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2014 OSCE Human Dimension Implementation Meeting, Working sessions 2 and 3, Tuesday 23 September: Fundamental freedoms 1 (on issues of freedom of association, the role of civil society in the protection of human rights and freedom of expression)

Written statement by the following organizations: Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene (Tajikistan), the Turkmen Initiative for Human Rights (based in exile in Austria), the Human Rights Movement Bir Duino – Kyrgyzstan, the International Human Rights Association Fiery Hearts Club (Uzbekistan, based in exile in France) and International Partnership for Human Rights (Belgium).

Current threats facing human rights NGOs and defenders in Central Asia

Across Central Asia, non-governmental organizations and individuals who are engaged in human rights promotion and protection activities work in precarious and insecure conditions. While the climate for civic engagement remains fundamentally repressive in Turkmenistan and Uzbekistan, recent developments in Kazakhstan, Kyrgyzstan and Tajikistan have signalled a deterioration of the situation in these countries. This trend is related to broader developments in the former Soviet Union, including recent events in Ukraine that have made leaders in the region increasingly fearful of challenges to their power. The situation is also affected by the negative example set by other post-Soviet governments -- in particular the Russian -- in their current crackdowns on civil society.

Restrictive legislation impeding the work of human rights NGOs

The adoption and implementation of legislation excessively restricting the exercise of freedom of association by human rights groups and other NGOs is a matter of concern in all the Central Asian countries.

Kazakhstan's new Criminal Code, which was signed by the president in July 2014 and is due to enter into force in January 2015, contains provisions that further curtail freedom of association in this country. The Code classifies creating, leading, participating in or financing unregistered public associations as criminal offences; sets out penalties for members of public associations for "unlawful interference" in the activities of state agencies, a term that is not defined; and characterizes "leaders" of public associations as a separate category of offenders and provides for stiffer penalties for them for a number of crimes. Human

rights activists fear that these provisions may be used to harass and hamper the activities of inconvenient NGOs, such as human rights groups and their members. The new Code on Administrative Offenses, which also was approved in July, retains vaguely worded provisions under which any violation of national law, no matter how minor, could result in the suspension or termination of the activities of public associations. A third new law signed by Kazakhstan's president this summer, the new Law on Trade Unions, has been criticized for facilitating de-facto monopolization of the trade union space and undermining independent trade union activity -- including efforts to defend labour rights -- by requiring unions to be part of industry- and nation-wide structures.

Information from Kazakhstan's government made public in July¹ indicates that NGO legislation may be further tightened. In particular, there are concerns that the establishment of a Ministry of Foreign Affairs working group to study the experience of other countries with respect to foreign grants and NGOs may result in the elaboration of repressive draft legislation in this area similar to that initiated elsewhere in the former Soviet Union, such as in Russia.

In **Kyrgyzstan**, NGOs have recently come under increasing pressure and there is shrinking space for them to operate. Inspired by Russian legislation, members of parliament have proposed several restrictive draft laws affecting NGOs. One of these prohibits propaganda of so-called non-traditional sexual relations, thus rendering groups defending the rights of sexual minorities vulnerable to prosecution. This illiberal draft law was approved by the relevant parliamentary committees in the summer and is expected to come up in plenary in the second half of October, which has given rise to fears that it may be adopted in a near future. Another draft law put forward by three MEPs in May this year requires NGOs to adopt the stigmatizing label of "foreign agents" if they receive foreign funds and engage in "political" activities. This is a recycled version of a draft law that was initially proposed last autumn but pulled back by the authors following civil society campaigning against it and serious criticism voiced, among others, in an ODIHR/Venice Commission opinion.²

In May 2014, the Ministry of Justice of Kyrgyzstan also proposed amendments to NGO legislation that, among others, would abolish the right to establish NGOs without legal status. If these amendments were to be approved they would put Kyrgyzstan on an equal footing with its authoritarian neighbouring states where state registration of NGOs is compulsory.

The Law on Public Associations in force in **Tajikistan** grants authorities wide powers to monitor and oversee the activities of associations, resulting in undue interference in the work of NGOs, including human rights organizations. In the recent period, there has been an increase in the number of unscheduled inspections of NGOs, which are often followed by warnings and legal actions against NGOs for alleged violations of the law. Similarly to in Kazakhstan, courts may order the closure of NGOs for any violations of national law, and in a number of cases, NGOs have been liquidated merely for violations of a technical nature, such as the failure to re-register an organization after a change of legal address. Among the organizations that have been closed down on such technical grounds is the Amparo Association of Young Lawyers, an organization committed to counteracting torture in the army. In June 2014, the Constitutional Court issued its ruling in response to a complaint filed by this group. The Court found that the Law on Public Associations overall is consistent with the Constitution, but stated that the provisions of the law that concern the closure of NGOs are not sufficiently clear and should be amended by the parliament.

Already prior to the Constitutional Court decision there had been reports indicating that the Tajikistani government (in particular the Ministry of Justice) is planning to develop new legislation affecting NGOs, including a new Law on Non-governmental Organizations. In view of trends in NGO legislation elsewhere in the former Soviet Union, as well as growing mistrust experienced by civil society representatives in Tajikistan, there are concerns that the elaboration of new draft legislation in this area may be used to introduce new limitations on NGO activities rather than to strengthen safeguards against abuse. Local NGOs are calling on the authorities to consult with civil society in all efforts to amend legislation on NGOs.

In **Turkmenistan**, a new Law on Public Associations entered into force in May 2014, replacing a law from 2003. This law grants citizens the right to establish and join local, regional, national and international associations and allows foreign organisations to establish branches in Turkmenistan. While some wording has been improved from the previous law, basic provisions remain problematic. State registration of NGOs is mandatory; registration rules are prohibitive especially for national-level organizations (which must have 400 members to gain registration); and authorities are granted wide powers to monitor and oversee the activities of associations, without adequate safeguards against abuse. Foreign grants obtained by public associations must be registered with the government and are subject to particular scrutiny in view of suspicions of money laundering and terrorism financing. Under the law, there are also broad grounds on which associations may be closed down by court.

No new NGO is known to have obtained registration since the new law entered into force and, as previously, no independent human rights group is registered in this country, where conditions for civil society activity remain highly prohibitive and the scene is dominated by state-controlled so-called GONGOs.

The regulatory framework on freedom of association also remains highly restrictive in **Uzbekistan**. Under the country's legislation, it is compulsory for NGOs to obtain state registration, and the involvement in "illegal" NGO activities is subject to harsh penalties of up to five years in prison. NGO registration procedures are cumbersome and grant wide discretion to authorities to deny registration to inconvenient groups or to drag out the process of considering their applications indefinitely. As a result, the few independent human rights NGOs that exist in the country, as a rule, carry out their work without registration, rendering their situation especially precarious with respect to conducting activities and obtaining funding for their work. Existing legislation also imposes onerous reporting requirements on NGOs and makes the receipt of foreign grants by them dependent on the approval of the "purposefulness" of such funds.³ Similarly to in Turkmenistan, the Uzbek authorities continue to promote a "state managed" civil sector by supporting the activities of so-called GONGOs.

Pressure on human rights defenders

Those who speak up on human rights in **Turkmenistan and Uzbekistan** continue to face an overhanging risk of persecution, while human rights groups and defenders in **Kazakhstan, Kyrgyzstan and Tajikistan** have increasingly been the targets of negative rhetoric by public figures, stigmatizing articles in pro-government media accusing them of serving foreign interests and the like, and other forms of intimidation and pressure. These trends, which also have affected organizations presenting this statement

and their representatives and partners, have resulted in a heightened sense of insecurity among human rights defenders in the region.

The human rights movement Bir Duino – Kyrgyzstan, which often raises sensitive human rights issues, has repeatedly been subjected to harassment⁴ -- the organization and its director **Tolekan Ismailova** has received threats, its office has been broken into, and it has been prohibited from showing human rights documentary films in some regions of the country. In the context of the discussion of the draft law prohibiting propaganda of so-called non-traditional sexual relations in Kyrgyzstan, activists addressing LGBTI discrimination issues have in particular reported facing growing harassment. This category of defenders is also at heightened risk in other countries of the region, as are those defending the rights of other minorities such as ethnic and religious minorities.

Human rights lawyers working on high-profile cases are another vulnerable group, as shown by the case against **Shukhrat Kudratov** and **Fahriddin Zokirov** in Tajikistan. Kudratov, who has represented the interests of, among others, the independent *Asia Plus* news agency and opposition figure Zaid Saidov, was arrested on charges of attempted bribery in late July 2014. Shortly before this, he had sent an appeal to foreign embassies and international organizations sounding alarm about harassment of Saidov's legal team. Zokirov, another lawyer on this team was arrested on fraud charges in spring. Tajikistani NGOs have called on the authorities of their country to ensure that the cases of the two lawyers are investigated in an impartial way and that they are not punished for their professional activities.⁵

A number of human rights defenders are currently locked up on grounds deemed to be politically motivated in Kazakhstan.⁶ Labour rights activist **Roza Tuletaeva** is serving a five-year sentence given to her for her alleged role in the Zhanaozen events following a flawed process. She was denied parole in August this year. Prisoner rights campaigner **Vadim Kuramshin** was sentenced to 12 years in prison on extortion charges in a 2012 trial that did not meet fair trial standards. He has reportedly faced harassment by prison staff. Lawyer **Zinaida Mukhortova** was again forcibly placed in a psychiatric clinic in July 2014 in a protracted saga that began after she protested the actions of a ruling party member in 2009.⁷

In Kyrgyzstan, human rights defender **Azimjan Askarov** continues to serve a life sentence handed down to him for his purported role in the June 2010 inter-ethnic violence following a process marred by fair trial violations and torture allegations. In February this year, the general prosecutor's office discontinued a new investigation into Askarov's case that was launched in 2013 in light of new evidence in the case. Following an appeal by Askarov's lawyer, who represents Bir Duino, a Bishkek district court held in April that this decision was unfounded and that the investigation should proceed. However, this ruling was subsequently revoked by the Bishkek City Court on appeal by the general prosecutor's office, as upheld by the Supreme Court on 3 September 2014.⁸ Human rights defenders continue to insist on an impartial and thorough examination of the case. In view of the injustice Askarov has suffered in Kyrgyzstan, a complaint in his case has also been submitted to the UN Human Rights Committee.⁹

The Uzbekistani authorities continue to hold numerous human rights defenders in prison, where conditions are deplorable and torture and ill-treatment widespread. Those imprisoned on political grounds in this country are frequently accused of violating prison rules as a means to prevent them from being released on amnesty, as well as to prolong their sentences when their initial ones are about to expire.¹⁰ For example, in March 2014, human rights defender **Ganihon Mamathanov**, who was due to be

released after serving out a five-year sentence on trumped-up charges of bribery and extortion, was given a new two-year sentence for allegedly disobeying prison authorities in a quick, unfair process.¹¹ There are serious concerns about the health of 63-year old Mamathanov, who has suffered three heart attacks. Another defender, **Abdurasul Khudoinazarov** was released on health reasons in late May this year after being imprisoned for more than eight years, only to pass away the following month due to cancer and other medical conditions.¹² He is believed to have been denied appropriate medical care and to have been subjected to torture in prison.

In Turkmenistan, little is known about cases of individuals imprisoned in retaliation for their criticism of authorities due to government policies suppressing the free circulation of information and the difficulties of on-the-ground monitoring. A case recently publicized by Amnesty International served to highlight the plight of such individuals: **Mansur Mingelov**, who was imprisoned in an unfair 2012 trial after exposing police abuse against an ethnic minority group, began a hunger strike in mid-May to protest his sentence. He ended it only several weeks later, when he was in a critical condition, after government officials reportedly had given attention to his case and the treatment of him.¹³

Central Asian human rights activists living in exile in Europe, such as representatives of the Turkmen Initiative for Human Rights (TIHR) and the International Human Rights Association Fiery Hearts Club, have also faced intimidation and harassment, e.g. insulting and discrediting articles, attacks on the websites and information resources of their organizations, and retaliatory measures targeting their relatives. In a recent example of the latter, TIHR Director Farid Tukhbatullin's brother **Ruslan Tukhbatullin** was prevented from leaving Turkmenistan in April 2014 and informed that he and his 9-year-old son have been black-listed from travelling abroad.¹⁴ So far he has not received any explanation for this decision, despite a request to the Turkmenistan's Migration Service.

Recommendations

We, the organizations presenting this intervention, welcome the publication in June this year of the new Guidelines on the Protection of Human Rights Defenders elaborated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). We call on the Central Asian states, as well as other OSCE participating States to take concrete and meaningful steps to implement these guidelines, which are based on OSCE commitments and universally recognized human rights standards that the participating States are bound to respect.

The Central Asian states should, in particular:

- Review draft legislation and legislation in force that affect the right to freedom of association to ensure consistency with relevant international human rights standards, and amend or repeal any legal provisions that directly or indirectly criminalize activities protected by international standards. They should consult with civil society and seek international assistance, including from the ODIHR in this regard. (Compare OSCE Guidelines, articles 24 and 64.)

- Ensure that the exercise of freedom of association in their countries is not contingent on the registration of organizations; promptly remove any offences related to activity on behalf of unregistered organizations from their legislation; and ensure that laws and procedures for NGO registration are clear, simple and non-discriminatory. (Compare OSCE Guidelines, articles 65, 66 and 67.)
- Refrain from imposing undue, burdensome and discriminatory requirements on NGOs, including with respect to obtaining funding, as well as from interfering with their internal affairs, management and implementation of activities. Any inspection of NGOs should be carried out in a transparent manner on the basis of an exhaustive list of the possible grounds for such inspections laid down by law. (Compare OSCE Guidelines, articles 67, 68 and 73.)
- Give adequate warnings to NGOs that are found not to have met reasonable and legitimate requirements regarding their operation to enable them to make corrections, and ensure that any sanctions against NGOs are proportionate. In accordance with this, the Central Asian states should ensure that national legislation does not allow for suspending or closing down NGOs for unsubstantial reasons, such as failure to meet requirements of a technical nature, and that any decision to impose penalties on NGOs is subject to judicial review in accordance with fair trial principles. (Compare OSCE Guidelines, article 69.)
- Ensure that national security concerns are not exploited to justify measures unduly impeding human rights activities; refrain from engaging in smear campaigns, negative portrayals or stigmatization of human rights groups and activists; and publicly acknowledge the importance of the work of human rights defenders, and condemn discrimination, hostility and violence targeting them. (Compare OSCE Guidelines, articles 37, 38, 39 and 43.)
- Put an end to intimidation and reprisals against human rights defenders, including those based in exile and their families; protect defenders from acts of harassment by non-state actors; and take steps to prevent abuses against defenders and to investigate and punish the perpetrators of such acts. (Compare OSCE Guidelines, articles 12 and 13.)
- Ensure that human rights activists and lawyers are not subject to retaliatory and arbitrary arrest, prosecution or deprivation of liberty because of their work, including cases they work on and, in the event that charges are brought against them, that they are granted fair proceedings and equal access to justice and defence. In accordance with this, the Central Asian states should promptly review the cases of defenders who have been locked up following processes falling short of international standards, including the cases outlined in our intervention, and release all individuals who are held on grounds of their exercise of freedom of association, freedom of expression and other fundamental rights. (Compare OSCE Guidelines, articles 23, 30, 36.)
- Guarantee that human rights defenders deprived of their liberty are treated in accordance with international standards, without discrimination of any kind, and that allegations of torture and ill-treatment against defenders – including in the cases mentioned in our intervention – are promptly, thoroughly and independently investigated and the perpetrators held accountable and given penalties commensurate with the gravity of the offence. (Compare OSCE Guidelines, articles 13, 14, 34.)

All OSCE participating States should:

- Promote awareness of the Guidelines on Human Rights Defenders; carry out reviews, in consultation with civil society, of national laws and practices affecting human rights defenders in the light of the Guidelines; and report to the ODIHR on measures taken to implement the Guidelines, thereby also setting a good example for other participating States. (Compare OSCE Guidelines, articles 93, 96 and 104.)
- Establish and implement appropriate instruments and mechanisms for the support and protection of human rights defenders in other OSCE participating States; raise instances of human rights violations against human rights NGOs and defenders with the states concerned (such as those described in this document), among others at high-level meetings and international forums; and take action through diplomatic missions to support human rights defenders in other states, in particular those at imminent risk of persecution. (Compare OSCE Guidelines, articles 97, 98 and 99.)
- Support the initiative underway by the ODIHR and the Venice Commission to develop Guidelines on Freedom of Association and commit themselves to working for the realization of these guidelines once they have been adopted – both at home and in other participating States.

The ODIHR, incoming OSCE Chairmanships and other OSCE institutions should:

- Continue to engage in close cooperation with civil society on issues related to freedom of association and other fundamental rights and maintain the good practice of holding civil society consultations to this end, such as those held in the context of the elaboration of the new ODIHR guidelines, as well as the regional civil society consultations organized by the Swiss Chairmanship this year.

¹ See <http://medialaw.asia/posts/08-07-2014/83196.html>

² Available at: <http://www.osce.org/odihr/107273>

³ For more details, see statement of the International Human Rights Association (IHRA) “Fiery Hearts Club” about the status of civil society in Uzbekistan, May 2014 (in Russian), at <http://jarayon.com/ru/index.php/2012-04-04-14-31-53/item/781-regionalnyj-seminar-usilenie-rol-i-grazhdanskogo-obshchestva-v-deyatelnosti-obse-dushanbe-respublika-tadzhikistan-20-21-maya-2014-goda>

⁴ 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>

⁵ See joint statement of Tajikistani civil society organizations in connection with the detention of Lawyer Shuhrat Qudratov, 24 July 2014, available at <http://notorture.tj/en/statements/joint-statement-tajik-civil-society-organizations-connection-detention-lawyer-shuhrat>

⁶ A group of representatives of Kazakhstani human rights and civil society organizations, including Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) Chair of the Board and Expert Consultant Yevgeniy Zhovtis, have set up an initiative to designate political prisoners in Kazakhstan, using criteria developed on the basis of those used by Amnesty International and the Parliamentary Assembly of the Council of Europe. See lists compiled by the group at:

http://www.bureau.kz/data.php?page=0&n_id=5996&l=en; and http://bureau.kz/data.php?n_id=6330&l=ru

⁷ For more background information about these cases, see briefing paper by International Partnership for Human Rights (IPHR) and KIBHR, updated March 2014, at

http://www.iphronline.org/uploads/9/0/2/7/9027585/kazakhstan_briefing_paper_updated_march_2014.pdf

⁸ 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>

⁹ 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>

¹⁰ See more in briefing paper by IPHR and the IHRA “Fiery Hearts Club”, updated March 2014, at

http://www.iphronline.org/uploads/9/0/2/7/9027585/eng_iphr_and_fiery_hearts_club_updated_hr_overview_march_2014.pdf

¹¹ See statement of the IHRA “Fiery Hearts Club”, May 2014 (in Russian), at <http://jarayon.com/ru/index.php/2012-04-04-14-31-53/item/781-regionalnyj-seminar-usilenie-rol-i-grazhdanskogo-obshchestva-v-deyatelnosti-obse-dushanbe-respublika-tadzhikistan-20-21-maya-2014-goda>; and update by Frontline, May 2014, at <http://www.frontlinedefenders.org/node/26005>

¹² See statement by IHRA “Fiery Hearts Club”, 27 June 2014, at <http://jarayon.com/en/index.php/human-rights/item/261-abdurasul-khudoinazarov-another-victim-of-torture-died-in-uzbekistan-on-the-international-day-in-support-of-victims-of-torture>

¹³ See Amnesty International appeal from 2 May 2014, at <http://www.amnesty.org/en/news/turkmenistan-must-grant-retrial-hunger-strike-prisoner-brink-death-2014-06-02>; and update from 13 June 2014, at

<http://www.amnesty.org/en/library/asset/EUR61/004/2014/en/be694288-e72d-4c58-980f-7d7bca81bd46/eur610042014en.html>

¹⁴ See Human Rights Watch and Amnesty International statement, 20 May 2014,

<http://www.hrw.org/news/2014/05/19/turkmenistan-activist-s-family-barred-travel-abroad>