

**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  
KAZ 3/2015:

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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 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 potential human rights violations which could be the result of the implementation of a draft law on public associations which, if adopted with no further changes, may seriously compromise the independence and existence of civil society organizations in Kazakhstan.**

According to the information we received:

On 7 July 2015, a draft law called "Law on the introduction of amendments and addenda to several legislative acts of the Republic of Kazakhstan relating to activities of non-governmental organizations" was introduced before the National Parliament. The draft law amends the Law on Non-profit organizations, the Law on State Social Order and the Code of Administrative Offences. On 23 September 2015, the Lower House of the National Parliament approved the draft law in first and second readings and it is reportedly now before the Senate for its consideration.

Article 1 of the draft law reviewed and approved by the Lower House of the Parliament establishes an operator, created by a Government decision, with the right to allocate both governmental and non-governmental grants to non-governmental organizations. Article 1 (paragraph 1 sub-paragraph 3) of the draft law defines a non-governmental grant as "funds that are provided to non-governmental organizations by the operator in the sphere of grant financing of non-governmental organizations to support civic initiatives, engage the potential

of civil society institutions to resolution of topical issues of social sphere development”.

Article 6-1 (1) to be introduced to the Law on State Social Order formulates that grants are state grants provided from budgetary sources and non-state grants provided from extra-budgetary sources by physical persons and legal entities, international and foreign organizations on voluntary basis. If adopted as above, the draft law will thus introduce the monopoly of one single operator to distribute grants irrespective of sources, including those from international organizations, diplomatic missions or international non-commercial organizations. It may provide the operator with the power to arbitrarily restrict the ability of civil society to access resources and to control the civic sector, in violation of international human rights law and standards.

Article 6-1 (4) to be introduced in the Law on State Social Order also prohibits associations receiving governmental grants from using more than 10 percent of their funding for its administrative expenditures. The enforcement of such a provision may place excessive restrictions on the ability of civil society organizations to operate freely and may adversely impact in particular human rights organizations, which may be compelled to stop their activities. It may also limit the activities that civil society organizations are able to carry out. Reportedly, the types of non-governmental organizations’ activities specified in the proposed article 5 of the Law on State Social Order do not include human rights.

Moreover, the draft law also requires civil society organizations to submit information for inclusion in a database of non-governmental organizations. Failure to provide such information, providing it untimely or with irregularities or providing knowingly false information entails administrative liability in the Code of Administrative Offences such as administrative fines or suspension of activities of non-governmental organizations for up to three months (under new article 489-1 of the Code of Administrative Offences). Subsequent closure of a non-governmental organization for non-compliance with this provision is possible under other laws, such as the current Law on Non-commercial Organizations (article 42).

Although public consultation on this draft law has been undertaken with civil society organizations, it is reported that their concerns have not been adequately taken into account by the authorities.

Serious concern is expressed that several provisions of the draft law may compromise the independence of civil society organizations. Serious concern is expressed that the competence of the new operator may contravene international human rights standards related to freedom of association and freedom of expression, including the ability of civil society organizations to access funding.

Further concern is expressed that the limitation for civil society organizations to use no more than 10 percent of Government's funding for administrative expenditures, as well as the requirement to submit information regarding their organizations for inclusion in a database, may result in fines, suspension or compromise their very existence, especially those working on human rights.

Moreover, we are concerned at reports that the views of NGOs regarding the negative effects of the amendments to the draft law that will ultimately affect their work have not been adequately taken into account by the authorities.

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.

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 full details on the proposed draft law and explain how the provisions comply with Kazakhstan's obligations under international human rights law, as well as clarifications into the specific concerns about the negative effects of the draft law on civil society in the country.
3. Please provide information on the public consultation process and any actions taken to consider the concerns shared by civil society actors, directly impacted by the draft law.

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.

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 opinion and expression, as well as the right to freedom of peaceful assembly and of association, as set forth in articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and in articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan ratified on 24 January 2006.

We would like to take this opportunity to recall that any restrictions to the exercise of the right freedom of expression, in accordance with article 19 (3) ICCPR must be provided by law and necessary and proportionate. Fines imposed on civil society organizations do not meet the proportionality requirement of article 19 (3) ICCPR, as they are not proportionate to the activities they are designed to sanction.

Furthermore, we wish 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 International Covenant on Civil and Political Rights 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 (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.

We should like to refer to Human Rights Council Resolution 24/5 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” (para. 2).

In this context, we would also like to refer to Human Rights Council Resolution 22/6, which calls upon States to ensure that reporting requirements “do not inhibit functional autonomy [of associations]” and “do not discriminatorily impose restrictions on potential sources of funding.”

We would also like to refer 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. 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, article 5 (b)

provides for the right to form, join and participate in non-governmental organizations, associations or groups. Finally, article 13 (b) and (c) which stipulate 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.

We further refer to the thematic report (A/HRC/23/39) of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which the Special Rapporteur stressed that “the ability of CSOs to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association [...] Under international law, problematic constraints [such as] requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities [...] violate article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights” (para. 20).

We also refer to the country visit report to Kazakhstan (A/HRC/29/25 Add.2) of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which the Special Rapporteur recommended the authorities of Kazakhstan “to ensure that the Law on Public Association allows for the free operation of unregistered associations, and that any amendments concerning access to funding do not jeopardize the independence of associations, including by limiting the proposed new grant mechanism to State funds only.”