

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: *Fourth Cycle, 49th Session*

THE KYRGYZ REPUBLIC

I. BACKGROUND INFORMATION

General background information on the legal framework and the populations of displaced and stateless persons in the Kyrgyz Republic can be found in **ANNEX I** to this submission.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the commitments of the Kyrgyz Republic to ensure protection of refugees and stateless people. In particular, in December 2021, the Kyrgyz Republic announced two pledges to the Global Compact on Refugees: (1) to grant refugees and asylum-seekers access to healthcare and social protection on par with citizens which was partially fulfilled; and, (2) to issue refugees and stateless persons with machine-readable travel documents. Moreover, in the framework of the Global Refugee Forum in 2023, the Government and academia announced 8 more pledges related to the improvement of RSD procedures, collection of statistics, better access to secondary education and free legal aid.

The 2023 amendments made to the 2002 *Law on Refugees* removed the 2020 provision which had denied registration of asylum applications of those who returned to their country of origin and were forced to flee again due to the same or different reasons. This positive change facilitated opportunities for rejected asylum-seekers to lodge applications based on new circumstances, which is applicable to the current situation in Afghanistan, and consistent with international refugee law principles.

The 2007 *Law on Citizenship* was amended in February 2023 and introduced more safeguards to prevent and reduce statelessness.

In February 2024, amendments to the *Law on State-Guaranteed Legal Aid* enabled access to free legal aid services for asylum-seekers and stateless people appealing negative decisions on their applications for asylum and stateless status.

In May 2024, the National Preventative Mechanism (NPM) represented by the National Centre for Prevention of Torture adopted a methodology on how to analyze and process extradition and expulsion cases as a mitigation measure to prevent refoulement.

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

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

Linked to 3rd cycle UPR recommendation no. 140.28¹

The *Law on Refugees* states that an asylum-seeker “shall be provided a real opportunity” to present his/her refugee claim to the competent authority (Article 4). Additionally, according to paragraphs 8 to 15 of the Provision on Work with Refugees, this process includes immediate registration of an asylum application and issuance of an asylum-seeker’s certificate valid for three months with further extension to cover the period of RSD, including appeal. UNHCR notes that, despite some progress being achieved in recent years, there are several areas where the authorities could make further improvements, including in respect to allocation of resources, use of country-of-origin information, gender considerations during RSD interviews, and interpretation of the refugee definition. Moreover, the referral mechanism of asylum applications from the border authorities to the competent asylum authorities does not function effectively.

The internal procedural requirement of the Ministry of Labor, Social Security and Migration (MLSSM), that an individual wishing to register an asylum application must appear in person, has caused significant protection concerns, especially in cases where individuals wish to seek asylum from detention facilities. In accordance with this requirement the designated authority for RSD procedures has to request permission from the General Prosecutor Office to access the individuals wishing to apply for asylum. However, such requests may go unanswered while extradition cases are being processed. UNHCR intervened in three instances of asylum-seekers in detention in 2023 and one instance in 2024. In all mentioned instances, the requested access for the designated RSD authority to visit the individuals in detention for the purpose of registration of their asylum application was denied. As the formal registration of an asylum seeker’s claim with the designated RSD authorities is essential for the asylum process to proceed, this should be rectified to comprehensively uphold the principle of non-refoulement in law and in practice.

Article 11 of the *Law on Refugees* provides that persons with rejected refugee status cannot be returned to a country where their life or freedom is threatened, or where they are in danger of being subjected to torture or inhuman or degrading treatment. This provision should be implemented to ensure protection from deportation and or extradition in cases where individuals have not been able to register their asylum applications, including those who are detained. However, currently no mechanism or responsible body exists for providing the corresponding legal status.

In 2023, at least three asylum-seekers who expressed their intention to seek asylum in the Kyrgyz Republic while in detention were denied access to the RSD procedure. Their returns to their country of origin² violated the *non-refoulement* principle enshrined in Kyrgyz national legislation. In May 2024, a national of the Republic of Uzbekistan was expelled despite attempting to apply for asylum. In August 2024, a national of the Republic of Mongolia has attempted to apply to asylum from detention; however, as of end September 2024, they have not been registered as an asylum-seeker.

*The Criminal Procedure Code of the Kyrgyz Republic*³ contains certain provisions protecting

¹ See, A/HRC/44/4. No. 140.28: “Continue implementing measures for the effective protection and promotion of the human rights of vulnerable groups (Bhutan)”.

² See e.g., UNHCR press-release available at <https://www.unhcr.org/centralasia/en/20689-unhcr-alarmed-over-asylum-seeker-extradition-from-kyrgyzstan.html>.

³ The Criminal Procedure Code of the Kyrgyz Republic, adopted on 28 Oct.2021, available in Russian at: <https://cbd.minjust.gov.kg/112308/edition/8273/ru>

refugees from extradition, but they are not comprehensive. Part 1 of Art. 532 of the Criminal Procedure Code prescribes a mandatory denial of extradition, specifically in relation to refugees (p.2) and those at risk of torture upon return (p.7). However, part 2 of the same Article 532 uses a “softer” wording stating that extradition of asylum-seekers who registered their claim could be denied (p.4).

In 2023, out of 114 rejections of asylum applications, 109 were of Afghan nationals. This data suggests that the application of RSD procedures may not be entirely fair and efficient, as UNHCR considers that certain profiles amongst Afghan asylum-seekers are likely to be in need of international protection.⁴ Given this, people in real need of international protection may not be adequately protected against *refoulement*.

Moreover, although the national legislation provides for safeguards against unlawful rejection, the appeal procedure seems to be nominal, as the courts of all instances uphold the initial decisions of MLSSM in all appeal cases.

Considering the above, UNHCR considers that the designated RSD authority should make further improvements to ensure accessible, fair and efficient asylum procedures, providing a real opportunity to exercise the right to seek and enjoy asylum and to be protected from *refoulement*.

Recommendations

UNHCR recommends that the Government of the Kyrgyz Republic:

- a) Assess all asylum applications fairly and without discrimination irrespective of their country of origin, ethnic background or manner of entry in the Kyrgyz Republic.
- b) Strictly uphold the principle of *non-refoulement* by aligning national criminal legislation as well as adopting mechanisms of complementary protection.
- c) Ensure timely registration of all asylum applications with the issuance of respective state documentation and halt any extradition or deportation as soon as an individual expresses their intention to seek asylum, pending their formal registration and consideration of their claim by the designated authorities for refugee status determination, including for those in detention.
- d) Strengthen the quality of its refugee status determination procedures by ensuring fair and timely decisions, as well as the protection of all in need of international protection, regardless of whether they have formally been able to register their claim with the authorities.
- e) Strengthen the referral mechanism of asylum applications from the border entry points to the state migration authority.
- f) Enhance efforts to ensure that the competent authorities, judges, prosecutors and lawyers are trained and have adequate resources in order to enable them to properly apply the *1951 Convention* in refugee cases and ensure a meaningful appeal.
- g) Consider inclusion of UNHCR in an advisory role for state refugee status determination processes, in line with the *1951 Convention*, to strengthen the implementation of the national asylum law.
- h) Allocate sufficient financial and human resources targeted at the fair and effective implementation of refugee status determination procedures.
- i) Ensure that detention of asylum-seekers is used only as a measure of last and the *non-refoulement* principle is strictly upheld for asylum-seekers in detention.

Issue 2: Access to social security for refugees, asylum-seekers and stateless people.

⁴ UN High Commissioner for Refugees (UNHCR), *Guidance Note on the International Protection Needs of People Fleeing Afghanistan (Update I)*, February 2023, <https://www.refworld.org/policy/countrypos/unhcr/2023/en/124216>

Linked to 3rd cycle UPR recommendation no. 140.105⁵

With the 2023 regulation "On Compulsory Medical Insurance Policy, the Kyrgyz Republic is implementing its pledge made at the Global Refugee Forum to grant refugees and asylum-seekers access to healthcare on par with citizens. However, stateless people and mandate refugees and asylum-seekers are still treated as foreigners when it concerns their access to health services. The health insurance premiums that stateless people and mandate refugees need to pay are around nine times higher than those for nationals, making it unaffordable for most mandate refugees and stateless persons.

Refugees, asylum-seekers and stateless people are not provided with access to the full range of social security rights. Only those non-nationals who contribute to the social security scheme are covered by social benefits. Thus, those who are not able to contribute, due to their legal status (asylum-seekers), age, disability, or due to employment in the informal sector of the economy – are not covered by any social allowances. Moreover, no financial support or public accommodation is provided to asylum-seekers throughout the duration of consideration of their asylum applications.

According to the *Law on Refugees* of the Kyrgyz Republic, asylum-seekers and refugees have the right to state-provided accommodation, which is in line with *1951 Convention* obligations. However, the Temporary Accommodation Center – foreseen in the law, established in 2008 and supported by UNHCR – was closed in 2016 after UNHCR handed over full responsibility for its facilitation to the Government. At the same time no allowance or support is being provided to refugees and asylum-seekers in relation to temporary accommodation.

According to the *Law on Refugees* only recognized refugees are provided the right to legal employment, while asylum-seekers do not have access to such a right. The RSD process may take up to two years or more, during which time the asylum-seekers do not have access to legal employment or income. In the absence of Government-sponsored financial support and accommodation, such limitations put asylum-seekers and their families in a very vulnerable situation, which may result in possible exploitation or other harms.

Regarding access to education, it is important to mention that while all foreigners generally have access to primary and secondary education, in practice, obstacles persist. Asylum-seekers, refugees, stateless people and people with irregular legal status are often unable to enroll their children through the online portal administered by the Ministry of Education and Science. To enroll on the online portal, it is required to enter the personal identification number (PIN) both for the parent/guardian and the child, as well as to enter the birth certificate number of the child. Asylum-seekers and stateless persons with undetermined status are not provided with PINs automatically, and therefore are unable to register accordingly.

In addition, under national legislation, stateless people and refugees cannot access vocational or higher education on par with citizens, as tuition fees are charged at the same rate as for foreign nationals which are very high and not affordable. Restricting access to higher education limits the prospects for these communities to fully and effectively integrate in the Kyrgyz Republic.

Recommendations:

UNHCR recommends that the Government of the Kyrgyz Republic:

- a) Ensure that national legislation ensures equal access to all social services for refugees, including access to pensions and social benefits, in line with the *1951 Convention*.
- b) Ensure that national legislation provides stateless people with access to medical

⁵ See, A/HRC/44/4. No. 140.105: "Strengthen further the programmes for social protection for all the people of Kyrgyzstan, especially vulnerable groups (Bolivarian Republic of Venezuela)".

- assistance on an equal basis with nationals of the Kyrgyz Republic.
- c) Amend national legislation to facilitate the right to work for asylum-seekers, removing the relevant conditions for acquiring work permits.
 - d) Allocate resources from the State budget for temporary accommodation facilities for the most vulnerable asylum-seekers and refugees.
 - e) Enable the effective enrollment in primary and secondary education for all children residing in the country, including the children of refugees, asylum-seekers and stateless persons, and to provide refugees and stateless persons with effective access to higher education and vocational education on par with citizens.

Issue 3: Mandate refugees residing in the Kyrgyz Republic

Linked to 3rd cycle UPR recommendation no. 140.22⁶

There remain 121 ‘mandate refugees’ in the Kyrgyz Republic, those who had been recognized as refugees by UNHCR under its mandate prior to the Government assuming responsibility for RSD. While the Government generally tolerates the presence of mandate refugees, their stay remains irregular, resulting in a constant risk of detention, *refoulement*, or extortion or related harms. Moreover, due to the lack of legal status, mandate refugees do not have access to basic rights as elaborated above in the background section. Applications to the Government RSD procedure by mandate refugees have been refused.

In view of the grave human rights and humanitarian situation in Afghanistan, the *UNHCR Guidance Note on the International Protection Needs of People Fleeing Afghanistan* calls on states to halt all returns to Afghanistan highlighting that most of the individuals fleeing from Afghanistan or unwilling to return there may have a claim within the meaning of *1951 Convention* and are likely to meet the broader mandate criteria. Considering that 119 of the 121 mandate refugees are from Afghanistan, their return is not feasible and they should be granted access to relevant rights and services.

Recommendations:

UNHCR recommends that the Government of the Kyrgyz Republic:

- a) Expedite the regularization of the legal status of the mandate refugees, including through permitting them access to national RSD procedures, enabling them to access to their social and legal rights, a pathway to naturalization, and protection against *refoulement*.

Issue 4: Accession to the Statelessness Conventions

Linked to 3rd cycle UPR recommendation no. 140.1⁷

The Kyrgyz Republic has expressed its commitment to end statelessness in the country. In 2019, the Kyrgyz Republic became the first country globally to eliminate all known cases of statelessness on its territory⁸ and, at the global High-Level Segment on Statelessness, made four pledges: (1) to introduce statelessness status determination procedures (2) to provide birth certificates to all children who do not yet have them, (3) to ensure all children born in the country will be registered at birth, and (4) to study the experience of State parties to the two United Nations Statelessness Conventions.

⁶See, A/HRC/44/4. No. 140.22 “Scale up efforts in the promotion and protection of the human rights of its population (Nigeria)”.

⁷ See, A/HRC/44/4. No. 140.1 “Consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Brazil); Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Uruguay)”.

⁸ Since 2019, a number of additional cases of statelessness have been identified. UNHCR continues to work with the Government of the Kyrgyz Republic to resolve these cases and prevent further instances of statelessness.

Following considerable progress in reducing and preventing statelessness, acceding to the Statelessness Conventions would complement and reinforce existing protections and would continue to demonstrate the Kyrgyz Republic's regional leadership on this issue.

Stateless people are often discriminated against in their enjoyment of economic, social and cultural rights, and prevention is key to ensuring such discrimination does not have the opportunity to manifest.

The Kyrgyz Republic does not currently have a statelessness determination procedure (SDP). Persons are determined to be stateless through applications for residence permits or for citizenship, through a procedure which is not yet fully aligned with international standards. The process is often complicated due to the requirement of certain documents, such as confirmation from the country of birth or former residence that the person is not a national of that country and, in some cases, bank certificates to prove solvency.

SDPs should be in place to effectively identify stateless people and ensure that their rights are protected in accordance with the *1954 Convention*. The absence of SDPs jeopardizes the legitimate stay in the Kyrgyz Republic of undocumented stateless people. Unrecognized stateless people may be at heightened risk of abuse, exploitation, arbitrary arrest, detention, deportation and/or refoulement. SDPs should thus be established and implemented as soon as possible so as to permit stateless people to acquire a secure legal residence and access to their rights.

Recommendations:

UNHCR recommends that the Government of the Kyrgyz Republic:

- a) Develop a formal statelessness determination procedure, expedite naturalization procedures, and improve documentation of undocumented stateless people, to ensure their protection and enjoyment of their rights as stateless people, until such time as they acquire a nationality.
- b) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

UNHCR
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