

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

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(Please use this reference in your reply)

6 January 2022

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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the adoption of legislative amendments to the Law on Non-Commercial Organizations (NCOs) may impinge on the exercise of the rights to freedom of expression and freedom of association in the country.**

We are respectfully submitting these comments in light of international human rights standards and best practices on the rights to freedom of association, and we stand ready to engage further with your Excellency's Government on this matter.

On 17 June 2021, the Parliament of Kyrgyzstan (Jogorku Kenesh) passed legislative amendments to the Law on Non-commercial organizations (NCOs) in two readings, imposing onerous financial and programmatic reporting requirements for non-governmental organizations. On 7 July 2021, the President signed the amendments into law.

The amendments were adopted in the first and second readings in June 2020, however, due to the vocal criticism of civil society and the international community, consideration of the draft law was subsequently put on hold.

Particular concerns have been raised about article 17 of the Law. Following the legislative amendments, Part 3 of Article 17 of the amended NCO Law now contains a requirement for NGOs (except for state and municipal ones), that function with funds received through grants, state social contracts, donations and other material resources that are received as donations (domestic or external), to annually submit to the Ministry of Justice information about their sources of funding, expenditures and assets owned or used, as well as on expenditures, on the Ministry's public website.

NGOs already submit statements to the national statistics committee, tax authorities and other agencies, and there are fears that these new rules may amount to overly burdensome and discriminatory financial and reporting requirements, as other non-public organizations are not required to report on their sources of funding.

The Ministry of Economy and Finance has not yet started drafting the by-law that would set out a new reporting requirements. The by-law should be developed within 6 months after the adoption of legislative amendments, i.e. by the end of

December 2021.

The reporting deadline under the amended NCO Law is set for 1 April – the required NGO reports about income, assets, property and expenses will need to be posted on the website of the state body, most likely, the State Tax Service.

The additional reporting requirements pose significant additional burdens on NGOs in Kyrgyzstan and may raise concerns of selective applicability and oversight, particularly targeting those civil society organizations that promote or protect human rights or are otherwise critical of the government.

*1. Applicable international and human rights law standards*

We respectfully draw your Excellency's Government's attention to the relevant international human rights law provisions enshrined in the ICCPR, which Kyrgyzstan acceded to on 7 October 1994: in particular article 19, which guarantees the right of everyone to freedom of opinion and expression, the enjoyment of which is fundamental to the enjoyment of a number of other rights; articles 21 and 22 which guarantee the rights of everyone to peaceful assembly and freedom of association; article 25, which promotes the right of every citizen to take part in the conduct of public affairs; and article 17, which protects against arbitrary or unlawful interference with a person's privacy, reputation and home.

Under article 2 of the ICCPR, your Excellency's Government has a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the respective Covenants, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenants and to ensure that the domestic legal system is compatible with the treaties.

We also 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, the Declaration reaffirms each State's responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including every person's right, individually and in association with others, "at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups" and "to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means" (A/RES/53/144, art. 5).

We would like to highlight the importance of having clear, comprehensive and human rights- and rule of law-informed guidance regarding the implementation of any proposed monitoring and surveillance powers. We recall the Human Rights Committee's determination that the right to privacy requires robust, independent oversight systems to supervise the implementation of these measures, including through the involvement of the judiciary and the availability of effective remedies in cases of abuse. (CCPR/C/IT/CO/6, para. 36).

We also wish to underline that international human rights obligations remain fully applicable in the context of counter-terrorism, including with regard to the

enactment of measures to counter the financing of terrorism.

## *2. Burdensome financial and reporting obligations*

We would like to remind your Excellency's Government that the Special Rapporteur on the rights to freedom of peaceful assembly and of association in a report called upon States "[t]o ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities" (A/HRC/23/39, para. 82 (b)).

Furthermore, although States may have a legitimate interest in establishing reporting requirements to associations, foundations and NGOs to ensure their compliance with the law, these requirements "should not inhibit associations' functional autonomy and operation" (Human Rights Council Resolution 22/6) by imposing costly and protracted burdens. Such reporting obligations and administrative requirements entail the dedication of additional time and resources, which could be exceedingly detrimental to the activities of a number of organizations. Indeed, such requirements are particularly time-consuming, and could impact negatively their budgets and capacity to fulfil their mandates and activities, including humanitarian activities. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association further noted that the use of "onerous and bureaucratic reporting requirements" can eventually "obstruct the legitimate work carried out by association" (A/HRC/23/39, para 38).

In light of the abovementioned concerns, we are concerned that the overall prospective impact of the legislative amendments to the Law on NCOs would likely be detrimental to civic space in Kyrgyzstan.

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 analysis;
2. Kindly provide information on the legislative process with regard to the amendment and whether the final text of the proposed amendment was available for comments by civil society and other stakeholders and to what extent their observations and concerns had been taken into account.
3. Please provide information on how non-governmental organizations can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments.
4. In conclusion, we call on your Excellency's Government to reconsider its approach to amend the Law on NCOs and to revoke the additional financial and reporting requirements imposed by this recent legislative

amendment.

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 after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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