

MISSION PERMANENTE
DE LA RÉPUBLIQUE DU KAZAKHSTAN
AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS
INTERNATIONALES AYANT LEUR
SIÈGE A GENÈVE

Ref. No. 90-418

The Permanent Mission of the Republic of Kazakhstan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit information on the draft «Law on the introduction of amendments and addenda to several legislative acts of the Republic of Kazakhstan related to activities of non-governmental organizations» for the attention of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders.

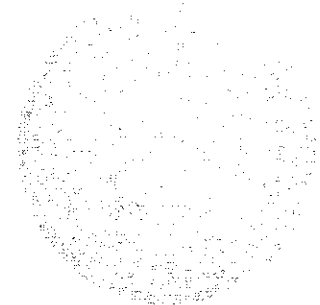
Enclosure: as stated, 7 pages.

The Permanent Mission avails itself of this opportunity to renew to the OHCHR the assurances of its highest consideration.

Geneva, October 26, 2015

Office of the United Nations
High Commissioner for Human Rights

Geneva



MEMO

on the Law «On amendments and additions to some legislative acts of the Republic of Kazakhstan on the activities of non-governmental organizations»

- The law on NGOs has been discussed for several years and repeatedly sent for further elaboration due to its partial non-compliance with the democratic commitments of Kazakhstan. The current version is now compliant. It takes into account the concerns of civil society, alongside balancing national security requirements with the core principles of democracy: freedom, equality, accountability and transparency.
- **The principle of «liberty»** ensures that after the adoption of the law, NGOs will have free access to both public, international (UN, OSCE, USAID, EU, etc.) and private financing. For the first time in an independent Kazakhstan, NGOs will be able to freely articulate their social position when applying for government grants, – i.e., NGOs themselves will propose state social guidelines of the country's development.
- **The principle of «equality»** will ensure equal access for all NGOs to government grants. A non-government organisation, "Operator" will be created, made up of both government officials and representatives from civil society. The NGOs themselves will have a significant voice in which organisations receive funding. In addition, similar to Western good practice, the Operator will have the ability to attract both international financing, and approve community and business fund raising. With this we reduce the level of financial dependence of the Operator from the state, which will also reduce its political dependence from the state.
- Operator will not impose a monopoly on the distribution of national and foreign grants. International funders, including USAID, EU, UN and others, will continue to distribute grants to national NGOs in Kazakhstan independent of the Operator. The bill provides for a possibility that the Operator can work with donors from a number of foreign and international organizations, which will only attract further investment in NGOs. The bill does not prescribe any restrictions or additional rights of the Operator on funds allocated by donors to non-governmental organizations.
- The concept of «Grant for NGOs», which is used in the bill, to be distinguished from the concept of «Grant» in the Tax Code. The concept of "Grant for NGOs" refers to funds that the operator provides to the NGOs to implement their initiatives in the form of social programs and projects. The concept of the "Grant" in the Tax Code is used to designate property that foreign donors provide to NGOs. Changes in the Tax Code are not envisaged at all.
- The draft law was extensively discussed by the Working Group under the Ministry of Culture and Sports, composed of representatives of local and foreign NGOs. On the recommendation of the Working Group Article 6-1, "Grants" has been supplemented by a separate paragraph 5, which guarantees non-interference of the Operator in the activities of foreign donors for awarding Kazakhstani NGO with grants. In particular, it reads as follows: "This Article shall not apply to relations arising in the process of awarding grants, which are governed by the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" (Tax Code) and other laws of the Republic of Kazakhstan."
- **The principle of «transparency and accountability»** guarantees full access to information about the NGO allocated by the Government of the volumes and forms of financing, as well as mechanisms for the distribution of grants under the Operator.

- Activities of the Operator will allow to alienate the procedure of transfer of funds from NGOs from those who allocate the funds: the state or a private sponsor. NGOs will have receive independence from direct customers in the implementation of projects.
- Operator will directly carry independent monitoring and overseeing the implementation of the projects. The Draft law provides for the Operator to attract experts within the framework of the Expert Council for monitoring of awarding and implementation of grants, which will increase the social control. The Expert Council will be formed from the representatives of domestic and international experts.
- All decisions on the allocation of grants and fundraising will be taken collectively. The Board of Directors of the Operator will include representatives of the public, who will be replaced on a regular rotational basis. Applications for grants will be considered just by a panel of independent experts, prominent public figures, and representatives of NGOs. This procedure will be regulated by a by-law, which was developed in collaboration with NGOs.
- An additional tool of public control over the activity of the Operator will be Public Councils to be established with the participation of civil society institutions at the state bodies. The appropriate Law "On Public Council" was adopted on 15 October this year by the Parliament of Kazakhstan.
- This principle requires reciprocal transparency and accountability of NGOs to society and the state through the annual submission of their data to the being formed database of NGOs, including information about ongoing projects, the sources of their funding, the partners and the target groups - the recipients of services.
- **The norms that establish transparency, raised concerns of NGOs, prompting the paradoxical situation in which NGOs know and see all the financial activities of the Government in relation to NGOs, demand more of its transparency up to their participation in the distribution of grants, but reject demands for a similar transparency on their part.**
- It is important to note that the current reporting forms of NGOs, including financial, are optional and often are implemented by non-governmental sector of Kazakhstan.
- Largely for this reason, the Draft law envisages annual submission by NGOs to the "Database of NGOs" information about their activities. This information will be available to the public on-line. This will allow to raise public awareness of NGOs, there will be enhanced vertical, horizontal ties between the representatives of NGOs, including human rights sector. All this will only contribute to the integration of civil society and, consequently, its strengthening and increasing role in the socio-political life of the state.
- As is known, no norm works without responsibility. The Draft law provides only administrative responsibility, not criminal. The same standard of liability is consistent with the principles of democracy and exists in the US, UK, Germany, France, Canada and other countries since long ago.
- **NGO legal environment.** The law does not change the current legal framework for NGOs. It does not change the requirements of registration, does not permit the Government to interfere in the affairs of NGOs, does not change their "tax-free" status, **and does not limit access to foreign grants.**

- The law adds sources of funding to NGOs - in addition to state orders, and foreign grants, NGOs can receive a "governmental grant". Here, in contrast to foreign grants and state orders, **NGOs themselves** will determine the scope of the project they run. Such an approach will enhance the effectiveness of projects, will release NGOs from the bureaucracy of state orders, as well as bring NGOs to the forefront of finding solutions to social problems. State grants will be awarded via Operator.

- **The bill does not limit the scope of the NGOs activity and does not allow anyone to close NGOs involved in the protection and promotion of human rights and freedoms.** Article 5 defines the scope of the implementation of the state contracts, grants, and covers a wide range of activities of NGOs, including human rights and democracy. Thus, the sub-item 10) of Article 5 contains a broad thematic area - "the protection of rights and legal interests of the citizens and organizations."

- In accordance with Article 6 of the Law of the Republic of Kazakhstan "On the Citizenship of the Republic of Kazakhstan", "foreigners and stateless persons enjoy in Kazakhstan the rights and freedoms and bear the responsibilities established for citizens, unless otherwise provided by the Constitution, laws and international treaties." **In other words, the scope of state contracts and grants for NGOs will cover also the rights of migrants, foreigners and stateless persons.** It is also worth noting that none of the areas of implementation of the state order within the law has been excluded in the framework of the bill.

- No one in the Government, especially those in the Operator, has been given the right to terminate the activities of any organization, including NGOs. This issue, in the unlikely event it occurs, will be resolved in the justice system. Only the judgment of a Court can form the basis for the closure of an NGO.

- **Organizational Capacity:** The law obliges NGOs to use part of the state grant for their own institutional development, including the strengthening of infrastructure and upgrading their employees' qualifications and skills.

- **Financial Viability:** In addition to maintaining the multilateral mechanisms of receiving grants, the national NGOs will be able to receive awards (premium/bonuses). Bonuses will be allocated on behalf of the Government to organizations to implement successful social projects, and allow NGOs to strengthen their material status. They are offered on the basis of a public assessment of the proposed candidates from the NGO community and with governmental approval.

- A fully transparent procedure for granting Bonuses is envisaged. Submission of the non-governmental organizations seeking Bonuses will be made by the Coordination Council for Cooperation with NGOs under the authorized body in the field of NGOs, which will include the representatives of governmental agencies, non-governmental organizations, and prominent public figures.

- Every application for the Bonus will be further evaluated by an expert commission formed under the authorized body. The evaluation criteria will be an assessment of the contribution of the applicant to the solution of social problems, public opinion, and reviews of the public organizations and other.

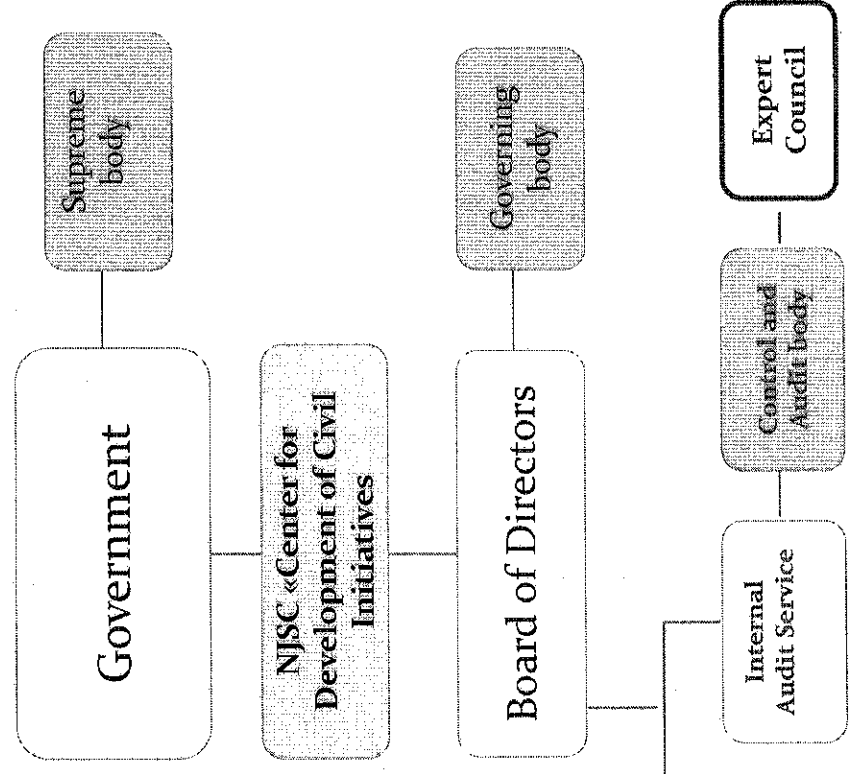
- Bonuses will be distributed among the members of NGOs, and will be spent on statutory objectives of the organization, such as institutional development, training of personnel and charity.

- The government of Kazakhstan, acting as the guarantor of stability and development in the country, has every right to regulate the non-governmental sector, but is obliged to preserve that sector's freedom of operation and financing.
- The proposed NGO bill does not restrict the activities of NGOs, does not prescribe the permitted scope of its activities, does not prohibit foreign funding, but rather complements them with significant public funding in times of economic crisis; we hope that these facts are understood and acknowledged by civil society of the Republic of Kazakhstan.
- The requirement for an annual report on the activities of NGOs is substantiated and constitutionally justified, as it will contribute to an atmosphere of transparency and trust both from the people of Kazakhstan, and the government, in the activities of the civil society. Moreover, it will create conditions for the elimination of all suspicions on the part of law enforcement bodies regarding the legality or illegality of activities of certain NGOs, eliminating suspicion of money laundering, criminal use, etc.
- Absence of criminal liability under this item also is a proof of sincere intentions of the Government not to limit, not to control or regulate the civilian sector, but ensure the basic principles of transparency of legal entities to the Government of the Republic of Kazakhstan.

Management Structure of the Non-Commercial Joint-Stock Corporation (NJSC) "Center for development of Civil Initiatives"

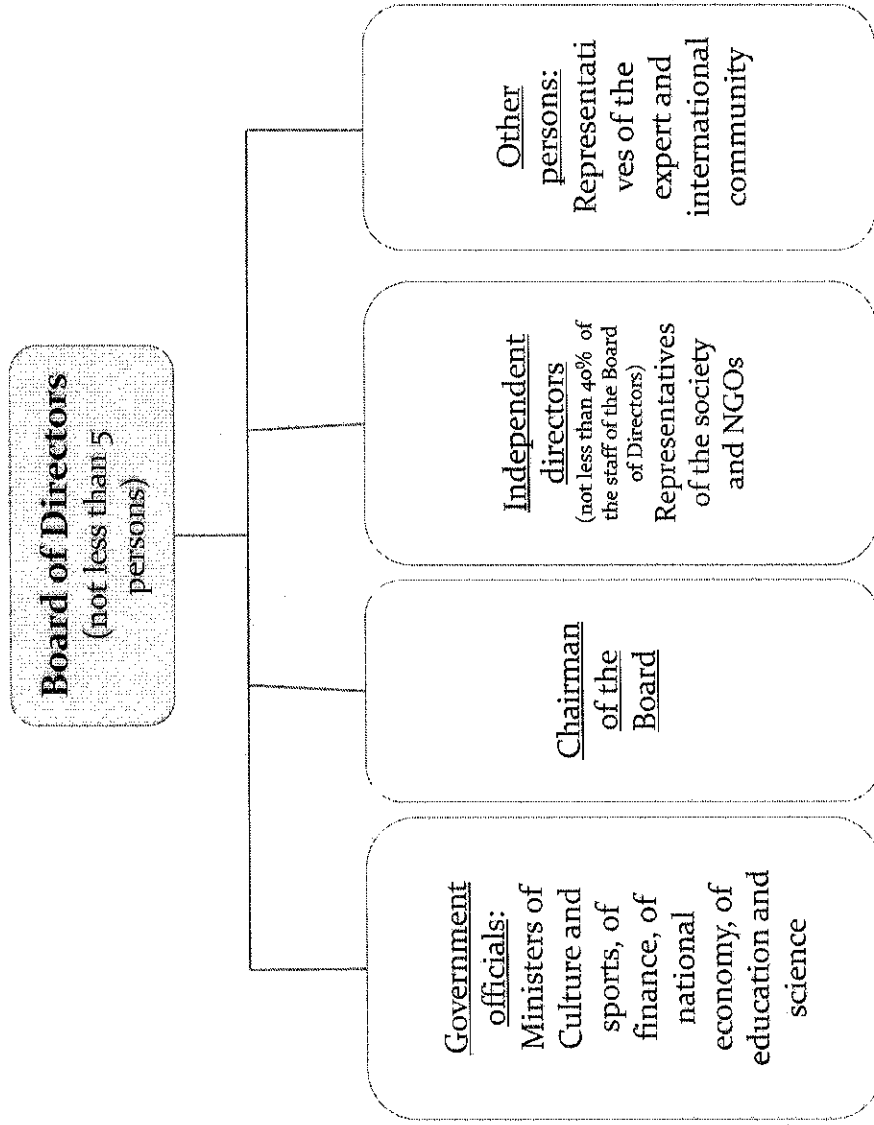
NJSC «Center for Development of Civil Initiatives» will be comprised of:

- ✓ The supreme body - Government
- ✓ Governing body – Board of Directors
- ✓ Executive body - Board
- ✓ Control and Audit body - Internal Audit Service
- ✓ Expert Council



The procedure for the formation of the Board of Directors of NJSC «Center for Development of Civil Initiatives»

- ✓ The staff of the Board of Directors is formed from the members of the Government of the Republic of Kazakhstan, Chairman of the Board, independent directors and other persons.
- ✓ The number of the members of the Board of Directors is not less than 5 persons, whereas the number of independent directors should be not less than two fifth from the number of members of the Board of Directors.
- ✓ Requirements for the persons being elected into the Board of Directors (except for Government officials) are set by the legislation of Kazakhstan and by the Articles of Association of the NJSC.



Board of NJSC «Center for Development of Civil Initiatives»

- ✓ The Board will consist of not less than 5 (five) persons, and includes the Chairman of the Board, his deputies and other persons.
- ✓ For the efficiency of the Center's management it is envisaged to involve in the staff of the Board the representatives of the Republican Public Council.

