

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
TJK 2/2016:

3 May 2016

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 **provisions of the Law on Public Associations that unduly restricts civil society space in the country, including the exercise of the rights to freedom of association and freedom of expression, and may be used to target civil society, including human rights organisations, in the country.**

The draft Law on Public Associations was the subject of a communication sent on 3 December 2014, see A/HRC/29/50 (case no. TJK 6/2014). We acknowledge the detailed reply of your Excellency's Government of 19 January 2015. However, we remain concerned in light of the below allegations.

The amendments to the Law on Public Associations were also addressed in the preliminary observations by the United Nations Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye, at the end of his visit to Tajikistan, dated 9 March 2016.

According to the information received:

On 8 August 2015, the Government of Tajikistan adopted amendments to the Law on Public Associations.

Under the amended Law, public associations are required to report to the Ministry of Justice on the receipt of "foreign funding" prior to their usage. The amendments fail to provide clear procedures for reporting to the Ministry of Justice and only apply to public associations with foreign funding, which may disproportionately affect the work of those organisations and their employees,

including human rights defenders and organisations, as well as those expressing dissenting opinions, who appear to be targeted in the application of the law. Additionally, these reporting obligations are added to the reporting burden for all public associations, which were already required to report their funding to the Government Tax Committee under Article 34 of the Law on the Monitoring of the Activities of Organisations.

Under Article 27 of the Law on Public Associations, all public associations receiving “foreign funding” are required to register with the Register of Humanitarian Assistance in order to carry out projects in the country. On 31 of March 2016, a procedure was adopted that requires public associations to register the receipt of a grant or other financial assistance from foreign sources with the Register of Humanitarian Aid, within 10 days of receiving the assistance. Failure to provide notice in this period will render the management of the organization liable for a penalty, although the penalty is not specified in the law.

Moreover, the Tax Committee and the Ministry of Justice, as well as the Prosecutor’s Office and various other Government offices, have conducted inspections of public organisations since the amendments were adopted. Reportedly, these inspections have been used to target human rights organisations in an attempt to intimidate and threaten their members, including with criminal responsibility.

Civil society associations and human rights defenders fear that these reporting requirements may be used to obstruct their access to funding and to prevent them from carrying out their work, including human rights work.

Serious concern is expressed about the additional reporting and registration requirements, as well as the inspections conducted, under the amended Law on Public Associations that may restrict civil society space through, inter alia, requirements to register and report on the activities conducted and to declare “foreign funding” received public associations in the country, including human rights organizations.

Concern is also expressed about the broader effect of the above-mentioned provisions and procedures, which may have a “chilling effect” on civil society and human rights defenders as a whole, particularly those with dissenting opinions, exercising their rights to freedom of association in the country.

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/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information about the purposes and government interest the registration and reporting requirements contained in, inter alia, the Law on Public Associations are intended to serve and explain how they are compatible with international human rights standards and norms. In particular, please provide information on how such financial disclosures are used.

3. Please provide information on any instruction, guidelines or regulations concerning the implementation of the Law on Public Associations, in particular concerning official inspections that are carried out on the basis of the law.

4. Please provide information regarding any review of the Law on Public Associations and any plans to reform it to bring it in line with international human rights norms and standards.

5. Please indicate the measures adopted to ensure that civil society, including human rights defenders and associations are able to carry out their legitimate work in Tajikistan in a safe and enabling environment without fear of retaliation, intimidation or harassment of any sort.

We would appreciate receiving 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 articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Tajikistan in 1999, which guarantees the rights to freedom of expression and freedom of association.

We would also like to refer to Human Rights Council resolution 24/5, which highlights States' obligation to both respect and fully protect the rights of all individuals to associate freely, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under international human rights law.

In communication No. 1274/2004, the Human Rights Committee observed that “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]” Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22.

We would also like to refer your Excellency's Government to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council “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.”

We would like to recall the report of the Special Rapporteur on freedom of peaceful assembly and association on the Ability of associations to access financial resources as a vital part of the right to freedom of association & Ability to hold peaceful assemblies as an integral component of the right to freedom of peaceful assembly (A/HRC/23/39).

We also wish 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 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 Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

- article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as 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 8 which provides for the right to submit to governmental bodies criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms;

- article 13, (b) and c), which provide for the right to solicit, receive, and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedom.

Finally, we would 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. The resolution 22/6 also urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (OP 10).