

KYRGYZSTAN

AT A CROSSROADS: SHRINK OR WIDEN THE SCENE FOR HUMAN RIGHTS DEFENDERS

International Mission Report



June 2016

Cover photo: Aziza Abdyrasulova during a November 2007 protest in Bishkek against attempts by the government to limit free speech and the right of free assembly. She glued her mouth shut with the epaulet from a police officer's uniform. ©RFE/RL

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Introduction

Kyrgyzstan, the only parliamentary democracy in Central Asia, portrays itself as committed to improving its human rights record and to allowing human rights groups to operate. Over the years, the country has complied with a large number of reporting obligations to the United Nations (UN), including to the Committee on Migrant Workers (CMW) and the Committee on the Elimination of Discrimination against Women (CEDAW) in 2015, the Committee on the Rights of the Child (CRC) and the Human Rights Committee (CCPR) in 2014, the Committee Against Torture (CAT) and the Committee on the Elimination of Racial Discrimination (CERD) in 2013. On October 28, 2015, the UN General Assembly elected Kyrgyzstan to sit at the UN Human Rights Council (UN HRC) until 2018. As such, members elected to the Council commit themselves to (1) uphold the highest standards in the promotion and protection of human rights; and (2) fully cooperate with the UN HRC¹. Moreover, in 2014, the Parliamentary Assembly of the Council of Europe (PACE) decided to grant the Kyrgyz Parliament Partner for Democracy Status, the third time that this status has been granted to a parliament since being created in 2009. This status is viewed as an important incentive to further develop democracy, the rule of law and protection of human rights.

In December 2015, Kyrgyzstan voted in favour of a UN General Assembly Resolution on the important role that human rights defenders play “in building and maintaining sustainable, open and democratic societies”² while Kazakhstan abstained and the Russian Federation voted against.

Yet, despite those developments at the multilateral level, in the meantime the situation of civil society has deteriorated in Kyrgyzstan, notably following the introduction of draft laws placing limitations on its activities. Moreover, Kyrgyz human rights defenders are facing increasing harassment since 2013: judicial harassment, physical attacks, searches of the offices of non-governmental organisations (NGOs), surveillance and intimidation of their employees, widespread discrediting of the activities of human rights defenders in the media, etc.

Human rights defenders is a term used to refer to *anyone, individuals, groups and organs of society, who, in conformity with international instruments of protection of human rights, acts on behalf of individuals or groups for the promotion and protection of universally recognised human rights and fundamental freedoms, whether individually or in association with others*³.

On behalf of the Observatory for the Protection of Human Rights Defenders (the Observatory), a partnership of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), a delegation composed of Karim Lahidji (France), FIDH President and President of the Iranian League for the Defense of Human Rights (LDDHI), who led the mission, Alexandra Pomeon (France), Director of the Observatory at FIDH, and Tatiana Glushkova (Russia), a lawyer from the Human Rights Center Memorial, conducted an international fact-finding mission in Kyrgyzstan from September 20 to 26, 2015.

The objective of the Observatory mission was to assess and analyse civil society space in Kyrgyzstan (in particular the state of the right to freedoms of peaceful assembly, association and expression) as well as the working environment in which human rights defenders operate, in particular human rights lawyers, activists defending the rights of ethnic minorities as well as of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. Special attention was paid to the capacity and willingness of the Government of Kyrgyzstan to guarantee respect for the rights of defenders and to enforce an enabling environment for civil society.

The mission also aimed at highlighting the situation of human rights defender **Azimjan Askarov**, who is serving a life sentence in connection with the events of 2010 in southern Kyrgyzstan. While the situation of Azimjan Askarov is particularly serious compared to the general situation

¹ See UN OHCHR, Suggested elements for voluntary pledges and commitments by candidates for election to the Human Rights Council: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/Pledges.pdf>.

² See UN General Assembly Resolution, UN Document A/RES/70/161, December 18, 2015: http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.46/Rev.1&Lang=E.

³ See UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Document A/RES/53/144, March 8, 1999.

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of human rights defenders in the country, it is emblematic of the repression that human rights defenders who tackle issues viewed as too sensitive may face.

The mission's delegation visited the capital Bishkek and the southern cities of Osh and Jalalabad. In order to undertake a full evaluation of the situation of human rights defenders in the country, the mission met in Bishkek with the Vice Prime Minister, as Chair of the Inter-governmental Coordination Council on Human Rights, together with members of the Coordination Council, the First Deputy Minister of the Ministry of Internal Affairs together with several representatives of the Ministry, the Deputy Chief of Staff of the President of the Kyrgyz Republic, the Head of the Inter-Department of Ethnic and Religious Policies and Interaction with Civil Society under the President, the Deputy Prosecutor General and several members of the Prosecutor General's Office and the judicial system, the Deputy Ombudsman of the Kyrgyz Republic, representatives of political parties running for seats in the *Jogorku Kenesh* (Parliament of Kyrgyzstan), NGO members, human rights lawyers, representatives of international organisations, the media, and foreign embassies. In Osh and Jalalabad, the mission met with regional ombudsmen and representatives of local NGOs⁴.

Unfortunately, the Observatory delegation was denied the right to visit Azimjan Askarov in detention. The Observatory concludes that the Kyrgyz Government did not wish to allow A. Askarov to meet with representatives of the international community.

The Observatory thanks all the persons met by its delegation, and would like to extend special thanks to the staff of the Human Rights Movement "Bir Duino Kyrgyzstan" in Bishkek and Osh for their assistance in organising the mission and to the staff of Public Fund "Kylym Shamy" and the Legal Clinic "Adilet" for their cooperation and support throughout the mission.

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⁴ See Annex p. 42.

CHAPTER I.

Socio-Political and Human Rights Context

I.1. Socio-political background

Kyrgyzstan is a Central Asian country whose territory became part of the Russian Empire in the mid-19th century and the Soviet Union in the early 1920s. The Kyrgyz Republic gained independence in 1991 after the dissolution of the Union of Soviet Socialist Republics (USSR).

Kyrgyzstan is a multi-national country. According to the National Statistical Committee of the Kyrgyz Republic, members of over 100 nationalities co-exist in the country. The most numerous of these nationalities are: Kyrgyz (72.8%), Uzbeks (14.5%), and Russians (6.2%)⁵.

The post-Soviet history of Kyrgyzstan is unique for former USSR Central Asian Republics. The socio-political situation there differs significantly from the situation in Kazakhstan, Uzbekistan, Tajikistan, and Turkmenistan, which are all governed by life-long authoritarian rulers with virtually unlimited power. Unlike these countries, Kyrgyzstan has already changed presidents three times, twice as the result of revolutionary events.

The country continues to endure ethnic conflicts, revolts and transitional governments. The widespread falsification of votes during the parliamentary elections of early 2005 resulted in the Tulip Revolution in March 2005 and the resignation of the first President of Kyrgyzstan, Askar Akayev. The underlying causes of this popular uprising were the impoverishment of the population, the concentration of financial resources in the hands of the President and his family, the high level of corruption in the country, ingrained clan system and nepotism, and the fact that residents in the south were unhappy with the concentration of power in the hands of people from the north.

On July 10, 2005, a native of the south, Kurmanbek Bakiyev, was elected President in pre-term elections. Prior to Akayev's forced resignation, Bakiyev held the position of Prime Minister and acting President from April 11, 2005 to July 10, 2005.

This bloodless revolution raised the hope that democracy would be established in Kyrgyzstan. But, on the contrary, Bakiyev's presidency was notable for a deterioration in the human rights situation in the country⁶: severe restrictions were placed on freedom of assembly⁷, independent media outlets were forced out of business⁸, power became concentrated in the hands of the President⁹, Parliament was dissolved, there was widespread falsification of votes during the parliamentary elections of 2007¹⁰ and the 2009 presidential election¹¹, and members of the President's family were appointed to key positions¹².

5 See table of Population of Permanent Residents of the Kyrgyz Republic by Nationality in 2009 – 2015: <http://www.stat.kg/ru/statistics/naselenie/>.

6 See FIDH Report, "Kyrgyzstan, A weak State, political instability: Civil society caught up in turmoil," 2010, pg. 6: <https://www.fidh.org/IMG/pdf/Kyrgyzstan547a-LAST-WEB-1.pdf>.

7 For example, in Bishkek, municipal authorities restricted the right to assembly to a total of three places. In July 2008, the Constitutional Court found that this decision was in line the Constitution, thus giving other municipal administrations a reason to introduce similar restrictions.

8 The independent newspapers *De Facto* and *Alibi* ceased publication, and the local *BBC* service and *Radio Azattyk*, the Kyrgyz service of *Radio Svoboda* stopped broadcasting.

9 As a result of Bakiyev's constitutional reforms, the position of prime minister was eliminated and the office of the president combined the functions of head of state and head of the executive branch. Gradually, a growing number of government agencies reported directly to him (Secretariat, Security Council, etc.).

10 On December 16, 2007, the president's party Ak Zhol (White Way) won 78 spots out of 90 in the parliamentary elections. At the same time, all the opposition parties were deprived of their mandates. To learn more about the nature of the elections, see OSCE/ODIHR final report on the observation of the pre-term parliamentary elections of December 16, 2007: <http://www.osce.org/odihr/elections/kyrgyzstan/28778?download=true>.

11 According to official statistics, Kurmanbek Bakiyev received almost 90 percent of votes with a turnout of 80 percent. To learn more about the nature of the election, see OSCE/ODIHR report on the observation of the election of July 23, 2009: <http://www.osce.org/odihr/elections/kyrgyzstan/39923?download=true>.

12 See article in *Radio Free Europe Radio Liberty (RFERL)*, *With first son's new role, Kyrgyz Government remains a family affair*, November 5, 2009: http://www.rferl.org/content/With_First_Sons_New_Role_Kyrgyz_Government_Remains_A_Family_Affair/1870575.html and article in *Fergana News*, *Five brother and two sons of the President of Kyrgyzstan nettle the opposition*, October 23, 2006: <http://enews.fergananews.com/article.php?id=1660>.

Discontent started to grow in the country, and on April 7, 2010, it spilled over into a popular uprising in Bishkek, during which 85 protesters were killed¹³ and many markets and shopping centres were destroyed. Kurmanbek Bakiyev was forced to flee the capital.

With Decree No. 1 of April 7, 2010, opposition leaders established a transitional government¹⁴ consisting mainly of people hailing from the northern part of the country. This decree also dissolved the Parliament, whose legislative functions were transferred to the provisional Government. On April 16, 2010, Bakiyev signed a letter of resignation from the position of president.

Soon after the provisional government came into power, tensions began to rise in the south, which was, to all intents and purposes, outside the control of Bishkek¹⁵. The problem of ethnic conflict between Kyrgyz and Uzbeks exploded to the surface, and on June 10-14, 2010, an escalation in violence crystallized into a series of ethnic clashes in the south, resulting in the death of 470 people, 74 percent of whom were ethnic Uzbeks. Another 1,900 people were wounded and over 400,000 were displaced. Over 2,800 homes were destroyed, the majority of which belonged to ethnic Uzbeks¹⁶.

In spite of the complex socio-political situation, the country held a referendum on June 27, 2010. Roza Otunbayeva was elected Interim President for a period running until December 31, 2011 without the right to run in the 2011 presidential election. On June 27, 2010, a new Constitution was adopted, making Kyrgyzstan the first parliamentary republic in Central Asia. Under this Constitution, the President serves a six-year term and does not have the right to run for re-election. The President may veto draft laws adopted by Parliament, which is unicameral and consists of 120 deputies elected under a system of proportional representation, with no party being able to hold more than 65 seats. The Constitution also bans parties created on an ethnic or religious basis. The main shortcomings of the new Constitution are the abolishment of the Constitutional Court of the Kyrgyz Republic as a separate body of constitutional review (the Constitutional Chamber of the Kyrgyz Republic Supreme Court was set up in its place) and insufficient independence for the judiciary. The latter is reflected in the fact that local judges are appointed by the President for a probationary period of five years, at which point they may be reappointed until retirement. These shortcomings were raised by the European Commission for Democracy through Law (Venice Commission) in its opinion on the draft Constitution, but concerns were not taken into account¹⁷.

The 2010 elections resulted in the forming of a Parliament with the lowest number of ethnic minorities in the entire history of the Republic of Kyrgyzstan¹⁸. In 2011, Almazbek Atambayev, a former opposition leader during Bakiyev's presidency who participated in the formation of the transitional government, was elected President of Kyrgyzstan. International observers gave a generally positive assessment of the presidential elections, though several serious electoral irregularities were observed such as ballot stuffing, multiple voting, family voting, and vote buying¹⁹.

The next parliamentary elections were held on October 4, 2015. Preparations for these elections were entering the final stages when the Observatory mission visited the country. Biometric identification was introduced as a measure to reduce fraud during the election process and to build voter confidence. In the opinion of Gulnara Jurabayeva, a member of the Central Election Commission (CEC), this means of identification should make it possible to hold the most transparent elections in the history of an independent Kyrgyzstan. At the same time, many of the people interviewed during the mission noted that the imposition of biometric registration resulted

13 See International Crisis Group (ICG) Report, Crisis Group Asia Report No.102, *Kyrgyzstan: A Hollow Regime Collapses*, April 27, 2010.

14 Decree No. 1 On the Establishment of a Provisional Government of April 7, 2010.

15 See FIDH Report, *Kyrgyzstan, A Weak State, Political Instability: Civil Society Caught up in Turmoil*, October 2010, p. 24: <https://www.fidh.org/IMG/pdf/Kyrgyzstan547a-LAST-WEB-1.pdf>.

16 The Government commissioned two investigations: a national commission and an independent international commission. See report commissioned by the President of the Kyrgyz Republic, Roza Otunbayeva to the Kyrgyzstan Inquiry Commission (KIC), Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010: http://www.fergananews.com/archive/2011/kic_report_english_final.pdf.

17 See Opinion No. 582/2010 adopted on June 4, 2010: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)015](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)015).

18 See ICG, Crisis Group Europe and Central Asia Briefing No. 76: *Kyrgyzstan: An Uncertain Trajectory*, pg. 3: <http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/b076-kyrgyzstan-an-uncertain-trajectory.pdf> 88.3 percent of the seats were held by ethnic Kyrgyz, 5.8 percent by ethnic Russians and 2.5 percent by ethnic Uzbeks.

19 See OSCE/ODIHR Election Observation Mission Final Report for the Kyrgyz Republic Presidential Election of October 30, 2011: <http://www.osce.org/odihr/elections/86926?download=true>.

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in depriving many people of their voting rights. Citizens were excluded from the process of biometric data registration because they lived in remote areas or abroad²⁰. Other people expressed their reluctance to undergo biometric registration because they were concerned about the use of their personal data without their permission. During the campaign, many of the voters polled indicated that vote buying was a common practice.

Overall, Kyrgyzstan continues to have the reputation of an “island of democracy” in Central Asia that it acquired during Akayev’s presidency. At the same time, however, the problems of corruption, low standard of living, and ethnic tension remain pressing. In recent years, the issues of islamisation and the heightened threat of terrorism have moved to the forefront. Also, Russia’s traditional influence over the country has intensified, leading to a deepening of authoritarian tendencies and an increase in anti-Western sentiments.

After experiencing great difficulty stabilizing the southern part of the country following the events of June 2010, the Kyrgyz Government declared that members of the Uzbek minority were responsible for the clashes²¹. Even though 75 percent of the victims and 90 percent of the losses fell to the share of the Uzbeks, over 85 percent of the individuals charged with crimes connected to the June events were also Uzbek. At the same time, the Kyrgyz and the Uzbeks received disparate punishments. For example, when members of these nationalities were charged with the same crimes under comparable circumstances, Kyrgyz offenders were given suspended sentences, while Uzbeks were sentenced to 20 years or life in prison, generally with confiscation of property²². Then the idea that the Uzbeks, who were suppressed in June 2010, had separatist leanings began to be articulated by officials at the national level²³. Kimmo Kiljunen, Chairman of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010, was declared *persona non grata* in Kyrgyzstan. Since 2010, the Uzbek minority has remained highly under-represented in the political and social spheres of life. For example, the number of minorities working in law enforcement remains drastically low: according to the 2014 data from the UN Office on Drugs and Crime (UNODC), ethnic minorities make up only 5.1 percent of the police force in Kyrgyzstan including in regions where non-Kyrgyz minorities make up the majority²⁴, while, at the national level, 65 to 70 % of the population is Kyrgyz. Minorities are also more frequently subjected to abuses by members of the police force, which, as mentioned above, is mainly made up of ethnic Kyrgyz²⁵. Moreover, over the years, both the Kyrgyz military and administration have been recruiting overwhelmingly among the ethnic Kyrgyz²⁶. While ethnic Uzbeks have traditionally been under-represented in the public sector, disputes over unequal access to economic and political power have simmered below the surface for years and continue to this date²⁷.

Instances of ethnic violence remain also frequent. They are generally not properly investigated and victims are forced to withdraw their complaints from the police. At the same time, all the representatives of government agencies interviewed by the mission delegation believed that the absence of additional major ethnic clashes in the south of the country since 2010 was an important achievement for the current government, even though they had nothing to say about the persistent harassment of members of the Uzbek minority²⁸. The integration, by presidential order in 2013,

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20 Biometric registration became a condition for inclusion in the list of voters in April 2015. The period for submitting biometric data to be included in the list of voters for the 2015 parliamentary elections ended on September 19, 2015. Many people believed that the five-month period was too brief for people to have time to submit their data.

21 The Government commissioned two investigations: a national commission and an independent international commission. The national commission’s report, released in January 2011, concluded that the events in southern Kyrgyzstan constituted a “planned, large-scale provocation, oriented towards the splitting of Kyrgyzstan and disrupting the unity of its people”. Responsibility for this provocation was seen as lying with “nationalistically-minded leaders of the Uzbek community”.

22 See Report of the Independent International Commission of Inquiry into the Events in Southern Kyrgyzstan in June 2010, available on http://www.fergananews.com/archive/2011/kic_report_english_final.pdf.

23 See Crisis Group Europe and Central Asia Briefing No. 76, Kyrgyzstan: An Uncertain Trajectory, pg. 2: <http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/b076-kyrgyzstan-an-uncertain-trajectory.pdf>; Interview with Mira Karybayeva, Deputy Chief of Staff of the President of the Kyrgyz Republic, Head of the Inter-Ethnic and Religious Department under the President of the Kyrgyz Republic, September 22, 2015.

24 See UNODC Annual Project Progress Report on Kyrgyzstan, *Peace and Trust: Equal Access to Law Enforcement and Justice*, 2014.

25 Interview with victims of police abuse, Shavkat Baybabayev, Mamir Nurmatov and Zulfiya Omonova, who have been supported by Bir Duino in Osh, September 23, 2015.

26 See article in *openDemocracy*, *The ethnicisation of violence in Southern Kyrgyzstan*, June 21, 2010: <https://www.opendemocracy.net/od-russia/madeleine-reeves/ethnicisation-of-violence-in-southern-kyrgyzstan-0>.

27 See OHCHR Report, *Evaluation of OHCHR Regional Office for Central Asia 2010-2013*, October 2014, p. 12: <http://www.uneval.org/document/download/2436>.

28 Interview with Mira Karybayeva, Deputy Chief of Staff of the President of the Kyrgyz Republic, Head of the Inter-Ethnic and Religious Department under the President of the Kyrgyz Republic, September 22, 2015, interview with Nurbay Kasymbayev, First Deputy Minister of Interior of the Kyrgyz Republic, September 22, 2015.

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of the concept of development of national unity and inter-ethnic relations in the Kyrgyz Republic into Kyrgyz policies further contributed to discrimination against ethnic Uzbeks²⁹. This concept asserts a unifying role for the official Kyrgyz language. Since 2014, Kyrgyz schools have been banned from offering graduating examination in the Uzbek language, even though 91 schools throughout the country hold classes in Uzbek only, another 136 schools offer Uzbek language classes, and 2,000 graduates took Uzbek-language exams in 2013³⁰. Along with this, various forms of nationalism (from moderate to radical) have become prevalent among Kyrgyz youth. Some nationalist groups such as Kyrgyz Choroloru raid night clubs and assert that they are acting under an agreement with the Kyrgyz National Security Committee, the Ministry of Internal Affairs, the Office of the Prosecutor General, and the Ministry of Labour, Migration, and Youth³¹. However, during a meeting with the Observatory delegation, First Deputy Minister of Internal Affairs Nurbay Kasymbayev denied that any such agreement had been signed with members of this group³².

Together with the increase of nationalism, a growth in the influence of Islam on public life has also been observed. Over 2,000 mosques have been built in the country since 1991. In some cases, devotion to religion assumes radical forms. For example, according to the Office of the Prosecutor General, as of November 2015, almost 500 Kyrgyz citizens had reportedly joined the ranks of the Jihadist group Islamic State (IS)³³. Unfortunately, the current situation in the region enables Kyrgyzstan's State security agencies to use in an abusive manner anti-extremist laws to suppress the Uzbek minority. Indeed, according to reports the laws are used discriminatingly against the Uzbek: while a criminal case may be initiated against an Uzbek for making a minor comment³⁴, ethnic Kyrgyz politicians do not suffer any legal consequences for radical statements³⁵.

Russia and Western countries have been competing for influence over Kyrgyzstan since it gained independence. While Kurmanbek Bakiyev's foreign policy steered a course between Russia and the United States, Atambayev's presidency has been marked by the increasing influence of the Russian Federation. Kyrgyzstan is the biggest recipient in Central Asia of U.S. aid, which totals around \$2 billion since independence from the USSR, but the recent cancellation of the 1993 Bilateral Agreement may hamper further assistance. Meanwhile, Kyrgyzstan is drawing closer to Russia, which maintains a military air base there and hosts thousands of Kyrgyz migrant workers. This new policy has resulted in the introduction of draft laws providing for new limitations on the activities of civil society in Parliament which copy similar existing legislation the Russia (see Section I.1 and I.2.) and in the domination of pro-Russian rhetoric in the media (see Section I.3.), and in Kyrgyzstan's accession to the Eurasian Economic Union on August 6, 2015.

The problem of corruption is reportedly severe in Kyrgyzstan and has remained unchanged over the entire period of the country's independence³⁶. According to the Corruption Perceptions Index, which is compiled annually by the international NGO Transparency International, in 2015 Kyrgyzstan was given 28 points out of a possible 100 (where 0 signifies the highest level of corruption and 100 signifies the absence of corruption) and was ranked 123 out of 167 countries. On April 11, 2016, then Prime Minister Temir Sariyev and his cabinet resigned after a parliamentary commission accused it of corruption.

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29 See the concept of strengthening the unity of the Nation and inter-ethnic relations in the Kyrgyz Republic Developed in official documents in 2013 following the Presidential Decree No. 24 of February 1, 2012 "On urgent measures aimed at strengthening national security of the Kyrgyz Republic (available in Russian only): http://www.president.kg/files/docs/kontseptsiya_ukrepleniya_edinstva_naroda_i_mejtnicheskikh_otnosheniy_v_kr.pdf.

30 See article in *Fergana News, Kyrgyzstan: Who needs education in Uzbek language?*, available in Russian only: <http://fergana.mobi/articles/7622&print=1>.

31 See article in *Kloop.kg, Kyrgyz Choroloru: We act under the agreement with the Ministry of Internal Affairs, with the Prosecutor General and the State Committee on National Security*, December 31, 2014, available in Russian only: <http://kloop.kg/blog/2014/12/31/kyrgyzchoro-my-dejstvuem-po-soglasheniyu-s-mvd-genprokuraturaj-i-gknb/>.

32 Interview with Nurbay Kasymbayev, First Deputy Minister of Internal Affairs, September 22, 2015.

33 See article in *Easttime.ru, 500 Kyrgyz fight for ISIS in Syria*, November 12, 2015, available in Russian only: <http://easttime.ru/news/kyrgyzstan/za-igil-voyuet-500-grazhdan-kyrgyzstana/9961>. See also article in *AhlulBayt News Agency (ABNA)* on the same topic: <http://en.abna24.com/service/central-asia-subcontinent/archive/2015/11/14/719866/story.html>.

34 On August 20, 2015, police in Osh arrested 20-year old Abdullokh Nurmatov, an ethnic Uzbek. He was charged for "liking" extremist photos and sharing them on social networks. His lawyer was not allowed to be present during the interrogation. A. Nurmatov claimed that during the interrogation, law enforcement officers forced him to carry out actions for which he was later indicted. At the time of publication, the case was in trial and A. Nurmatov under house arrest. For more information see Bir Duino.

35 For example, at a press conference on March 24, 2015, Nurlan Motuyev expressed his support for the Islamic State, but the authorities failed to react to this statement. See article in *inosmi.ru, ISIS banned in Kyrgyzstan*, March 3, 2015, available in Russian only: <http://inosmi.ru/sngbaltia/20150326/227137230.html>.

36 See ICG, Crisis Group Europe and Central Asia Briefing No. 76, *Kyrgyzstan: An uncertain trajectory*, pg. 5: <http://www.crisisgroup.org/~media/Files/asia/central-asia/kyrgyzstan/b076-kyrgyzstan-an-uncertain-trajectory.pdf>.

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In this context, the level of mistrust toward political parties is significant. Two hundred and three political parties are currently registered in Kyrgyzstan³⁷. Of these, 14 participated in the parliamentary elections of October 4, 2015. Six parties were elected to the VI Session of the Parliament. The Social Democratic Party of Kyrgyzstan, which is considered to be the party of President Almazbek Atambayev (his membership in this party was suspended in 2011 when he was elected President), received the greatest number of votes (26.8 percent) and holds the greatest number of seats (38 out of 120).

In spite of this wide-ranging diversity of political parties, people interviewed by the Observatory delegation reported that they did not see significant differences among party platforms and did not believe that the situation would change if one particular party or another came to power. They felt that the sole goal of a party was to come to power, and that not one party intended to fulfil its campaign promises. Many people surveyed also expressed indignation that over 10 percent of the candidates for Parliament had been criminally prosecuted in the past, which, in their opinion, was evidence of the close connections between political figures and the criminal world. According to official statistics from the Kyrgyz Ministry of Internal Affairs and law enforcement bodies, criminal cases have been previously initiated against 234 of the over 2,000 candidates for Parliament. At the start of the election campaign, 15 candidates were under investigation and three were wanted³⁸.

The country also continues to experience acute economic problems. Kyrgyzstan does not have substantial natural resources, unlike its neighbours. Industry is also poorly developed, which gives rise to high levels of unemployment and internal migration and, consequently, a high level of economic dependence on other countries, primarily Russia. Kyrgyzstan does not have any official data on how many of its citizens work abroad, but according to expert estimates, this number reaches one million, or 40 percent of the country's economically active population. Most Kyrgyz citizens leave the country to find work in Russia, Kazakhstan, and South Korea³⁹. Money transfers from Russia comprise 30.3 percent of Kyrgyzstan's GDP. Due to the start of an economic crisis in Russia, the volume of transfers, which reached 386 million US \$ (approximately 339 million euros) in the first quarter of 2014, plunged to 230 million US \$ (approximately 202 million euros) in the first quarter of 2015, which naturally affected the country's economy. The exchange rate of the national currency - the Kyrgyz som - followed the ruble's decline, leading to a deterioration in the population's well-being.

I.2. The national institutional framework for the protection of human rights

The Observatory delegation was pleased to note that all the Government representatives interviewed by the mission expressed concern with regard to the human rights situation in the country and spoke of their readiness to cooperate with human rights organisations and to discuss and resolve the issues raised⁴⁰. All of them were well informed and had a good command of international human rights standards and mechanisms. They emphasised that progress had been achieved in terms of human rights protection and that more should and will be achieved in the future.

Furthermore, they all recognised the legitimate, necessary and positive role of human rights defenders in society. They all acknowledged that they were already working and cooperating with human rights defenders and that they were available to meet, discuss and address issues with human rights defenders⁴¹.

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³⁷ See list of political parties on: http://minjust.gov.kg/?page_id=6551.

³⁸ See article in *ng.ru*, *Criminals Run for Kyrgyz Parliament*, September 3, 2015, available in Russian only: http://www.ng.ru/cis/2015-09-03/6_kirgizia.html.

³⁹ See Ministry of Labour, Migration, and Youth of the Kyrgyz Republic Report, *Unified Report on Migration in the Kyrgyz Republic of the Ministry of Labor, Migration, and Youth of the Kyrgyz Republic*, 2014, available in Russian only: https://www.auca.kg/uploads/Tian%20Shan%20Policy%20Center/TSPC%20Publications/Unified%20Migr%20Report_2014.pdf.

⁴⁰ Interview with First Deputy Minister of Internal Affairs Nurbayev Kasymbayev, September 22, 2015, interview with Deputy Prime Minister Abdyrakhman Mamataliyev, September 25, 2015.

⁴¹ See Interview with First Deputy Minister of Internal Affairs Nurbayev Kasymbayev, September 22, 2015, interview with Deputy Prime Minister Abdyrakhman Mamataliyev, September 25, 2015.

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The Observatory also welcomes the adoption in 2014 of the Law "On Community Councils of State Authorities", which provides for the creation, under each executive authority, of a supervisory and advisory body consisting of volunteers from civil society to cooperate on and promote community initiatives. The law specifies that such bodies should include the most respected human rights defenders in the country⁴².

Meanwhile, the Observatory notes that in spite of all the reforms that were undertaken over the past 20 years, State authorities, whose responsibilities include, among other areas, the protection of human rights, have failed to guarantee a safe and conducive environment for human rights defenders across the country, while authoritarian and corruption practices remain common.

National institutional watchdogs remain weak and subject to the interference of the executive or the legislative. There is no security of tenure for the judiciary and the Ombudsman's Office.

Finally, several of the interviewees reported that the Kyrgyz national security services remain very powerful and seem to be acting without control. It was reported that some institutions such as the police, courts, medical experts and ombudsman's offices were afraid to act counter to their interests. Allegations of extortion cases by intelligence officials were also brought to the attention of the Observatory delegation.

Accordingly, the national institutional framework for the protection of human rights - and in particular the independence of the various key institutions - should be strengthened.

Insufficient independence of the judicial system

As noted above in Section I.1, neither the Constitution nor current laws contain sufficient guarantees to ensure the independence of the judiciary. There is no security of tenure. This was corroborated by the early dismissal on decision of a judicial disciplinary body of Judge Klara Sooronkulova from her post in the Constitutional Chamber of the Supreme Court in June 2015 for her statement that the law "On the Biometric Registration of Citizens" was illegal and by pressure exerted on her by the Chair of the Constitutional Chamber Mukanbet Kaymaliyev⁴³. Judge Sooronkulova's dismissal was criticised by the Head of the Venice Commission⁴⁴.

Other factors responsible for this lack of independence are poor salaries and benefits, which result in a high level of corruption, and a highly developed system of "telephone law" - a way that other government bodies can exert unofficial influence on judges.

According to several civil society representatives met by the Observatory delegation, the judicial reforms launched after the events of 2010 to ensure transparency have failed to meet expectations, though some progresses have been noted (see below Section I.2.)⁴⁵. Several interviewees met by the delegation referred to the Prosecutor General as the head of the judiciary. This reflects the insufficient independence of the judicial system in Kyrgyzstan. The population's level of trust in the judicial system and in the law enforcement system overall is extremely low.

The Prosecutor General's Office

According to Article 33 of the Law "On the Public Prosecutor's Office of the Kyrgyz Republic", guaranteeing the respect of human rights and fundamental freedoms is one of the office's main activities. Accordingly, the Public Prosecutor's Office decides whether or not to open criminal and administrative proceedings for violation of the rights of citizens and additionally may file civil complaints to request damages.

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⁴² For example, Aziza Abdirasulova, Director of the Public Fund "Kylm Shamy", is the Deputy Chair of the community council at the Ministry of Internal Affairs, and Tolesan Ismailova, Chairman of Bir Duino, is a member of the community council at the Ministry of Finance.

⁴³ See article in *Eurasianet*, *Kyrgyzstan: Judge fired for opposing government's fingerprint-collection drive*, June 24, 2015, <http://www.eurasianet.org/node/73996>.

⁴⁴ See article in *24kg.org*, *Dismissal of Klara Sooronkulova – Sign of lack of independence of judges in Kyrgyzstan*, June 27, 2015, available in Russian only: http://www.24kg.org/obschestvo/15202_djanni_bukikkio_ovolnenie_klaryi_sooronkulovoy_-_priznak_nedostatochnosti_garantiy_nezavisimosti_sudey_v_kyrgyzstane/.

⁴⁵ See article in *centrasia.ru*, *Kyrgyzstan: Will the judicial reform fail again?*, April 8, 2014, available in Russian only, <http://www.centrasia.ru/newsA.php?st=1396933740>.

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However, many, including lawyers, view the institution not as the keeper of the respect of the rule of law, but as a body whose first objective is to obtain convictions, even if violations of due process or fair trial have been alleged.

For example in 2014-2015, Bir Duino filed almost 20 complaints in Osh regarding allegations of human rights violations committed by the police during police searches. It should be noted that the Prosecutor's Office failed to support any of these complaints.

In July 2015, a new unit was set up within the Prosecutor General's Office to coordinate the work to fight against torture and other cruel, inhumane and degrading treatment: the Department on Supervision of Compliance with Human Rights during the Pre-trial Stage of Criminal Proceedings. According to the Deputy Prosecutor General, Ludmila Usmanova, the objective is enhancing the effectiveness of the fight against torture. This unit works closely with human rights NGOs⁴⁶. However, all NGO representatives interviewed by the Observatory delegation reported the quality of investigations conducted into reports of the use of violence by law enforcement bodies had not yet improved.

The Ombudsman's Office

The institution of the Ombudsman was created in Kyrgyzstan in 2002. Unfortunately, the Ombudsman's Office is not a member of the International Coordinating Committee of National Human Rights Institutions (ICC), the network of national human rights institutions (NHRIs) whose internal accreditation system is based on compliance with the 1993 Paris Principles⁴⁷. Furthermore, the Office of the High Commissioner on Human Rights (OHCHR) noted that the principles of independence and pluralism of Ombudsman Institutions are not sufficiently guaranteed by the Law on the Ombudsman⁴⁸. The appointment process is not in line with the Paris Principles. For example, these Principles require that the selection process "shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights". In contrast, under Kyrgyz law, the Ombudsman is appointed by the Parliament, and only parliamentary groups may propose a candidate to this position. Therefore, members of civil society are not involved in this process. The Ombudsman is appointed for five years and may only be renewed once. It was reported to the Observatory delegation that this institution remains extremely weak, owing to insecurity of tenure, limits to its authority and insufficient resources. Indeed, the Parliament may terminate the Ombudsman's term of office before its end, in violation of the Paris Principles. Even though the Paris Principles do not explicitly mention anything about the possibility for the early termination of a NHRI's mandate, it provides that "appointment shall be effected by an official act which shall establish the specific duration of the mandate". The possibility of early termination by a political body thus jeopardise the stability and independence of the Ombudsman.

In recent years, the Parliament has made frequent use of its power to terminate an ombudsman's mandate early. For example, on June 27, 2013, it removed Tursunbek Akun shortly after he was appointed for a second term, and on June 25, 2015, it dismissed Bakytbek Amanbayev from this position, because the Parliament did not find his annual report "satisfactory". Article 7.7 of the Law foresees the possibility of early dismissal of the Ombudsman if the Parliament does not approve its Annual Report. As it stands, this article infringes on the security of tenure and the principle of functional independence of the Ombudsman. In December 2015, the Parliament elected Kubat Otorbaev as Ombudsman of Kyrgyzstan.

In the current setting, the safeguards to ensure the independence of the Ombudsman office are not sufficient, resulting in serious concerns regarding the capacity and impartiality of this institution.

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⁴⁶ Interview with Ludmila Usmanova, Deputy Prosecutor General, September 21, 2015.

⁴⁷ The Paris Principles set out the minimum standards required by national human rights institutions (NHRI) to be considered credible and to operate effectively. See United Nations Principles relating to the status of national institutions (The Paris Principles), adopted by General Assembly Resolution 48/134 of December 20, 1993.

⁴⁸ See Office of the United Nations System in the Kyrgyz Republic Statement, *The United Nations in the Kyrgyz Republic calls upon Kyrgyz authorities to guarantee the independence of National Human Rights Institutions of the Kyrgyz Republic through clear and robust laws*: <http://www.un.org/kg/en/media/news-releases/article/65-news-center/6712-the-united-nations-in-the-kyrgyz-republic-calls-upon-kyrgyz-authorities-to-guarantee-the-independence-of-national-human-rights-institutions-of-the-kyrgyz-republic-through-clear-and-robust-laws>.

1.3. The weakening of the media

In Kyrgyzstan, the legal environment for the press still contains several restrictive provisions, which can lead to self-censorship. In May 2014, President Almazbek Atambayev signed into law an amendment to the Criminal Code that prescribed up to three years in prison for falsely and publicly accusing a person of committing a crime, thereby re-criminalizing libel (see above Section II.3). The Draft Laws on "Gay Propaganda", if adopted, would also severely restrict freedom of expression as well as the operation of groups dedicated to protecting journalists' rights. The Draft Law on "Foreign Agents", even if it was not adopted, created a climate of suspicion towards civil society groups under the pretext of foreign funding. It was also reported that existing laws on terrorism, extremism, and incitement of ethnic hatred were also sometimes used against journalists and media outlets. In 2015, several media outlets and journalists faced trials following complaints by State officials and public figures related to the protection of honour, dignity and business reputation. Damages varied between 100,000 thousand som (1,295 euros) and 30 million som (390,000 euros).

Disproportionate and high fines are detrimental to freedom of the media. In December 2015, OSCE Representative on Freedom of the Media Dunja Mijatović called on the authorities in Kyrgyzstan not to impose disproportionate and excessive fines for civil defamation, following a ruling in a defamation case involving a public figure⁴⁹.

In December 2015, Dayirbek Orunbekov, Editor-in-Chief of *Maalymat.kg*, was ordered to pay two million som (approximately 24,000 euros) to the President of Kyrgyzstan for insulting his honour and dignity, following a ruling in the Chui Regional Appeals Court. The complaint followed a story published in 2014 on *Maalymat.kg* on the 2010 events in the south of Kyrgyzstan, in which responsibility for the incidents was placed with members of the then interim Government.

All the members of civil society interviewed by the Observatory delegation reported that Kyrgyzstan's growing political alignment with Russia and its accession to the Eurasian Economic Union have had a negative influence on freedom of the media. They reported that the media often suffered from editorial pressure from private owners or the authorities. There were reports that the Government occasionally pressures outlets regarding the coverage of certain stories and that some media outlets exercised self-censorship. The vast majority of media outlets in Kyrgyzstan broadcast a pro-Russian agenda, which includes anti-Western rhetoric and stigmatises NGO activities in the country (see Section I.3.). As a result of this, in May 2015 the Soros Foundation-Kyrgyzstan stopped providing financing for the public-service broadcaster, the National Television and Radio Broadcasting Corporation (KTRK)⁵⁰, which it had funded since 2010, citing non-compliance with basic media standards and unbalanced editorial policies⁵¹. At the same time, pressure on journalists reporting on sensitive topics or reflecting dissenting voices has intensified.

The most glaring examples of this were the illegal takeover of the newspaper *Vecherniy Bishkek*, the extra-judicial blocking of the web-portal *kloop.kg*, and the persecution of the American journalist Umar Farooq.

In addition to pro-Russian rhetoric, State-controlled media outlets make wide use of hate speech in relation to national and other minorities living in Kyrgyzstan. As Inga Sikorskaya, Director of the School of Peacemaking and Media Technology in Central Asia, noted in her interview with the mission delegation, according to data from a monitoring analysis conducted by her organisation, hate speech regularly appears in 56 percent of media outlets broadcasting or publishing in Kyrgyzstan. Another problem is that very few media outlets broadcast or publish in the languages of national minorities, primarily Uzbek. Following the ethnic conflict that took place in southern Kyrgyzstan in June 2010, virtually all of the media outlets broadcasting or publishing in the Uzbek language were shuttered. The gradual resurrection of Uzbek-language media outlets started only in 2012, and the level of broadcasting and publication in Uzbek has not yet reached the level of 2010.

49 See OSCE Representative on Freedom of the Media Dunja Mijatović Press Statement, Excessive fines for defamation a threat to media freedom in Kyrgyzstan, says OSCE Representative, December 16, 2015: <http://www.osce.org/fom/210251>.

50 KTRK is the national television and radio broadcaster of Kyrgyzstan. KTRK is head-quartered in Bishkek. It operates five radio stations and four TV channels.

51 See article in *medialaw.kg*, *Soros Foundation Explained Termination of Funding of PTRC Projects Referring to Non-Compliance to International Broadcasting Standards*, May 25, 2015, available in Russian only: <http://medialaw.kg/2015/05/25/fond-sorosa-obyasnil-prekrashenie-finansirovaniya-proektov-otrk-nesootvetstviem-materialov-kanala-mediijnym-standartam>.

Illegal takeover of Vecherniy Bishkek

Vecherniy Bishkek is one of the most popular newspapers in Kyrgyzstan. It is published in Russian and has a circulation of 45,000. The online edition of *Vecherniy Bishkek* is one of the three most popular online resources in the country.

With its own printing house and a high level of financial stability, this media outlet was independent until September 2014 and offered readers a wide range of viewpoints on the news it covered. The closed joint-stock company *Vecherniy Bishkek* Publishing House and the advertising agency Rubicon, which placed ads in this publication and was its financial center, were owned by Alexander Kim and his wife Anna Vlasenko.

This media holding company, which included *Vecherniy Bishkek* and Rubicon, was founded in 1997 by A. Kim, A. Vlasenko, and Alexander and Galina Ryabushkin. Each held a 25 percent stake. But in 2000, the Ryabushkins sold their share to Petrovsky Corporation, which was owned by Adil Toiganbayev, the son-in-law of Askar Akayev, President of Kyrgyzstan at that time. According to A. Kim, attempts were also made to force him to sell his stake in Rubicon, but he was able to hold onto this stake by ceding one percent to Petrovsky Corporation, which is how the Corporation received a controlling stake. After former President Akayev's resignation in 2005, Petrovsky Corporation, which was registered in Washington, stopped participating in the operations of Rubicon, and A. Kim filed a suit to have Petrovsky withdrawn from the group of founders. The court granted the lawsuit, and A. Kim and A. Vlasenko each became the owners of a 50 percent stake in Rubicon.

That same year, the Ryabushkin spouses filed a lawsuit demanding that the purchase and sales agreement for its share of Rubicon in 2000 be found null and void. The court, however, did not grant its demand. In 2010, after former President Bakiyev's resignation, it filed a lawsuit with similar demands, which was again rejected.

In 2014, the Ryabushkin spouses made a third attempt to become a Rubicon shareholder. He filed a lawsuit against A. Kim and A. Vlasenko with the Pervomaisky District Court of Bishkek to find that they had ownership rights to half of the shares in the company. In violation of the statute of limitations, Judge Emil Aksamayev granted the Ryabushkins' claim and judges of subsequent instances upheld this decision⁵².

The Ryabushkins, however, did not limit themselves to a return of the 50 percent Rubicon stake. In 2015, they filed a new lawsuit with the Pervomaisky Court, this time to collect lost profits for the period of 2005 – 2015 and psychological damages from A. Kim and A. Vlasenko. The amount of the lawsuit was a fantastical 450 million som (approximately 5,601,244 euros)⁵³.

Vecherniy Bishkek viewed this as the launch of an illegal takeover and said as much in an open letter to President Almazbek Atambayev published on April 17, 2015⁵⁴ that accused a number of members of the President's administration of exerting pressure on the court. The President instructed the Public Prosecutor's Office to conduct "a careful review of all of the circumstances of this case". The Prosecutor General's Office concluded that it did not find that officials from President Atambayev's administration had committed any of the violations alluded to by the newspaper⁵⁵.

Soon thereafter, the Pervomaisky Court seized Alexander Kim's property as security for the lawsuit, and on May 20, 2015, without the notification or participation of the respondents, issued a decision on the collection of 388 million som (approximately 4,829,517 euros) from the respondents in favour of the Ryabushkins⁵⁶. Since A. Kim and A. Vlasenko did not have that amount in their

52 See article in *vb.kg*, *Seizure of "Vecherniy Bishkek": Lawyers' assessment of court ruling*, October 9, 2014, available in Russian only: http://www.vb.kg/doc/289152_zahvat_vechernego_bishkeka_uristy_dali_zaklučenje_po_resheniu_syda.html.

53 See article in *Kloop.kg*, *Lawsuits against "Vecherniy Bishkek": What will happen with mostly read Newspaper?*, July 23, 2015, available in Russian only: <http://kloop.kg/blog/2015/07/23/iski-protiv-vechernego-bishkeka-cto-stanet-s-samym-chitaemyim-izdaniem/>.

54 See article in *vb.kg*, *Letter to Almazbek Atambayev from "Vecherniy Bishkek"*, April 17, 2015, available in Russian only: http://www.vb.kg/doc/310455_obrashenie_k_almazbeky_atambaevy_ot_kollektiva_id_vecherniy_bishkek.html.

55 See article in *inozpress.kg*, *Kyrgyzstan: seizure of the leading media resource*, May 13, 2015, available in Russian only: <http://inozpress.kg/news/view/id/45520>.

56 See article in *Fergananeews*, *Kyrgyzstan: Trial against the paper "Vecherniy Bishkek" ruled down in secret in favour of the plaintiff*, May 20, 2015, available in Russian only: <http://www.fergananeews.com/news/23412>.

bank accounts, the Ryabushkin spouses asked the court to seize the remaining 50 percent stake in Rubicon held by the respondents, as well as a 65 percent stake in *Vecherniy Bishkek* Publishing House Closed Joint-Stock Company. On August 28, 2015, the court granted the claimant's demands, and *Vecherniy Bishkek* fell under the Ryabushkins' full control⁵⁷.

A. Ryabushkin has stated repeatedly in interviews⁵⁸ that all the court proceedings he initiated were for economic reasons only and that Kim was only trying to politicize a property dispute. All the other circumstances of this case, however, suggest the opposite. These circumstances include, specifically, the unusual speed with which legally dubious court decisions were issued, a programme entitled "Business Based on Lies", which accused A. Kim of having connections with Maxim Bakiyev, the son of the former President who was hiding from Kyrgyz authorities in the UK, shown on KTRK's main television channel⁵⁹, and the fact that with the transfer of control to the Ryabushkins, publications started to align itself to the current Government's positions.

Blocking of the news web-portal kloop.kg

On November 24, 2014, the independent online news portal *kloop.kg* published material about children from Kazakhstan training in an Islamic State camp. The story was neutral and contained a description of a videotape that had been published online by the Islamic State two days earlier. This material was illustrated by fragments of the video, which had previously been published on UK daily conservative tabloid newspaper the *Daily Mail* website, and screen-shots from this video⁶⁰.

On the same day, one of the portal's founders received an email from an official at the Computer Incident Response Service under Kazakhstan's Ministry of Communications and Information, who requested the removal of this publication, referring to Resolution 1373 of the UN Security Council, which states that countries should take measures to prevent terrorist acts by sharing information⁶¹, and Kazakh laws banning the promotion and justification of extremism and terrorism. *Kloop.kg*'s editorial board rejected this request, arguing that providing information about the activities of a terrorist organisation in a neutral tone is not promoting terrorism and does not contravene international law⁶². On November 26, 2014, the Prosecutor General's Office of Kazakhstan blocked access to *kloop.kg* on its own territory⁶³.

On December 10, 2014, the Kyrgyz Federal Communications Agency sent Internet providers a request to block this material, pursuant to specific orders of the Prosecutor General's Office and upon the request of Kazakhstan⁶⁴. Such orders were clearly illegal, since under Kyrgyz law a website may only be blocked following a court decision. Nevertheless, several large Internet providers complied with this request. Some were forced to block access to the entire web portal, since they lacked the equipment to block access to just one publication⁶⁵.

57 See article in *Azzatyk.org*, *Vecherniy Bishkek*: "City Court ruled in favour of Ryabushkin", August 28, 2015, available in Russian only: <http://rus.azattyk.org/content/article/27213292.html>.

58 See article in *Azzatyk.org*, *Ryabushkin: This is The Last Chance to Stand for One's Rights*, October 8, 2014, available in Russian only: <http://rus.azattyk.org/content/article/26626422.html>.

59 This specific programme caused Soros-Foundation Kyrgyzstan to stop funding KTRK, and the Media Complaint Review Commission acknowledged that this programme violated a number of provisions of the Kyrgyzstan Code of Ethics for Journalists. See article in *vb.kg*, *Soros Foundation Froze Funding to PTRC*, May 23, 2015, available in Russian only: http://www.vb.kg/doc/314008_fond_soros_kyrgyzstan_zamorozil_finansirovanie_proektov_otrk.html and article in *vb.kg*, *Business Built on Lies* and "Troja Horses", available in Russian only: <http://members.vb.kg/2015/06/19/cmi/1.html>.

60 See article in *kloop.kg*, *ISIS video: Children Threaten to Kill the Unfaithful*, November 24, 2014, available in Russian only: <http://kloop.kg/blog/2014/11/24/video-islamskogo-gosudarstva-deti-iz-kazahstana-ugrozhayut-ubivat-nevernyh/>.

61 See UN Security Council Resolution 1373, UN Document S/RES/1373 (2001), September 28, 2001.

62 See article in *kloop.kg*, *Kazakhstan Authorities Demand kloop.kg to Remove the Article on Children-Jihadists*, November 24, 2014, available in Russian only: <http://kloop.kg/blog/2014/11/24/vlasti-kazahstana-prosyat-kloop-kg-udalit-material-pro-detej-dzhihadistov/>.

63 See article in *kloop.kg*, *Kazakhstan blocks access to kloop.kg for posting material on children-Jihadists*, November 26, 2014, available in Russian only: <http://kloop.kg/blog/2014/11/26/kazahstan-zablokiroval-kloop-kg-posle-materiala-o-detyah-dzhihadistah/>.

64 See article in *kloop.kg*, *State communication agency: Prosecutor's Office did not provide court ruling on blocking access of kloop.kg*, December 17, 2014, available in Russian only: <http://kloop.kg/blog/2014/12/11/vlasti-kyrgyzstana-prikazali-zablokirovat-video-o-detyah-dzhihadistah-na-kloop-kg/>; <http://kloop.kg/blog/2014/12/17/gas-genprokuratura-ne-predostavila-reshenie-suda-o-blokirovke-video-na-kloop-kg/>.

65 See article in *kloop.org*, *Authorities of Kyrgyzstan ordered blocking of access of of the video on children-Jihadists on kloop.kg*, December 11, 2014, available in Russian only: <http://kloop.kg/blog/2014/12/11/vlasti-kyrgyzstana-prikazali-zablokirovat-video-o-detyah-dzhihadistah-na-kloop-kg/>.

On December 16, 2014, the Prosecutor General's Office withdrew this request at its own initiative, referring to its failure to present a court decision characterising the publication as extremist⁶⁶.

Although this web portal was only blocked during several days, this case shows that Kyrgyz federal bodies and Internet providers have been restricting and may further restrict media freedom, despite existing safeguards and in violation of legal requirements.

Deportation and judicial harassment of journalist Umar Farooq

On March 25, 2015, officers from the Osh Office of Internal Affairs detained US freelance journalist **Umar Farooq**, who had come in Kyrgyzstan to investigate and prepare a series of articles on the 2010 ethnic clashes⁶⁷. U. Farooq was arrested after meeting representatives of the Osh branch of the human rights NGO Bir Duino on suspicion of possessing documents of an extremist nature. He was sent to the department of the Kyrgyz State Committee for National Security (SCNS), where he was placed in a pre-trial detention centre for two days. On March 27, 2015, the SCNS issued a statement saying that officers had found "copies of investigation documents of criminal cases recently brought against Rashot Kamalov, the imam at the Kara-Suu mosque, accused of being a leader of the religious-extremist organisation 'Hizb ut-Tahrir (see above Section II.3), as well as DVD-discs with video materials of a religious-extremist and terrorist nature, with calls to 'jihad' and interreligious discord" in Umar Farooq's possession. On the basis of this evidence, a criminal case was initiated for "attempt to make a public call to overthrow the constitutional order" and "incitement of national, racial, religious, or regional enmity with the use of force".

U. Farooq himself told SCNS officials that the discs were planted on him, since he had no need to keep them: the sermons were freely accessible online and his laptop did not have a disc drive. As far as the documents from the criminal case were concerned, he received those from Valerian Vakhitov and Khusanbay Saliev, lawyers at the Osh office of Bir Duino⁶⁸.

On March 28, 2015, an SCNS investigator sent a report on an administrative offence committed by Umar Farooq to the Osh Municipal Court. The nature of this offence was covered under Article 390, part 2 of the Code of Administrative Responsibility - "violation by foreign citizens and stateless persons of the established regime of stay in the Kyrgyz Republic" (since U. Farooq was not accredited as a journalist). However, the investigator did not contend that any elements of a crime were present in U. Farooq's actions because his actions were not on the record, and no court ruled that the video recordings found on him were extremist. The court agreed with the investigator's arguments and found U. Farooq guilty of committing the offence stipulated in Article 390, part 2 and ruled that he should be expelled from the country⁶⁹. U. Farooq was deported to the United States the following day⁷⁰. However it should be noted that, under the Code of Administrative Responsibility, foreign citizens may be deported from Kyrgyzstan only if they have violated the regime of stay two times within the same year. Umar Farooq had not previously been prosecuted for this administrative offence. Nonetheless, both the court and the Prosecutor at the court session ignored these provisions.

At the time of writing, the criminal case that followed the discovery of documents and discs on U. Farooq was ongoing and it was still not possible for Bir Duino lawyers to get access to the case file.

66 See article in *kloop.org*, *Altynai Ysayeva: On blocking access of websites, providers' authority and unlawful authorities' demands*, December 22, 2014, available in Russian only: <http://kloop.kg/blog/2014/12/22/altynaj-isaeva-o-blokirovke-sajtov-polnomochiyah-provajderov-i-nezakonnyh-trebovaniyah-vlastej/>.

67 See article in *Fergananeews*, *Kyrgyzstan: American journalist arrested in Osh, search taking place in premises of human rights organisation "Bir Duino"*, March 27, 2015, available in Russian only: <http://www.fergananeews.com/news/23206>.

68 See article in *Fergananeews*, *Kyrgyzstan: Journalist from USA, arrested in Osh, is being accused of links with banned religious movement «Khizbut-Tahrir» and work without accreditation*, March 27, 2015, available in Russian only: <http://www.fergananeews.com/news/23208>.

69 See article in *Fergananeews*, *Umar Farouk and the "Human rights defenders case": what was important was to seize documents and deport*, March 30, 2015, available in Russian only: <http://www.fergananeews.com/articles/8471>.

70 See article in *Fergananeews*, *Arrested American journalist Umar Farouk released from detention centre but will be deported*, March 28, 2015, available in Russian only: <http://www.fergananeews.com/news/23210>.

I.4. Cooperation with UN human rights institutions

The level of cooperation of Kyrgyzstan with the UN system in terms of ratification and cooperation with the review mechanisms (Treaty Bodies, Special Procedures) is good. Kyrgyzstan has ratified most UN human rights conventions and optional protocols to them. The exceptions are the Convention on the Rights of Persons with Disabilities, which the country signed in 2011 but has yet to ratify, and the Convention for the Protection of all Persons from Enforced Disappearances. The Kyrgyz Republic also recognizes the procedures for reviewing individual complaints of the Human Rights Committee (CCPR) and the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW). But it has not yet made declarations allowing the Committee on the Elimination of Racial Discrimination (CERD) and the Committee against Torture (CAT) to review individual communications⁷¹.

Overall, Kyrgyzstan has demonstrated a high level of readiness to cooperate with UN Treaty Bodies. It is currently up-to-date on all its periodic reports to these bodies⁷². The Observatory welcomes the creation, in 2013, of a national intergovernmental body to coordinate the preparation of these reports, carry out measures to implement the recommendations and promote the activities of the latter. This body is the Coordination Council on Human Rights and it is led by Deputy Prime Minister Abdyrakhman Mamataliyev⁷³.

Furthermore, regarding individual complaints, the Constitution of 2010 guarantees Kyrgyz citizens the right to appeal to international human rights bodies and provides for the enforceability of UN findings. Indeed, its Article 41.2 provides that "everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage"⁷⁴.

The Observatory also welcomes a 2014 amendment to the Criminal Procedural Code stating that a violation of human rights and freedoms committed during the review of a given criminal act may trigger the review of a criminal case in light of new circumstances, and regrets the absence of similar provisions in the Civil Procedural Code and the Code on Administrative Responsibility. Despite the high level of cooperation, the level of implementation of recommendations remains low. There are currently 664 recommendations, including recommendations on the protection of human rights defenders⁷⁵, issued by UN Treaty Bodies that have not been implemented⁷⁶.

With regard obligations pertaining to the protection of human rights defenders, the Observatory recalls that with the adoption by the UN General Assembly of 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", commonly known as the "Declaration on Human Rights Defenders", in 1998, the General Assembly codified in international law the right and the responsibility to defend human rights. For the first time, UN Member States explicitly committed themselves to promoting the work and protecting the rights of those acting towards the implementation of the ideals enshrined in the Universal Declaration of Human Rights (UDHR) and other human rights instruments.

The Declaration contains a series of rights and principles, which are based on and reflect existing, legally binding, human rights standards. It recalls rights attached to the activities of human rights defenders, including, *inter alia*, the rights to freedoms of expression, association and peaceful assembly, to protest, and to conduct advocacy at national, regional and international levels, as well as the right to seek, obtain, receive and hold information relating to human rights, the right

71 See OHCHR database on the ratification status by country or by treaty: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=EN.

72 Interview with Mira Karybayeva, Deputy Chief of Staff of the President of the Kyrgyz Republic, Head of the Inter-Ethnic and Religious Department under the President of the Kyrgyz Republic, September 22, 2015.

73 See article in *Fergananeews*, *Official reply to State question: Following recommendations is voluntary*, June 10, 2015, available in Russian only: <http://www.fergananews.com/articles/8581>.

74 See unofficial translation on OSCE ODIHR website legislationline: www.legislationline.org/documents/id/5045.

75 See List of human rights defenders related recommendations in the report recommendations p. 37.

76 See Tian Shan Policy Center (TSPC) with the support of the Regional Office for Central Asia of the United Nations High Commissioner for Human Rights (OHCHR ROCA), *Compendium of recommendations of the UN Human Rights mechanisms to the Kyrgyz Republic 2010 – 2015*: <https://www.auca.kg/en/compendium/>.

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to make complaints about official policies and acts relating to human rights and to have such complaints reviewed, and the right to benefit from an effective remedy, etc.

As far as country visits by UN Special Rapporteurs are concerned, despite the fact that during meetings with the Observatory delegation all Kyrgyz officials declared that they were open to receive the visit of any UN Special Rapporteur⁷⁷, Kyrgyzstan has not expressed such readiness at an official level, since it has not issued any standing invitations to accept a request to visit the country at any time⁷⁸. Also, the request of the Special Rapporteur on the Situation of Human Rights Defenders sent to the Kyrgyz Government in 2012 was only officially accepted on May 8, 2015. Mira Karybayeva informed the Observatory delegation that a date had been agreed upon for a visit in February 2016. This information was not confirmed by the UN services, which replied that despite many verbal promises by senior government officials, the Government had not yet agreed on a date for the visit of the Special Rapporteur. Similarly, the date of the visit of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, whose request was accepted by the Government in November 2011, has also not been agreed on and no date has been fixed. Requests from the Special Rapporteurs on Freedom of Religion and Belief and on Extra-judicial, Summary, or Arbitrary Executions have been under consideration since 2004 and 2008, respectively⁷⁹.

Thus, even though Kyrgyzstan has demonstrated significant progress in its cooperation with UN Treaty Bodies and Special Procedures since 2010, the measures the country has adopted are not sufficient to ensure compliance with its human rights obligations. Today the Government needs to steer movement towards implementation and to allocate adequate resources to this endeavour.

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⁷⁷ Interview with Mira Karybayeva, Deputy Chief of Staff of the President of the Kyrgyz Republic, Head of the Inter-Ethnic and Religious Department under the President of the Kyrgyz Republic, September 22, 2015, interview with Abdyrakhman Mamataliyev, Deputy Prime Minister, September 25, 2015.

⁷⁸ See OHCHR database on standing invitations to UN Special Procedures of the Human Rights Council: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx?Lang=EN.

⁷⁹ See OHCHR database on country visits of Special Procedures of the Human Rights Council since 1998: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en.

CHAPTER II.

Laws and draft laws designed to restrict the activities of human rights NGOs

Although all the representatives of government agencies interviewed by the mission delegation noted that the country's laws needed to be adjusted to bring them into line with Kyrgyzstan's international human rights obligations, law-making trends of recent years show evidence of attempts by the authorities to narrow the space of human rights NGOs in the country.

Draft Laws on "Foreign Agents" and "Gay Propaganda" were being considered by the unicameral Parliament known as the *Jogorku Kengesh* (Supreme Council) at the time of the mission and were cause for the greatest amount of concern.

Several laws, in particular the Law on "Combating Extremist Activity" and amendments to the legal provision on "false accusations made knowingly", which have already been adopted, have also had a restrictive impact on the working environment and capacity of civil society.

II.1. Attempts to amend the Law on Non-Commercial Organisations: from the Draft Law on Foreign Agents to the Draft Law on Foreign Non-Commercial Organisations and Transparency

From the Draft Law on Foreign Agents...

Draft Law No. 6-13589/14 "On amendments and additions to several laws of the Kyrgyz Republic (to laws "On non-commercial organisations" and "On the State registration of legal entities, affiliates (Representative offices)", and to the Criminal Code) was proposed by Members of Parliament (MPs) Tursunbay Bakir Uulu and Madaliyev Nurkamil (Ar-Namys faction) and Narmatova Nadira (Ata-Zhurt faction) in September 2013 and officially recorded in Parliament on May 26, 2014⁸⁰.

It borrowed widely from a similar law adopted in Russia in 2012.

This draft law required NGOs receiving funding from abroad and engaging in "political activities" to register with the Ministry of Justice as "non-commercial organisations performing the functions of a foreign agent" and mark all documentation with the corresponding label. Such organisations should also be subject to additional administrative hurdles including requirements to submit financial records to government agencies and audits. The financial reporting obligations stipulated in this draft law were burdensome and costly. Thus, the adoption of this draft law could have hindered NGO activities in Kyrgyzstan and even forced some NGOs to suspend their activities because they did not have the resources to prepare such a large volume of financial reports or pay for an auditor's services.

The draft law would also have authorised the Ministry of Justice to conduct frequent scheduled and unscheduled inspections of the concerned organisations under a broader range of grounds, request and check any internal documents, and to suspend their activity for up to six months without waiting for a court decision, in case an organisation fails to file an application for inclusion in the register of non-commercial organisations acting as a "foreign agent". The ability to supervise the activities of NGOs that the Ministry of Justice would have received if this draft law had been adopted would have provided the Ministry of Justice with virtually unlimited discretion to interfere in the activities of an NGO listed in the register of "foreign agents". The ability to suspend the activities of an NGO without a court decision also represented a serious blow to the level of protection available to such organisations.

⁸⁰ See the bill "On amendments to certain legislative acts of the Kyrgyz Republic" (6-13589/14), available in Russian only: <http://kenesh.kg/lawprojects/DocumentDownload.ashx?type=project&id=139244&lang=ru>.

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Additionally, this draft law introduced criminal liability for the heads of NGOs whose activities are connected with "inciting citizens to refuse to fulfil their civic duties or to commit other unlawful actions". This section would have led to the criminalisation of the work of human rights defenders. Indeed, the terms "inciting" and "propaganda acts" were ill-defined and broad, and would have given rise to subjective interpretation. As the Venice Commission and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) noted, the proposed charges were written in such a way that, for example, a group advocating for an end to mandatory military service could be viewed as "inciting to refuse to fulfil civic duties" and thus subject it to criminal prosecution⁸¹. If this draft law had been adopted, any form of civil disobedience, even the most moderate, could have resulted in criminal prosecution.

The position of President Atambayev on the subject has been unclear. In December 2014, President Atambayev, who had previously stated⁸² that the country had no need for a law on "foreign agents", stated during an interview that since "some NGOs are actually carrying out political activities under cover", this law needed to be passed⁸³. In March 2015, he reiterated his new position, declaring "We do not want foreign special services open their organisations in Kyrgyzstan under the guise of NGOs in order to destabilize the country"⁸⁴. In September 2015, during the Observatory mission, Mira Karybayeva, Deputy Chief of Staff of the President, expressed confidence that the draft law would not be adopted by Parliament since it was sponsored by only three MPs and reassured the mission delegation that the President was not favourable to its adoption⁸⁵.

This draft law has been widely criticised by both Kyrgyz NGOs⁸⁶ and international human rights organisations. In their joint interim opinion on this draft law, approved on October 16, 2013, the Venice Commission and the OSCE ODIHR found that the draft law failed to meet Kyrgyzstan's international human rights commitments⁸⁷. The UN also expressed concern on the potential negative impact of the draft⁸⁸.

One of the most important reasons why this draft law faced so much criticism was that the term "political activity" was broad and might be subject to subjective interpretation. In the draft law, the term "political activities" was broadly defined as "organising and conducting political activities in order to influence the decisions of public authorities, [...] changing public policy" or influencing public opinion to affect either of these goals. While such broad interpretation might lead to the misapplication of the law, as well as making this provision difficult to enforce, it might also target a broad range of groups whose activities have nothing to do with politics.

One shortcoming of this definition was that the subjective perception of the goal of the activity was the deciding factor in whether or not the activity is classified as political. The Venice Commission and the OSCE ODIHR had good reasons for stating that it would be difficult to assess such a subjective element: administrative authorities would have an overly broad discretion in categorising an activity as "political", which would make it difficult for an NGO to anticipate whether its activities would risk being classified as such.

While the draft provided for a list of activities as exceptions to the definition of "political activity", it was unclear whether human rights activities would qualify as "social support and protection of citizens" or "charitable activity". The risk was high that any expression of dissent with the Government be interpreted as a "political activities". By definition, human rights defenders and

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81 See Venice Commission and OSCE-ODIHR Joint Interim Opinion, *Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic adopted by the Venice Commission at its 96th Plenary Session* (Venice, October 11-12 2013), October 16, 2013: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29030-e>.

82 See article in *Fergananews*, *President of Kyrgyzstan Declared Being Against the Foreign Agents Bill*, September 19, 2013, available in Russian only: <http://www.fergananews.com/news/21214>.

83 See article in the web-portal *vb.kg*, *Atambayev Supports "Foreign Agents" Bill*, December 1, 2014, available in Russian only: http://www.vb.kg/doc/295404_atambaev_podderjivaet_zakon_ob_inostrannyh_agentah.html.

84 See article in *Kabar.kg*, *Atambaev is against foreign special services opening their organisations under the guise of NGO to conduct destabilizing policies*, March 31, 2015, available in Russian only: <http://kabar.kg/rus/society/full/91517>.

85. See interview with Mira Karybayeva, September 22, 2015.

86 See Joint Open Letter signed by 28 Kyrgyz and foreign human rights organisations, *Kyrgyzstan: Reject "Foreign Agents" Bill in Plenary*, May 19, 2015: <http://www.civicsolidarity.org/article/1095/kyrgyzstan-reject-foreign-agents-bill-plenary>.

87 See Venice Commission and OSCE/ODIHR Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic adopted by the Venice Commission at its 96th Plenary Session (Venice, October 11-12, 2013), October 16, 2013: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29030-e>.

88 See OHCHR Press Briefing Note, May 26, 2015: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16006&LangID=E>.

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NGOs attempt to raise public awareness on human rights and influence public authorities to comply with human rights standards.

A second key cause of concern was the use of the phrase "foreign agent", which has extremely negative connotations in the former USSR and is unequivocally understood by residents of this region as meaning "spy". Thus, Kyrgyz NGOs had good reason to fear that the obligation to use this phrase in reference to themselves would create an atmosphere of stigmatisation, mistrust, fear, and enmity towards them and that citizens and representatives of State authorities would refuse to collaborate with them, especially in matters related to changing laws or State policy.

If adopted, the draft law would have resulted in numerous violations to the right to freedoms of expression and association. The ability for associations to access funding and resources is an integral and vital part of the right to freedom of association. Any associations should have the right to seek and secure funding and resources from domestic, foreign, and international entities. In many countries, such as Kyrgyzstan, domestic funding is very limited or non-existent, leading associations to rely heavily on foreign assistance to conduct their activities. This amendment would force non-commercial organisations to choose between negatively branding their publications and potentially reducing their readership, or, should they choose not to brand their publications in such a fashion, forcing them to act outside of the law. Also, the criterion of proportionality was taken into account, since, under the draft law, the status of "foreign agent" could be assigned to an organisation that receives any amount of money from abroad, however small it may be, which, in turn, could result in corrupt practices.

Based on the above-mentioned considerations, this draft law clearly contravened the Constitution of Kyrgyzstan and the country's international human rights commitments. It should also be noted that in March 2015 the UN Human Rights Committee recommended that Russia "repeal or revise the legislation requiring non-commercial organizations that receive foreign funding to register as "foreign agents"", in connection with a similar law in Russia⁸⁹.

Additionally, having had the opportunity to observe how the very similar Russian law of 2012 has been applied in that country, members of Kyrgyz civil society had good reason to fear that in practice this law would be applied in a similar manner in Kyrgyzstan due to the rise of Russian influence in the country. The main features of Russia's enforcement of this law were increasing pressure on the country's large and respected human rights organisations, diminished opportunities for activity, and the virtual absence of judicial control over any enforcement measures applied to NGOs in connection with this law (the percentage of court decisions in favour of NGOs in these types of cases is zero).

In spite of all the calls from Kyrgyz civil society to reject this draft law, it was adopted in its first reading on June 4, 2015. The second reading was scheduled for June 29, 2015, but it was later withdrawn from the agenda for "additional examination"⁹⁰.

None of the three bill initiators were re-elected during the parliamentary elections of October 2015. The new Parliamentary Committee in charge of the bill seemed not to be in favour of the bill either. On February 29, 2016, the Committee on Constitutional Legislation, State Structure, Judicial and Legal Issues and Regulations of the Parliament organised a round table with MPs, international and local civil society organisations. The outcome of the round table was a joint opinion that the bill should not be supported.

The text was then extensively revised. The term "foreign agent" was removed from the text of the law and the possibility of criminal prosecution of NGO representatives and NGOs excluded. The new text contains two provisions: one on foreign non-commercial organisations and the other one on transparency.

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⁸⁹ See UN Human Rights Committee Concluding Observations on the seventh periodic report of the Russian Federation, UN Document CCPR/C/RUS/CO/7, April 28, 2015.

⁹⁰ See article in *Akipress*, *Two out of three initiators of the Foreign Agents bill Agree to postpone second reading Until Autumn*, June 30, 2015: <http://www.akipress.com/news:561143/>.

On April 12, 2016, a revised text amending several provisions of the Law on Non-Commercial Organisations was adopted in less than a minute by the Human Rights and Constitutional Legislation Committee at its weekly hearing. The new version of the law was scrapped from most of repressive and discriminatory content.

The new text contained two sets of provisions: one on the registration of affiliates and offices of foreign non-profit organisations operating in Kyrgyzstan and the other on new reporting requirements for non-commercial organisations. These new provisions placed onerous reporting obligations on non-commercial organisations. Under the pretext of "transparency", it required NGOs to publish on its official website and/or the official website of the State agency authorised to register legal entities and affiliates (representative offices) no later than the first of April of the year following the reporting period the following information: the annual report on its financial and business activities; information about the sources of its funding and property, the list of members of its governing body and the size of its staff and information on the use of property and financial resources.

Such provisions failed to meet States' obligation to create the best possible enabling environment for civil society. First, they were discriminatory as they imposed restrictions on associations that were stricter than those applying for businesses⁹¹. Second, they were also contrary to international human rights standards, which require that any restrictions be "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (Article 22.2 of the International Covenant on Civil and Political Rights - ICCPR).

On April 14, 2016, the Parliament adopted the new text in second reading, by a vote of 73 in favour and 35 against.

On May 12, 2016, the Parliament finally rejected the bill on foreign not-for-profit organisations in third reading, by a vote of 46 in favour and 65 against. While this latest development is to be welcomed, the Observatory regrets the negative impact this legal initiative has had on civil society space. First, mobilisation against the adoption of the bill distracted international and local civil society from other important human rights issues. Second, the public debate on the bill will certainly leave a long-lasting stigma on human rights organisations in the public eye and created a permissive environment in which people feel entitled to target and attack human rights defenders.

II.2. The Draft Law on the Promotion of Non-Traditional Sexual Relationships ("Gay Propaganda")

The Draft Law No. 6-11804/14 "On Additions to Several Laws of the Kyrgyz Republic (the Criminal Code, the Code of Administrative Responsibility, and Laws "On Peaceful Assembly" and "On the Mass Media")", which was tabled by 28 MPs in the Parliament on May 6, 2014, if adopted, will place severe limitations on the ability of Kyrgyz civil society to defend the respect of human rights for all.

As with the former Draft Law "On Foreign Agents", this draft law is similar to a law that was adopted in Russia in 2013. But while the Kyrgyz version of the Draft Law "On Foreign Agents" was much less harsh than the Russian version (it did not contain sanctions for refusing to register as an "agent" or for failing to mark materials with the corresponding stamp), the Kyrgyz draft law on the promotion of non traditional sexual relationships is more restrictive as it provides for both criminal and administrative sanctions.

The draft law bans the dissemination of any information promoting "non-traditional sexual relations" or "homosexual lifestyles" in a "positive" way. It would apply to the media, the Internet, as well as to public assemblies as well as other means – a clear violation of freedom of expression.

The bill carries a maximum sentence of up to one year in prison. Given its vague wording, the draft law could be used against a wide range of individuals and groups whose work is directed at sexual health

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⁹¹ See UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai's third report to the United Nations General Assembly, Comparative study of enabling environments for associations and businesses, UN Document A/70/266, August 4, 2015.

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or at sexual and gender minorities in Kyrgyzstan. It should be noted that Kyrgyzstan decriminalized homosexual relations in 1998. Nevertheless, members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community have been frequently subjected to discrimination and violence, including both by State and non-State actors (see Section III.5.). Several LGBTI NGOs are currently operating in Kyrgyzstan, but their activities are concentrated mainly in Bishkek. Their offices and events are regularly exposed to attacks by nationalist groups and the police fail to conduct proper investigations on the attacks. In other cities, such groups either are not active or keep a low profile by fear of reprisals. Few local human rights organisations criticised the draft law for fear of being targeted by smear campaigns and thus the introduction of the draft law barely resonated within the country.

The adoption of this draft law in its first reading on October 15, 2014 was widely criticised by the international community, including by the Office of the High Commissioner for Human Rights and key UN Special Procedures⁹², the OSCE Representative on Freedom of the Media⁹³, the US Embassy in Bishkek⁹⁴, and the European Parliament⁹⁵. As a response to concerns raised by the international community, a parliamentary working group was set up in 2014 to revise the draft law. Unfortunately, most of the concerns remain unchanged. On June 24, 2015, the draft law was adopted in its second reading.

The adoption of the draft law could potentially lead to the criminalisation of any body expressing any positive or neutral information about same-sex relationships. It will also seriously obstruct or even ban the conduct of activities on HIV-Aids prevention, the right to health and health care, the promotion of LGBTI rights, work around sexual orientation and gender identity, and human rights in general and affect the work of journalists. The Observatory believes that this draft law contravenes Articles 31, 33, and 34 of the Constitution of Kyrgyzstan, which guarantee the right to freedoms of speech, information and peaceful assembly, as well as Article 16 of the Constitution and the ICCPR, which both enshrine similar rights.

On June 29, 2015, Kanybek Imanaliyev, Chair of the International Affairs Committee of the Parliament, announced that, like the former Draft Law "On Foreign Agents", the Draft Law on "Gay Propaganda" would be "withdrawn for further discussion and consultations to account for the opinions of a wide circle of experts and members of society". However, as it had already been adopted in second reading, the text cannot be amended any more. Thus, in the third reading, the Parliament may either adopt it or reject it. During her meeting with the delegation, Mira Karybayeva expressed doubt that it would ever take effect, since the draft violated the right to freedom of expression, as well as the prohibition of discrimination⁹⁶. Following the renewal of Parliament, the schedule of the bill adoption remains uncertain. It was scheduled for adoption in third reading for February 2016 but the vote did not take place.

II.3. Laws in force used to criminalise human rights defenders: the Law on "Combating Extremist Activities" and the provision on "false accusation made knowingly"

The Law on "Combating Extremist Activities"

The Observatory has serious concerns about existing legal provisions to combat extremism and their implementation with respect to the protection of human rights defenders and their activities.

The Law "On Combating Extremist Activities" is in force in Kyrgyzstan since 2005. In addition, in 2009, a new offence on extremist material was added in Article 299-2 of the Criminal Code. This

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92 See OHCHR Press Briefing Notes, October 24, 2014, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15205&LangID=E> and UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst and UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Puras Joint Statement, "Kyrgyzstan: Don't condemn LGBT people to silence – UN rights experts urge Parliament to withdraw anti-gay bill", November 26, 2014: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15349&LangID=E>.

93 See OSCE Representative on Freedom of the Media Dunja Mijatović Statement, "Proposed legislation in Kyrgyzstan criminalizing LGBT-related information poses a threat to free speech and free media, says OSCE Representative", October 17, 2014: <http://www.osce.org/fom/125657>.

94 See US Embassy Statement, "Statement on legislation that threatens human rights", October 10, 2014: http://bishkek.usembassy.gov/pr_10-10-14_statement_on_legislation_that_threatens_human_rights.html.

95 See EU Parliament Resolution 2015/2505 (RSP), "European Parliament resolution on the homophobic draft legislation in Kyrgyzstan", January 13, 2015: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2015-0056&format=XML&language=EN>.

96 Interview with Mira Karybayeva, September 22, 2015.

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article establishes criminal liability for "acquiring, storing, transporting, and forwarding extremist materials in order to distribute them or prepare them for distribution". In 2013, the wording of the elements of the crime stipulated in this article was changed, and now "acquiring, preparing, storing, distributing, transporting, and forwarding extremist materials" shall be criminally liable. Article 299-2 has reportedly been used on several occasions to harass ethnic Uzbek citizens and civil society actors.

Under the current law, anyone may be prosecuted simply for having one copy of an extremist material that he or she acquired with no intention of distribution, including for research or other similar purposes. Moreover, the only type of punishment stipulated by this provision is imprisonment with forfeiture of the right to hold certain official positions or engage in some public activities. No other former USSR country envisages such a severe punishment for holding "extremist" materials.

Article 299-2 of the Criminal Code contradicts Article 1 of the Law "On Combating Extremist Activities", under which extremist materials are only recognised as such if they are "documents intended for publication or information on other media". The application of this law, however, has shown that law enforcement agencies do not believe it is necessary to prove that extremist materials that have been discovered on a person have been published or were intended for publication.

Unfortunately, State officials in charge of implementing these provisions often lack the expertise to assess whether or not a specific material qualifies as "extremist". Therefore, the law is subject to subjective interpretation. The determination of whether a specific material qualifies as "extremist" is made by the State Commission on Religious Affairs (SCRA). SCRA's findings are not scientifically justified, typically conclusions do not indicate what kind of research was conducted and on the basis of what data the commission came to its conclusions. According to the law, such determination must then be sanctioned by a court judgement, which has never been the case.

During the mission, several of the interviewees reported that the law was used abusively to harass ethnic minorities and silence dissenting voices among civil society actors, as was the case with the judicial harassment of the Advocacy Center in 2014 (see below Section III.2.), the case of journalist Umar Farook (see above Section I.3.) or the judicial harassment of the International Crisis Group (ICG) analyst Connor Prasad in 2012 for allegedly inciting ethnic unrest⁹⁷.

Rashod Kamalov, the Imam of the central mosque of Karasuu located in Osh region, has been detained since February 9, 2015. He was accused of "inciting religious hatred" and "storage of extremist materials". The prosecution is based on the conclusions made by SCRA. Some connect Kamolov's criminal prosecution with the fact that the Imam had denounced publicly extortion carried out by law enforcement officials under the pretext of combating religious extremism⁹⁸.

The provision on "false accusation made knowingly"

The Observatory has also serious concerns about existing legal provisions criminalising libel. In May 2014, President Almazbek Atambayev signed into law an amendment to the Criminal Code "On false accusation made knowingly" that prescribed up to three years in prison for falsely and publicly accusing a person of committing a crime, which can result in re-criminalising defamation. Kyrgyzstan had decriminalised defamation in 2011. The Ombudsman in office at that time, Baktybek Amanbaev, reported that the law violated constitutional provisions on free speech. OSCE Representative on Freedom of the Media Dunja Mijatović called on the President of Kyrgyzstan to veto the bill as it could de facto criminalise defamation⁹⁹. Additionally, a provision in the amendment introduces stronger protection for public officials against accusations of corruption.

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⁹⁷ See article in Irish Times, *Irish analyst accused of 'provoking unrest*, November 23, 2012: <http://www.irishtimes.com/news/irish-analyst-accused-of-provoking-unrest-1.555701>.

⁹⁸ See Bir Duino.

⁹⁹ See OSCE Representative on Freedom of the Media Dunja Mijatović Press Release, *OSCE representative calls on Kyrgyzstan's President to veto reintroduction of criminal defamation*, April 23, 2014: <http://www.osce.org/fom/117942>.

Chapter III.

Human Rights Defenders under Increasing Pressure

The civil society sector in the Kyrgyz Republic is considered one of the strongest in Central Asia. Indeed during the mission, the delegation met a very dynamic and diverse human rights community working on a large span of human rights. Two of the regional representatives of the Ombudsman's Office acknowledged that NGOs provided vital support to the promotion and protection of human rights in the country¹⁰⁰. Furthermore, the delegation bore witness that human rights defenders worked in close collaboration with several State institutions, including through the system of community councils (see above Section I.2.). This was confirmed by both State and NGO representatives.

While defenders reported that they were no longer the subject of systematic and massive violations, they stressed out that today they experience the shrinking of their space of action. Some human rights defenders are regularly subject to acts of intimidation and surveillance and some have been denigrated via smearing campaigns in the media and, sometimes, criminalised at the initiative of State officials or with the inaction of the authorities. Non-State actors, such as nationalist groups like *Kyrk choroloru* and *Kalys*, also exert tremendous pressure on civil society, especially on organisations working on LGBTI rights. Those working on issues deemed to be "sensitive" such as the fight against impunity, corruption, the rights of ethnic or sexual minorities have been particularly targeted. Many defenders shared a "feeling of despair" in the current context and felt that, due to the absence or weakness of "traditional" watchdogs as explained above, they were left at the front line and more vulnerable to repression by actors involved in human rights violations.

In addition, international NGOs such as Human Rights Watch (HRW) have faced difficulties in pursuing their work in the country. Indeed, on December 2, 2015, immigration officials in Kyrgyzstan refused to allow **Mihra Rittmann**, HRW Central Asia researcher and Bishkek Office Director, to enter the country and told her she had been banned¹⁰¹. The immigration authorities reportedly referred to the fact that Mihra Rittmann had violated the migration laws. This incident occurred shortly after the publication by HRW of reports on women's rights and LGBTI discrimination. Since HRW opened an office in Bishkek in 2012, the organisation has faced serious difficulties getting work permits for Bishkek-based international staff.

III.1. The continued arbitrary detention of prominent rights defender Azimjan Askarov despite massive international condemnation: a negative signal for defenders monitoring police abuses in the South

Rights activist and journalist **Azimjan Askarov**, an ethnic Uzbek, has been detained since June 15, 2010. Five years after sentencing Azimjan Askarov to life in prison in connection with the events of 2010 in southern Kyrgyzstan, Kyrgyzstan continues to resist international calls for his release or to review his case.

A. Askarov is a local activist, known and highly respected in his community and in Kyrgyzstan in general. He founded the group *Vozduh* (Air) in 2002 in Bazar Kurgan, Jalalabad Oblast, in the South of the country to investigate police brutality and the conditions of Kyrgyz prisons. On several occasions, Azimjan Askarov met successes in his efforts to hold the local police accountable. As a result, several police officials were not appreciative of his work. He also worked with ODIHR on monitoring human rights in places of detention in southern Kyrgyzstan.

During the ethnic clashes of June 2010 in southern Kyrgyzstan, which primarily targeted people of the Uzbek nationality (470 people, primarily Uzbeks, were killed, and hundreds of thousands

100 See interview with Shambet Kasymov, Head of the Regional Office of the Ombudsman in Osh, and Alima Amanova, Head of the Regional Ombudsman Office of the Jalal-Abad region, September 23, 2015.

101 See HRW Statement, *Kyrgyzstan: Rights group representative banned*, December 3, 2015.

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displaced - see above Section I.1), A. Askarov documented the violence in Bazar Kurgan. He visited the morgue to identify bodies, spoke with the wounded in the local hospital, kept a diary with detailed descriptions of the events, and recorded everything he saw on camera and video.

Dozens of Uzbek community and religious leaders were arrested by the Government and accused of inciting ethnic violence. On June 15, 2010, A. Askarov was arrested and charged with participating in mass unrest, inciting racial strife, illegal weapons trafficking, and being an accessory to the murder of a police officer that occurred on June 13, 2010.

A. Askarov's arrest was only officially registered on June 16, and on June 17 a court approved his detention; he was only given the opportunity to meet with his lawyer on June 20, 2010. A. Askarov reported that police officers beat him during the period of June 15-19, 2010. When A. Askarov was arrested and tortured in the very same police station that was subject for more than a decade of his human rights investigations and reporting, the police reportedly laughed at him "Now it is your turn to serve us". There are compelling reasons to believe that his statement is true. According to the affidavit of Sondra S. Crosby, M.D., who specialises in the care of torture survivors and who examined A. Askarov in December 2011 at the request of the Open Society Justice Initiative, A. Askarov's "description of acute symptoms, as well as chronic physical and psychological symptoms, his physical examination, and his psychological evaluation, are all highly consistent with his allegations of trauma"¹⁰².

On September 15, 2010, the Nookensky District Court in Jalalabad Oblast convicted A. Askarov guilty for the above-mentioned charges and sentenced him to life in prison with confiscation of property. During the trial, A. Askarov's defence was seriously undermined: A. Askarov himself continued to be subjected to beating by police officers, and relatives of the deceased police officer attacked A. Askarov's lawyer in the presence of court workers. Several defence witnesses were threatened and refused to appear in court. Despite complaints, the authorities failed to investigate A. Askarov's statements about police abuse and torture. During the mission, the Observatory delegation met Kubatbek Baybolov, who was Prosecutor General of Kyrgyzstan at the time of A. Askarov's sentencing¹⁰³. The latter recounted that Interim President Roza Otunbayeva had instructed the Judiciary that A. Askarov should be sentenced to life in prison. He added that the elements in the criminal case failed to demonstrate that A. Askarov was guilty. He concluded that, during that time, the Judiciary was under the influence of the revolutionary spirit. The Executive interfered directly into decisions of the Judiciary¹⁰⁴.

The life sentence was upheld in appeal by the Jalalabad District Court on November 10, 2010 and by the Supreme Court of Kyrgyzstan on December 20, 2011. Once the domestic remedies were exhausted, his lawyer and Open Society Justice Initiative, acting as co-counsel, filed an individual complaint before the UN Human Rights Committee (CCPR), referring to violations of his right to integrity, the right to a fair trial, the right to freedom of expression, the prohibition of torture, and the prohibition of discrimination¹⁰⁵.

At the same time, A. Askarov's lawyer continued reviewing possibilities for domestic remedies. He collected written testimonies from witnesses in favour of A. Askarov's innocence. He then submitted the new material to the Prosecutor General. In May 2013, the Office of the Prosecutor General conducted a review of the criminal case to decide whether or not the case should be reconsidered in light of newly-discovered circumstances. Nine months later, in February 2014, an investigative group of the Prosecutor General concluded that there were no grounds for reopening the investigation. A. Askarov's lawyers appealed this decision in court.

On April 30, 2014, the Oktyabrsky District Court in Bishkek found the decision invalid, referring to A. Askarov's arguments that the investigative group had failed to review his testimony and to interview his wife, their neighbours, and relatives, and to signs that evidence in the criminal case file had been falsified and had not been given a proper legal evaluation.

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¹⁰² See Sondra S. Crosby Affidavit, January 12, 2012: <https://cpj.org/reports/Askarov.Medical.Exam.ENG.pdf>.

¹⁰³ Previously, Kubatbek Baybolov was sitting at the Parliament and also held positions within the Executive. From June 13 to July 13, 2010, he was commandant of Jalalabad Region. From June 13 to September 13, 2010, he was Minister of Internal Affairs. In 2015, he was running again for a sit at Parliament.

¹⁰⁴ Interview with Kubatbek Baybolov, former Prosecutor General of Kyrgyzstan, September 21, 2015.

¹⁰⁵ See Open Society Justice Initiative Communication to the CCPR, November 2012: <https://www.opensocietyfoundations.org/sites/default/files/askarov-hrc-11132012.pdf>.

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The Prosecutor General's Office challenged this ruling and filed an appeal against it. This appeal was granted in part by the Bishkek Municipal Court on June 12, 2014, which ruled that the Supreme Court (and not a lower court) was the competent body to review appeals against a Prosecutor's decision regarding the refusal to re-open an investigation in light of newly-discovered circumstances. As the Criminal Procedural Code does not specify which court has competence to review an appeal against a prosecutor's refusal to reopen an investigation in light of newly-discovered circumstances, A. Askarov's lawyer filed an appeal against the June 12, 2014 ruling and filed an appeal against the Prosecutor General's decision not to reopen the investigation before the Supreme Court.

On September 3, 2014, the Kyrgyz Supreme Court reversed the Bishkek District Court decision of April 30, 2014 and rejected Azimjan Askarov's appeal for a review of the case without providing any explanation.

The hearing was marked by acts of intimidation against A. Askarov. It was reported that several unidentified athletic-looking men appeared in the hallway of the Supreme Court before the beginning of the court session. One of them tried to speak privately with A. Askarov's lawyer and Tolekan Ismailova, Chairman of the human rights NGO Bir Duino. He was turned away and, upon noticing that a journalist was recording him on a mobile phone, he made several threats against the journalist and then left¹⁰⁶.

Numerous international human rights NGOs, among which the Observatory, denounced the human rights violations committed during the investigation and trial and urged the authorities to review A. Askarov's conviction and release him.

Similarly, OSCE observers of the first and second instance trials "reported serious violations of fair trial standards, such as over-reliance on police evidence, and the failure of the authorities to adequately address the intimidation of defence witnesses and lawyers, to consider exculpatory evidence, and to effectively follow-up on visible signs of torture"¹⁰⁷. On July 30, 2014, Head of the Human Rights Department of the ODIHR Snježana Bokulić visited Azimjan Askarov in prison in Bishkek. The then High Commissioner for Human Rights Navi Pillay also "voiced deep regret at the decision taken on Tuesday by the Kyrgyz Supreme Court in the case of human rights defender Azimjan Askarov". "His arrest is believed to be related to his peaceful activities as a human rights defender, particularly his documentation of inter-ethnic violence in the Jalal-Abad region in June 2010"¹⁰⁸. EU institutions also called Kyrgyzstan to guarantee A. Askarov's right to a fair trial as well as for his release¹⁰⁹. Numerous foreign high level officials and heads of State have also called for the revision of his trial and his release.

Following his detention, A. Askarov received several international human rights awards. In 2011, the Czech foundation People in Need awarded A. Askarov its Homo Homini award for "dedication to the promotion of human rights, democracy and non-violent solutions to political conflicts"¹¹⁰. In 2012, he was awarded the Committee to Protect Journalists (CPJ)'s International Press Freedom Award, and, in July 2015, A. Askarov received the Human Rights Defenders Award from the United States Department of State. The award of the latter prize led to a major diplomatic crisis between Kyrgyzstan and the United States. As a result, on August 20, 2015, the Kyrgyz authorities scrapped a 1993 cooperation treaty with the United States.

Unfortunately, allegations of torture and fair trial violations have never been properly investigated by Kyrgyz judicial institutions.

Furthermore, A. Askarov is facing restrictions to his right to visit, including family visits and lawyer's visits. In particular, after he received the US award, the Kyrgyz Government has been declining all requests from human rights defenders and Western diplomats to visit A. Askarov. Eamon Gilmore, former Minister for Foreign Affairs and Trade of Ireland, was the last official who

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106 See Bir Duino.

107 See OSCE Press Statement, July 30, 2014: <http://www.osce.org/odihr/122117>.

108 See UN High Commissioner for Human Rights Press Statement, *Kyrgyzstan: UN official urges judges to respect defendants' civil rights*, December 22, 2011: http://www.un.org/apps/news/story.asp?NewsID=40819#.Vw-_bhzs_Xp.

109 See European Parliament Resolution of January 15, 2015 on Kyrgyzstan, homosexual propaganda bill (2015/2505(RSP)): <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0008&language=EN&ring=P8-RC-2015-0054>.

110 See People in Need webpage: <https://www.clovekvitsni.cz/en/human-rights/info/homo-homini-award>.

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was allowed to visit A. Askarov in December 2014 during a mission organised by the international NGO Front Line Defenders. Moreover, in its response to several requests sent by the Observatory to the Government of Kyrgyzstan to visit A. Askarov, the Federal Service for the Execution of Punishments stated that no visit would be possible in light of its Order No. 364 "On Enhanced Readiness" of September 14, 2015. Besides, this response was only received as the mission was drawing to an end. This is evidence that the Kyrgyz Government did not wish to allow A. Askarov to meet with representatives of the international community.

A. Askarov also faces punitive measures in detention. For example, on December 1, 2015, he was forced to meet his attorney, V. Vakhitov, in handcuffs. Prison officials refused to take off the handcuffs, invoking the implementation of a regulation. The same incident occurred on December 9, 2015, but the prison officials finally accepted to take the handcuffs off. In neither of the cases, A. Askarov and his lawyer were granted access to relevant documents justifying any new regulations. Moreover, on December 1, 2015 and on January 25, 2016, A. Askarov's lawyer was denied the right to talk privately to his client, in violation of the Criminal Code. Article 61 stipulates that convicts are granted the right to meet with their lawyers in private, without limiting the number nor the duration of such meetings. Furthermore, no clause stipulates the necessity to use handcuffs during convicts' meetings with lawyers or family members.

On January 25, 2016, A. Askarov was again brought to the prison meeting room in handcuffs. The same day, his lawyer V. Vakhitov had difficulties passing a parcel to him. First, the prison administration refused to pass over any of the items to A. Askarov. The parcel contained the texts of the Constitution, the Criminal Code and the Code of Criminal Procedure, TV and radio sets, a wall calendar, a hot plate and an extension cord. After day-long clarifications, the items were handed over to A. Askarov, except TV and radio sets.

Such restrictions amount to violations of A. Askarov's rights as a prisoner since he is submitted to additional acts of intimidation and punishment in detention.

A. Askarov complained to the Prosecutor General's Office, the Chair of the Federal Service for the Execution of Punishments under the Government, and the Director of the National Centre for the Prevention of Torture to alert them on these incidents. The Office of the Prosecutor General rejected the complaint arguing that the process of bringing A. Askarov to a meeting in handcuffs was in conformity with the Instructions on Detention Procedures of Convicts' Sentenced to Life Imprisonment (No. 480 dated November 16, 2011).

In its reply, the Office of the Prosecutor General failed to address the issue of the lawfulness of keeping A. Askarov in handcuffs during meetings with his lawyer as well as the issue of the privacy of meetings between a prisoner and his lawyer. Other institutions did not respond to the complaints. Bir Duino has sent a communication to the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment on these incidents.

A. Askarov's wife, Khadicha Askarova, also encounters difficulties when she visits her husband. Sometimes she is denied access to the prison. On other occasions, visits take place in bad conditions. Sometimes, visits take place right in A. Askarov's cell, rather than in the family meeting room. Conditions have deteriorated in the family meeting room (lack of access to utilities such as water, heating or gas). Following the US human rights award, H. Askarova has faced more restrictions. Her right to visit was postponed several times. She is also subjected to thorough searches before visits. Finally, she is continuously subjected to acts of surveillance and intimidation by Kyrgyz intelligence agencies, a fact that was directly observed by the Observatory delegation when it tried to meet her.

A. Askarov's health condition has also seriously deteriorated over the past months. His vision and hearing have deteriorated, and he has constant headaches and pains in his legs and spine. It is likely that at a minimum these symptoms are at least partially connected to the injuries he sustained in 2010 at the hands of the police.

On March 12, 2015 and April 23, 2015, a medical doctor appointed by the association Centre of Family Reunion "Alternative" examined A. Askarov and diagnosed him with severe heart diseases, such as coronary heart disease, angina and incomplete blockade of left bundle branch block;

disorders of the cardiovascular system, such as atherosclerosis of the aorta, coronary and cerebral arteries; liver problems, such as chronic hepatocholecystitis; as well as kidney diseases such as Pasternatzky's symptom and acute chronic pyelonephritis. He was also diagnosed with deforming osteoarthritis (chronic progressive degenerative joints disease) as well as with hearing loss and high myopia. As a result of this condition, A. Askarov has reported acute pains. Although he has been prescribed more than a dozen different drugs, his condition has not improved since then. Unfortunately, in June 2015, the same doctor was denied the right to visit A. Askarov¹¹¹. The Government representatives interviewed during the mission complained that the attention put by international organisations on A. Askarov's case have made this case extremely sensitive in Kyrgyzstan. The Kyrgyz authorities do not seem ready to release A. Askarov and continue to propagate the view that A. Askarov is responsible for the ethnic clashes of 2010. Mira Karybayeva, Head of the Department of Ethnic and Religious Policy and Cooperation with Civil Society of the Administration of the President, stated that A. Askarov's release at the present time would only lead to a rise in ethnic tensions and inferred that A. Askarov was detained due to his "separatist" views¹¹². The Deputy Prosecutor General Ludmila Usmanova noted though that the case would be re-open if the UN CCPR found a violation of the ICCPR in the case¹¹³.

Finally, on March 31, 2016, the UN CCPR adopted its decision, after an in-depth review and exchange of views with both A. Askarov's lawyer and the Kyrgyz Government. The Committee concluded that Azimjan Askarov was tortured and that his right to a remedy had not been respected, that he was arbitrarily detained and that he was subject to inhuman conditions while in detention. His trial did not respect minimum international fair trial standards, in particular the right to call witnesses on his behalf, the right to cross-examine prosecution witnesses and the right to have adequate time and facilities for the preparation of his defence were violated.

The Committee urged Kyrgyzstan to immediately release Azimjan Askarov, quash his conviction and, if necessary, conduct a new trial, subject to the principles of fair hearings, presumption of innocence and other procedural safeguards on evidence, and provide Azimjan Askarov with adequate compensation¹¹⁴.

On April 25, 2016, the Supreme Court of Kyrgyzstan declared that the UN decision created grounds, under Article 41 of the Constitution, for A. Askarov to lodge a new appeal¹¹⁵.

On April 27, 2016, Azimjan Askarov filed an appeal for review of his conviction based on UN CCPR's decision.

In the days that followed, several officials and public figures, including Mr. Tabaldiev, Advisor to the President and former Chairman of the State Committee on National Security, called for a revision of Article 41 of the Constitution. Mr. Tabaldiev portrayed the UN CCPR's decision as a threat to national security and foreign interference into national affairs¹¹⁶.

III.2. Judicial harassment, police raids and confiscation of documents in NGO offices: a threat to NGOs monitoring the rights of ethnic minorities in the South

Under the pretext of fighting "ethnic hatred" and "extremism", several NGOs and their staff have been subjected to abusive police raids and prosecution. All of them were conducting human rights work related to the situation of ethnic minorities in the South of Kyrgyzstan.

111 See the Centre of Family Reunion "Alternative" Report, April 2015.

112 Interview with Mira Karybayeva, September 22, 2015.

113 Interview with Deputy Prosecutor General Ludmila Usmanova, September 21, 2015.

114 See UN CCPR Views, Views concerning communication No. 2231/2012, UN Document CCPR/C/116/D/2231/2012, April 21, 2016: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2231/2012&Lang=en.

115 Article 41.2 provides that "Everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms. In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage".

116 See article in *Kyrgyz Today*, Advisor to the President B. Tabaldiev: situation with Askarov shows that in order to strengthen the sovereignty and national security of the Kyrgyz Republic, we will have to amend the Constitution, available in Russian only, April 28, 2016: <http://kyrgyztoday.kg/ru/?p=2713>.

*Judicial harassment and search of the Advocacy Center office*¹¹⁷

On September 26, 2014, the Osh office of the State Committee for National Security (SCNS) opened a criminal case against employees of the NGO "Human Rights Advocacy Center" on charges of "inciting ethnic hatred" in connection with a research project on the rights of ethnic minorities. This project was conducted in Jalalabad and Batkensk oblasts in cooperation with the US-based human rights organisation Freedom House. The case was allegedly based on an expert opinion produced by the National Academy of Sciences and complaints made by Osh residents about a survey (even though no survey was conducted in this city). The expert opinion indicated that "under certain circumstances", some of the questions in the survey could "implicitly or covertly" lead to social unrest on ethnic grounds. As a result, the SCNS found that the opinion survey distributed by the Advocacy Center posed a threat to national security.

The SCNS conducted a search of the Advocacy Center's office within the framework of the investigation and confiscated documentation, computers, and copying machines. SCNS officers also questioned several staff members of the Advocacy Center and Freedom House. The Advocacy Center, represented by lawyers Valerian Vakhitov and Khusanbai Saliyev, filed a motion to drop the criminal investigation, and on November 3, 2014 the Osh Municipal Court dismissed it.

On November 28, 2014, the Osh Public Prosecutor's Office decided to close the case as the offence was not constituted. The confiscated equipment and documents were returned to the organisation approximately one month later. Following two months of judicial harassment, these decisions show the capacity of some courts to act independently.

Search of the Osh office of Bir Duino Kyrgyzstan and the residences of lawyers

On March 27, 2015, at 4.20 pm, Investigators A. Dzhenbaeva and A. Shadybekova, officers from the Osh office of the SCNS, searched the premises of the Osh office of Bir Duino Kyrgyzstan and the residences of two Bir Duino lawyers, **Valerian Vakhitov** and **Khusanbay Saliev**. The two lawyers were working, among other things, on torture and blackmail cases involving SCNS officials, as well as on cases related to the events of June 2010, including the case of Azimjan Askarov. This incident occurred two days after the arrest of US journalist Umar Farook (see above Section I.3).

The court's approval for the searches was based on the fact that the business cards of the two lawyers were found on journalist Umar Farooq. The investigator sought a search warrant for the premises of the two lawyers on the grounds that they could contain documents "necessary for the investigation". Judges K. Matisakova and B.T. Satybaldiyeva issued warrants to the SCNS to search the NGO premises where the lawyers worked and to search their residences.

During the searches, the SCNS confiscated computers, material related to criminal cases, flash drives, voice recorders, and discs. In total, materials on about 100 legal cases were seized, thus putting them on hold and violating the right to legal defence of victims whom Bir Duino represented in courts. As a result, SCNS employees gained access to privileged information.

On April 30, 2015, the Osh Oblast Court found all three searches illegal, and on June 24, the Supreme Court upheld this decision. All the confiscated material was returned after the decisions. While these court decisions are to be welcomed, the SCNS had these materials at its full disposal for nearly three months.

The searches violated the Law "On the Practice of Law by Lawyers" of the Kyrgyz Republic protecting lawyers from any arbitrary interference in their professional activity. In particular, Article 29.5 states that "requisitioning, seizure, examination, inspection, copying documents, collection and use of information related to legal assistance in a particular criminal case are allowed only in the case involving a lawyer as a defendant ...". The day the Osh City Court issued its order to search Bir Duino premises and the residences of lawyers V. Vakhitov and K. Saliev, neither of the two lawyers were accused in a lawsuit.

¹¹⁷ See Bir Duino.

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These illegal searches are particularly concerning as they allow SCNS officials to access confidential data on victims of human rights violations, including in cases where they stand as alleged perpetrators.

While the outcome of the legal case is satisfactory, to date, no measure or sanction has been taken against the investigators and judges in charge of the search. Furthermore, several incidents should be highlighted.

First, all the complaints regarding the actions of the investigator sent to the Prosecutor General's Office and to the Osh Oblast Public Prosecutor's Office were sent for review to the investigator whose behaviour was the subject of the complaint.

Second, during the trial at the Supreme Court, the Prosecutor stated that he was surprised that lawyers from the Kyrgyzstan Bar Council, members from such a respectable organisation, were representing V. Vakhitov and K. Saliev, "lawyers who defend extremists". V. Vakhitov and K. Saliev' lawyer reminded the Prosecutor of the right to counsel.

Third, during all three trials at the Supreme Court, the Prosecutor repeatedly requested that the judge from the Osh Oblast Court be subjected to disciplinary action in connection with the decision he issued in this case.

Additionally, on April 30, 2015, 10 young people arrived at the building of the Osh Municipal Court bearing banners reading "Bir Duino Defends Extremists", "Vakhitov and Saliev Defend Extremists", and so forth. After Aziza Abdirasulova, Head of Kylym Shamy, spoke with them, they rolled up their banners and entered the courtroom as audience members. Bir Duino fears that this rally was organised by staff of the Osh Oblast Office of the SCNS.

III.3. Physical attacks against lawyers representing minorities in southern Kyrgyzstan

The persecution of lawyers protecting the rights of ethnic Uzbeks in Kyrgyzstan is not limited to searches and the confiscation of documents. In some cases, lawyers were attacked in court buildings and even courtrooms.

Attacks against lawyers Kalybay Pratov, Dinara Medetova, Kuban Zhoroyev and Ryspek Adamaliev as well as against Dina Ivashchenko

For example, lawyers **Kalybay Pratov**, **Dinara Medetova** and **Kuban Zhoroyev**, who defended an ethnic Uzbek named Makhamat Bizurukov¹¹⁸, were subjected to repeated beatings. On August 20, 2013, Dinara Medetova and Kuban Zhoroyev were beaten in a courtroom of the Osh Regional Court by a dozen women supporting the alleged victim. Previously, K. Pratov, M. Bizurukov's previous lawyer, had been attacked and beaten several times. It should be noted that, one day before the August 20 attack, D. Medetova, who had replaced K. Pratov, had asked the Presiding Judge, the Office of the Prosecutor, and the Head of the Osh Oblast Internal Affairs Office to ensure the security of court hearings. Unfortunately, no measure was undertaken to prevent the beatings that took place the following day during a court hearing. Indeed, no police officer was present in the building at that time. Due to the constant attacks and the failure of police officers to guarantee the security of the lawyers, the hearing of the case was moved to Chuysky Oblast Court, in northern Kyrgyzstan, at the request of the lawyers. But even there security was not guaranteed: on January 9, 2014, the victim's relatives again attacked D. Medetova, **Dina Ivashchenko**, public defender¹¹⁹, and **Ryspek Adamaliev**, a lawyer at Kylym Shamy who was monitoring the trial. Even though Dina Ivashchenko filed a complaint at the Leninski district police, no subsequent action was taken to identify and bring the perpetrators to justice.

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118 M. Bizurukov was sentenced to life in prison for committing murder during the events of June 2010, but the Supreme Court struck down this sentence and sent the case for review (the case is being subjected to additional investigation).

119 Under the Kyrgyz Code of Criminal Procedure, a public defender can act as the legal representative of a suspect, a defendant or a victim. With some exceptions, he has the same rights and obligations as lawyers. Representatives of legal entities, political parties, trade unions, human rights organisations and other public associations can act as public defenders. The practice of public defenders in Commonwealth of Independent States (CIS) countries was taken over from the Soviet Union.

Attacks against lawyers Tatiana Tomina and Ulugbek Usmanov at the Supreme Court

Some lawyers have even been attacked at the Supreme Court. For example, on April 2, 2013, during the trial of an ethnic Uzbek named Shamshidin Nizyazaliyev, who also faced charges in connection with the events of June 2010, the victim's relatives beat S. Nizyazaliyev's lawyers **Tatiana Tomina** and **Ulugbek Usmanov** in the courtroom. The judges observed the attack without taking any measure to stop it. Two police officers finally appeared five minutes later, but their actions were not effective. In the end, the lawyers and the victim's mother were forced to flee. Though the lawyers filed a complaint before the Prosecutor General's Office, no subsequent action was taken to identify and bring the perpetrators to justice.

Beating against lawyer Kumushbek Ybykeyev

On June 18, 2014, **Kumushbek Ybykeyev**, a lawyer defending a driver who had hit and killed Rustam Makambayev, a local police inspector, was also beaten in the Osh Oblast Court House. K. Ybykeyev went to the hospital to receive medical assistance, but the police officer's relatives ran him down there and continued to threaten him. He was forced to head directly for the airport and fly to Bishkek.

None of the attackers have ever been prosecuted for their actions, even though all the beatings took place in the presence of court staff and sometimes even judges. Police officers and other law enforcement personnel who could have ensured the security of the court sessions and protected lawyers were either absent or took no action.

Worse, some attacks against lawyers involved beatings by law enforcement personnel.

Attacks on lawyers by police officers

For example, on July 4, 2013, police officers from the Osh Internal Affairs Office beat **Nazgul Suiunbayev**, who was escorting his client to the probation department. On June 1, 2014, lawyer **Almakul Turdumambetova** was beaten by police officers at the Department of Internal Affairs in Tokmok and expelled from the premises, where he had come to meet with an individual in custody. Dinara Turdumamatova, who was recording an interrogation of her clients on her phone because the interrogation was being conducted in violation of the law, was beaten by an investigator from the Osh Internal Affairs Office on May 1, 2013. After she was hospitalized, law enforcement personnel exerted pressure on doctors and demanded that they release her from the hospital.

The Observatory delegation raised the issue of attacks on attorneys during meetings with the Deputy Prosecutor General Ludmila Usmanova, the First Deputy Minister of Internal Affairs Nurbay Kasymbayev, the Head of the Department of Ethnic and Religious Policy and Cooperation with Civil Society of the Administration of the President Mira Karybayeva and the acting Kyrgyzstan Ombudsman Gulnara Jamgyrchiyeva. All of these officials asserted that they had no knowledge of any such cases and that law enforcement agencies had never received any complaints from the lawyers.

III.4. Smear campaigns against human rights defenders in the media and others acts of intimidation against human rights defenders

Since the introduction of the Draft Laws on "Foreign Agents" and on "Gay Propaganda" until the time of publication of the report, NGOs have been subjected to more harassment and smear campaigns in the media.

For example, several articles were published in *Slovo Kyrgyzstana (Word of Kyrgyzstan)*, the largest State-controlled newspaper published in Russian¹²⁰, and in *Delo.kg*, targeting Bir Duino. The rhetoric used in these articles mimicked the rhetoric of Russian State-controlled media: NGOs, such as Bir Duino and its staff, President of the Open Viewpoint Foundation **Dmitry Kabak**, or LGBTI activist **Iliia Lukash** were accused of working under the control and in the interests of

¹²⁰ See article in *Slovo.kg*, *Who feeds NGOs?*, March 14, 2014, available in Russian only: <http://slovo.kg/?p=31707>.

foreign governments, attempting to control political life in the country, destabilizing the situation in the country, and even desiring to carry out a revolution.

Harassment campaign against the Human Rights Movement Bir Duino and its Chairman

One of the key targets of this campaign was the Human Rights Movement Bir Duino, in particular its Chairman **Tolekan Ismailova**.

For example, in the days that followed several human rights activities carried out by Bir Duino in December 2013, harassment against the organisation intensified. On December 18, 2013, Bir Duino published its 2013 Annual Report. On December 22, during a regular meeting with the Public Council under the Office of the Prosecutor General, T. Ismailova gave a brief presentation on the rights of persons sentenced to capital punishment, the number of which increased significantly since the events of June 2010. In this context, T. Ismailova spoke about the rights of detained human rights defender Azimjan Askarov. On December 23, 2013, T. Ismailova, together with a member of Parliament, Abdumanap Kutushev (from the Kyrgyzstan Social Democrat Party), was invited by the radio *Azattyk* to talk about the negative influence of the Shanghai Cooperation Organisation (SCO) and the Collective Security Treaty Organisation (CSTO) on the enjoyment of human rights in Kyrgyzstan and on the territory of post-Soviet countries. In the days that followed, the harassment intensified against Bir Duino.

In the night of December 26, 2013, unknown perpetrators broke into the office of Bir Duino in Isanova street in Bishkek. They broke two safes and stole 33,000 som (around 485 euros) as well as the video surveillance camera and five laptops that contained a lot of key data of Bir Duino, including information on the events of June 2010 and Azimjan Askarov's case. A criminal investigation was opened on December 27 by the Investigation Department of the Pervomaysky District of Bishkek, which had not led to any result at the time of writing.

Furthermore, in April 2014, during a visit conducted by Freedom House in Osh to address various human rights issues, a crowd gathered in front of the hotel where the delegation was staying and held a protest against Freedom House. Some held banners stating "*Ismailova - enemy of the family - out of Kyrgyzstan!*". The police, who arrived to the scene, reportedly urged the staff of Freedom House to leave, saying that they could not "guarantee their safety"¹²¹. The same happened during protests held before court houses at the occasion of sensitive hearings involving alleged Uzbeks accused and Kyrgyz police victims in Osh. Posters bearing the inscription "*Bir Duino-foreign agent! Get out of Kyrgyzstan*" were used by participants to the protests.

Furthermore, in June 2015, Deputy Tursunbay Bakir Uulu, one of the sponsors of the Draft Law "On Foreign Agents", stated that Bir Duino's activities "represent a threat to the national security of Kyrgyzstan"¹²², and accused Tolekan Ismailova of "imposing non-traditional outlooks on society"¹²³. In a media interview on July 27, 2015, President Almazbek Atambayev stated that there are "foreign agent" NGOs that want to "stir up" the situation in the country. Although he did not make any direct mention to Bir Duino, he noted that in Kyrgyzstan "there are human rights defenders who have gone so far as to promote the film '*I'm Gay. I'm Muslim*', thereby referring to Bir Duino.

Indeed, the film '*I'm Gay. I'm Muslim*' was intended to close the VI International Human Rights Documentary Film Festival, held annually by Bir Duino, on September 28, 2012. However, not long before its screening, the Pervomaysky District Court in Bishkek found this film to be extremist and its showing was banned by the police. Bir Duino appealed this decision before the Bishkek Municipal Court, which rejected the appeal. Bir Duino lodged an appeal before the Supreme Court, but Bir Duino lawyer Abdyerim Ashirov died suddenly before the hearing, and therefore the Supreme Court refused to consider the case as the claimant had failed to appear.

In parallel, T. Ismailova and her family have faced a series of acts of harassment since the beginning of 2014 and until today. Lately, Tolekan Ismailova's grand children have also been subjected

121 See Bir Duino.

122 See article in *ns40gezitter.org*, *Baisalov and Ismailova: Foreign agents?*, June 2, 2015, available in Russian only: http://ns40.gezitter.org/politic/40457_baisalov_i_ismailova_inostrannyye_shpionyi/.

123 See article in *bekeshev.kg*, *Dastan Bekeshev expressed his opposition to the "Foreign agents" bill*, June 5, 2015, available in Russian only: <http://www.bekeshev.kg/?p=31426>.

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to verbal harassment at school on the part of classmates and school staff. The family is being constantly followed by suspicious individuals. Recently, unidentified individual in black tried to break the lock of the family apartment's door. He was noticed by a neighbour who apparently scared the assailant. T. Ismailova has informed the police about this situation, but no protective measure or investigation has ever been taken.

Ongoing smear campaigns against Azimjan Askarov

Furthermore, while Azimjan Askarov has been in custody for over five years, he also continues to be a favourite target of smear campaigns. For example, on June 13, 2015, MP Jyldyzkan Joldoshev stated in an interview that A. Askarov was not "protecting the rights of a single citizen in Kyrgyzstan", that he "crossed the border from Uzbekistan, thus violating the border", and that he "organised actions that led to the conflict between the two ethnic groups"¹²⁴. The Kyrgyz President in turn called the awarding of the US State Department human rights prize to A. Askarov a "provocation to incite ethnic discord"¹²⁵. Unfortunately, such comments and remarks by State officials bear important consequences: both foster attacks and the criminalisation of human rights defenders.

III.5. Violence against LGBTI human rights defenders

LGBTI organisations in Kyrgyzstan face even greater challenges than other NGOs, since, in addition to the pressure exerted on all human rights organisations, they face violence from nationalist groups. Additionally, many lawyers, activists, and NGOs refuse to cooperate with LGBTI organisations in order to avoid being associated with an issue that remains sensitive in Kyrgyz society.

In 2014, several LGBTI defenders reported acts of harassment and threats on social networks, including death threats following the publication of a report on police violence against gay and bisexual men in Kyrgyzstan by Human Rights Watch¹²⁶.

Attack and harassment against the LGBTI group Labrys

The Bishkek office of the LGBTI organisation Labrys was attacked on April 3, 2015. At approximately 10.30 pm, two unknown individuals flung three bottles containing an incendiary mixture into the courtyard of the group's building. Fortunately, the fire did not spread to the office walls, so the organisation's property was not damaged. The nature of this attack indicates that the goal was arson.

As a result, Labrys was forced to move to a new location after this incident.

Activists with this organisation did not ask law enforcement agencies for protection after the attack because they believe that an effective investigation would not have been conducted. They also think that, in Kyrgyzstan, the police department itself is generally the source of violence against LGBTI groups.

Their fears were confirmed very shortly after this incident. On May 17, 2015, representatives of the nationalist movements Kalys and Kirk Choro, two groups well known for their anti-LGBTI positions, forced their way into a Labrys event celebrating International Day Against Homophobia and Transphobia.

This event, which was attended by approximately 30 people, started at 2 pm in a private café in Bishkek. By 2.15 pm, the attendees learned that the leader of Kalys was standing near the café and setting people up around the perimeter of the adjacent area. A crowd of men had gathered by the

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¹²⁴ See article in *ns40gezitter.org*, Jyldyz Jodosheva, member of Parliament: A. Askarov did not defend rights of a single Kyrgyz citizen, July 13, 2015, available in Russian only: http://ns40.gezitter.org/society/41701_jyldyzkan_joldosheva_deputat_jk_a_askarov_ne_zaschitil_prava_ni_odnogo_grazdanina_kyrgyzystana/.

¹²⁵ See article in *sputnik.kg*, *I'm Afraid, this is provocation — Atambayev on award to A. Askarov*, July 27, 2015, available in Russian only: <http://ru.sputnik.kg/video/20150727/1016994856.html>.

¹²⁶ No example is provided for fear of reprisals against LGBTI defenders.

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gate of the café by 2.30 pm and started behaving aggressively around 3 pm. They started banging on the gate and shouting threats over the fence. At 3.15 pm, the attackers broke the lock and forced their way onto the territory of the café. A fight broke out. One of the people attending the event received bodily injuries. The activists called the police.

The attackers told the activists that the event had to be shut down or they would call even more people and assault the attendees. One attacker threatened: *"You won't leave here alive! You should all be burned! We won't allow you to leave this café quietly"*.

The patrol officer who arrived ordered everyone to the local police precinct. Even though the activists were taken there as witnesses and victims, the police officers twisted their arms behind their backs and pulled their hair.

At the police precinct, all of the attendees were questioned and asked to write statements. They spent over five hours at the precinct and were never offered access to food, water, medicine, or a bathroom. Moreover, two lawyers called to the police station by activists were denied access. A third attempt to request lawyer's presence was only partially complied, as the lawyer was denied access to the interrogation room. The attackers, on the other hand, were allowed to eat, drink, and move around the precinct.

The activists' fears of possible violence on the part of the police were not unfounded: during their time at the precinct, officers cursed at them, threatened them, and refused to provide their identity. Officers tried to force some of the activists to display their genitals - this is how they searched out transgender people. Finally, the officers showed the victims' statements to the attackers, thus giving the attackers access to the activists' personal information (names, home addresses, telephone numbers).

The activists were finally released from the precinct at approximately 1 am on May 18, 2015.

A criminal case under Article 234 ("hooliganism") of the Criminal Code was opened against the attackers. At the time of publication of this report, the investigation was ongoing.

As Labrys members noted during a conversation with the mission delegation, the number of threats and attacks against LGBTI groups and human rights defenders has surged with the introduction of the draft law stipulating criminal and administrative liability for "the formation of a positive attitude towards non-traditional forms of sexual relations". The fact that the film *"I'm Gay. I'm Muslim"* was found to be extremist (see Section II.3.) is indicative of the level of homophobia within Kyrgyz federal agencies. Specialists at the State Committee for Religious Affairs found that this film "contains signs of incitement of religious hatred and the disparagement of Muslims based on religious reasons", while the Committee's inspector stated in the media that the goal of this film was to "destabilize the situation in the country".

Conclusion and recommendations

The Observatory delegation appreciates that all authorities met during its mission in Kyrgyzstan acknowledged the legitimate, necessary and positive role of human rights defenders in society and the need to pursue reforms to ensure the greater respect of their human rights obligations. That being said, the Observatory deplors the fact that the authorities failed to allow its delegation to visit human rights defender Azimjan Askarov in detention, while his health reportedly continues to deteriorate. More generally, even though the Government of Kyrgyzstan has made effort to cooperate with international human rights bodies, these efforts remain insufficient. It must now implement the recommendations of international human rights bodies, including those outlined below.

In particular, the Observatory regrets that over the past years State authorities have failed to guarantee a safe and conducive environment for human rights defenders across the country.

Civil society in Kyrgyzstan has indeed come under increasing pressure from both State officials authorities and nationalist groups, whose attacks are not being adequately addressed and suppressed by the authorities. In particular, organisations and individuals working to protect traditionally oppressed groups - the Uzbek ethnic minority and the LGBTI people community - have been subjected to the greatest pressure.

This pressure has been seen in attempts to impose severe legislative limitations on human rights activities, the initiation and support of smear campaigns to discredit the work of human rights defenders, and individual cases where illegal pressure was directly exerted on them (through for instance investigations, prosecutions, searches, beatings, etc.).

The introduction of the Draft Laws on "Foreign Agents" and "Gay Propaganda" has had an extremely negative impact on Kyrgyz civil society, by portraying them as potential "foreign agents" and forcing them to express their opinion on human rights issues deemed sensitive. First, such legislative initiatives, whether or not they are adopted, have placed human rights defenders and NGOs in a vulnerable situation where they have to put a lot of effort and energy to safeguard their capacity to act instead of being fully devoted to the support of victims of human rights violations. Second, they reinforce the atmosphere of distrust and animosity towards NGOs in society, which, along with the discrediting of their activities in mass media publications, may result in extremely negative consequences, all the way up to raids on offices and events. Third of all, the very presence of such draft laws in Parliament can only lead to a growth in hate speech and, as a result, violence against those individuals that many NGOs are working to protect, particularly vulnerable groups such as national minorities and members of the LGBTI community.

Causes of such detrimental context can be attributed to external political and economic factors such as pressures exercised by Russian counterparts, but also to internal factors, such as the need to strengthen the rule of law and democratic governance through the adoption of genuine reforms on the independence of the judiciary, the fight against corruption and the fight against impunity.

Among national institutions whose task is the protection of human rights, there is not one that has demonstrated the willingness or capacity of taking effective actions in this arena. State institutions recently set up have also failed to play their role: the Ombudsman is not sufficiently involved in high-level human rights discussions (such as the EU-Kyrgyzstan Human Rights Dialogues) and the national preventive mechanisms are very weak, among others because they lack adequate funding needed for conducting inspection visits and awareness raising activities.

Limitations have also been inexorably placed on freedom of the press, and reforms should aim at strengthening the independence and diversity of media outlets and journalists.

In a context where corruption is high and institutional watchdogs remain weak, Kyrgyz human rights defenders appear as the main critical voice to the regime. As a result, they are at the front line of repression by State authorities and non-State actors, such as nationalist groups. In order to strengthen the rule of law and democracy, and in turn to improve the working environment for human rights defenders, the Kyrgyz authorities must prioritise the fight against corruption,

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build an independent judiciary and provide effective powers and independence to institutional watchdogs, such as the Ombudsman.

Today, the recent UN CCPR decision on Azimjan Askarov appears as a test case for the authorities of Kyrgyzstan. The legal obligation to release Azimjan Askarov is clear and Kyrgyz law recognises international standards as part of domestic law. It is now for the Judiciary to choose on which side it wants to come down in the history books. On the side of repression, or as part of system of justice and the rule of law.

Having analysed the current situation of human rights defenders in Kyrgyzstan, the Observatory calls upon:

1. The Government of Kyrgyzstan to:

Regarding the protection of human rights defenders

- guarantee in all circumstances the physical and psychological integrity of all human rights defenders;
- put an end to any kind of harassment - including at the judicial level - against all human rights defenders;
- carry out an immediate, thorough, impartial and transparent investigation into all allegations of human rights violations against human rights defenders and organisations in order to identify all those responsible, bring them before an independent tribunal, and sanction them as provided by the law, taking into account, where relevant, the motive of hate as an aggravating circumstance;
- create and maintain a safe working environment for human rights groups and defenders, including for those protecting the rights of minorities;
- ensure the respect of freedoms of association, peaceful assembly and expression, in accordance with the International Covenant on Civil and Political Rights as well as the UN Declaration on Human Rights Defenders; to that end reject the Draft Law on "Gay Propaganda", which is currently under consideration in Parliament, and repeal or amend restrictive amendments to the Law on "Combating Extremist Activities", and to the Law criminalising libel so as to ensure that they are not used abusively to harass or criminalise human rights defenders for their human rights activities;
- fully implement the decisions and recommendations of United Nations (UN) treaty bodies and in particular to:
 - immediately release Azimjan Askarov, quash his conviction and, if necessary, conduct a new trial, subject to the principles of fair hearings, presumption of innocence and other procedural safeguards on evidence, and provide Azimjan Askarov with adequate compensation (UN CCPR Views concerning communication No. 2231/2012);
 - undertake a full, effective and independent investigation into the claims of torture made by Azimjan Askarov; ensure that Azimjan Askarov receives adequate medical care during his detention; and review the grounds for his continued detention in light of his allegations, respecting all requirements for a fair trial and avoid any threats against human rights defenders, irrespective of their ethnic origin (UN CAT, 2013; UN CERD, 2013; UN CCPR, 2014);
 - ensure that journalists, human rights defenders and other individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Human Rights Committee's General Comment No. 34 (2011) on the freedoms of opinion and expression (UN CCPR, 2014);
 - ensure that threats, intimidation and violence against human rights defenders and journalists are investigated, that perpetrators are prosecuted and punished, if convicted, and that victims are provided with compensation (UN CCPR, 2014);

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- ensure that all individuals or organisations can freely provide information to the Human Rights Committee and should protect them against any reprisals for providing such information (UN CCPR, 2014);
 - ensure that human rights defenders and independent lawyers are protected from intimidation or violence as a result of their activities; ensure the prompt, impartial and thorough investigation of all allegations of harassment, torture or ill-treatment of human rights defenders, and prosecute and punish the perpetrators with appropriate penalties; consider accepting the request for a visit by the UN Special Rapporteur on the Situation of Human Rights Defenders; refrain from enacting legislation that would impede the ability of human rights defenders to conduct their activities in line with the provisions of the UN Declaration on Human Rights Defenders; and ensure that no individual or group will be subjected to prosecution in reprisal for cooperating with United Nations or other international, regional, or national human rights entities (UN CAT, 2013);
 - ensure freedom of association, in accordance with article 22 of the Covenant, and refrain from imposing disproportionate or discriminatory restrictions on the freedom of association (UN CCPR, 2014);
 - pending Azimjan Askarov's release, ensure that his right to family and lawyer visits is fully respected in accordance with the procedures and under the conditions stipulated by Kyrgyz law and international human rights standards; ensure that representatives of Kyrgyz and international NGOs and diplomatic missions have access to Azimjan Askarov in prison;
 - conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially: Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels"; Article 5, which underscores the right of every individual to form, join, and participate in non-governmental organisations ; and Article 12.2, which provides that the State shall "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of his or her rights";
 - immediately schedule a visit with the UN Special Rapporteur on the Situation of Human Rights Defenders and the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association;

Regarding the national framework for the protection of human rights

- adopt measures to strengthen the principle of the separation of powers, notably by avoiding appointing the same individuals to Executive and Judiciary positions;
- to this extent, fully implement the decisions and recommendations of UN CCPR to pursue judicial reforms to ensure a fully independent and impartial judiciary, including the establishment of objective and transparent criteria for the selection and dismissal of judges in accordance with international standards, notably the Basic Principles on the Independence of the Judiciary (1985) (UN CCPR, 2014);
- provide guarantees for the independence of court authorities at the legislative level and in practice;
- make the fight against corruption a priority for federal and local authorities;
- adopt measures to strengthen the freedom and diversity of the media;
- revise the Concept on Ethnic Relations, by placing more emphasis on the participation of ethnic minorities in the country's political and public life;

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- bring normative legal acts and the application of the law in the sphere of combating extremist activity into line with the Constitution and Kyrgyzstan's international human rights commitments, specifically: publish a list of extremist materials in the media and on the websites of authorised federal agencies of justice that combat extremist activities; adopt regulations for a coordinating expert committee to prepare expert opinions on the extremist content of informational materials and statements; end the criminal prosecution of individuals holding informational materials that have not been found to be extremist under a court decision;
 - develop and adopt comprehensive anti-discriminatory laws, prevent discrimination against vulnerable groups, including ethnic minorities and LGBTI persons, by law enforcement agencies;
 - provide for the creation of units whose responsibilities include the supervision of the implementation of anti-discrimination laws at the Public Prosecutor's Office, the Ministry of Internal Affairs, and other law enforcement agencies, ensure that laws are applied impartially, prevent discrimination against minorities, improve the system of legal protection for minorities in accordance with Kyrgyzstan's international commitments;
 - increase the number of members of ethnic minorities working in federal and municipal bodies;
 - amend the law on the office of the Ombudsman in such a way that guarantees the genuine independence of this institution;
 - ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Kyrgyzstan.

2. The United Nations, and especially its Special Procedures to:

- call upon the Kyrgyz authorities to guarantee physical and psychological integrity of all human rights defenders;
- continue to pay special attention to the protection of human rights defenders in Kyrgyzstan, in accordance with the UN Declaration on Human Rights Defenders, and to monitor the implementation of recommendations addressed to Kyrgyzstan;
- call on the Kyrgyz authorities to implement the UN CCPR's decision on Azimjan Askarov.

More specifically:

The Special Rapporteur on the Situation of Human Rights Defenders to:

- follow-up, in cooperation with other relevant Special Procedures, individual cases of defenders victims of harassment in Kyrgyzstan, in particular that of Azimjan Askarov;
- follow-up on the request for a visit with the Kyrgyz authorities in order to carry out shortly an official visit on the situation of human rights defenders;

The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to:

- follow-up, in cooperation with other relevant Special Procedures, individual cases of defenders and NGOs facing obstacles relating the rights to freedom of peaceful assembly and of association;
- follow-up on the request for a visit with the Kyrgyz authorities in order to carry out shortly an official visit on the situation of the rights to freedom of association and peaceful assembly in the country.

The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression to:

- follow-up, in cooperation with other relevant Special Procedures, individual cases of defenders facing obstacles relating the right to freedom of opinion and expression;
- request an invitation from the Kyrgyz authorities in order to carry out an official visit on the situation of the right to freedom of opinion and expression in the country.

The Special Rapporteur on the Independence of Judges and Lawyers to:

- follow-up, in cooperation with other relevant Special Procedures, individual cases of judges and lawyers facing judicial harassment aiming at sanctioning their human rights activities;
- request an invitation from the Kyrgyz authorities in order to carry out an official visit on the degree of independence of judges and lawyers in the country.

3. The European Union (EU) and its Member States to:

- prioritise human rights, the rule of law, judicial independence and anti-corruption at all levels of political cooperation with Kyrgyzstan including in high level contacts and at the Cooperation Council. These meetings must be the opportunity to systematically take stock of developments in the human rights situation in Kyrgyzstan, based on an agenda entailing *a minima* the following priorities:
 - the full implementation of UN human rights conventions; the full cooperation with international mechanisms, including UN Special Procedures; the ratification and implementation of the Rome Statute of the International Criminal Court (ICC);
 - concrete steps to end the harassment against civil society, in particular human rights defenders, including through the repeal or amendment of repressive laws affecting their work (the Law on "Combating Extremist Activities" and to the Law criminalising libel);
 - call on the Kyrgyz authorities to implement the UN CCPR's decision on Azimjan Askarov
 - the need to set up impartial investigation into all allegations of torture and other human rights violations, in particular the 2010 inter-ethnic violence; the bringing of the persons responsible for these violations to justice;
- clarify how the EU intends to combine various instruments to press for adequate action to meet these benchmarks, in particular concerning:
 - actions to be taken by the Kyrgyz authorities to meet the recommendations of the monitoring bodies of the Conventions referred to in the GSP+ (General System of Preferences Plus) scheme granted by the EU in 2016;
 - the proactive implementation of the EU Guidelines on human rights, especially the ones concerning LGBTI, freedom of expression, torture and other cruel, inhuman or degrading treatment or punishment and human rights defenders;
 - the Central Asia Rule of Law Platform and the focal sector "Rule of Law" of the Development Cooperation Instrument for 2014-2020, which should integrate indicators allowing to identify and reduce the actual gap between legislation and practice;
- connect the allocation of future instalments of budget support to advances regarding the human rights benchmarks;
- take concrete measures to implement the call made by the Council of the European Union in its 2015 review of the EU-Central Asia Strategy for a enhanced involvement of civil society in the dialogues and programmes. In particular:
 - this involvement should go beyond preparation and follow-up of the human rights dialogue and should also concern the political dialogue as well as sectoral cooperation

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(in particular in the areas of migration, border management, electoral reform, the fight against terrorism, security and drug trafficking), areas for which the EU should ensure that human rights safeguards are systematically main-streamed;

- support to the independent civil society should lead to its effective protection and to the reinforcement of its capacity to hold public authorities accountable and to take part in the national decision making processes as well as monitor the implementation of public policies.

4. The Organisation for Security and Cooperation in Europe (OSCE) and notably:

The Office for Democratic Institutions and Human Rights (ODIHR) to:

- call on the Kyrgyz authorities to implement the UN CCPR's decision on Azimjan Askarov;
- keep monitoring and, where necessary, publicly react on violations of the rights of human rights defenders in Kyrgyzstan.

The OSCE Permanent Council to:

- raise the case of restrictive legislations and the arbitrary detention of Azimjan Askarov and ensure regular follow-up.

The OSCE Ministerial Council to:

- adopt a decision on the situation of human rights defenders in the OSCE region, with a focus on the situation in Kyrgyzstan.

The OSCE Participating States to:

- implement the OSCE/ODIHR Guidelines on Human Rights Defenders, in particular by taking all necessary measures of protection, prevention, reaction, and, in particular by:
 - periodically meeting with human rights defenders and giving visibility to civil society;
 - visiting Azimjan Askarov in detention;
 - conducting trial observations in cases where human rights defenders face judicial harassment as a result of their human rights activities.

5. States having a strong economic relationship with Kyrgyzstan to:

- call on the Kyrgyz authorities not to adopt legislations which might restrict the activities of human rights defenders, including the Draft Law on "Gay Propaganda";
- call on the Kyrgyz authorities to implement the UN CCPR's decision on Azimjan Askarov;
- call on the Kyrgyz authorities to improve the working environment for human rights defenders.

ANNEX - List of persons met by the mission

Meetings with State authorities:

Abdyrakhman Mamataliev, Vice Prime Minister and Chair of the Inter-governmental Coordination Council on Human Right

Nurbai Kasymbaev, First Deputy Minister of Interior

Mira Karybaeva, Deputy Chief of Staff of the President and Head of the Department of Ethnic and Religious Policies and Interaction with Civil Society under the President

Ludmila Usmanova, Deputy Prosecutor General

Mukambet Kasymaliev, Chairman, Constitutional Chamber of the Supreme Court

Jarkyn Bapanova, Member, Central Election Commission

Gulnara Djurabaeva, Member, Central Election Commission

Gulnara Zhamgyrchieva, Ombudsman ad Interim

Shambet Kasymov, Head, regional office of the Ombudsman

Alima Amanova, Head, regional Ombudsman office of the Jalal-Abad region

Koshmat Myrzaev, Officer, regional Ombudsman office of the Jalal-Abad region

Meetings with NGOs and human rights defenders:

Ulan Dastan uulu, Head, Legal Clinic "Adilet"

Timur Sultanov, Lawyer, Legal Clinic "Adilet"

Tolekan Ismailova, Chairman, "Bir Duino Kyrgyzstan"

Alika Karabaeva, Member, "Bir Duino Kyrgyzstan"

Aziza Abdirasulova, Head, Public Fund "Kylym Shamy"

Abdunazar Mamatislamov, Representative, Public Fund "Kylym Shamy", Jalal Abad

Maksatbek Berdikulov, Representative, Public Fund "Kylym Shamy", Jalal Abad

Nazgul Turdubekova, Deputy Chairman, Coordination Council of the National Centre for the Prevention of Torture

Ainura Usupbekova, Executive Director, Association "Taza Shailoo"

Aliya Moldalyeva, Coordinator, "Coalition for non-discrimination and justice"

Ruslan Kim, Member, "Coalition against Discrimination"

David Yanchinov, Member, Association "Labrys"

Izatilla Rakhmatillaev, Head of NGO "Zakon I Poryadok"

Timur Shaikhutdinov, Member of the Public Council of the Ministry of Interior

Daniele Rumolo, Manager of the Human Rights Programme, Tian Shan Policy Centre of the American University of Central Asia in Kyrgyzstan

Sanjar Kurmanov, Member, Public association "Labrys"

Satad Salieva: Member, feminist group

Nookat Idrisov, Legal Consultant, International Center for Non-profit Law (ICNL)

Tumara Toktosunova, Legal expert, Advocacy Centre for Human Rights

Sadykjan Makhmudov, Director and Attorney at Law, "Luch Solomona" (en. "Ray of Solomon")

Arsen Ambaryan, Legal Expert, Centre for Support of International Protection

Umar Shadiev, Centre for Social Psychiatry Law

Aida Temirbekova, Legal Expert, human rights organisation "Spravedlivost" (en. "Justice"), Jalal-Abad

Mamat Karataev, Member, Public fund "LARK", Jalal-Abad

Meetings with Lawyers:

Edward Lee, Lawyer, Bar Council of the Kyrgyz Republic

Tair Asanov, Lawyer

Bakhodyr Rasakhodjaev, Lawyer

Mukhae Abduraupova, Lawyer

Shukurullo Saliev, Lawyer

Meetings with media representatives:

Korina Chepoi, Country Director, "Internews Network"

Burulkan Sarygulova, Chief Editor, Radio "Azattyk"

Anna Lelik, Journalist, news website *Kloop.kg*

Timur Toktonaliev, Editor on Kyrgyzstan, Institute for War and Peace Reporting (IWPR)

Inga Sikorskaya, Director, School of Peace-making and Media Technologies in Central Asia

Aleksandr Kim, Former owner of the newspaper "Vecherniy Bishkek"

Naryn Idinov, Former Chief Political Editor, newspaper "Vecherniy Bishkek"

Abdumomun Mamaraimov, Chief Editor, news portal "Voice of Freedom" (vof.kg)

Alla Pyatibratova, Website Editor, Advocacy Center

Meetings with diplomatic missions and international organisations representatives:

Vera Tkachenko, International Project Manager, UN Office on Drugs and Crime (UNODC)

Synthia Schmitte, Senior Advisor on Human Rights, OSCE

Lilian Darii, Consultant on Political Affairs and Elections, OSCE

Elisabeth da Costa, UN Human Rights Office Regional Representative, UN OHCHR

Jaap Ora, Head of Political, Press and Information Section, EU Delegation

Peter Rudolf Scholz, Ambassador of Germany to Kyrgyzstan

René Holestein, Ambassador of Switzerland to the Kyrgyz Republic

Richard Dewel, Deputy Head of Mission, British Embassy in Kyrgyz Republic

Other:

Shavkat Baybabaev, Entrepreneur, owner of a cherry garden and victim of abuse by security officials

Zulfiya Omonova, Given suspended prison sentence for dissemination of extremist materials

Mamir Nurmatov, Father Abdolokha Nurmatov faced criminal prosecution for his activism in social networks and for disseminating extremist materials.

Khadicha Askarova, Spouse of Azimjan Askarov, human rights defender convicted to life imprisonment

Aida Ismailova, Candidate to the Parliament from the political party "Respublica-Ata-Jurt"

Ulanbek Ismailov, Candidate to the Parliament from the political party "Respublica-Ata-Jurt"

Altunay Omurbekova, Candidate to the Parliament from the political party "Respublica-Ata-Jurt"

Kanatbekov Turgunbekov, Head of election campaign "Kyrgyzstan"

Tamerlan Ibraimov, Political scientist, expert

Medet Tulegenov, Political scientist, expert

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Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Created in 1985, the World Organisation Against Torture (OMCT) is the main international coalition of non-governmental organisations (NGOs) fighting against torture, summary executions, enforced disappearances, arbitrary detentions and all other cruel, inhuman and degrading treatment or punishment. The strength of OMCT lies in its SOS-Torture Network composed of 311 NGOs from around the world.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions.

OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture.

OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture.

OMCT presence in Tunisia and Libya is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org

FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29