

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 5/2014:

23 September 2014

Excellency,

We have the honour to address you in our capacity 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 Excellency's Government information we have received concerning **the draft law "On Introducing Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic" which, if adopted without further changes, will unduly restrict the right to freedom of association and may lead to the criminalization of the work of human rights defenders.**

According to the information received:

On 26 May 2014, Members of the Kyrgyz Parliament registered a draft law "On Introducing Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic" aimed at amending three existing laws, namely the law No. 111/1999 on Non-Commercial Organizations; the law No. 57/2009 on state registration of legal entities and Article 259 of the Criminal Code. This draft law is also known as the Foreign Agents draft law.

Article 1 of the draft law introduces an additional obligation for non-commercial organisation established in the Kyrgyz Republic, involved in "political activities" and receiving funding from foreign sources, to register as a "foreign agent". Article 1 also requires that any materials published by the concerned non-commercial organisation through the media and the Internet include a reference stating that these materials are published or distributed by non-commercial organisation acting as a "foreign agent". The draft law does not clearly define the term "political activities", referring only to "activities aimed at influencing the

decisions of public authorities in order to change their policy, as well as activities aimed at influencing the public opinion for the abovementioned purposes”.

This vague wording may leave numerous organisations engaged in service delivery or human rights issues at risk of being exposed to this legislation. This label could also lead to stigmatization, mistrust and hostility towards activists, human rights defenders and civil society organizations as a whole, as the term “foreign agent” can be perceived as carrying negative connotations.

Article 1 of the draft law further grants the Ministry of Justice the power to conduct scheduled and unscheduled inspections of the concerned organisations, request and check any internal documents, send its representatives to participate in any internal activities, determine whether an organisation complies with the goals of its creation, and to suspend their activity for up to 6 months without waiting for a court decision, in case an organization fails to file an application for inclusion in the register of non-commercial organizations acting as a “foreign agent”.

If the law is adopted these powers would contradict national and international law pertaining to freedom of association, including Article 5 of the Non Commercial Organisations Law of the Kyrgyz Republic which states that “interference of state bodies or officials in the activity of non-profit organizations... is not allowed”, as well as Article 17 of the International Covenant on Civil and Political rights, as further detailed in the Annex.

Article 3 of the draft law envisages criminal liability and imprisonment of up to three years for establishing a non-commercial organisation whose work aims to “incite citizens to refuse to fulfill their civic duties or commit other unlawful acts”. The same Article adds that the participation in “the activities of non-commercial organizations listed in [the aforementioned] paragraphs one and two [related to the obligations to register as a foreign agent]... as well as [the participation in] propaganda of acts provided by the [the aforementioned] paragraphs one and two” shall be punished by imprisonment for a term not exceeding two years.

This Article may lead to the criminalization of legitimate expression, affecting in particular the work of human rights defenders. Furthermore, the terms “inciting” and “propaganda acts” are broad and may be subject to arbitrary interpretation enabling undue restrictions to the right to freedom of opinion and expression.

We are seriously concerned at these amendments to the draft law which may arbitrarily restrict the right to freedom of association and obstruct the legitimate work of several organizations that carry out human rights activities and provide essential humanitarian, cultural and social services.

In connection to 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.

As 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 observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide the full details on the aforementioned draft law and explain how its provisions comply with the Kyrgyz Republic's obligations under international human rights law, particularly article 22 of the ICCPR.
3. Please indicate whether any consultation has been undertaken, including with civil society actors.

We would appreciate a response within 60 days.

Your Excellency's Government's 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

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 refer to the right to freedom of association as recognized under article 22 of the International Covenant on Civil and Political Rights (ICCPR), which the Kyrgyz Republic ratified on 7 October 1994.

We would also like to refer your Excellency's Government to Article 17 of the ICCPR which further guarantees the right of individuals to privacy against any "arbitrary or unlawful interference with [their] privacy, family, home or correspondence, nor to unlawful attacks on [their] honour and reputation".

We would further like to refer to article 19 of the ICCPR which guarantees the right to freedom of opinion and expression. In particular, we wish to refer your Excellency's Government to Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of the referred article.

In this regard, we would also like to refer to Human Rights Council resolution 22/6 (adopted on 21 March 2013), which calls upon States "[t]o ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration referred to in paragraph 3 above, other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto".

Reference is also made to 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, which provides specifically 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 freedoms through peaceful means in accordance with Article 3 of the present Declaration" (Article 13).

We would further like to recall the recommendations of the Special Representative of the Secretary-General on the situation of human rights defenders in that "Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments" (A/59/401, para. 82). Moreover, and in line with the 2012 thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, we reiterate that "any association... should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations" (A/HRC/20/27 para. 68).

Furthermore, the 2009 report of the Special Rapporteur on the situation of human rights defenders to the General Assembly stipulates that “human rights organizations that are independent and whose objectives and activities are not in violation of the International Covenant on Civil and Political Rights should have the right to engage in activities for the benefit of their members and for the public; and should be free to participate in public policy debates, including debates about and criticism of existing or proposed State policies or actions. Any limitations, within these parameters, including lists of permitted and prohibited activities, are incompatible with the right to freedom of association. Accordingly, no distinction regarding the types of permitted activities should be made between national and foreign organizations” (A/64/226, para. 122).

The 2011 thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27) further highlights a series of best practice, underlining notably “that no one [should be] criminalized for exercising the rights to freedom of peaceful assembly and of association” (para. 84 (c)) and that “[s]uspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law” (para. 100).