

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
KGZ 2/2015:

30 July 2015

Dear Mr. Djusupov,

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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received concerning the **increased targeting of human rights defenders and civil society organisations, by both State and non-State actors, including in the context of retrogressive draft legislations and amendments.**

Mr. Dmitry Kabak is President of the **Open Viewpoint Public Foundation**, an organization which focuses on the freedom of religion or belief. He has worked with a number of United Nations (UN) agencies and has assisted the State bodies of the Kyrgyz Republic in the drafting of human rights reports and core documents. In 2010, he was one of the drafters of the Human Rights Chapter of the Kyrgyz Constitution, and one of the candidates for the post of the Ombudsman in 2013. In 2014, he supported critics of the Government's decision to join the Eurasian Economic Union (EAEU), due to the negative effect it could have in the Kyrgyz Republic.

Mr. Khusanbay Saliev and **Mr. Valerian Vakhitov** are human rights lawyers and members of the Osh branch of Bir Duino - Kyrgyz Republic (One World), a human rights organization which defends the freedom of association and political space for human rights defenders in the Kyrgyz Republic through legal support, culture and arts. Bir Duino has engaged directly with a number of UN mechanisms, including with Treaty Bodies, the Universal Periodic Review and Special Procedures.

Labrys is a grassroots platform for the advancement and protection of the human rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people in the Kyrgyz Republic and Central Asia. It promotes equal rights, justice and non-discrimination for LGBTI communities. Labrys was the subject of a previous

communication sent to your Excellency's Government by various Special Rapporteurs on 24 April 2008, case no. KGZ 6/2008, see A/HRC/10/12/Add.1. We regret that no response to this communication has been received to this day.

Association of human rights non-governmental organisations (NGOs) “Human Rights Advocacy Center” (the Advocacy Center) was created in February 2005, in the south of the Kyrgyz Republic, at the initiative of non-governmental human rights organizations and with the support of the local office of the OSCE. The Advocacy Center aims to build capacity of civil society organisations working to promote human rights and is comprised of 24 non-governmental human rights organizations from Osh, Jalalabad and Batken regions.

Human Rights Watch (HRW) is a prominent international organization that works as part of a civil society movement to uphold human dignity and advance the cause of human rights for all. HRW opened a representative office in Bishkek, Kyrgyz Republic, in July 2013, after having obtained registration from the Ministry of Justice in May 2012.

According to the information received:

The case of Mr. Dmitry Kabak

On 1 April 2015, Mr. Dmitry Kabak received a phone call during a meeting he was attending with the Public Expert Council on Religious and Ethnic Development. The caller introduced himself as an officer of the 10th Police Department and requested a meeting to clarify recent requests sent to the State bodies. They agreed to speak the following day.

On 2 April 2015, Mr. Kabak received a call from the same person and they arranged to meet that afternoon. Two of Mr. Kabak's colleagues accompanied him to the meeting. The officer then cancelled the meeting, saying that he had been called away due to work. Later that day, at 11.28 p.m., Mr. Kabak received two phone calls to his mobile phone. When he answered, the caller did not speak. The next morning at 7 a.m. he received another such call. When he arrived to work, the door to the office appeared to have been damaged.

On 6 April 2015, Mr. Kabak, as part of the delegation of the Open Viewpoint Public Foundation, was to visit Talas Oblast province to conduct interviews about the situation of freedom of religion or belief. However, members of local religious groups reportedly informed the organisation that they had received phone calls from the local office of the State Committee of National Security (SCNS) regarding the visit. The visit was therefore cancelled.

On 13 April 2015 Mr. Kabak received a phone call from the Head of the Department of National Security Service, who invited him for lunch. At the lunch, Mr. Kabak was introduced to another person who he was told would be working

on inter-ethnic issues in the department. Mr. Kabak was then left alone with that person, who asked a number of questions regarding Mr. Kabak's activities, including his stance on a number of Government's decisions, such as the draft Foreign Agents Law and the Eurasian Economic Union. Mr. Kabak was then presented with a folder containing his private images. He was informed by the SCNS officer that the images had been taken from surveillance cameras. There was no explanation as to why or how the images were obtained and he was not informed of any court order to allow for this invasion of privacy. The officer then revealed that he had been the one who had called Mr. Kabak on 1 April 2015, suggesting that Mr. Kabak "cooperate with State bodies".

On 14 April 2015, Mr. Kabak switched off his regular mobile phone and started using a different SIM card to prevent unsolicited calls. However, he soon started to receive those calls to his new number.

Before travelling to Vienna on 15 April 2015 to take part in a civil society forum organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Mr. Kabak filed complaints related to the above-mentioned incidents, which he addressed to the Chairperson of the SCNS, the Prosecutor General and the Head of the Department on Ethnic and Religious Issues and Cooperation with Civil Society at the Office of the President.

On 20 and 21 April 2015, following his return to Bishkek, Mr. Kabak filed additional complaints to the Bishkek district courts, and to the communication companies of which he is a customer, regarding the interference and surveillance of his phone calls and private life, particularly the legal requirement of a court order for such restriction on the right to privacy.

On 22 April 2015 Mr. Kabak received a call from the Internal Security Department of SCNS regarding his complaint and inviting him to a meeting. On 23 April 2015 Mr. Kabak, accompanied by his lawyer, visited the SCNS for the appointment. They requested to be provided with copies of any court order permitting the interference into his private life. To date, no copy of the court order has been provided.

The case of Mr. Khusanbay Saliev, Mr. Valerian Vakhitov and Bir Duino – Kyrgyz Republic

On 26 March 2015, the Osh City Court issued a search warrant for the Osh branch of Bir Duino – Kyrgyz Republic, under Article 13 of the Penal Code "countering extremist activity by confiscating forbidden material of religious character".

On 27 March 2015, investigative officers from the SCNS carried out a search of the Osh office of Bir Duino. During the search, computers and other electronic devices were reportedly seized. On the same day, the apartments of Mr. Saliev and Mr. Vakhitov were also searched and documents and computer drives were

seized. During those searches, documents related to more than a hundred legal cases were allegedly taken, in violation of attorney-client privilege. Legal sanctions were issued without the participation of prosecutors in alleged violation of Article 8 of the Code of Criminal Procedure. It is alleged that pursuant to Article 29(5) of the Law on Lawyers and Lawyers' Activity of the Republic of the Kyrgyz Republic, such seizure is possible only in circumstances when the lawyer is a defendant in a criminal case. To date, these files have reportedly not been returned.

On 28 March 2015, a lawsuit against a journalist from the United States was examined as an administrative case and resulted in his/her deportation from the Kyrgyz Republic. The journalist is believed to have been carrying the business cards of Mr. Saliev and Mr. Vakhitov at the time of his arrest. The search warrant for Bir Duino is therefore believed to have been issued in connection with the criminal case involving the journalist.

On 6 and 8 April 2015, the brother and father of Mr. Saliev were summoned for questioning by an investigative officer of the Osh Department of the SCNS. The legal basis for their summons remains unknown, as there is no criminal investigation formally open against Mr. Saliev.

On 8 April 2015, Bir Duino filed urgent appeals to the SCNS and its Anti-corruption Agency calling for immediate action to stop the judicial harassment of Bir Duino. It claimed that the searches violated the protection of lawyers from arbitrary interference in their professional activity. As neither lawyer was under investigation at the time of the searches, Bir Duino also filed a complaint before the Osh Oblast Regional Court to challenge the lawfulness of the searches.

On 30 April 2015, the Osh Oblast Regional Court considered the complaints and in all three cases, found the search warrants to be illegal and nullified. In response, the Prosecutor's office filed an appeal before the Supreme Court asking to overrule the Osh province court's decision.

On 24 June 2015, the Supreme Court delivered three judgments in favour of the Bir Duino's case, upholding the decision of the regional court. However, a number of confidential legal documents that were confiscated during the search have, to date, yet to be returned.

On 14 July 2015, the website of Bir Duino was reportedly hacked, in an attack apparently linked to a letter sent by the organization to the Kyrgyz President demanding the release of a prominent human rights defender, Mr. Azimjan Askarov, who has been serving a sentence of life imprisonment since 2010. A week later, on 27 July 2015, a high-ranking official reportedly attacked Bir Dunyo in the media allegedly for the same reason of representing Mr. Askarov by accusing the NGO being "under the influence of foreign agents".

The case of Human Rights Advocacy Center

On 30 September 2014, at approximately 3:45pm, six people in civilian attire, including one who identified himself as a senior lieutenant of the SCNS, entered the Office of the Association of Human Rights NGOs “Human Rights Advocacy Center” in Osh. The SCNS officer presented a court-approved warrant for searching the premises of the NGO as well as an order authorizing a criminal investigation for the ‘incitement of ethnic, racial, religious or inter-regional hatred’ under Article 299 of the Criminal Code of the Kyrgyz Republic. During the two-hour search, three desktop computers, one laptop and two copy machines were seized. They also searched desks and document folders of staff who coordinate the funding of the survey. Staff members were not permitted to leave the office, nor to make or receive phone calls during the search.

As stated in the order presented, the investigation against HRAC has been opened due to the recent “conducting of a pilot survey on observance of the rights of ethnic minorities in Osh” by the HRAC.

On 28 October 2014, a hearing was scheduled to consider the appeal lodged against the investigation of HRAC. The hearing was unable to proceed as the case prosecutor and investigator were not present, and was rescheduled for 30 October 2014. On 30 October 2014, proceedings were resumed in the absence of the prosecutor and the investigator.

On 3 November 2014, the appeal submitted on behalf of HRAC was dismissed.

The investigation against HRAC was initiated in the context of a public statement made by the Chair of the Uzbek National and Cultural Centre in Osh City at the end of September 2014. In his statement, the Chair claimed that questionnaires developed by the HRAC had displeased ethnic Uzbeks in Osh and could cause division of communities based on ethnicity.

The questionnaires were developed by the HRAC within their project on “Protecting the rights of vulnerable groups” supported by Freedom House and USAID. The questionnaires were not disseminated among the wider public, and they targeted the HRAC partners and experts only. The survey results were planned to be submitted to the state authorities.

There are concerns that this criminal case may be further used to justify the forced closure of the NGO through withdrawal of their legal entity status. Further concerns include the risk that individual staff members may be eventually charged under the same Criminal Code’s Article 299, p.1, “incitement of ethnic, racial, religious or inter-regional hatred” which foresees up to eight years’ imprisonment as a punishment.

The case of Labrys

On 3 April 2015, at approximately 10.30p.m., two unidentified men reportedly threw three bottles filled with explosives at the office of Labrys in an attempt to set fire to the building. The attempt was unsuccessful, and the equipment and documents of the organisation were undamaged. The attack was recorded on CCTV security cameras.

On 17 May 2015, it is reported that as many as 30 members of youth nationalist political movements entered a restaurant in Bishkek where members of Labrys were celebrating the International Day against Homophobia and Transphobia and they threatened and insulted the Labrys members. One of the members of Labrys was injured. The police have opened a criminal case into the incident on the charges of ‘hooliganism’.

The case of Human Rights Watch

On 7 April 2015, the representative office of Human Rights Watch (HRW) in Bishkek submitted applications to the Ministry of Youth, Labour and External Migration for the renewal of work permits of the office’s three international staff. On 4 May 2015, a ‘quota’ for three foreign staff to work in the HRW office was granted by the Ministry. The HRW office was subsequently informed that the three work permits would be forthcoming, pending final review by the State Committee of National Security.

On 25 May 2015, two Labour Ministry officials and two officials from the Ministry of Internal Affairs made an unannounced visit to the HRW office in Bishkek, and demanded to see the individual work permits of the international staff present. Unable to produce the work permits, two of the HRW office’s foreign staff members were forced to pay a fine of approximately 180 USD.

On 5 June 2015, the HRW office was informed by the Labour Ministry that work permits had been granted for two of the office’s three foreign staff. Ms. Mihra Rittmann, who is the representative of the HRW office, was denied a work permit without a written explanation for this decision. Some HRW staff members were reportedly told that it would be “inappropriate” to grant Ms. Rittmann a work permit.

Foreign Agents Bill

On 26 May 2014, Members of the Kyrgyz Parliament re-introduced for the second time a draft law “On Introducing Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic” (Foreign Agents Bill) aimed at amending three existing laws, namely the law No. 111/1999 on Non-Commercial Organisations; the law No. 57/2009 on State registration of legal entities and Article 259 of the Criminal Code.

This draft law was the subject of two previous communications sent to your Excellency's Government by 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 on 30 September 2013, see A/HRC/25/74, case no. KGZ 2/2013; and on 23 September 2014, see A/HRC/28/85, case no. KGZ 5/2014. We regret that, to date, no response has been received to these communications, especially given the increasing restrictions on NGOs in the Kyrgyz Republic. In January 2015, a number of States also raised concerns over the Bill during the Kyrgyz Republic's second Universal Periodic Review at the UN Human Rights Council. The Government deferred its answer to recommendations specifically urging it not to adopt the 'Foreign Agents' bill. It was due to respond to the outstanding recommendations by the end of the twenty-ninth session of the Human Rights Council on 3 July 2015.

On 4 June 2015, a proposed amendment to the Foreign Agents Bill passed its first reading in Parliament by a vote of 83 to 23. To become law, the Bill must pass two more votes in Parliament and be signed by the President Almazbek Atambayev. If enacted into law, non-governmental organisations which receive foreign funding and which are considered to be involved in political activities would be required to register as 'foreign agents'.

LGBTI Bill

On 24 June 2015, during its second reading, the Kyrgyz Parliament approved legislative amendments to the draft law 'On introducing additions to some legislative acts of the Kyrgyz Republic', establishing penalties for non-traditional sexual relations propaganda in the media and on the Internet. The Bill stipulates that actions which are deemed to create a positive attitude towards non-traditional sexual relations through the use of media or peaceful assembly would result in up to six months imprisonment and/or a fine, and administrative sanctions. The proposed draft was passed in this reading in Parliament by 90 votes in favour and to two votes against. Concerns have been expressed about the Bill that, if adopted, it would unduly restrict the right to freedom of expression and lead to the criminalization of the work of human rights defenders, in particular those who promote and protect the rights of the LGBTI community in the country.

Grave concern is expressed at the increased level of harassment and targeting of human rights defenders and civil society organizations in the Kyrgyz Republic, including cases of judicial harassment and interrogation by State actors in relation to their legitimate human rights activities. Similar concern is expressed at the increasingly limited space for civil society as a result of restrictive legislation and legislative amendments, judicial harassment, surveillance and attacks, which unduly impede the legitimate work of human rights defenders and impose undue restrictions on the enjoyment of their right to freedom of expression and opinion. Concern is also expressed at the draft LGBT

legislation, which would further contribute to the already difficult environment that LGBT rights defenders operate in, including intimidation, threats and physical attacks. Further concern is expressed at the Foreign Agents Bill that would threaten financial sustainability of civil society organisations in the country and create vaguely defined concepts such as ‘engaging in political activities’, which may be used to obstruct and stigmatize the legitimate work of human rights defenders and civil society organizations.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the attempted arson attack on the Labrys office and the threats against its members. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information concerning the legal grounds for the interrogation of Mr. Saliev’s family members, as well as the basis for interrogating and surveilling Mr. Dmitry Kabak. Please indicate how these measures are compatible with international norms and standards, including whether court orders were obtained prior to the above-mentioned interrogations and, if so, whether they were presented at the times in question.
4. In addition, please provide further information regarding the finding of the Osh Oblast Regional Court that the search warrants issued for the premise of Bir Duino and the homes of Mr. Khusanbay Saliev and Mr. Valerian Vakhitov. Please indicate whether compensation will be provided to the victims or their families and whether the documents and other items seized will be returned to them in due course.
5. Please provide information concerning the legal grounds for the criminal case brought against Human Rights Advocacy Center and the denial of work permits of international staff of the HRW office in Bishkek. Please

indicate how these measures are compatible with the Government's obligations under international human rights law.

6. Please provide the full details of how the provisions contained in the Foreign Agents and LGBTI Bills, and the amendments to the laws, comply with the Government's obligations under international human rights law.
7. Please indicate what measures have been taken to ensure that human rights defenders in the Kyrgyz Republic are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or criminalisation of any sort, on the part of both State and non-State actors.
8. Please further indicate what measures have been, or will be, taken to guarantee the exercise of the right to freedom of association in the Kyrgyz Republic.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Djusupov, 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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would first like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights, acceded to by Kyrgyzstan on 7 October 1994, which guarantees the right to freedom of expression and association.

We would like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) 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.

Moreover, we would like to draw your Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the rights of all individuals to... associate freely, online as well as offline... including human rights defenders... 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".

We would like to refer your 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a & b), which provides for the right to meet or assemble peacefully; and for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 7, which provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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;

We would also like to refer to Human Rights Council resolution 22/6, which calls upon States to ensure that procedures governing the registration of civil society organizations are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration and are in conformity with international human rights law.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Furthermore, we refer to Human Rights Council resolutions 17/19 and 27/32 on human rights, sexual orientation and gender identity where the Council expressed grave concern at acts of violence and discrimination, including through legislation, committed against individuals because of their sexual orientation and gender identity.