

## **Submission to EU-Kyrgyzstan Human Rights Dialogue, 18 May 2015:**

### **The civil society situation in Kyrgyzstan\***

During much of the post-Soviet period, Kyrgyzstan has had a more enabling civil society environment than other countries in the Central Asian region. However, as part of a trend seen across the former Soviet Union, civil society organizations and activists have recently come under growing pressure in the country. We are particularly concerned that two draft laws currently pending in the parliament threaten to seriously undermine the rights to freedom of association, assembly and expression and deliver a heavy blow to civil society. Civil society groups and activists have also have been the targets of negative and discrediting rhetoric, intimidation and harassment, including in the recent case of unlawful searches targeting the Bir Duino-Kyrgyzstan Human Rights Movement and its lawyers. A victim of the miscarriage of justice after the inter-ethnic violence that took place in southern Kyrgyzstan in June 2010, human rights defender Azimjan Askarov continues to serve a life-time sentence.

Below these issues are described in some more detail. We also provide a number of recommendations that we urge the EU to address with the authorities of Kyrgyzstan.

#### **Draft “foreign agents” law**

**A draft “foreign agents” law currently under consideration in the parliament poses a serious threat to Kyrgyzstan’s civil society. It requires NGOs to adopt the stigmatizing label of “foreign agents” if they receive foreign funding and engage in “political activities”, a term that is excessively broadly defined as activities aimed at influencing government policies or public opinion. As a result, it could be applied to virtually any NGO activities. At the same time, most NGOs in the country depend on foreign grants for their important work. NGOs refusing to register as “foreign agents” would risk being suspended or having to close down. The draft law also grant authorities new, broad powers to inspect and interfere in the internal affairs of NGOs.**

The draft “foreign agents” law, which draws heavily on similar Russian legislation, was first initiated by a group of MPs in autumn 2013. It was later pulled back, only to be reintroduced in May 2014. At a public hearing held in the parliament in November 2014, MPs present adopted a recommendation to the authors of the draft law to withdraw it. However, this did not happen, and in early March 2015, the parliament’s Committee on Law, Order and Crime Prevention gave its approval to the draft law, thus paving the way for its continued consideration. In late April 2015, the Human Rights Committee was due to start considering it. If

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\* This briefing note has been prepared by International Partnership for Human Rights, drawing on its cooperation with Kyrgyzstani NGOs and other organizations.

adopted by the full parliament in three readings and signed by the president, the draft law will enter into force.

The draft law has been denounced by civil society and international human rights bodies as infringing the right to freedom of association and other fundamental rights guaranteed by national and international law. In a joint legal opinion, the OSCE Office for Democratic Institutions and Human Rights and the Venice Commission of the Council of Europe concluded that the amendments would, if adopted, “breach international human rights standards and OSCE commitments on freedom of association” and provide authorities with “largely unfettered powers” to monitor and intervene in the work of NGOs.<sup>1</sup> The enactment of similar legislation has had a seriously chilling impact on NGOs in Russia, where it has been used to target a broad range of groups whose activities have nothing to do with politics.

While Kyrgyzstan’s President Atambaev had previously said that he thinks that a “foreign agents” law is “not needed” in Kyrgyzstan, comments made by him on this topic in a December 2014 interview alarmed local civil society. He used similar arguments as the advocates of the draft law, suggesting that some NGOs carry out political activities in the interests of foreign governments and linking the issue of transparency of NGO funding to national security.<sup>2</sup> In a joint appeal issued in response, Kyrgyzstani NGOs expressed dismay with the president’s comments and appealed to him to opt for cooperation rather than confrontation with NGOs. They stressed that NGOs are no security threat and that transparency of their work is ensured through a number of oversight and reporting mechanisms in place.<sup>3</sup> When asked about the “foreign agents” law during his Brussels visit in March 2015, President Atambaev indicated that he may consider vetoing it, depending on the version the parliament passes.<sup>4</sup>

As in Russia, advocates of the Kyrgyzstani draft “foreign agents” law have compared it to the US Foreign Agents Registration Act (FARA), suggesting that it is similar to this one. However, as pointed out by NGOs, FARA has nothing in common with the laws initiated in Russia and Kyrgyzstan as it does not apply to NGOs.

## **Draft law on propaganda of so-called non-traditional sexual relations**

**Another draft law pending in Kyrgyzstan’s parliament prohibits “propaganda of non-traditional sexual relations,” which is defined as promoting a “positive attitude” or “interest” in same-sex relations, through the media or the internet, at public assemblies or in other ways. It provides for administrative and criminal sanctions in the form of fines and imprisonment of up to one year. If adopted, this law would basically outlaw advocacy for the rights of homosexuals and other sexual minorities and render all NGOs that promote such rights vulnerable to prosecution. It would also hamper discussion on LGBTI issues and would be likely to reinforce intolerance and discrimination against LGBTI members, who are already in a highly vulnerable situation in Kyrgyzstan and frequently face harassment.**

The draft law on “propaganda of non-traditional sexual relations,” which is even harsher than the Russian law that has served as its example, was first put forward in March 2014. It was approved by a large majority at the first full reading in the parliament in mid-October 2014, and a second vote by the full parliament is expected after the draft law has been considered by parliamentary committees. It is of particular concern that some of the supporters of the draft law have used openly hateful language, e.g. branding homosexuals as “sick” and saying they should be “isolated” as was the case at a meeting of the Committee on Law Order and Crime Prevention in February 2015, where the bill was discussed and approved.<sup>5</sup> The draft law will enter into force if adopted in three votes by the full parliament and signed by the president.

This draft law has been widely criticized by representatives of civil society and the international community as violating the rights to freedom of expression, freedom of assembly and non-discrimination, as well as other fundamental rights. For example, in November 2014, a group of UN human rights experts warned that the bill would “silence any discussion” of the situation of the LGBTI community in the country and “chill the legitimate work” of human rights defenders advocating LGBTI rights.<sup>6</sup> The office of the UN High Commissioner for Human Rights and the UN representation in Kyrgyzstan and individual UN member states have also spoken out against the draft law.

In a January 2015 resolution, the European Parliament called on the parliament of Kyrgyzstan to reject the draft law on “propaganda of non-traditional sexual relations.” It also called on the Commission, the Council and the External Action Service to make clear to the authorities of Kyrgyzstan that the adoption of this draft law could affect relations with the EU under the mutual Partnership and Cooperation Agreement, which sets out human rights as an essential element of the partnership.<sup>7</sup>

### **Intimidation and harassment of civil society, including individual cases**

**In the recent period, civil society groups, activists and lawyers in Kyrgyzstan have increasingly been subjected to negative and discrediting rhetoric, intimidation and harassment. Similarly to in other former Soviet Union countries, public figures and media in Kyrgyzstan have, among others, accused NGOs and their representatives of serving the interests of foreign donors, betraying “traditional” national values and posing a threat to national security. The discussion surrounding the problematic draft laws described above has featured such arguments and reinforced suspicion and mistrust against civil society actors. Especially those who defend the rights of vulnerable groups, such as ethnic and sexual minorities, have been targeted. The recent case involving the Bir Duino-Kyrgyzstan Human Rights Movement is of particular concern in view of the integrity of the work of lawyers. Well-known human rights defender Amimjan Askarov remains imprisoned following a legal process marred by fair trial violations and torture allegations.**

#### ***The case of the Bir Duino-Kyrgyzstan Human Rights Movement and its lawyers***

*On 27 March 2015, officers from the State Committee for National Security (SCNS) searched the Osh branch office of the Bir Duino-Kyrgyzstan Human Rights Movement, as well as the homes of its lawyers Valerian Vakhitov and Khusanbay Saliev to look for and seize allegedly “prohibited” material. The SCNS officers confiscated computers, flash cards and files containing information related to dozens of cases where the organization is providing legal assistance to defendants, including the case of Azimjan Askarov and several cases against representatives of the SCNS.*

*Bir Duino denounced the actions of the SCNS as unlawful interference and pressure. It stressed that while the searches were sanctioned by court, they violated national and international standards that protect the integrity and confidentiality of the work of lawyers. National legislation also provides that case material of lawyers may only be confiscated or inspected in cases where lawyers have been charged with criminal offenses, which was not the case here, and sets out a specific procedure for declaring information “extremist”, which was not met.<sup>8</sup>*

*The searches were carried out in relation to a criminal case initiated by the SCNS against American journalist Umar Farooq, who was arrested on 25 March on accusation of possessing material of a “religious extremist and terrorist character” and subsequently charged under three provisions of the Criminal Code.<sup>9</sup> While in Osh*

to conduct research for articles he was working on, Farooq met with Bir Duino lawyers. On 28 March, he was released and illegally deported from the country.<sup>10</sup> However, the case has not been closed.

Bir Duino and its lawyers appealed the court decisions sanctioning the searches of the organization's office and the homes of its lawyers.<sup>11</sup> In a welcome development, Bir Duino, Valerian Vakhitov and Khusanbay Saliev all won their appeals against these court decisions on 30 April, when they were annulled by the Osh Regional Court. The same day, the Osh Regional Court was due to consider an appeal by the two Bir Duino lawyers against the actions of the two SCNS officials who requested the search warrants and oversaw the confiscation of case materials. However, in response to a motion filed by the prosecutor's office, the court declined to do so since the searches had already been deemed unlawful. While the court rulings on the three first appeals were welcome and gave rise to hope that justice may prevail in this case, it is imperative that the SCNS officials responsible for the unlawful searches and confiscations also are brought to justice and that all confiscated files are immediately returned. The Osh Prosecutor's Office representative who is overseeing the criminal case under which the unlawful searches were carried out made a formal decision on 25 April to allow the return of part of the confiscated material, but refused to do with respect to other material. In mid-May, Valerian Vakhitov and Khusanbay Saliev submitted a new appeal to court about the failure to ensure the full return of return of the confiscated case materials. Other further judicial action is also under way by Bir Duino and its lawyers.

This case is not the first time that an Osh-based human rights NGO has been subjected to harassment by security services. Last September, the SCNS opened a criminal investigation against another NGO based there -- the Advocacy Center for Human Rights -- on the grounds that a survey on the rights of ethnic minorities conducted by the Center allegedly could incite interethnic discord. An appeal to court by the NGO was rejected. However, following widespread national and international criticism, the Osh Prosecutor's Office closed the case in late November 2014.

Bir Duino and its staff have also previously faced threats and harassment, including discrediting articles in media. In 2013 its offices were twice broken into and equipment stolen, and up to now no perpetrators have been found or brought to justice. In 2012 after the group attempted to screen a film entitled "I am Gay and Muslim" at an annual human rights film festival, security services warned its director Tolekan Ismailova that this film is "extremist" and that she may face criminal charges if it is shown.<sup>12</sup> In connection with the recent developments, the family of lawyer Khusanbay Saliev has also been subjected to intimidation: his brother and father have been summoned and questioned by SCNS officials.

### **The case of Labrys**

In the evening of 3 April 2015, two unknown people threw several bottles of explosives into the yard outside the office of the Bishkek-based Labrys, an NGO that defends the rights of LGBTI people. This appeared to be an attempt to set fire on the organization's office, which however was unsuccessful. The attack was recorded on security cameras, but Labrys decided against turning to police given the well-documented pattern of abusive treatment by law enforcement authorities against LGBTI communities in the country. It announced that it would instead petition to the UN Special Rapporteur on Human Rights Defenders. Representatives of the organization have repeatedly received threats.

### **The case of Azimjan Askarov**

Askarov, who is the director of the human rights organization "Vozdukh" ("Air") and an ethnic Uzbek, was detained in mid-June 2010 for his purported role in events in his home settlement Bazar Korgon that resulted in the death of a police officer. In September the same year, he was found guilty on numerous charges,

*including participation in mass disturbances, incitement of ethnic hatred, and complicity in murder. This decision was later upheld by the Supreme Court.*

*The legal process against Askarov was marred by due process and fair trial violations, and the trial was conducted in a hateful atmosphere, where relatives of the dead policeman shouted anti-Uzbek slurs against Askarov and his co-defendants, and intimidated and attacked their lawyers and family members. To date credible allegations that Askarov was subjected to torture in detention have not been investigated. Askarov is believed to have been targeted for his human rights work, including efforts he was engaged in shortly prior to his arrest to document looting, arson and attacks perpetrated during the inter-ethnic violence that took place in southern Kyrgyzstan at that time.*

*In May 2013, the General Prosecutor's office initiated a new investigation into Askarov's case on the basis of new evidence. However, in February 2014, this investigation was discontinued, a decision that eventually was confirmed by the Supreme Court in September 2014 after being challenged by Askarov's lawyer.<sup>13</sup> A complaint in Askarov's case is pending with the UN Human Rights Committee.<sup>14</sup>*

*National and international NGOs, as well as representatives of the international community have repeatedly expressed concern about Askarov's imprisonment and called for his release, as well as for a thorough and impartial investigation into his allegations of torture. In its resolution on Kyrgyzstan adopted in January 2015, the European Parliament also made such calls.<sup>15</sup>*

## **Recommendations to the authorities of Kyrgyzstan**

- Reject the draft laws on "foreign agents" and "propaganda of non-traditional sexual relations" as inconsistent with the Constitution of Kyrgyzstan, as well as the country's international human rights obligations.
- Refrain from rhetoric that stigmatize and discredit civil society organizations and activists, including by portraying them as a threat to national security or so-called traditional values. Instead, acknowledge publicly the importance of their work; support their participation in decision-making at all levels; and cooperate with them on improving human rights protection in law and in practice.
- Ensure that NGOs, human rights defenders and lawyers can carry out their work without hindrance and fear, including by publicly speaking out against any attacks on such groups and individuals and effectively investigating and addressing them. Make particular efforts to ensure the safety of NGOs, activists and lawyers who work to protect the rights of minorities, victims of law enforcement abuse and other vulnerable groups.
- Ensure that all case material confiscated during the March 2015 searches of the office of the Bir Duino Human Rights Movement and the homes of its two lawyers are promptly returned, and that all officials responsible for unlawful actions in relation to the searches and the confiscation of case material are held accountable.
- Immediately release human rights defender Azimjan Askarov and carry out a fair, thorough and impartial investigation into his allegations of torture and ill-treatment with a view to bringing the perpetrators to justice.
- Take other concrete steps, in accordance with guidelines and recommendations adopted by UN bodies, the Venice Commission, the OSCE Office of Democratic Institutions and Human Rights and other international human rights mechanisms, to ensure and maintain an enabling environment for civil society and to safeguard the independence and integrity of lawyers at all times.

- Ensure that measures taken in the fight against “extremism” and terrorism do not infringe fundamental rights and freedoms in violation of the requirements of national and international law. Review and revise existing legislation and law enforcement practice to this end.

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<sup>1</sup> This opinion, which was adopted in October 2013, is available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29030-e>

<sup>2</sup> See “Prezident uveren, chto v interesah nachezopasnosti u Kyrgyzstana dolzhna byt' prozrachnost' v voprosah finansirovaniya NPO,” 2 December 2014, at <http://kabar.kg/rus/society/full/87185>

<sup>3</sup> See appeal by over 40 Kyrgyzstani NGOs and civil society representatives from December 2014, at <http://vof.kg/?p=17922>

<sup>4</sup> Remarks made by the president in response to a question posed by an IPHR representative at an event organized by the Representation of the Free State of Bavaria to the EU.

<sup>5</sup> See “V parlamente predlagajut izolirovat' ljudej netradicionnoj orientacii,” 17 February 2015, at [http://www.vb.kg/doc/303400\\_v\\_parlamente\\_predlagaut\\_izolirovat\\_ludej\\_netradicionnoy\\_orientacii.html](http://www.vb.kg/doc/303400_v_parlamente_predlagaut_izolirovat_ludej_netradicionnoy_orientacii.html)

<sup>6</sup> The statement is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15349&LangID=E>

<sup>7</sup> European Parliament resolution P8\_TA(2015)0008 adopted on 15 January 2015.

<sup>8</sup> See statement disseminated by Bir Duino (in Russian) on 28 March 2015, at <http://birduino.kg/blog/2015/03/28/27-marta-2015-goda-v-16-20-v-ofis-bir-dujno-kyrgyzstan-bdk-v-postupilo-soobshhenie-o-tom-chto-proizvoditsya-obysk-ofisa-bir-dujno-kyrgyzstan-v-g-osh-sotrudnikami-gknb/>

<sup>9</sup> According to press release distributed by the SCNS on 27 March 2015 (in Russian) and republished by Ferghana News, <http://www.ferghananews.com/news/23208>

<sup>10</sup> More details can be found in an expert opinion put together by the Bir Duino human rights movement from 13 April 2015 (a copy can be shared, if requested).

<sup>11</sup> See more details in Bir Duino press release, Правозащитники приглашают на судебные слушания по делам адвокатов «Бир Дуйно Кыргызстан», 24 April 2015, at <http://vof.kg/?p=23553>

<sup>12</sup> For more detailed information, see statement by the Observatory for the Protection of Human Rights Defenders, 20 January 2014, at <http://www.fidh.org/en/eastern-europe-central-asia/kyrgyzstan/14500-kyrgyzstan-burglary-of-the-offices-of-bir-duino-and-targeted-intimidation>

<sup>13</sup> For more details see press releases by Bir Duino from 26 August and 4 September 2014 (in Russian), available at <http://civicsolidarity.org/ru/article/1002/v-bishkeke-mogut-peresmotret-delo-askara-azimzhanova>

<sup>14</sup> See press release of Open Society Justice Initiative, “Azimjan Askarov takes his torture and unfair trial in Kyrgyzstan to Human Rights Committee,” November 2012, <http://www.opensocietyfoundations.org/press-releases/azimjan-askarov-takes-his-torture-and-unfair-trial-kyrgyzstan-human-rights-committee>

<sup>15</sup> European Parliament resolution P8\_TA(2015)0008 adopted on 15 January 2015.