

KYRGYZSTAN: OPEN LETTER TO THE AUTHORITIES

To:
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Mr. Jeenbekov A. Sharipovich
Speaker of the Jogorku Kenesh of
the Kyrgyz Republic

All Members of Parliament

Paris-Geneva, March 16, 2015

Re: Call to the authorities of Kyrgyz Republic to respect their citizens' right for freedom of association

Excellencies,

The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), would like to draw your attention to our concerns over the draft amendments to the laws "On non-profit organizations" and "On state registration of legal entities and branches" to be considered by the Human Rights Committee of the Parliament of Kyrgyzstan on March 17, 2015 and subsequently voted in Parliament's plenary session. If adopted, the said amendments will severely restrict the freedom of association of Kyrgyz citizens. Hereby the adoption of the bills will not only violate the international obligations undertaken by the Kyrgyz authorities but also infringe the provisions laid out in the Constitution of the Kyrgyz Republic.

The United Nations, the Venice Commission of the Council of Europe and other international and Kyrgyz organizations have already expressed their preoccupation over the discriminatory nature of the legal provisions under consideration. We consider that the new obligation imposed on non-governmental organisations (NGOs) receiving funds from abroad to register as "foreign agents" contradicts the Constitution of the Kyrgyz Republic (Art. 4.2, Art. 52) and undermines the right to financial independence of NGOs laid out in Art. 22 of the International Covenant on Civil and Political Rights to which the Republic of Kyrgyzstan is a party. If adopted, tougher financial reporting requirements would not only violate the constitutional right to equal treatment but also discriminate against civil society organisations receiving grants from foreign foundations, donors countries and organisations that equally support the Kyrgyz government's reform programmes.

Stigmatisation arising from treating civil leaders and their organisations as foreign agents will have serious negative impacts on Kyrgyz civil society that contributes significantly in improving country's public policies and in solving social problems. Moreover, NGOs failure to comply with the said provisions will lead to disproportionate legal sanctions - ranging from suspension to eventual closing of NGOs - creating an atmosphere of fear, uncertainty and possible termination of certain programs - including those financed by international organisations to which the Kyrgyz Republic is a member.



The Observatory
for the Protection
of Human Rights Defenders

In addition, we would like to draw your attention on a vague wording of the bill that equates citizens' lawful participation in public affairs with a political activity, which so far has been solely characteristic to persons and entities seeking political office. Considering NGOs as political actors while their very mission is rather to participate in improving society's well-being using a variety of lawful means, including advocacy and awareness raising, undermines the basis of a democratic political system and of a mechanism of checks and balances that the Kyrgyz Constitution is meant to protect.

The Observatory is therefore concerned that such legislative moves contradict international law as well as the Constitution and laws of the Kyrgyz Republic regulating the right to freedom of association, as they would establish a set of harsh restrictions towards NGOs going far beyond what is permissible under international law as well as under the Kyrgyz legislation. We recall that Article 35 of the Constitution of the Kyrgyz Republic reads that "everyone has the right to freedom of association", and that the Law of the Kyrgyz Republic on Non-commercial Organizations explicitly provides citizens with the right to establish unregistered public organisations that are and have been accountable to the authorities.

We also recall that the right of NGOs to freedom of association is a fundamental and universal right enshrined in numerous international treaties and standards, especially Article 22 of the International Covenant on Civil and Political Rights (ICCPR). While this right may be restricted, especially for purposes of transparency and good governance, as in any other sector of society, any restrictions must always be "prescribed by law" and "necessary in a democratic society", and respect the primacy of the general interest and the principle of proportionality (Article 22.2 of ICCPR and case-law of the United Nations Human Rights Committee). It should be emphasised that freedom shall remain be the rule, while restrictions should always be an exception admissible under the above-mentioned conditions.

The Observatory urges the Kyrgyz authorities not to adopt legislative initiatives currently discussed in the Parliament as they are likely to significantly restrict the space of NGOs. In a context of globally shrinking civic freedoms, the Observatory urges the members of the Kyrgyz Parliament not to follow the example of neighbouring countries passing regressive legislative measures undermining the dynamism and viability of its civic sector.

We call on the Kyrgyz authorities to ensure that all human rights defenders can pursue their legitimate work without any further hindrances and sincerely hope that you will take these elements into account.

Yours sincerely,

Karim LAHIDJI
FIDH President

Gerald STABEROCK
OMCT Secretary General