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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9)
KGZ 1/2014

6 May 2014

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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 25/2, 24/5, 24/6, and 25/18.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the draft Bill "On the formation of a positive attitude toward non-traditional forms of sexual relations", which would impose criminal sanctions for disseminating information that encourages "non-traditional sexual relations" in the Kyrgyz Republic.**

According to the information received:

On 26 March 2014, the Kyrgyz Republic's Parliament submitted for public consultation a draft Bill "On the formation of a positive attitude toward non-traditional forms of sexual relations". The Bill was reportedly scheduled to be open for public consultation until 26 April 2014. According to the sources, the Bill is at the moment 'suspended' for procedural reasons, but is still undergoing evaluations within the relevant departments of the Kyrgyz Republic's Parliament.

According to reports, the Bill would amend the Criminal Code, the Code of Administrative Responsibility, the Law on Peaceful Assembly, and the Law on Mass Media, and would introduce a range of criminal and administrative sanctions on persons who speak or act in a way that creates "a positive attitude toward non-traditional sexual orientation."

The Bill's professed objective is reportedly "the safety and protection of the traditional family, human, moral, and historical values of the Kyrgyz society by limiting the dissemination of information, comprising the formation of a positive attitude toward non-traditional forms of sexual relations". In the explanatory notes, the Bill defines "non-traditional sexual relations" as "sodomy, lesbianism and other forms of non-traditional sexual behaviour". The Bill determines "creating a positive attitude toward non-traditional sexual relations" as "disseminating information that would create non-traditional sexual attitudes in an individual or distorted notions of social equivalence between traditional and non-traditional sexual relations", or disseminating information that would "evoke interest" in non-traditional sexual relations.

According to the information received, the Bill seeks to "limit dissemination of information in the media, information, photo, video, and written materials, including materials that have an open or hidden call toward non-traditional sexual relations"; "[r]estrict organizing and participating in peaceful assemblies that aim to make publicly available any information regarding any forms of non-traditional sexual relations"; and "define the criminal and administrative liability of legal entities and individuals for disseminating information containing hidden or open propaganda about non-traditional forms of sexual relations, including toward minors."

Under the proposed amendments to the Criminal Code, persons who are found responsible for "creating a positive attitude toward non-traditional sexual relations, using the media or information and telecommunications networks," may reportedly face up to six months' imprisonment and a fine ranging from 2,000 to 5,000 som (USD 36 to 91). If the person is deemed to have created "a positive attitude toward non-traditional sexual relations" among minors, or if the person is a repeat offender, the person may reportedly face up to one year in prison and a fine ranging from 3,000 to 6,000 som (USD 55 to 110). It is reported that administrative fines may be imposed under the Bill for forming a positive attitude to unconventional sexual relationships even where such activities fall short of criminal liability.

In the context of the public consultation on the Bill, we have received allegations concerning the increased harassment of the lesbian, gay, bisexual and transgender people (LGBT) community in the Kyrgyz Republic, despite the fact that consensual homosexual relations were decriminalised in the country back in 1998, when article 112 of Criminal Code was revoked. In this connection, we wish to raise the following concerns in anticipation of the Bill's submission to the first parliamentary hearing.

In January 2011, the Ministry of Justice allegedly denied registration of the "Alliance and Social Services of Gays and Lesbians Pathfinder" because it breached article 20(2) of the Kyrgyz Constitution, deeming that the "designation

of the words ‘gay’ and ‘lesbian’ in the name of a legal entity promotes the destruction of moral norms and national traditions of the people of Kyrgyzstan”.

On 28 September 2012, the documentary film “I’m Gay and Muslim” was reportedly scheduled to be shown at the Sixth International Festival on Human Rights in Bishkek. The film tells the stories of homosexual, Muslim men in Morocco, as they attempt to reconcile their sexuality with their faith. According to reports, the film was not shown because the State Commission on Religious Affairs ruled that it contained “extremist material, arousing intra-religious strife and humiliation directed at Muslims and their inferiority on religious grounds.” The Pervomaisky District Court of Bishkek reportedly upheld this ruling.

On 27 February 2014, the nationalist youth movement, *Kalis*, reportedly held a demonstration against homosexual propaganda. During the demonstration, *Kalis* members allegedly burned a portrait of a LGBT rights activist in front of the Embassy of the United States of America in Bishkek.

Serious concern is expressed at the Kyrgyz Republic Parliament’s introduction of the recent draft Bill “On the formation of a positive attitude toward non-traditional forms of sexual relations”. The scope of the Bill is gravely concerning regarding the chilling effect it will have on the peaceful and legitimate work of human rights defenders in the Kyrgyz Republic who are working to protect and promote the rights of the LGBT community.

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

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. Please provide any additional information and any comment you may have on the above-mentioned allegations. In this connection, kindly provide information on the current status of the Bill.

2. Please provide the full details of how the draft Bill “On the formation of a positive attitude toward nontraditional forms of sexual relations” complies with your obligations under the international legal framework of human rights law and standards including, *inter alia*, non-discrimination on the grounds of sexual orientation under the International Covenant on Civil and Political Rights (ICCPR), to which the Kyrgyz Republic acceded on 7 October 1994.

3. Please provide an explanation of the following provision of the draft Bill: “International experience shows that in developed countries such as UK, USA (8 states), the Russian Federation, Moldova, Ukraine, Lithuania, Latvia and other countries imposed

restrictions on the dissemination of information in any form, aimed at creating a positive attitude toward nontraditional forms of sexual relationship”.

4. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists and particularly those working on LGBTI issues, 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 be grateful to Your Excellency’s Government if the present letter could be shared with the concerned members of Parliament for their attention.

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.

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

Frank La Rue
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

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Reference to international human rights law and standards Annex

In connection to the above concerns, we wish to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of opinion and expression and to freedom of peaceful assembly and association

We would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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. This paragraph reminds States 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 also like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination.

We wish to draw the attention of your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy and right to information (para.3), and that the principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30).

We further wish to refer to the jurisprudence of the United Nations human rights treaty bodies that discrimination on the grounds of sexual orientation and gender identity is prohibited under the respective human rights treaties, that legislation prohibiting "propaganda of unconventional sexual relationship" should be repealed and that States should take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community. (see inter alia CCPR/C/RUS/CO/6, CCPR/C/109/D/1873/2009, E/C.12/GC/20, CRC/C/RUS/CO/4-5, CRC/GC/2003/3, CRC/GC/2003/4, CRC/C/GC/13, CEDAW/C/GC/28, CAT/C/GC/2, A/HRC/19/41).

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. In this connection, the United Nations High Commissioner for Human Rights that States has issued recommendations to, inter alia, protect persons from homophobic violence and investigate and prosecute perpetrators of such violence; prevent the torture and cruel, inhuman and degrading treatment of LGBT persons in detention; ensure that criminal laws are not used to harass or detain people on the basis of their sexual orientation or gender identity; enact comprehensive laws that include sexual

orientation and gender identity as prohibited grounds of discrimination; ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety and without discrimination (A/HRC/19/41, para 84(a)-(h)).

We would like to note that in March 2014 the Human Rights Committee in its Concluding Observations expressed concern about reports of violence against LGBT persons by both State and non-State actors, and the failure to address such violence by Kyrgyzstan (para. 9, CCPR/C/KGZ/CO/2).

In this connection, 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, 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.

For the particular concerns raised in this letter, we would like to refer to article 7 of the Declaration on Human Rights Defenders, which includes the right to discuss and advocate for human rights ideas that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. States are encouraged to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as questioning accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

Finally, we would also like to refer to Human Rights Council Resolution 22/6, which explicitly indicates that domestic law and administrative provisions, and their application, should facilitate the work of human rights defenders, including by avoiding their criminalization or stigmatization, or by imposing any impediments, obstructions or restrictions to their work. States should take concrete steps to prevent and stop the use of legislation to hinder or unduly limit the ability of defenders to exercise their work. (A/HRC/RES/22/6, PPs 10-13)