

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 25/2 and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **ongoing considerations by the Latvian Parliament on the draft law "On Amendments to the Latvian Criminal Law", debated in the Parliament of Latvia on 7 April 2016 that may seriously restrict the rights to freedom of expression and freedom of association in the country.**

According to the information received:

On 3 March 2016, the Parliament of Latvia approved the draft law "On Amendments to the Latvian Criminal Law" on their first reading. The draft amendments were reportedly prepared by three Latvian security services, but were tabled in Parliament by standing committees on Legal Affairs and on National Security. The amendments change the existing chapter of the Latvian Criminal Law on "Crimes against the State".

Article 80 of the new draft amendment criminalizes any action against Latvian independence or sovereignty, and actions aimed at undermining the territorial unity, or overthrowing of the state power or state structure. The annotation to the draft amendments specifically states that overthrowing State power can also refer to non-violent actions. Article 80.1 prohibits the establishment of organizations that aim to act against the same interests identified above.

Article 81 of the draft amendments further criminalizes public calls for action against State independence, sovereignty or territorial integrity, overthrowing State power or changing the State structure. These provisions impose sanctions from 5

to 8 years of imprisonment, including cases where there has been no violence involved.

The amendments have been considered in accordance with the urgent legislative procedure, which reportedly circumvents the normal procedure for adopting laws before the Latvian Parliament. Therefore, the draft may be adopted in two, rather than the usual three readings. The first reading occurred on 3 March 2016, and the second occurred on 7 April 2016.

The National Security Commission and the annotations to the bill both invoke notions of hybrid and information warfare to justify the need for the draft amendments.

Serious concern is expressed about the draft amendments to the criminal law and the negative impact that the aforementioned provisions may have on the exercise of the rights to freedom of expression and freedom of association in the country. Additional concern is expressed about the chilling effect that the draft amendments may have on individuals and associations in Latvia, in particular those expressing dissenting opinions, exercising their rights to freedom of expression and freedom of association.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Latvia ratified on 14 April 1992, which provide for the rights to freedom of opinion and expression and to freedom of association.

While the reported amendments allegedly seek to address the national security threat of hybrid and information warfare, the vague wording of the amendment can have broad implications for the exercise of the rights to freedom of opinion and expression and freedom of association. The amendments do not make clear what actions would be sufficient for a criminal charge under article 80, but specifically state that violence is not required. Because article 81 prohibits public calls for actions against the State, the law could include, under either article 80 or 81, the proscription of peaceful advocacy for reform. The amendments also pose a threat to the freedom of the press, since the prohibited actions could include the publishing of articles that are critical of the government.

In this context, we would also like to refer to General Comment 34 of the Human Rights Committee on the right to freedom of opinion and expression, which emphasizes that restrictions to the right to freedom of opinion and expression, though permissible under paragraph 3 of article 19, “must conform to the strict tests of necessity and proportionality” (CCPR/C/GC/34, para. 22). The Committee further indicates that extreme care must be taken by State parties to ensure that provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of paragraph 3.

Moreover, we reiterate the principle enunciated in Human Rights Council Resolution 12/16 that States ought to refrain from imposing restrictions which are not consistent with paragraph 3. Restrictions that are inconsistent with paragraph 3 could include: discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (A/HRC/RES/12/16, operative para. 3).

We would also like to remind your Excellency's Government of its obligation "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law" (A/HRC/RES/24/5, operative para. 2).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the people of Latvia in compliance with international instruments.

As it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the draft amendments.
2. Please provide information about whether the proposed amendments have been adopted by the Parliament of Latvia and, if so, when they will come into effect.
3. Please provide information on the kind of Government interest the proposed amendments are intended to serve, and indicate how these restrictions are compatible with international human rights standards under article 19 and article 22 of the ICCPR. In particular, please indicate why the criminalization of speech and association in the draft amendments are considered as restrictions that are necessary and proportionate to protect the identified interest of national security and explain how this is compatible with international human rights norms and standards referred to above.

4. Please provide information on the justification for considering the proposed amendments under the urgent legislative procedure, as well as on the consultations conducted in the elaboration of the proposed amendments.

While awaiting a reply, I urge that all necessary measures be taken to prevent the hasty adoption of the draft amendment. We would appreciate receiving a response within 60 days.

This communication and your Excellency's Government response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association