

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

REFERENCE:
AL KGZ 2/2021

15 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged surveillance and attempts to break into the office of non-governmental organisation (NGO) Kyrgyz Indigo and the alleged privacy violations against its employees**, who appear to be targeted for their legitimate human rights activity, as well as **the alleged widespread privacy violations against people in Kyrgyzstan based on their actual or perceived sexual orientation and gender identity, and the alleged marginalisation of LGBT and gender-diverse people and human rights defenders working to protect and promote the rights of the LGBTI people in Kyrgyzstan.**

Kyrgyz Indigo is a public association founded in 2009 that supports the LGBTI community in Kyrgyzstan. Its activities are aimed at the protection of the rights of LGBTI people, promotion of a healthy lifestyle, providing shelter, conducting training, outreach work, and peer-to-peer consultations.

Harassment of the human rights defenders who are working to protect and promote the rights of the LGBTI people has been the subject of two previous communications: KGZ 2/2015 sent to your Excellency's Government on 30 July 2015 and KGZ 1/2014 sent to your Excellency's Government on 6 May 2014. In addition, draft laws mentioned in this communication have been the subject of five communications: KGZ 1/2020 sent to your Excellency's Government on 9 March 2020, KGZ 2/2015 sent to your Excellency's Government on 30 July 2015, KGZ 5/2014 sent to your Excellency's Government on 23 September 2014, KGZ 1/2014 sent to your Excellency's Government on 6 May 2014, and KGZ 2/2013 sent to your Excellency's Government on 30 September 2013. We thank your Excellency's Government for the replies received to the communications KGZ 1/2014 and KGZ 2/2013 and regret that no response to the rest of the communications has been received to this day.

According to the information received:

The break-in of Kyrgyz Indigo

On 16 April 2021, two unidentified individuals tried to break into the office of Kyrgyz Indigo in Bishkek. After an unsuccessful attempt, they and several more unidentified individuals stayed outside the office in their cars and watched who entered and left the office.

On 21 April 2021, a video containing information about Kyrgyz Indigo and the personal data of its 16 employees was published on YouTube. Some of the employees concerned are Isa uulu Ilgiz, Adilet Alimkulov, Nurgazy Ernazarov, Rano Ibragimova, Belek Kurmantaev, Dastan Mambetaliev, Nadira Masiumova, Amir Mukambetov, Talant Talaibekov and Daian Zaripov. Employees' personal data included their full names, dates of birth, photographs, sexual orientation and gender identity, and other information about their private lives. The disclosure of this information puts their lives and security at risk and may lead to discrimination against them. The video was allegedly made by law enforcement officers using data from the social fund and tax service of Kyrgyzstan.

On 30 April 2021, four unidentified individuals followed Nadira Masiumova, the Head of Advocacy and Human Rights Department of Kyrgyz Indigo.

Online threats on social media

Unknown social media accounts, known as “troll factories”, reportedly use fake accounts to spread false information about civil society activists' sexual orientation and gender identity in an attempt to discredit them. They also reportedly disclose the sexual orientation and gender identity of LGBT people without their consent.

The public use of homophobic and transphobic narratives

It is further reported that a number of public officials use homophobic and transphobic narratives to gain support for legislative initiatives limiting the civic space, discredit political opposition and civil society initiatives, while deflecting people's attention away from the political and social problems.

Gaining support for legislative initiatives

In 2014, several members of the Jogorku Kenesh (Parliament of Kyrgyzstan) initiated draft laws prohibiting “gay propaganda” and allowing the authorities to designate NGOs receiving foreign funding and engaging in vaguely defined political activity as “foreign agents”. The information campaigns supporting these draft laws portrayed LGBT and gender-diverse people as associated with “western” values which would be contrary to Kyrgyzstan's. While neither of the laws were adopted, such narratives have further contributed to marginalise LGBT and gender-diverse people.

In 2016, then-President Almazbek Atambayev and his party and other allies pushed forward amendments to the Constitution. To increase the public support for the amendments, one of the newly included provisions specified that only a man and a woman could marry. This provision was then used to emphasise

that the amendments were necessary to preserve the “traditional” family and prevent same-sex marriages. The constitutional amendments were eventually adopted by referendum.

In 2019, several members of the Jogorku Kenesh initiated amendments to the law on NGOs. This initiative was reportedly a reaction to the participation of lesbian, bisexual and trans* women in the ‘March for Women’s Rights’ that took place earlier that year. At least three initiators ([REDACTED], [REDACTED] and [REDACTED]) publicly mentioned that the amendments were aimed to prevent LGBTI activism. State media reportedly supported the anti-LGBT narrative and justified a more restrictive regulation of NGOs. On 19 April 2021, the Public Broadcasting Corporation of the Kyrgyz Republic issued a news report mentioning that some NGOs’ policies “do not correspond to the traditions and values of the Kyrgyz people and thereby adversely affect the youth”. According to the information received, the draft law is currently under consideration in the parliament.

Homophobic and transphobic narratives have also reportedly been used to promote the draft Law on the Protection of Children from Malicious Information initiated in 2019 and the draft Law on Manipulating Information initiated in 2020. Moreover, the draft Law on the Protection of Children from Malicious Information reportedly contains provisions that can be used against the human rights defenders working to protect and promote the rights of the LGBT –and gender-diverse people. For example, information that “denies family values” can reportedly be restricted. According to the information received, the draft laws are under consideration in the parliament.

In 2021, the new Constitution was approved in a nationwide referendum. The new provisions notably included Article 10 (4) which specify that activities “contrary to moral and ethical values and the public consciousness of the people of Kyrgyzstan” may be prohibited to protect the younger generation.

Discrediting political opposition and civil society initiatives

In 2019-2020, a series of “#ReAction” rallies demanded freedom of expression and a fair investigation of corruption allegations. It is reported that in an attempt to discredit the rallies, some provocateurs brought the rainbow flag to the rally and later distributed information that some LGBT people organised the rallies.

In October 2020, shortly before the parliamentary elections, bulk SMS messages were sent through mobile operators MegaCom and Beeline, spreading the information that the opposition Reform Party supported and promoted “LGBT rights”. The Reform Party denied sending the messages.

On 15 April 2021, an “I don’t want to be killed” rally took place in front of the Ministry of Internal Affairs in Bishkek. The rally was sparked by the murder of a young woman abducted and killed in a case of “bride kidnapping”. At the same time, a rally against LGBT people and NGOs took place at the Ala-Too Square in Bishkek. The protesters from the Ala-Too Square then obstructed the

“I don’t want to be killed” rally, defamed participants and publicly threatened them in the presence of police officers who reportedly did not intervene. It is alleged that some plain-clothed police officers directed the provocateurs who obstructed the protest.

Without wishing to prejudge the accuracy of the information received, we wish to express concern as to the alleged attempts to break into the office of Kyrgyz Indigo, and the alleged surveillance, and publication of personal data of its employees, who appear to be targeted for their legitimate human rights activity. We also express our concern at the allegations of widespread privacy violations against LGBT and gender-diverse people and activists who are portrayed as members of the community in an apparent attempt to discredit them. We are furthermore concerned with the alleged widespread use of homophobic and transphobic narratives that further marginalises LGBT and gender-diverse people and human rights defenders working to protect and promote the rights of the LGBTI people. We are also concerned with the allegations that the above-mentioned legislative initiatives can potentially be used to restrict the rights of LGBT and gender-diverse people and human rights defenders working to protect and promote the human rights of the LGBTI people, including, *inter alia*, the rights to freedom of expression, association, and peaceful assembly. Furthermore, we are concerned with the alleged obstruction to a peaceful assembly and the police’s alleged failure to protect peaceful protesters from anti-LGBT provocateurs.

We are concerned that these various actions have a chilling effect on human rights defenders in Kyrgyzstan, especially those working on the rights of LGBTI people. Such intimidation may discourage them from exercising their rights for fear of retaliation or harassment.

In connection with these serious concerns, we would like to refer your Excellency’s Government to relevant international human rights instruments and standards, cited in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate 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 comments you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, which may have been carried out in relation to the allegations of the publication of personal data of Kyrgyz Indigo employees, as well as surveillance and attempts to break into their office.
3. In light of the publication of personal data of Kyrgyz Indigo employees, please provide full details of any protective measures put in place to ensure their physical and psychological security and integrity.
4. Please explain what safeguards are being taken to ensure human rights defenders defending the rights of LGBTI people can exercise their right

to freedom of expression, association, and peaceful assembly free from interference, harassment or retaliation of any sort.

5. Please indicate what measures are being taken to combat incitement to hatred and violence on the grounds of sexual orientation and gender identity and to hold accountable and prosecute persons, including public officials, who have incited hatred and violence against LGBT people.
6. Please indicate what measures are being taken to combat discrimination and violence against people based on their sexual orientation and gender identity; to prevent, investigate and prosecute violence against them; and to provide effective remedy, protection and support to victims.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible of the alleged violations.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

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

Victor Madrigal-Borloz

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Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kyrgyzstan on 7 October 1994, in particular, Articles 9, 17, 19, 21, and 22, which guarantee to all persons the rights to security of person, privacy, freedom of opinion and expression, freedom of peaceful assembly, and freedom of association.

In its General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on each State to ensure the protection of the ICCPR rights of individuals against violations by its agents and by private persons or entities. Accordingly, states' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by private persons or entities could give rise to a breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, Paragraphs 8 and 18).

We would like to emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity. The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in Article 2 (1) of the ICCPR. The Human Rights Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, Paragraph 3).

The United Nations High Commissioner for Human Rights has emphasised that States have an obligation, *inter alia*, to prohibit and prevent discrimination in private and public spheres, diminish conditions and attitudes that cause or perpetuate such discrimination, and protect individuals from violence and discrimination on the basis of sexual orientation and gender identity (A/HRC/29/23). He has recommended that States, *inter alia*, prohibit incitement of hatred and violence on the grounds of sexual orientation and gender identity, and hold to account those responsible for related hate speech; ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity; implement appropriate sensitisation and training programmes for law enforcement personnel; train law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity; support public education campaigns to counter homophobic and transphobic attitudes, and address negative, stereotypical portrayals of LGBT persons in the media (A/HRC/29/23, A/HRC/19/41).

The Human Rights Council has also repeatedly expressed grave concern at acts of violence and discrimination against individuals on the basis of their sexual orientation and gender identity (A/HRC/RES/17/19, A/HRC/RES/27/32, A/HRC/RES/32/2).

Furthermore, 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

Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realisation 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.

Likewise, 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 (a) and (b), which provides for the right to meet or assemble peacefully; and for the right to form, join and participate in non-governmental organisations, associations or groups;
- Article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;
- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The Special Rapporteur on the situation of human rights defenders recommended to the States to pay particular attention to the most exposed groups, including the defenders of the rights of LGBTI persons, and support mainstreaming support for defenders from vulnerable groups, including LGBTI defenders (A/75/165, A/HRC/46/35).

The former Special Rapporteur on the situation of human rights defenders also expressed his concern that defenders promoting the rights of LGBTI persons are the target of numerous attacks, and the lack of any protection under the law or in practice

exacerbates their vulnerability. Therefore, he recommended that States adopt the following measures: (i) do more to disseminate the work of defenders and to support their work through campaigns and specific communication and information activities that pay tribute, in particular, to the contributions made by certain categories of defenders, such as defenders of the rights of LGBTI persons, (ii) conduct impartial investigations and ensure that the perpetrators of violations against the rights of defenders are brought to justice, and (iii) provide State agents, especially those who are in direct contact with communities of defenders, with the necessary training regarding the role and rights of defenders and regarding the Declaration on human rights defenders (A/70/217, Paragraphs 65-66, 93).