the organizers, the number of protesters exceeded 10000 persons).*

*They placed themselves in the road where they also set up tree yurts.*

*A kindergarten and a secondary school were located less than 100 meters from the protesters.*

The Law "On peaceful assemblies" does not contain any norms about timelines for peaceful assemblies which meets international standards. The authors of the draft Law proposed a norm according to which state bodies and local self-government bodies and their officials would not have the right to determine the time, venue and routes for the peaceful assembly, in any way prohibit or restrict these parameters, except in those cases when failure to undertake such measures would lead to the violations of the rights of citizens who do not participate in the assembly, and also in order to protect national security, public order, and secure health and morals of the population.

The observers did not note any case when the assembly was restricted by time. The data on the number of held assemblies in 2011 as compared to 2012 had not changed significantly.

In the absolute majority of cases, the assemblies were held during workdays, i.e. during business hours of those state bodies and local self-government bodies whom the protests and calls were addressed to.

**Figure 9. Days of assemblies.**

| <b>Week day</b> | <b>2011</b> | <b>2012</b> |
|-----------------|-------------|-------------|
| Monday          | 25,5%       | 21,4%       |
| Tuesday         | 18,8%       | 17,7%       |
| Wednesday       | 12,6%       | 19,5%       |
| Thursday        | 18,8%       | 17,3%       |
| Friday          | 17,2%       | 12,7%       |
| Saturday        | 4,6%        | 5,5%        |
| Sunday          | 2,5%        | 5,9%        |

The indicators of holding assemblies during holidays and week days had not changed much.

**Figure 10. Ratio of assemblies during holidays and week days.**

| <b>Year</b> | <b>Holidays</b> | <b>Week Days</b> |
|-------------|-----------------|------------------|
| 2011        | 1,7%            | 98,3%            |
| 2012        | 4,1%            | 95,9%            |

The monitoring findings help make a conclusion that both last year and this year weather conditions did not play a decisive role in organizing the assembly or participate in it.

**Figure 11. Weather conditions during the day of assembly.**

| <b>Weather conditions</b> | <b>2011</b> | <b>2012</b> |
|---------------------------|-------------|-------------|
| Sunny                     | 51,9%       | 47,7%       |
| Hot                       | 14,7%       | 10,9%       |

|          |       |       |
|----------|-------|-------|
| Raining  | 5,4%  | 5,2%  |
| Overcast | 14,6% | 16,1% |
| Snowing  | 1,3%  | 8,3   |
| Cold     | 12,1% | 15,5% |

#### 4.1.5. Nature of assemblies

The Guidelines on Freedom of Peaceful Assembly proclaim that only peaceful assemblies are to be protected. The assembly should be identified as peaceful if its organizers have peaceful intentions and the assembly itself is not violent.

The term “peaceful” should include conduct that may annoy or give offence to other persons and also such conduct that could temporarily impede actions of third persons or make them difficult.<sup>41</sup>

If the assembly satisfies the main criterion of being peaceful, this leads to a positive duty of state authorities in relation to the right to peaceful assembly.<sup>42</sup>

This idea is clearly stipulated in the new Law “On peaceful assemblies”. Positive duties of state authorities and local self-government bodies to promote the right to peaceful assemblies are detailed in Articles 4, 5, and 6 of the Law. The Law sets forth the actions of authorities regulating the assemblies in terms of prohibiting, restricting, and dispersal of assemblies that are not peaceful or have lost their peaceful demeanour.

Within 2012 monitoring, the observers noted an (2,8%) increase, though insignificant, in the number of peaceful assemblies. It means that the number of non-peaceful assemblies had a 2,8% decrease.

**Figure 12. Nature of assemblies.**

| Year | Peaceful | Non-peaceful |
|------|----------|--------------|
| 2011 | 91,3%    | 8,7%         |
| 2012 | 94,1%    | 5,9%         |

Among non-peaceful assemblies the observers noted those where the participants let themselves make statements and threats based on ethnic hatred, instigated for discrimination, animosity, and violence.

#### **From an observer’s questionnaire:**

*On 25 October 2012, the participants of an assembly, unhappy with the Rayon judge’s ruling of home arrest for ethnic Uzbeks R. and Sh. (accused of committing the crime in line with Article 234, Part 2 of the Criminal Code of the Kyrgyz Republic) called for the burning of the houses of the accused.*

*The demonstrators forcefully led the judge and the prosecutor out of the courtroom and escorted them towards the Rayon Interior Department as the demonstrators thought they had got a bribe of 200 000 som. On the way, both the judge and the prosecutor were bitten up and subsequently taken to the hospital. The judge was diagnosed with a closed cranio-cerebral injury.*

<sup>41</sup> Guidelines on freedom of peaceful assembly, principle 1.3.

<sup>42</sup> Interpretative Notes to the Guidelines on freedom of peaceful assembly, para. 26, 28, 31-34, 104, 144-145.

The observers noted that the mood of the crowd was very aggressive in relation to the persons of a different ethnicity. The Uzbeks living in that area were trying to keep out and go around the street where the act of protests took place. About 20 police officers were among the protesters, some of them wearing civilian clothes. The protestors openly insulted them, demonstrating aggressiveness and belief in their impunity.<sup>43</sup>

Based on Guidelines on Freedom of Peaceful Assembly, any assembly that transitions from being peaceful into non-peaceful is not any more to be protected according to the human rights legislation. Therefore, such assembly may be dispersed.

However, the use of force by a small group within the assembly (and their hate speech) do not automatically make a non-peaceful assembly from a peaceful one; therefore, any intervention should be directed towards neutralizing specific individuals rather than dispersing the whole assembly.<sup>44</sup>

This issue is detailed in the relevant section of this report.

#### 4.1.6. Formats of assemblies

The right to free expression includes the right to choose a form of communicating ideas without the unjustified interference of authorities. In the judge’s ruling on the case of *Christians against Racism and Fascism (CARAF) vs the United Kingdom*, the European Commission recognized that “the freedom of peaceful assembly applies both to static assembly and public marching”.<sup>45</sup>

**Table 4. Format of public events.**

| Format of public event               | 2011  | 2012  |
|--------------------------------------|-------|-------|
| In motion                            | 6,7%  | 12,3% |
| Static                               | 66,1% | 55,9% |
| In motion and static                 | 11,3% | 6,8%  |
| Walking assembly                     | 7,5%  | 4,1%  |
| Assembly using transport             | 1,7%  | 9,5%  |
| Walking and using transport assembly | 1,3%  | 1,4%  |
| Sit-in                               | 5,4%  | 10,0% |

According to organizers and protestors, an effective way to attract attention to a problem is to block roads.

During monitoring the observers reported on five cases of blocking roads. In the course of the 2011 monitoring exercise the protestors blocked roads nine times.

#### **From an observer’s questionnaire:**

*On 4 and 16 October 2012, about 300 residents of villages located close to Burgandy and Mailuu-Suu village councils (ayil okmotu) blocked the Osh-Bishkek highway in the area of Kypchak-Talas of Nooken Rayon, demanding the release of K. Tashiyev and T. Mamytov. The officers of the Interior Unit stationed themselves on the road near the assembly, some of them mingling among the participants.*

*For security purposes a security cordon was created from both sides of the road and in the middle of it.*

<sup>43</sup> Monitoring report #3/7-3.

<sup>44</sup> Interpretative Notes to the Guidelines on Freedom of Peaceful Assembly, para.164.

<sup>45</sup> *Christians against Racism and Fascism v/ UK*, 1980.

*The Deputy Head of the Interior Unit, Deputy Prosecutor, as well as Head and Deputy Head of Burgandy came out to hold negotiations with the event organizers and participants and promised to review the demands of protestors.*

*On 16 October, yurts were installed along the road. Verbal exchanges and fighting happened between the protesters and strangers going to Bishkek from Osh.*

*After a government representative came out to negotiate with the organizers of the assembly, they re-opened the road at about 23.30. The assembly warned that if their requirements were not satisfied the next day by 10.00, they would block the road again.<sup>46</sup>*

**From an observer's questionnaire:**

*On 4 October 2012, about 300 fellow-villagers and relatives of deputies K. Tashiyev and T.Mamytov blocked the Osh-Bishkek highway in the area of Barpy constituency.*

*A truck with a trailer was located on the road with women stationing themselves right in the road. The assembled people paid no attention whatsoever to the resentment of drivers and those being late for their flights.*

*The Governor (Akym) of Suzak Rayon, the Head of Suzak Interior Unit, and the Head of Jalal-Abad Province Interior Department came out to negotiate with the protesters. They asked to open the road and not to act as a traffic barrier, offering to protest in a different location without infringing upon the rights of other people.*

*The protesters responded by bringing benches and installing them right in the road with aging women sitting on them. They started to assemble a yurt by the side.<sup>47</sup>*

***Example:***

*In the course of the protest against the judge's ruling of the home arrest for R. and Sh., accused of committing a crime according to Article 234, Part 2 of the Criminal Code of the KR, on 26 September 2012, the protesters blocked the road near the building of the Rayon state administration.<sup>48</sup>*

***Example:***

*On 11 August 2012, about 100 residents of three five-storied apartment buildings in Osh blocked Shakirov Street aiming at attracting attention of the city water canal administration to the problem of cutting off the water supply.<sup>49</sup>*

***Example:***

*On 25 September 2012, the residents of Zulpuev village in Nookat Rayon of Osh Province blocked the road in order to attract attention of the public and executive bodies to the deplorable conditions of roads.<sup>50</sup>*

*Stressing the economic side of the matter, former Prime Minister Omurbek Babanov proposed to increase fines "for offences and blocking roads" up to 1 million som.<sup>51</sup>*

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<sup>46</sup> Monitoring report #3/3-1.

<sup>47</sup> Monitoring report #3/7-6.

<sup>48</sup> Monitoring report #3/7-4.

<sup>49</sup> Monitoring report #2/6-3.

<sup>50</sup> Monitoring report #2/6-5.

*This initiative of the former Prime Minister created a mixed response of the public and among experts. Meanwhile the Parliament approved the draft law saying that blocking roads shall be subjected to a fine in the amount of 30 calculated points for physical persons, 50 – for legal persons, and 50-70 calculated points for those blocking roads with barriers.<sup>52</sup>*

Another way to put pressure is a conscientious refusal to eat, or a “hunger strike”, as a protest and as a call for guilt by the surrounding people for what is happening. In the course of monitoring, the observers noted two cases of hunger strikes.

**From an observer’s questionnaire:**

*More than 2,000 people assembled near the provincial state administration building in the centre of Jalal-Abad on 8 October 2012, to protest the arrest of K. Tashiyev, S. Japarov, and T. Mamytove, “Ata-Jurt” party deputies.*

*In the evening of the same day, nine women went on a hunger strike. The next day they were joined by dozens of other women and one aging man. The total number of hunger strikers made up 40 people with some of them quitting the strike due to health conditions. An ambulance was on duty 24 hours in case emergency assistance would be needed for the protesters.<sup>53</sup> The hunger strike was stopped only after K. Tashiyev was released from custody on 30 October.*

**Press coverage:**

*In the southern capital of Kyrgyzstan, one of the protesters, who called herself “Maksat Odonova”, announced a hunger strike and put clear tape over her mouth.<sup>54</sup>*

An important component of any assembly is the exterior accessories, such as symbols, uniform, emblems, music, flags, posters, and billboards that are shown or used during the assemblies.

The Guidelines on Freedom of Peaceful Assembly explain that if such symbols used in the course of the assembly are associated exclusively with the acts of physical violence, then legitimate restrictions could be imposed on them. A peaceful assembly should not be prevented from wearing costumes or masks intended to express their views unless they are used to prevent identification of persons whose behaviour creates reasons for their arrest, and unless the masks do not create a clear and direct threat of an inevitable illegal act.<sup>55</sup>

The existing legislation on peaceful assemblies does not contain restrictions on external attributes of the assembly. It is noteworthy that the assembly participants prepare well for public events and actively use visuals and soundtracks.

**Figure 13. Visual aids used during assemblies.**

| <b>Visual aids</b> | <b>2011</b> | <b>2012</b> |
|--------------------|-------------|-------------|
| Flags              | 20,1%       | 12,4%       |
| Bill boards        | 29,3%       | 19,2%       |
| Posters            | 32,6%       | 27,4%       |

<sup>51</sup> Omurbek Babanov: In Kyrgyzstan the fines for offences and road blocking should be increased to one million som. Bishkek – “24.kg” information agency. 13.06.2012. 14:56. Tolgonai Osmongazieva.

<sup>52</sup> The Parliament of Kyrgyzstan approved the draft law according to which a fine is introduced for blocking the road. Bishkek – “24.kg” information agency. 22.11.2012. 13:51. Calia Duishebaeva.

<sup>53</sup> Monitoring report #3/7-7.

<sup>54</sup> “In the southern capital of Kyrgyzstan one of the female protesters for three deputies of the Parliament put clear tape over her mouth and announced a hunger strike”. Osg – “24.kg” information agency. 11.10.2012, 14:30. Igereem Egemberdieva.

<sup>55</sup> Interpretative Notes to the Guidelines on freedom of peaceful assembly, para. 97,98.



|                |       |       |
|----------------|-------|-------|
| Special outfit | 10,9% | 9,4%  |
| Masks          | 0,0%  | 3,0%  |
| Headwear       | 2,2%  | 17,5% |
| Other          | 4,9%  | 11,1% |

**Figure 14. Sound tracks during assemblies.**

| Sounds          | 2011  | 2012   |
|-----------------|-------|--------|
| Amplified sound | 27,8% | 23,2%  |
| Singing         | 7,7%  | 14,6%  |
| Shouting        | 25,7% | 21,6%  |
| Slogan chanting | 18,2% | 10,3%  |
| Music           | 21,2% | 30,30% |

**From an observer's questionnaire:**

*Near the Belarusian Embassy in Kyrgyzstan on 7 September 2012, Ondush Toktonasyrov and representatives of the "7 April" movement demanded extradition of the Bakiyevs and all proxies. To produce noise the assembly used aluminium spoons and pans.<sup>56</sup>*

**4.2. PROCEDURAL ISSUES**

**4.2.1. Notification**

In an open society, many types of assemblies do not require any state regulation. The Guidelines on Freedom of Peaceful Assembly stress that the international human rights law does not require national legislation to contain the requirement of preliminary notification for an assembly. The preliminary notification should be demanded only in those cases when the idea is to provide the state agencies with an opportunity to get prepared and facilitate the freedom of assembly, arrange for the protection of public order, public security, and the rights and freedoms of other persons.

Any legal provision on this matter should stipulate that assembly organizers give notification rather than ask for authorization to do so.<sup>57</sup>

The Constitution of the Kyrgyz Republic has fully implemented this principle and established that notification to state authorities of a planned assembly shall be the right of organizers and participants of peaceful assemblies. It is not allowed to prohibit or restrict a peaceful assembly and its protection based on the missing notification or provision of it in an unacceptable form, on the basis of its contents, or timelines.

Organizers and participants of peaceful assemblies shall not be responsible for missing notifications regarding holding an assembly, inappropriate format of the notification, its contents and time of submission.<sup>58</sup>

<sup>56</sup> Observer's questionnaire #1/1-13.

<sup>57</sup> The Guidelines on freedom of peaceful assembly, principle 4.1.

<sup>58</sup> The Constitution of the Kyrgyz Republic, Article.34, Part 1,2.

The provision that the notification of holding an assembly should be perceived by state authorities or local self-government bodies as a notification of intent rather than as a request for permission was made part of the Law “On peaceful assemblies”.

The Law elaborates on the meaning of the notification about holding an assembly, saying that it is a preliminary warning to state authorities and local self-governments about a planned assembly. A spontaneous assembly is described by the Law as the assembly taking place without any preliminary notification.<sup>59</sup>

Almazbek Atambayev, President of the Kyrgyz Republic, noted that from now onward no one is going to prohibit demonstrations and picketing. “Another matter is that they should be within law, like in any normal country. Henceforth, so be it. One should not be afraid of demonstrations and one should not confuse solid stability with seeming stability; one has to look deeper”, - he said drawing conclusions of his first year in office.<sup>60</sup>

The observers noted that public officials of state authorities and local self-governments also held to this line.

The majority of assemblies (75,9%) were held without organizers notifying authorities. Organizers and participants of assemblies explained why they had not notified the authorities of the assembly in advance. They explained that, according to the Constitution and the new Law “On peaceful assemblies”, they enjoy the right to decide for themselves whether to notify or not.

**Figure 15. Notification of authorities and local self-government bodies of assemblies.**

| Notifications | 2011  | 2012  |
|---------------|-------|-------|
| Sent          | 45,2% | 24,1% |
| Not sent      | 54,8% | 75,9% |

Failure to notify the authorities about an assembly had never been a reason to restrict or terminate a public event altogether.

As in 2011, in 2012 observers did not report a single case of refusing an assembly after notification. After making the notification optional and in the context of no refusals of assemblies, the observers did not register a single legal conflict in this area.

In accordance with the Guidelines on Freedom of Peaceful Assembly, the process of notifying should not be made burdensome and bureaucratic.

This principle was mentioned in the Law “On peaceful assemblies” which stipulates the right to notify of an upcoming assembly in the form of a letter, wire, telephone message, post, facsimile, electronic, or any other format or type of communications.<sup>61</sup>

<sup>59</sup> The Law «On peaceful assemblies», Article 3, Part 1, para.7,8.

<sup>60</sup> A.Atambayev: “In Kyrgyzstan from now onwards no one will prohibit demonstrations and pickets”. Bishkek, “AKIpress”. 28.11.2012.

<sup>61</sup> The Law of the KR “On peaceful assemblies”, Article 11, parts 1,2.

Out of the 53 cases of notifying the authorities of the planned assembly, in 50 cases the organizers sent a written notice to the appropriate agencies, in two cases they sent a telephone message, and in one case they used a facsimile communication.

#### 4.2.2. Spontaneous assemblies

The Guidelines on Freedom of Peaceful Assembly note that if the legislation requires sending a preliminary notification, then there should be direct provisions detailing that notification shall not be required when it is not feasible to make.

This exception shall be applied only in those circumstances when it is impossible to fit within the time limits set by law. The authorities should always ensure protection of any spontaneous assemblies and protect them unless they are peaceful no more.<sup>62</sup>

The law “On peaceful assemblies” defines a spontaneous assembly as the one held without any prior notice. However, spontaneous assemblies are mentioned in the glossary only. The requirements of Article 34 of the Constitution of the Kyrgyz Republic were not fully and clearly stipulated in the Law “On peaceful assemblies”.

However, as demonstrated by monitoring, 14,1% of all monitored assemblies turned out to be spontaneous.

**Figure 16. Types of assemblies.**

| Types of assemblies   | 2011  | 2012  |
|-----------------------|-------|-------|
| Planned assembly      | 69,5% | 85,9% |
| Spontaneous assembly  | 22,6% | 14,1% |
| Simultaneous assembly | 5,4%  | 0%    |
| Counter assembly      | 2,5%  | 0%    |

#### 4.2.3. Simultaneous assemblies

In line with the Guidelines on Freedom of Peaceful Assembly, when there are notifications of two or more unconnected assemblies to be convened at the same location at the same time, one has to apply maximum efforts to ensure that they are held in the best possible way. To prohibit a public assembly based on the fact that it would be held at the same location and the same time with another one is likely to be a disproportionate decision, if both of them could be held at this place.<sup>63</sup>

The Law “On peaceful assemblies” envisages the right to hold a simultaneous assembly, namely the assembly that would take place at the same time with another one in the same territory and would express views different from the views of the other assembly.

At the same time, the Law vests the responsibilities to prevent clashes and other conflicts between one assembly and a counter or simultaneous assembly with the law enforcement agencies (LEAs).

According to the Law, in case of simultaneous assemblies, the LEAs must ensure and determine a safe distance between these assemblies.<sup>64</sup>

It was not possible to monitor how the LEAs manage to perform the vested functions as in the course of monitoring the observers were not able to report on a single simultaneous assembly.

<sup>62</sup> The Guidelines on freedom of peaceful assembly, principle 4.2.

<sup>63</sup> The Guidelines on freedom of peaceful assembly, principle 4.3.

<sup>64</sup> The Law of the KR «On peaceful assembly”, Article 6, part 1, para.11.

#### 4.2.4. Counter assemblies

The Guidelines on Freedom of Peaceful Assembly define counter assemblies as a form of simultaneous assembly whose participants are willing to express their disagreement to the views expressed by the other assembly. Here, one mainly has to pay attention to the responsibilities of state bodies to ensure the conduct and protection of each assembly.<sup>65</sup>

A similar definition of counter assembly is set forth in the Law “On peaceful assemblies”. A counter assembly is an assembly held for the same reason only to express a dissenting opinion, regardless of place and time of these assemblies.

Same as with simultaneous assemblies, the Law “On peaceful assemblies” vests certain responsibilities with LEAs to ensure the conduct of the counter assembly.

As such, in case of a counter assembly, LEAs determine and ensure a safe distance between the assembly and the dissenting counter assembly within a range of mutual visibility and audibility.<sup>66</sup>

During the whole period of monitoring, the observers have not reported on a single case of a counter assembly.

### 4.3. ENSURING THE RIGHT TO FREEDOM TO PEACEFUL ASSEMBLY

In line with the Guidelines a most important principle on freedom of peaceful assembly is the duty of the state to promote and protect peaceful assemblies.<sup>67</sup>

Aiming at providing such protection, the new Law “On peaceful assemblies” envisages mechanisms and procedures allowing the real implementation of freedom of assembly without excessive bureaucratic regulation.

#### 4.3.1. Responsibilities of state bodies and local self-government bodies in ensuring the right to freedom of peaceful assembly

Relevant articles of the Law “On peaceful assemblies” clearly stipulate the responsibilities of state bodies and local self-government (LSG) bodies.

As such, Article 5 of the Law vests the following important responsibilities with LSGs:

- Undertake interventions to protect peaceful assemblies in co-operation with law enforcement agencies and other state agencies;
- Interact with organizers and participants of assemblies to protect peaceful assemblies;
- Inform state agencies to whom these issues are addressed, on the basis of the available information, about the reasons of holding the assembly.

The state bodies and LSGBs, to whom the demands of the assembly are addressed, should ensure the reception and consideration of substantial claims, and also inform about the decision taken in line with the procedure established by national legislation.

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<sup>65</sup> The Guideline on freedom of peaceful assembly, principle 4.4.

<sup>66</sup> The Law of the KR “On peaceful assemblies”, Article 6, Part 2.

<sup>67</sup> The Guideline on freedom of peaceful assembly, principle 2.2.

During monitoring, the observers documented the actual interventions of state bodies and LSGBs and their potential abilities to ensure the conduct of peaceful assemblies. The observation was concentrated around two main aspects with the results being summarized in the figures below.

Same as last year, in the absolute majority of cases there is an observed attempt of state bodies and local self-governments to come into contact with the participants of assemblies and listen to their claims, requests, and wishes.

**Figure 17. Consideration of claims from assemblies.**

| <b>Consideration of claims</b>                                       | <b>2012</b> | <b>2011</b> |
|--|-------------|-------------|
| State agency or LSG body did not react to the demand in any way      | 3,2%        | 21,4%       |
| Head of a state agency or LSG body came out to public protesters     | 93%         | 52,4%       |
| A private meeting arranged by the head of a state agency or LSG body | 3,9%        | 26,2%       |

There were some cases documented when representatives of state bodies ignored the fact of assembly as such and, consequently, the claims that were being put forward.

***Press coverage:***

*“A demonstration of mothers whose children had been infected with HIV/AIDS through medical errors took place in the capital of Kyrgyzstan. Today they intend to spend the night in front of the White House”. This was mentioned by the mothers themselves to “24. kg” information agency. According to them, they have been picketing together with their children since last week, demanding an increase in the benefits paid to them, and resolution of housing issues. “Nobody came to talk to us. Last week we asked our acquaintances to give us shelter for several days. Today the time is up and we have to vacate the premises where we and our children slept on the floor. It is obvious that today we’ll have to sleep right at the White House. There is no other way out”, - added one of the protesters.<sup>68</sup>*

Depending on the substance and complexity of the matter, the heads of state and LSGBs either satisfied the claims of the assembly on the spot or they promised to study these claims as it was not possible to resolve them immediately.

***From an observer’s questionnaire:***

*A group of relatives of S.A., sentenced to ten years of imprisonment by the Tokmok City Court according to Article 97 of the Criminal Code of the KR, assembled on 31 October 2012 in front of the court’s building to protest against this ruling, shouting out threats addressed to the judge who had issued this ruling.*

*To ensure public order, a police unit was called for. The chairman of the city court came out to the protesters and convinced them to come inside the court’s building, where he explained that they can appeal against the ruling to a court of a higher instance.<sup>69</sup>*

<sup>68</sup> “In Kyrgyzstan the protesting mothers intend to sleep in front of the White House”. “24.kg” information agency. 12.11.2012. 09:18. Asylkan Shainazarova.

<sup>69</sup> Observer’s questionnaire #8/13-9.

**From an observer's questionnaire:**

More than a hundred proponents of arrested deputies of the Parliament, K. Tashiyev and T. Mamytov, blocked the road demanding their release on 4 October 2012 in the vicinity of Kypchak-Talas of Nookan Rayon. About 17 representatives of authorities, including the head and deputy head of Burgandy village council, head of the Interior Unit, and a deputy head of the Rayon Prosecutor's Office, came out to talk to leaders.

They promised to communicate their messages to relevant agencies, having told the assembly that their demands could not be possibly met instantaneously.<sup>70</sup>

**Figure 18. Decision-making on specific requirements of protesters.**

| <b>Decision-making on specific requirements</b>   | <b>2012</b> | <b>2011</b> |
|---|-------------|-------------|
| Answer was given that it is impossible to satisfy the requirement                                     | 0,7%        | 9,5%        |
| A promise was given to study the requirements as it was not possible to make the decision immediately | 87,4%       | 78,6%       |
| The requirements satisfied, the decision communicated to the assembly                                 | 11,9%       | 11,9%       |

There were cases registered when the rude response of an official, made without any consideration for the condition and a possible behaviour of the crowd, became reason for serious consequences.

**From an observer's questionnaire:**

Residents of a multi-storied building in Shakirov Street were fed up with living without water. When they visited the head of the City Water Canal office, the response of the head was blunt and abrupt. He made it clear that he would not be going to do anything for the residents of these buildings. This became a reason for blocking one of the central roads.<sup>71</sup>

It is necessary to mention that in some cases, the meeting of the head and representatives of state agencies and LSGBs with assembly members helped to decrease tensions that otherwise could have led to escalation.

**Press coverage:**

*“The assembly members, mainly aging women, tried to get to the White House to support three arrested Ata-Jurt party members – K. Tashiyev, S. Japarov, and T. Mamytov, but they were stopped by the police.*

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<sup>70</sup> Questionnaire #3/3-1.

<sup>71</sup> Observer's questionnaire #2/6-3.

*A female representative of the Parliament office came out to them and informed that the MPs agreed to see three representatives for each of the arrested deputies. At the present moment the delegated representatives of the protesters are getting passes to the building”.*<sup>72</sup>

#### **4.3.2. Responsibilities of interior bodies in the area of ensuring the right to freedom of peaceful assemblies**

##### **Protection of public order**

The Law “On law enforcement agencies of the Kyrgyz Republic” identifies the place and role of LEAs in the system of the executive power, their main tasks, rights and responsibilities.

The Law establishes that, in its activities, the LEAs base themselves on respect to human rights and act as guarantors of protection for each person. The Law describes the provision of public order, safety of person and society as the most important tasks of LEAs.<sup>73</sup>

The main task of LEAs in the area of protecting peaceful assemblies is also ensuring public order, and safety of persons and society.

Aiming at ensuring proper fulfilment of this task along with responsibilities envisaged by Article 8 of the Law “On law enforcement agencies of the Kyrgyz Republic”, some specific responsibilities are also envisaged by relevant provisions of the Law “On peaceful assemblies”, namely:

- Interaction with other state bodies on the matters related to protecting assemblies;
- Interaction with organizers and participants of assemblies on the matters of ensuring the conduct of peaceful assemblies, including informing of the undertaken measures in relation to peaceful assemblies;
- Ensure protection of peaceful assemblies and other persons that found themselves in the territory of the assembly, as well as the property, from offences against it.<sup>74</sup>

The summarized findings of observations help better present information about how LEAs organize themselves and ensure order within interventions to protect assemblies.

In 80,7% of cases, the observers noted the presence of law enforcement officers in the territory where the assembly was held. In 19,3% of cases, the observers were not sure if there were law enforcement officers before the monitoring who then disappeared from the scene, having been reassured of its peaceful nature, or they were not present in the first place.

**Figure 19. Presence of police in an assembly.**

| <b>Presence of police</b>               | <b>2011</b> | <b>2012</b> |
|---|-------------|-------------|
| Police were present during the assembly | 93,3%       | 80,7%       |
| Police were not present                 | 16,7%       | 19,3%       |

<sup>72</sup> “Protesters supporting the three arrested Ata-Jurt party members attempted to enter the White House in Kyrgyzstan but they were stopped by the police”. Bishkek “24.kg” information agency, 10.10.2012. 11:47. Shavkat Turgaev.

<sup>73</sup> The Law of the Kyrgyz Republic “On law enforcement agencies of the Kyrgyz Republic”, Article 2.

<sup>74</sup> The Law of the KR “On peaceful assemblies”, Article 6.

**Press coverage:**

*“In Kyrgyzstan, after voting, the public order shall be ensured by 6,0 28 police officers and 10,652 people’s guards”. It was mentioned by B. Jusubaliev, Deputy Minister of Interior in a press conference. According to him, in all polling stations the police officers are working in a robust security regime with higher levels of preparedness. There are some minor violations with measures being undertaken at this very moment. “People’s guards also monitor public order”, - he said. There is information that some political parties are going to demonstrate today, however, this information still remains at the level of rumours. “Law enforcement agencies increase awareness of political parties”, - he added.<sup>75</sup>*

Police officers from relevant divisions and services were mostly involved in ensuring the conduct of assemblies, such as Patrol and Guard Service (30,1%) and district police officers (29,3%). The staff of other divisions and services were involved depending on the form and nature of the assembly.

**Figure 20. Forces involved in ensuring the conduct of assemblies.**

| <b>Forces involved</b>                                      | <b>2012</b> | <b>2011</b> |
|---|-------------|-------------|
| Security Service officers                                   | 0           | 0,017       |
| Special Police Force  | 0,031       | 0,014       |
| Road Traffic Safety Inspectors                              | 0,16        | 0,143       |
| Investigators   | 0,035       | 0,025       |
| Authorized operatives of the Criminal Investigations Office | 0,133       | 0,115       |
| Minor Inspectors  | 0,047       | 0,062       |
| District police officers                                    | 0,293       | 0,162       |
| Patrol and Guard Service police officers                    | 0,301       | 0,462       |

The Guidelines on Freedom of Peaceful Assembly stress the importance of a law enforcement agent standing out from the assembly so he can be easily spotted. The monitoring findings demonstrate that normally during assemblies the law enforcement offices are wearing their daily police uniform when performing the protection functions (79,4%). In 6,1% cases, law enforcement officers were wearing special gear. In 14,5% cases, despite the fact that the law enforcement officers were wearing civilian outfits, the observers were still able to identify that they were police officers.

The Law “On law enforcement agencies of the Kyrgyz Republic” and other MOI KR ministerial acts clearly stipulate the reasons and procedure for the law enforcement officers to apply physical impact measures, non-lethal weapons, and firearms.

The monitoring showed that often the law enforcement officers start to ensure order during assemblies without any special equipment. However, if necessary, and depending on the nature of an assembly, a law enforcement officer may be equipped with a baton or service weapons.

**Figure 21. Gear of police officers.**

|                         |       |
|-------------------------|-------|
| Everyday police uniform | 79,4% |
| Protective clothes      | 14,5% |
| Civilian clothes        | 6,1%  |

<sup>75</sup> “Bahyt Jusubaliev: In Kyrgyzstan, after voting the public order shall be ensured by 6 thousand 28 police officers and 10 thousand and 652 of people’s guards”. Bishkek – “24.kg” information agency, 25.11.2012. 17:41. Shavkat Turgaev.



**Figure 22. Equipment of police officers.**

|                           |     |
|---------------------------|-----|
| <b>No equipment</b>       | 53% |
| <b>Rubber batons</b>      | 2%  |
| <b>Firearms</b>           | 2%  |
| <b>Non-lethal weapons</b> | 20% |
| <b>Protective helmets</b> | 21% |

Very often, the attitude of police officers toward assembly participants and organizers produces a significant impact on preventing any violations of public order in the course of the assembly. Therefore, an important responsibility of the police in protecting peaceful assembly is to demonstrate respect to the assembly.<sup>76</sup>

In 60,3% of cases, the attitude of police officers to assembly participants and organizers was neutral while in 3,1% cases it was disdainful. The attitude of police toward organizers and participants was registered as respectful in almost one case out of three (31,3%).

**Figure 23. Attitude of police towards assemblies.**

| <b>Attitude</b>                    | <b>2012</b> | <b>2011</b> |
|------------------------------------|-------------|-------------|
| <b>Neutral</b>                     | 60,3%       | 77,1%       |
| <b>Disdainful (hostile, tense)</b> | 3,1%        | 9,5%        |
| <b>Suggestively supportive</b>     | 5,3%        | 2,2%        |
| <b>Respectful</b>                  | 31,3%       | 11,2%       |

The Law “On peaceful assemblies” vests the LEAs with an obligation to demand that citizens and officials obey the laws of public order, discontinue offences and halt actions impeding the achievement of the objectives of a peaceful assembly and law enforcement. In case the legitimate requirements are not met, the LEAs shall apply coercive measures as envisaged by the applicable national legislation.<sup>77</sup>

During an absolute majority of assemblies that were covered by monitoring (86,8%), the observers noted the calm behaviour of participants and organizers not intending to break public order.

**Figure 24. Behaviour of assembly participants.**

| <b>Behaviour</b>  | <b>2011</b> | <b>2012</b> |
|-------------------|-------------|-------------|
| <b>Calm</b>       | 75,3%       | 86,8%       |
| <b>Aggressive</b> | 24,7%       | 13,2%       |

It may explain the neutral, and, in some cases, respectful attitude of police officers to assembly participants and organizers, and a similar reciprocal attitude of assemblies towards police officers.

**Figure 25. Attitude of assembly participants towards law enforcement agencies.**

| <b>Attitude of assemblies</b> | <b>2012</b> | <b>2011</b> |
|-------------------------------|-------------|-------------|
| <b>Elements of violence</b>   | 0,8%        | 1,4%        |
| <b>Verbal insults</b>         | 9,2%        | 4,0%        |
| <b>Aggressive</b>             | 3,8%        | 4,0%        |
| <b>Respectful</b>             | 11,4%       | 3,6%        |
| <b>Neutral</b>                | 74,8%       | 87,0%       |

<sup>76</sup> The Law of the KR “On peaceful assemblies”, Article.6, Part 1, para.4.

<sup>77</sup> The Law of the KR “On peaceful assemblies”, Article.6

At the same time, during 3,8% of assemblies the observers noted some elements of aggression on behalf of participants with 18 cases when aggression was directed towards police officers and expressed itself in insulting cries using obscene terms, threats, curses, and sometimes even accompanied by beating.

***Press coverage:***

*“In the southern capital of Kyrgyzstan, several police officers were harmed in a clash with protesters. This was reported by “24.kg” information agency to the Interior Department of Osh.*

*According to the information agency, the City Hall of the southern capital did not issue permission to install yurts in the square. “Despite the prohibition, the protesters attempted to put yurts up, then the police began to prevent them from doing so. At that moment, some participants of the assembly attacked the police officers and started to beat them up with sticks and bags”, - reported the ID.<sup>78</sup>*

***From an observer’s questionnaire:***

*On 13 September 2012 at about 17.00 in Karajygach village, three police officers apprehended a 35-year old E. M., who according to his relatives and his lawyer, then died as a result of physical force applied to him by the police. On 17 September, about 200 people assembled near the building of Karajygach Police Unit demanding the punishment of the guilty law enforcement officers. The assembly behaved aggressively, shouting out threats and using strong language towards law enforcement agencies. The Head of the Rayon Interior Unit and the Rayon Prosecutor came out to talk to the assembly and informed that the service of all suspected persons would be suspended until the full explanation of the case was available, and that a criminal case had already been initiated on this matter. The aggressive crowd would not calm down, and it was not until the organizers called for order that participants dissipated.<sup>79</sup>*

***Press coverage:***

*“The Ministry of Interior of Kyrgyzstan confessed that they had not let the “refugee camp” set up a yurt unlawfully. According to the Ministry, the protesters started to set up their yurt, and when the police tried to prevent them from doing so, the protesters attacked the law enforcement officers. They tore the pants of one of the police officers... ”<sup>80</sup>*

***From an observer’s questionnaire:***

*“Relatives and proponents of N. Tyuleyev, former mayor of Bishkek, gathered on 17 August 2012, near the building of the Pervomaiski Rayon court in Bishkek demanding to drop the charges and release him from custody. The behaviour of the assembly was aggressive towards law enforcement officers with curses and threats being heard. The attitude of police officers to the protesters was very aggressive as the latter threatened to block the road”.<sup>81</sup>*

The growing number of cases when police officers find themselves in situations clearly threatening their life and health reconfirm that in fulfilling obligations to protect human rights one should not forget about the rights, health, and safety of law enforcement agents.

The observers noted a significant reduction in interference of law enforcement agencies in assemblies and in imposing unjustified restrictions.

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<sup>78</sup> In the southern capital of Kyrgyzstan a number of police officers suffered in a clash with protesters. 11/10/12 12:59, Bishkek – “24.kg” information agency, Makhinur Nijazova.

<sup>79</sup> Monitoring report #3/7-1.

<sup>80</sup> “The Ministry of Interior confessed that they had not let “the refugee camp” set up a yurt illegally. Bishkek – “24.kg” information agency, 19.09.2012, 18:10. Mahinur Nijazova.

<sup>81</sup> Monitoring report #1/1-6.

There are examples, as described above, when police officers did not in any way respond to rude and insulting remarks made by protesters. However, there are cases when police officers did not interfere even when it was necessary to ensure safety of the assembly.

***Press coverage:***

*“The public is surprised by the inaction of law enforcement agencies rather than by the behaviour of protesters. Police turned a blind eye to the protesters as if nothing illegal were happening. However, the impunity creates conditions for such “activists” to be extra-active and expand their ranks. Fair enough, as no one is held responsible for it”.*<sup>82</sup>

*One can give an example of an insult in presence of police officers, when one of the female protesters hit an information agency journalist in her face with a bag.*<sup>83</sup>

***Press coverage:***

*“The crowd that had gathered at the White House demanded the three deputies step down from “Ata-Jurt” faction. One of the female demonstrators attacked Dariya Podolskaya, a parliamentary correspondent of our information agency, when she intended to communicate the information over the phone.*

*She started to insult the journalist and then hit her with the bag. The police officers who witnessed the scene and who were responsible for ensuring law and order during this protest did not undertake any measures to stop the female hooligan”.*<sup>84</sup>

***From an observer’s questionnaire:***

*During the assembly that took place on 5 September 2012 at the White House, where the protesters demanded that PMs Kh.Korkmazov, R. Shin, and N. Moldobaev, step down, one of the protesting females hit a journalist in the face with her bag while the journalist took pictures.*<sup>85</sup>

*According to the project team, the behaviour of law enforcement officers could be explained by the fact that individual police officers are afraid to undertake any proactive measures, though it is their direct duty as representatives of law enforcement agencies to prevent offences and ensure protection of victims. The fear is based on the fact that they do not know how to act in a situation in order not to incite more anger from a rebellious crowd directed towards them and their colleagues. The implications of such anger are still remembered by many police officers who participated in providing public order during the April revolution.*

*It is difficult for peaceful assembly participants to hope to be protected by a police officer who was not specially trained in the matters of keeping order during assemblies, and who does not possess skills to prevent an escalation of violence and mitigate conflicts.*

*The press service of law enforcement agencies report on cases like the one with the attacked as an incident that they know nothing about, as they responded in this case.*<sup>86</sup>

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<sup>82</sup> Kyrgyzstan in the power of the crowd 11/09/12 11:49, Bishkek – “24.kg” information agency, Islam Duvanaev.

<sup>83</sup> Observer's questionnaire #1/1-11.

<sup>84</sup> In the capital of Kyrgyzstan the protesters attacked a journalist of “24.kg” information agency. 05/09/12 10:10, Bishkek – “24.kg” information agency, Jazgul Masalieva.

<sup>85</sup> Observer’s questionnaire #1/1-11.

<sup>86</sup> “Main Interior Department of the capital of Kyrgyzstan: No violations reported during the assembly outside of the White House”. Bishkek – “24.kg” information agency. 05.09.2012, 10:31. Makhinur Nijazova.

### 4.3.3. Procedures for promoting peaceful assemblies

According to the requirements of the Law “On peaceful assemblies” and aiming at promoting assemblies, the law enforcement agencies must, if necessary, create cordons and escort assembly members, block or change traffic routes, and install road signs.<sup>87</sup>

In 17.3% of all monitored assemblies, law enforcement officers undertook different interventions to promote assemblies.

**Table 5. Interventions to promote assemblies.**

| Type of intervention  | 2011 | 2012 |
|---|------|------|
| Cordoning off the area  | 14   | 9    |
| Escorting assembly members  | 6    | 3    |
| Blocking traffic routes   | 4    | 2    |
| Changing traffic routes   | 4    | 10   |
| Establishment of additional road signs  | 0    | 7    |
| Fencing off the location of assembly  | 0    | 6    |
| Removal of persons committing or instigating unlawful acts, as requested by organizers (participants) | 1    | 1    |
| TOTAL   | 29   | 38   |

### 4.4. RESTRICTIONS AND DISPERSAL OF ASSEMBLY

The Constitution of the Kyrgyz Republic stipulates that human rights and fundamental freedoms may be restricted by the Constitution and other laws in order to protect national security, public order, protect health and morals of the population, and protect the rights and freedoms of other persons.

The restrictions introduced must be proportional to the stated objectives.<sup>88</sup>

In line with Article 15 of the Law “On peaceful assemblies”, the decision to restrict an assembly in terms of time, place, or route, shall be made in light of circumstances when there is a real threat to the safety of the assembly and other citizens located in a given place.

The state agencies and LSG agencies must inform organizers and participants of the reasons for limiting the assembly.

This norm determines that a decision to limit the assembly may be made in those cases when the assembly pursues illegal objectives, including:

- war propaganda;
- manifestation of ethnic, race, or religious hatred, gender and other social inferences instigating for discrimination, animosity or violence;
- calls for breaking national security, public order, and rights and freedoms of other persons;

<sup>87</sup> The Law of the KR “On peaceful assemblies”, Article 6, part 1, para.10.

<sup>88</sup> The Constitution of the Kyrgyz Republic, Article 20, Part 2.

- holding a counter assembly to disrupt another peaceful assembly.

The Guidelines on Freedom of Peaceful Assembly set forth that the application of restrictions should strictly adhere to the principles of lawfulness, proportionality, and non-discrimination.<sup>89</sup>

The Guidelines on Freedom of Peaceful Assembly stress that inappropriate, excessive, or illegal application of force by law enforcement agencies may violate fundamental freedoms and protected-by-law rights, undermine relations between the police and society and become a reason for a widely spread tensions and unrest. In this connection, the use of force must be regulated by national legislation.<sup>90</sup>

In order to implement this recommendation, the Law “On peaceful assemblies” sets forth that the termination of an assembly through use of force shall be a measure of last resort. The Law prohibits the application of physical force, including special fighting techniques, improvised means, non-lethal weapons and firearms, if the assembly with unlawful objectives is not violent and does not use arms.

The reasons and procedure for the police to apply measures of physical impact, non-lethal weapons and firearms are regulated by the Law “On law enforcement agencies of the Kyrgyz Republic”.<sup>91</sup>

Out of the total number of monitored assemblies, two were dispersed by LEAs.

**From an observer’s questionnaire:**

*On 28 August 2012, Kubat Toksobayev, “New Forces of Kyrgyzstan”, and leaders of other public associations, such as “Erdem”, “Eldick Kairat”, “Jany Kuch”, and “Kyrk Choro”, organized a demonstration near the Public TV and Radio Company (PTVRC) on Gandy Street.*

*The requirements of the assembly, which amounted to 90-100 persons, were to stop selling gold and coal deposits. They stormed the PTVRC building where the auctions to sell 12 such deposits were being held, and started shouting: “We won’t let our native lands to be sold!”, “Motherland is not for sale!”, “We won’t let the deposits of Kyrgyzstan be sold!” According to them, the corrupt government and deputies come, rip off, and loot the country, and in this context, they dare to offer 12 deposits for sale. According to the participants, the circumstances forced them to render the live auction aborted on national TV.*

*“If they had demonstrated their discontent at the state for receiving bids, then the State Geology Office would have held the auction secretly. They still managed to move the venue of the auction several times”, - they clarified.*

*“The security guards were unable to control the crowd and there was a need for additional forces in order to put the crowd out, however, they managed to abort the auction”.<sup>92</sup>*

**From an observer’s questionnaire:**

*About 300 persons gathered on 3 October 2012 at about 11.50 near the Historical Museum in Bishkek with the request to reform the Constitution, hold a referendum, and organize a people’s “kurultai” to discuss the Constitution, and open a Centre for the Kyrgyz Language. The assembly also demanded to stop selling the land and subsoil of Kyrgyzstan and to deprive foreign citizens of the right to privatize land and natural resources, in particular, by “Kumtor”, a gold mining company.*

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<sup>89</sup> Guidelines on freedom of assembly, Principle 2.3-2.5.

<sup>90</sup> Interpretative Notes to the Guidelines on freedom of peaceful assemblies, para. 171.

<sup>91</sup> The Law of the Kyrgyz Republic “On law enforcement agencies of the Kyrgyz Republic” as of January 11, 1994, 1360-XII, Articles 12-15.

<sup>92</sup> Observer’s questionnaire #1/1-9.

*After calling the organizers to finish the assembly, the crowd, as led by several leaders, directed itself towards the White House at 14.00. About 20 young men started to climb over the fence of the White House. At this moment, the special force officers came from the western side of the White House and started to crowd out the protesters cordoning the White House along the perimeter.*

*The crowd launched rocks at the offices of special forces, wounding a number of people. At the same time, the crowd tried to climb over the fence once more. The law enforcement bodies had to use non-lethal weapons, namely gas and flash bang grenades. The mounted police had to get involved to disperse the aggressive crowd.*<sup>93</sup>

In both cases, the termination measures were combined with using the physical force. The observers did not receive any information about bodily harm, nor was this information published by mass media in relation to dispersing the assembly that took place on the 28 August 2012 near the PTVRC.

As a result of the measures undertaken to disperse the non-peaceful demonstration that took place on 3 October 2012, P. Sujunbaeva, the Permanent Secretary of the Ministry of Health, reported that 12 persons suffered, including 7 that were hospitalized and 5 receiving outpatient medical service.

Nine out of 12 victims were law enforcement officers. There were no people inflicted with grave harm or who perished.<sup>94</sup>

In both cases of dispersed assemblies, the participants were requested to stop illegal actions and vacate the venue. However, based on immediate transformation of the peaceful assembly into a non-peaceful one, one can assume that the warning was lost to them.

Special law enforcement detachments that were located in the vicinity of the assemblies were called to respond in both cases of dispersal of non-peaceful assemblies.

As regards the disruption of the auction that was selling natural deposits, the Investigations Department of the MOI KR initiated a criminal case based on the characteristics of the offence according to Article 234 of the Criminal Code of the Kyrgyz Republic (“Hooliganism”). At the present time, two persons have been apprehended.<sup>95</sup>

According to A. Abdirasulova, Chairman of the human rights NGO “Kylym Shamy”, the dispersal of the assembly on 3 October 2012 resulted in the apprehensions of more than 20 persons who were delivered to the Rayon Interior Department in Bishkek, with many of the apprehended people not at all related to the act of protest.

***Press coverage:***

*“When I arrived at the Rayon Interior Department, there was a boy there who had been simply going home while passing by the square, as he did not have any change for a bus. Sapar Argyubaev, a human rights activist, was also apprehended. I also met a person who told me that he had been a member of a commission of deputies investigating cases of looting. He had been apprehended whilst he was going to work”, - the human rights activists stated.*<sup>96</sup>

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<sup>93</sup> Observer’s questionnaire #1/1-26.

<sup>94</sup> <http://www.vb.kg> 03.10.12, 17:33

<sup>95</sup> “The names of those who were apprehended for the disruption of the auctioned sale of natural deposits became known: one was released after interrogation with the two remaining in custody”. “Communiqué”. 31-08-2012, 17:14.

<sup>96</sup> “A. Abdirasulova: about 10 persons apprehended during the assembly find themselves in the Pervomaisky Rayon Interior Department”. <http://www.vb.kg>. 03.10.2012, 20:04.

*Based on the incident on 3 October 2012, the General Prosecutor's Office of the Kyrgyz Republic initiated a criminal case according to Article 295 ("The forced seizure of power or a forced maintaining of power") and Article 297 ("Public calls for a forced change of the constitutional regime") of the Criminal Code of the KR. Three deputies of the Parliament of the Kyrgyz Republic were put in custody.<sup>97</sup>*

As during monitoring in 2011, observers in 2012 paid special attention to the reasons for applying restrictive measures by LEAs and the suitability of choosing specific impact measures and their consequences.

According to an observer, in both cases the measures undertaken by LEAs to disperse assemblies and restrict actions of the participants were recognized as justified.

The Law "On peaceful assemblies" provides for an important requirement that in case an assembly is dispersed forcefully, LEAs must write up a protocol with explicit reasoning for such actions. This protocol should then immediately be submitted for the court to pass judgment about the legitimacy and appropriateness of the use of force.

Failure to act upon this requirement and inappropriate fulfilment of this requirement entails the recognition of the dispersal of the assembly through application of force as illegal.<sup>98</sup>

As such, the forceful dispersal of the two mentioned-above assemblies would be recognized as legal only if the court made a ruling about the legitimacy and appropriateness of the application of force itself.

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<sup>97</sup> "Tashiyev, Mamytov, and Japarov" could be sentenced for a minimum of 12 years". <http://rus.kg>. 04.10.2012, 10:52.

<sup>98</sup> The Law of the KR "On peaceful assemblies", Article 17, Part 4.

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## THE LAW OF THE KYRGYZ REPUBLIC

“On peaceful assemblies”

Chapter 1. General provisions

Chapter 2. Promotion of the right to freedom of peaceful assembly

Chapter 3. Prohibition, restriction, and termination of the peaceful assembly

Chapter 4. Final provisions

### **Chapter 1**

#### **General provisions**

Article 1. The subject of regulation by this Law

This Law regulates public relations connected with the implementation of the right of every person to assemble peacefully.

Article 2. Legislation regulating assemblies

1. In ensuring the right to freedom of peaceful assembly, the state agencies and local self-government bodies shall be guided by the Constitution of the Kyrgyz Republic, this Law, legally enacted international treaties to which the Kyrgyz Republic is a Party, and also by generally recognized norms and principles of the international law. The laws and other normative and legal acts shall not be in contradiction to this Law.

2. The right to freedom of peaceful assembly can not be restricted, except in cases stipulated by the law with the aim to protect national security and public order, protect health and morals of the population, or protect the rights and freedoms of other persons. Any introduced restriction shall be proportionate to the stated objectives.

3. It is prohibited to adopt by-laws that restrict the right to freedom of peaceful assembly.

Article 3. Terms used in this Law

For the purposes of this Law, the terms used below shall mean the following:

1) Counter assembly – is an assembly held with the same reason but aiming at expressing an opposite view regardless of place and time of these assemblies;

2) Peaceful assembly – an assembly that is by its nature not violent and not armed;

3) Organizer of a peaceful assembly – a person acting on behalf of political parties, other organizations, and citizens, who acts as the initiator of the peaceful assembly and performs actions, intended to prepare the mentioned event and manage its participants;



- 4) Simultaneous assembly – an assembly taking place at the same time with another assembly in the same territory that does not pursue the objective of expressing an opinion different from the one of the other assembly;
- 5) Planned assembly – an assembly held based on a preliminary notification;
- 6) Assembly – an intentional and temporary presence of a number of persons in open public spaces with the purpose of attracting attention of the state bodies and local self-government bodies, and the attention of the public, including the expression of an opinion on some matters;
- 7) Spontaneous assembly – an assembly held without any preliminary notification;
- 8) Notification of an assembly - a preliminary informing of state bodies and local self-government bodies about the planned assembly;
- 9) A participant of the assembly – a citizen of the Kyrgyz Republic, a foreign citizen and a stateless person participating in a peaceful assembly.

## **Chapter 2**

### **Promotion of the right to freedom of peaceful assembly**

#### Article 4. Obligations in the area of promoting the right to freedom of peaceful assembly

1. State bodies and local self-government bodies must respect and promote the right to freedom of peaceful assembly without discrimination by gender, race, language, ethnicity, religion, age, political or other beliefs, origin, social or another status, and also other circumstances.
2. Participation in the assembly is voluntary. The persons forcing others to participate in the assembly or illegally restricting the participation shall be held liable in accordance with the legislation of the Kyrgyz Republic.
3. Upon receipt of information about the planned or held assembly, state bodies and local self-government bodies must immediately inform relevant executive bodies of the local self-government and law enforcement agencies.
4. State bodies and local self-government bodies who are addressed by the participants and organizers of the assembly, must ensure the receipt and consideration of the matters, and also inform about the decisions following the procedure established by the legislation of the Kyrgyz Republic.
5. In performing activities to promote peaceful assemblies, the state bodies and local self-government bodies and their officials shall not have the right to do the following:
  - 1) pass a judgment about the expediency of holding a peaceful assembly;
  - 2) take sides in case of a counter assembly;
  - 3) determine the time, venue, and routes for a peaceful assembly;
  - 4) prohibit or introduce restrictions in relation to the venue, time, and routes of peaceful assembly, except in cases when failure to undertake such measures will entail violations of the rights of citizens not participating in the assembly, and for the sake of protecting national security, public order, protection of health and morals of the population following the requirements as set forth by this Law;

5) create barriers in achieving the objectives of peaceful assemblies, except in cases envisaged by this Law;

6) organize and hold counter assemblies.

#### Article 5. Responsibilities of local self-government bodies

Local self-government bodies:

1) immediately inform law enforcement agencies in the territory of the assembly and other state bodies about the received information on a planned or held assembly;

2) in co-operation with law enforcement agencies and other state bodies act to promote peaceful assembly;

3) interact with organizers and participants of assemblies to promote peaceful assembly;

4) ensure the receipt of notifications about holding an assembly;

5) organize, when necessary, the operations of utility and other services (emergency medical aid, fire service, rescue service, and other services);

6) help law enforcement agencies to prevent and interdict the consumption of alcohol, drugs, psychotropic and other intoxicating substances in places of assembly;

7) when the information is available, communicate the issues that caused the assembly to the state agencies to whom the questions are addressed;

8) perform other duties as envisaged by this Law.

#### Article 6. Responsibilities of law enforcement agencies

1. Law enforcement agencies shall do the following:

1) immediately inform local self-government bodies and other interested state bodies about the received information about a planned or held assembly;

2) when required, cooperate with other state authorities on the assembly-related matters;

3) interact with organizers and participants of assemblies on the matters of promoting peaceful assembly, including their informing about the measures undertaken to this effect;

4) demonstrate respective attitude towards participants of peaceful assembly;

5) ensure the unhindered work of mass media;

6) demand that citizens and officials should observe the public order, stop offences and actions hindering the achievement of objectives of peaceful assembly and fulfilment of duties by law enforcement agencies, and in case of non-obedience to perform legitimate requirements, apply coercive measures as stipulated by legislation of the Kyrgyz Republic;

7) ensure protection of participants of peaceful assembly and that of other persons finding themselves in the territory of the peaceful assembly, as well as their property from offences against it;

8) help with providing medical assistance and safe evacuation from the venue of the peaceful assembly;

9) ensure access of utility and other services to the venue of the peaceful assembly;

10) when necessary perform cordoning of the venue, escorting the participants of the peaceful assembly, blocking or changing traffic routes, and establishing road signs;

11) undertake measures to prevent clashes between the participants of one assembly and those of the counter and simultaneous assembly, and also provocations of disturbances and other conflicts as they may emerge during the assembly.

2. In case of a counter assembly, the law enforcement agencies ensure and determine a safe distance of the participants of the main assembly and those of the counter assembly within the area of mutual visibility and audibility.

3. In case of simultaneous assemblies the law enforcement agencies ensure and determine a safe distance for the participants of these assemblies.

#### Article 7. Restrictions of actions of law enforcement agencies

Given the restrictions of actions of state bodies in the area of organizing peaceful assemblies as provided for by the Law, there are additional prohibitions for law enforcement agencies to do the following:

1) partake in the peaceful assembly as a participant;

2) prevent organizers, their representatives, and participants of peaceful assembly from performing their lawful actions;

3) remove or hide distinguishing badges of a law enforcement agent, except in cases set forth by the legislation of the Kyrgyz Republic; and refuse to show and study ID of a law enforcement agent by participants of the assembly;

4) prevent the participants of assemblies or other people to take pictures or videotape the assemblies.

#### Article 8. Interventions to promote peaceful assembly

1. Interventions to promote peaceful assembly, including the required procedures of cordoning, escorting the participants of peaceful assemblies, blocking or changing traffic rules, establishment of traffic signs, and other activities to ensure safety on the road, and also the work of utility and other services (emergency medical aid, fire service, rescue service, a sanitary cleaning service, and other services), shall be performed by state agencies and local self-government bodies on a voluntary basis.

2. Activities to ensure the conduct of peaceful assembly, given the notification about this peaceful assembly by organizers, shall include the following:

1) registering information about the purpose of the peaceful assembly, its form or a combination of forms of peaceful assembly, its venue and date, route of the assembly, the start and finish time, the estimated number of participants, the use of sound amplifying systems or other devices during this public event;

2) visual examination of the place of conduct of peaceful assembly in order to ensure safety of the assembly and that of other persons finding themselves in the venue of the assembly, access of utility and other services to ensure peaceful assemblies and possibilities of a safe evacuation;

3) organizational measures in order to identify the need to cordon or escort the peaceful assembly, block or change traffic routes, and install traffic signs;

4) estimation of dangerous factors and adoption of additional measures to ensure safety of the peaceful assembly and other persons, including, but not limited by, the installation of metal detectors, fences, change of time, place, and/or the march route of peaceful assembly;

- 5) identification of required forces and means to ensure peaceful assembly;
  - 6) review of data about other assemblies held at the same time and venue, comparisons of the received data, development of the required measures (introducing of restrictions in terms of time, venue and/or the march route of participants and others) in order to prevent conflicts that could hinder the achievement of objectives of peaceful assembly.
3. Local self-government executive agencies and law enforcement agencies document and subsequently analyse the identified problems, and analyse the actions of their officers in the area of promoting peaceful assemblies.
  4. Local self-government executive agencies and law enforcement agencies inform in advance the persons not participating in the assembly about interventions related to blocking and changing of traffic routes, and other important information, including notifications in mass media.

#### Article 9. Rights of participants and organizers of peaceful assemblies

Organizers and participants of peaceful assemblies enjoy the following rights when holding assemblies:

- 1) receive information about activities to ensure the conduct of peaceful assemblies as performed by state bodies and local self-government bodies;
- 2) receive information about the name, title and place of work of officials of state bodies and LSGBs participating in protecting the peaceful assembly;
- 3) without barriers communicate with mass media representatives;
- 4) use sound amplifying equipment when holding a peaceful assembly without exceeding the sound and noise levels as allowed by the legislation of the Kyrgyz Republic;
- 5) use different campaigning methods and forms of attracting attention of state bodies, LSGBs, and public, including expressing opinion on some matters and collection of signatures that are peaceful by nature and that are not pursuing illegal objectives;
- 6) receive and send proposals, applications, complaints, and other types of communications to the state bodies and LSGBs;
- 7) hold assemblies in any formats;
- 8) take pictures and videotape assemblies;
- 9) request for protection by law enforcement agencies in case of unlawful encroachments by other persons and ask the law enforcement agencies to provide other assistance in holding a peaceful assembly;
- 10) request medical aid and support in ensuring safe evacuation from the venue of the peaceful assembly;
- 11) request law enforcement agencies to adopt measures to discontinue offences and actions of persons disrupting the peaceful assembly in line with the legislation of the Kyrgyz Republic;
- 12) perform other actions not prohibited or restricted by law.

#### Article 10. Responsibilities of participants and organizers of peaceful assembly

1. During a peaceful assembly its participants and organizers shall be obliged to do the following:
  - 1) follow the requirements of this Law and ensure a peaceful nature of the assembly;

- 2) perform legitimate requirements of law enforcement agencies, LSGBs, and other state bodies engaged in regulating the peaceful assembly;
- 3) in holding a peaceful assembly maintain the public order and the one established by the event organizer;
- 4) observe normative and legal acts regulating sanitary and hygiene issues;
- 5) ensure safety of buildings, structures, equipment, furniture, stock, and other property, as well as green spaces in the place of the peaceful assembly;
- 6) not to impede a free movement of citizens that do not participate in peaceful assemblies.

2. Along with the requirements of Part 1 of this Article, the organizers are obliged to:

- 1) arrange for the participants of peaceful assemblies to follow conditions for holding peaceful assemblies as mentioned in the notification, in case there has been one sent;
- 2) cooperate with law enforcement agencies to make sure that the participants of peaceful assemblies maintain public order and the order for holding a peaceful assembly;
- 3) inform the participants of the peaceful assembly of prohibition or restriction of the assembly.

3. The assembly participants shall be prohibited to:

- 1) carry guns, specially prepared or fitted devices that could be used against life and health of people and that could cause harm to the property;
- 2) distribute or consume alcohol, drugs, psychotropic and other intoxicating substances.

#### Article 11. Notification of a peaceful assembly

1. A notification of a planned peaceful assembly shall be done in writing by organizers not earlier than 30 days and not later than 2 working days before the day of assembly. The notification could be provided as a letter, telegram, telephone message, post, facsimile, electronic or another type of communication or by other means or in another form.

2. Notification shall include information about the organizer (name of organization and person) and his contact details (location, of the organization, its address and/or contact person's address, and a telephone number), information about the venue and/or a marching route, date and start and end times, objectives, approximate number of participants, use of the sound equipment and other devices in convening and holding the peaceful assembly. The organizer of the peaceful assembly shall enjoy the right to include other information into the notification as deemed necessary and also attach other relevant documents.

3. Given the state agencies and LSGBs have the reliable information in relation to other peaceful assemblies or other circumstances that influence the safety of citizens, they (the agencies) shall have the right to propose a changed date, changed venue, and the marching route for the peaceful assembly.

4. Persons who have notified about the peaceful assembly shall have the right to request a written confirmation of the receipt of such notification and state authorities and local self-government bodies must provide such written confirmation on the same day it was received.

5. The written confirmation from the state body or LSGB should include the name of this body and the name and signature of an official who received this notification, the date and time the notification was received.

## Article 12. The venue of holding a peaceful assembly

1. Peaceful assemblies may be held in the entire territory of the Kyrgyz Republic, except for places listed in Part 2 of this Article.

2. Aiming at ensuring safety of participants, the peaceful assemblies could not be held in the vicinity (no less than 100 meters) of dangerous and hazardous sites, power plants, railways, oil pipes and high voltage electrical transmission lines, penitentiary institutions, state and municipal health organizations, pre-schools, pre-schools and secondary educational institutions.

## Chapter 3

### Prohibition, restriction, and dispersal of the peaceful assembly

#### Article 13. Measures against offenders as undertaken by law enforcement agencies

In case of identification of persons breaking the public order, committing or instigating to commit unlawful actions, preventing the peaceful assembly to achieve the objectives, then the law enforcement agencies must undertake appropriate lawful measures against these persons without stopping the peaceful assembly.

#### Article 14. Prohibition or restriction of peaceful assembly

1. A decision to restrict an assembly in terms of time, venue or route, or to prohibit it altogether shall be made by court when there are grounds for it as stipulated by this Law.

2. Territorial offices of law enforcement agencies and LSGBs shall have the right to restrict or prohibit only this one assembly in terms of time, place or route, given the availability of reasons as stipulated by this Law and only in the territory within their jurisdiction. Lawfulness and justifiability of decisions of LSGBs and law enforcement agencies to restrict or prohibit the assembly shall be subjected to court consideration. The body that made such decision must apply to court within 24 hours the decision had been made.

3. The application about prohibition or restriction of the assembly must be considered by court within 24 hours from the moment it was received.

4. The burden of proof of the grounds for prohibiting or restricting the assembly shall be placed with the applicant who applied to court.

5. Any doubts about the reasons for prohibition or restriction shall be interpreted in favour of the right to holding peaceful assemblies.

6. The judgment passed by a court of the first instance to prohibit or restrict the assembly may be appealed against in a higher court within 24 hours such judgment was passed. A complaint against the court's judgment to prohibit or restrict the assembly shall be considered by higher courts within 24 hours from the moment of filing. Court's judgments become binding from the date they were passed.

7. Court's judgment about prohibition or restriction of the assembly shall be communicated to the organizers and participants of the assembly by LSGBs and LEAs in writing or verbally within 24 hours from the date of passing this judgment.

8. In case of making a decision to prohibit or restrict the assembly, the LSGBs inform the organizers and participants verbally or in writing immediately from the moment this decision was made.

#### Article 15. Grounds for prohibiting or restricting a peaceful assembly

1. A decision to restrict an assembly in terms of time, venue or route shall be made for the period of circumstances when there is a real threat to the safety of the assembly participants and of other citizens located in the mentioned places.

State bodies and LSGBs must inform the organizers and assembly participants of the reasons for introducing restrictions on the assembly.

2. A decision to prohibit an assembly may be made in those cases when the assembly pursues unlawful objectives, including:

- 1) war propaganda;
- 2) manifestation of ethnical, race, or religious hatred, gender and other social inferences instigating for discrimination, animosity or violence;
- 3) calls for breaking national security, public order, and rights and freedoms of other persons;
- 4) holding a counter assembly to disrupt another peaceful assembly.

#### Article 16. Procedure for restricting and terminating the assembly

1. If a termination judgment was passed in relation to the assembly, it is to stop.

2. Interventions to restrict or terminate assemblies shall be carried out through a coordinated effort of state bodies and local self-government bodies with a preliminary notification of organizers and participants at the venue of the assembly with the provision of necessary time to vacate the venue in case of prohibition of the assembly, and in case of restriction – change the venue, time or routes.

3. It is prohibited for the Armed Forces of the Kyrgyz Republic to participate in the activities to restrict or disperse assemblies.

#### Article 17. Use of force to disperse an assembly

1. Dispersal of assemblies by force shall be a measure of last resort.

2. It is prohibited to use physical force, including special fighting techniques, improvised means, and non-lethal weapons, in case the assembly that pursues the illicit objectives is not violent and does not use arms.

3. The use of force to disperse an assembly, including in cases of mass upheavals, shall be done with the account of the requirements of this Law following the procedure as set forth by the legislation of the Kyrgyz Republic.

4. In case of an assembly dispersed by force, the law enforcement agencies shall write up a protocol with enumerating the reasons of such actions. This protocol shall be immediately submitted to court to pass a judgment on the legitimacy and appropriateness of the use of force.

Failure to fulfil or inappropriate fulfilment of this requirement entails the recognition of a forceful dispersal of assembly, illegal.

#### Article 18. Liability

The guilty persons who have made the violation of this Law's provisions possible shall be held liable according to the legislation of the Kyrgyz Republic.

## Chapter 4

### Final provisions

Article 19. Enactment of this Law

1. Publication of this Law in mass media.

2. The following laws are recognized as repealed upon enactment of this Law:

- The Law of the Kyrgyz Republic “On the right of citizens to assemble peacefully, without arms, and hold demonstrations freely” # 120 as of 23 July 2002 (Journal of the Parliament of the Kyrgyz Republic #9, 2002, Article 408);

- the Law of the Kyrgyz Republic “On amending the Law of the Kyrgyz Republic “On the right of citizens to assemble peacefully, without arms, and hold demonstrations freely” # 192 as of 5 August 2008 (Journal of the Parliament of the Kyrgyz Republic #7, 2008, Article 656).

3. The Government of the Kyrgyz Republic shall within the three-month period develop and submit for the consideration of the Parliament of the Kyrgyz Republic the following draft laws:

1) intended to bringing the legislation in line with this Law;

2) logically following the norms of this Law.

President of the Kyrgyz Republic

A. Atambayev

Adopted by the Parliament

of the Kyrgyz Republic on 12 April 2012

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