

**Mandates of 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:
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Excellency,

We have the honour to address you in our capacities as 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 41/12 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning draft law No. 6-28018/19 **which introduces amendments to the Law on Non-Commercial Organizations (Law on NCOs).**

We are concerned that, if adopted, the draft law may have a significant and detrimental impact on the operations of all civil society organizations in Kyrgyzstan, including those that provide essential services. The amendments would unnecessarily and disproportionately restrict the right to freedom of association, as provided by Article 22 of the International Covenant of Civil and Political Rights (ICCPR), acceded to by Kyrgyzstan on 7 October 1994.

We have raised similar concerns in previous communications sent to your Excellency's Government in September 2013 (KGZ 2/2013) and September 2014 (KGZ 5/2014), when we urged the Kyrgyz government not to adopt legislation which would unduly restrict the right to freedom of association. We thank your Excellency's government for the clarifications provided in the reply received on 22 November 2013, however we would like to continue to express our concern on the draft law.

According to the information received:

Draft law No. 6-28018/19 was initiated by a member of the Zhogorku Kenesh (Parliament of Kyrgyzstan) on 30 December 2019, which proposed amendments to the Law on Non-Commercial Organizations. The draft law was registered in Parliament on 6 February 2020 and on 4 March 2020 it passed the first reading in the Parliament. Out of 109 participating MPs, 100 MPs voted in favor of adopting the law and nine against. The second reading has not yet been scheduled, but according to information received, it will likely take place in the coming days.

The draft law proposes to amend Article 17, part 2, of the Law on NCOs to require that *“non-commercial organization operating at the expense of grants, budgetary funds and other cash and material resources received free of charge”*

post annually “*information on the sources of funding and expenditure of assets on the specialized website of the registering body*”. The draft law also states that “*the form and procedure for the provision of information is determined by the Government of the Kyrgyz Republic.*”

The law as amended would also add additional reporting requirements to the existing annual income and expense reports. NGOs would need to detail the size and structure of their income and expenditures as well as the number of employees, volunteers and their remuneration. If NGOs fail to fully comply, they would face liquidation within a year. State authorities would allegedly also be allowed to undertake ad hoc inspections of NGO premises and request additional documentation and other information.

It is reported that the draft law may unnecessarily increase non-profit associations’ registration hurdles and monitoring by the authorities. Furthermore, it seems unclear how the proposed amendments to the Law on NCOs may limit real risks of misconduct by NGOs and whether there are such risks in practice that apply exclusively to NGOs. Although some consultation has taken place, we are concerned that some organizations and human rights defenders have not been included in discussions and there may have been a lack of a genuine consultation process for the discussion of the draft law.

We would like to recall that the right to freedom of association, as set forth in article 22 of the ICCPR implies a wide range of positive and negative obligations for the State to ensure its enjoyment as it foresees that: “*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*”.

While States may have a legitimate interest in establishing reporting requirements to registered associations to ensure their compliance with the law, these requirements should not limit associations’ functional autonomy and operation, by adding costly and protracted burdens. The listed new reporting requirements provided in the draft law allegedly duplicate existing reporting requirements to the Ministry of Justice, which may be burdensome for organizations, especially for small organizations that do not have the same financial capacities and resources as larger ones. The need to dedicate more time and resources to administrative requirements could be highly detrimental to the activities of many organizations, as they are particularly time-consuming, and may have a negative impact on their budgets.

We would like to recall that Human Rights Council Resolution 22/6 provides that States need to ensure that reporting requirements “do not inhibit functional autonomy” of associations. The mandate of the Special Rapporteur on freedom of assembly and association has reiterated that the use of onerous and bureaucratic reporting requirements

can eventually obstruct the legitimate work carried out by association (HRC/23/39, para 38).

We are also concerned that the draft law gives a wide margin of discretion to government authorities to determine the “form and procedure for providing information” in the additional reports. We would like to underline the importance that regulations of the civil society sector must be clearly set forth in law, with minimum discretion given to State officials.

The mandate of the Special Rapporteur on freedom of assembly and association has stressed that an enabling environment for civil society is a prerequisite for the implementation of the 2030 Agenda (A/73/279 and A/74/349). The imposition of excessive reporting or renewal requirements in general make it difficult for civil society organizations to contribute to the 2030 Agenda. Civil society is on one hand a means to ensure social participation in the implementation of the 2030 Agenda. On the other hand civil society is a beneficiary of the promise of the SDGs “to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources”.

We moreover refer to resolution 2005/38 of the Commission on Human Rights, highlighting that the right to peaceful assembly and association and the right to take part in the conduct of public affairs, are intrinsically linked to freedom of opinion and expression. In this context, states are to take all necessary measures to create conditions for the promotion of these rights. The promotion of civil society is fundamental to ensure stability and economic growth, and states should take all measures to promote civil society, including through legislation that is in compliance with international human rights law.

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 information.
2. Please provide information on measures taken to ensure the compliance of the amendments to the Law on NCO’s with Kyrgyzstan’s relevant obligations under international human rights law and standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for your response, we would urge your Excellency's Government to undertake a review of the draft law vis à vis the international human rights obligations of your Excellency's Government. Furthermore, we urge you to open a fully participatory and inclusive consultation process, which provides sufficient opportunity for meaningful dialogue among all those concerned on this important issue. We stand ready to provide your Excellency's Government with technical assistance in this regard.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders