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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the submission of a draft law "On Introducing Amendments and Changes to Certain Laws of the Kyrgyz Republic" (Laws "On Non-commercial Organizations", "On the State registration of legal entities, branches", and Criminal Code) for public discussions by two members of Jogorku Kenesh of the Kyrgyz Republic.. It is alleged that the draft law would propose amendments to the laws on non-commercial organisations, on state registration of legal entities and to the Criminal Code of the Kyrgyz Republic.

According to the information received:

On 6 September 2013, two members of the Kyrgyz parliament reportedly tabled a draft law on "non-commercial organisations fulfilling the role of foreign agent". The law would reportedly make the following changes:

Changes to the Law of the Kyrgyz Republic on Non-Commercial Organisations and the Law on State Registration of Legal Entities

It is reported that Article 2 of this law would now speak of "non-commercial organisations which function as foreign agents" in place of "foreign non-commercial organisations". Non-commercial organisations which function as foreign agents would be defined by receipt of money or other property from foreign governments or their public authorities; international or foreign

organisations; foreign citizens; persons without citizenship or their representatives; and would also be involved in “political activity”. Political activity would be defined as “organising and conducting political activities in order to influence the decisions of public authorities, [...] changing public policy” or influencing public opinion to affect either of these goals. It is alleged that the wording of this amendment is excessively vague and could allow for misapplication of the law, as well as making this provision difficult to enforce.

According to reports received, Article 12 would also be amended so that any materials published or distributed by non-commercial organisations functioning as foreign agents would have to be marked as such. Given that it is further alleged that the term “foreign agent” has extremely negative connotations in the Kyrgyz Republic, it is possible that this amendment would force non-commercial organisations to choose between negatively branding their publications and potentially reducing their readership, or, should they choose not to brand their publications in such a fashion, forcing them to act outside of the law.

It is also reported that proposed changes to Article 17 would mean non-commercial organisations would be obliged to provide detailed information on the size and composition of its property, as well as the number of employees, the remuneration of their labour and unpaid labour, and the composition of their governing bodies to an authorised body biannually. Additionally, information regarding the expenditure of funds from foreign sources would have to be submitted on a quarterly basis. The organisations would also be obliged to record funding received from foreign sources separately from other sources and to publish activity reports in the media or online every six months. The changes would additionally mean that in a case where a non-commercial organisation does not register as a foreign agent they could face suspension for up to six months. Besides making some of the reporting procedures excessively burdensome, it is alleged that this proposal would force organisations, as with the amendment mentioned above, to choose between branding and criminalising themselves.

Changes to the Criminal Code

Reports have been received which allege that changes to Article 259 of the Criminal Code would mean that the establishment of an organisation “whose work is associated with urging citizens to refuse to fulfil their civic duties or commit other unlawful acts” would be punishable by three years’ imprisonment or a heavy fine. It is further reported that participation in such an organisation would be punishable by two years’ imprisonment or a fine. It is alleged that the wording of this amendment, and the lack of a definition of “civic duties”, render the provision very vague and open to misapplication.

On 18 September, during his visit to the EU in Brussels, President Atambayev made a statement indicating that the Kyrgyz Republic does not need such a law. He stated that should this law be adopted by the Parliament, he could exercise his

veto powers. Moreover, he expressed hopes that the Parliament would not pass this law.

Concern is expressed at the imprecise wording of some of the proposed amendments, as it is felt this may lead to arbitrary application of the law. Deep concern is expressed that organisations may face a choice between societal stigmatisation and being penalised. Further serious concern is expressed at the fact that these amendments, if implemented, would be likely to have a detrimental effect on the rights to freedom of association and to defend human rights, as well as having a chilling effect on civil society as a whole.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer to article 22 of the ICCPR, which provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their 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."

In addition, we would like to mention the second thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council (A/HRC/23/39), in which he called upon States to:

- "ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities" (A/HRC/23/39, para. 82(a)).
- "recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding" (para. 82(d)); and

- “adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received” (para. 82(e)).

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental

freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

- article 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

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

1. Are the facts alleged in the above summary of the proposed changes accurate?
2. Please provide the full details of the proposed amendments and how they comply with your obligations under the international of human rights law and standards including, *inter alia*, articles 20 and 23 UDHR and article 21 of the ICCPR.
3. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the legal and administrative framework complies with international human rights law and standards. .

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

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freedom of opinion and expression

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