



INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW, LLC (ICNL, LLC) KYRGYZ REPUBLIC

1126 16th Street, NW, Suite 400 Washington, DC 20036 USA

Tel: (202) 452-8600 Fax: (202) 452-8555 E-mail: icnl@icnl.org

Кыргызстан, 720040, Бишкек ул. Абдрахманова 204, 4-й этаж

Тел: (312) 664-636 Факс: (312) 620-830 E-mail: NIdrisov@icnlalliance.kg

**Analysis
of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”**

March 10, 2009

On February 18, 2009 parliamentarians Iskhak Masaliev, Arapbai Tolonov and Nurgazy Aidarov submitted to the Parliament of the Kyrgyz Republic (“Jogorku Kenesh”) a proposed draft Law “On amendments to several legislative acts of the Kyrgyz Republic” (further “Draft Law”). The main purpose of the Draft Law is to introduce amendments to the Law of the Kyrgyz Republic “On noncommercial organizations” (further, “NCO Law”). This Analysis presents commentaries on provisions of the Draft Law which are certain to considerably restrict Kyrgyz and foreign non-commercial organizations (NCOs and FNCOs, respectively) from conducting activities in Kyrgyzstan.

Kyrgyzstan has established a reputation for being one of the more progressive countries in Central Asia, and indeed the NIS, in terms of protecting fundamental human rights and freedoms and creating a legal framework where civil society can work together with the government with its basic mission to improve living conditions for the Kyrgyz people. Unfortunately, many provisions in the Draft Law would undermine and reverse this effort, not only by stifling the development of civil society organizations but also by impairing Kyrgyzstan’s ability to attract foreign investment, receive humanitarian aid and profit from the wisdom of its people that are essential to maintaining Kyrgyzstan’s good standing in the world as a democratic country.

The Draft Law contains serious shortcomings that contradict fundamental democratic principles of human rights and equality. Many of the provisions of the Draft Law contradict the provisions of the International Covenant on Civil and Political Rights (ICCPR), to which the Kyrgyz Republic has been a party since 1994. Other provisions are vague and/or contradict other existing legislation in the Kyrgyz Republic.

If adopted in its present version, the Draft Law will have a profoundly negative impact on all NCOs—not only advocacy groups, but also humanitarian and social services organizations. The Draft Law would grant enormous discretion to mid-level Government officials to monitor, control, penalize and liquidate NCOs and initiative groups without appropriate oversight and review. The Draft Law creates barriers and restrictions to the operation of NCOs that have no parallel in the regulation of commercial organizations. ICNL understands the need for Kyrgyzstan—indeed, any government—to act to prevent threats to its national security and sovereignty, but by focusing on NCOs we submit that the identity of any perceived threat is being blurred and misfocused. The Draft Law also creates additional barriers for FNCOs that, if adopted, would likely result in a withdrawal of international aid at a time when, given the global economic downturn, it is arguably most needed.

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

The key issues to be addressed in this Analysis include:

1. Expanded government supervisory powers, which would include:
 - new burdensome reporting requirements on NCOs
 - the power to examine resolutions of the organization’s governing body
 - the power to send representatives to an organization’s events
 - discretionary power to determine whether activities are legal
 - discretionary power to prohibit financing of local NCOs by branches and representative offices of FNCOs
 - discretionary power to suspend or terminate the activity of NCO or liquidate NCO.
2. Prohibition on participation of NCOs in “political activity”, *per se* participation in public life.
3. Broad grounds for rejection of registration of a branch or representative office of a FNCO.
4. Possible limitations on creation and participation in informal associations.
5. Restriction and possible prohibition for foreigners to be founders and members of NCOs
6. Additional limitations on the types of persons who can be founders and members of NCOs.
7. Requirement that FNCOs purchase and maintain insurance.

This analysis will demonstrate why the above provisions are problematic for both the Kyrgyz Government and NCOs.

1. Expanded Government Supervisory Powers

The Draft Law would add significant new administrative and discretionary powers to the Ministry of Justice and its subordinate offices to examine NCO activity, attend NCO events, including internal meetings, conduct audits and request internal reports and documents (article 1.10 of the Draft Law). The Draft Law also grants the Ministry of Justice the administrative power, without prior court approval, to suspend the activity of an NCO and even cancel its registration in the event of repeated perceived violations of law or actions inconsistent with the statutory goals of the organization (article 1.10 of the Draft Law).

- ***New burdensome reports required for NCOs.*** The Draft Law increases the reporting burden on organizations by among other things requiring them to report on all funds received from foreign sources and how these are allocated or used. In addition to currently required reports to tax authorities, NCOs will be required to submit the following reports (article 1.12 of the Draft Law):
 - Information about their activities to the bodies of justice and statistics according to established procedure (i.e., the Draft Law grants to the Ministry of Justice and the Republican Statistics Agency the authority to establish their own procedures to request any information as they wish).

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”**

ICNL

- Annual reports to tax authorities regarding the structure of revenue, as well as information on the value and content of the NCO’s assets no later than a month following after a reporting period, according to established procedure.
- Monetary and non-monetary assets received by NCOs and branches and representative offices of FNCOs from international organizations and foreign states shall be accounted for separately from other revenues, and information about such assets shall be provided to the “designated government body in the area of finance”. The later requirement is especially troubling for several reasons: (1) as it requires disclosure of the source of all contributions to an NCO, it violates the right of an individual and business donors to remain anonymous (for example, a person with acquired immunodeficiency syndrome (AIDS) has a rightful wish not to advertise his contribution to the NCO on AIDS control) and could potentially cripple anonymous charitable contributions; (2) it will prevent NCOs from holding public fundraising campaigns with multiple small contributions (e.g., charity boxes in grocery shops, or charitable contributions via text-messaging (cell phones - one of the most advanced and effective means to make charitable contributions in the world); (3) as is the case with other new reports required by the Draft Law, it is troubling that some unknown “designated government body in the area of finance” will have the power to establish any requirements to please itself, without any legal boundaries or guidelines, potentially choking off all foreign aid to NCOs, including humanitarian assistance, if reporting requirements appear to be too burdensome.
- Additional special requirements are imposed on representative offices and affiliates of FNCOs. The later are required to provide information on their activities, public-benefit programs, social services contracting, amounts and sources of financing of their activities, property, expenditures, number and identification of their employees and volunteers. This information shall also be available to the Ministry of Justice. The details for reporting requirements are to be established by the Government of the Kyrgyz Republic.

A regulation that addresses these issues might ameliorate some of the burden of complying with the requirement imposed on both the government and the NGO community. One of the principal concerns with respect to the Draft Law is that it vests the government with authority to collect information that does not appear to be tied to any specific regulatory goal articulated in this or other laws. For example, it is certainly reasonable, when an organization receives income tax exemptions or other tax benefits for the state to seek reporting on information relating to the use of these benefits. Similarly, where the state has provided funding to an organization through grants or contracts, it will necessarily seek reporting to ensure that the funds it has provided are used appropriately and in accordance with the purpose for which they were provided.

By contrast, the Draft Law requires that organizations provide information on all funding received from foreign and international sources. The Draft Law does not attempt to tie this requirement to a particular regulatory purpose, and does not give any indication how the regulatory authorities may interpret or use the information. For example, suppose that upon review, the registration authority determines that an NCO is receiving grant funds from the Eurasia Foundation. Is it permitted to give warnings or otherwise question the NCO regarding its source of funding, and if so, on what authority, given that there is nothing illegal or improper about the funding source on its face?

The new reporting requirements in the Draft Law are likely to have unintended consequences. We can

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

look for precedents at similar reporting requirements introduced by the 2006 NGO Law in Russia¹. During the first two years of implementation of the Russian NGO law, the government authority in charge of enforcing and reviewing such reports failed to implement the new reporting requirements in a useful manner. Even though the efforts to enforce the Russian NGO law were accompanied by a substantial increase in the staff of the Ministry of Justice, which required new budget expenditures, the additional staff was unable to digest the “tsunami” of information received from NCOs or to enforce the submission of all these reports by thousands of NCOs. At the same time, many NCOs failed to submit reports for a variety of reasons, including because they never received information about new requirements and lacked the capacity to prepare such reports². In recognition of these facts, the Russian Ministry of Justice has now prepared a set of revisions substantially simplifying the reporting requirements enforced in 2006.

- ***The power to examine resolutions of the organization’s governing body.*** The Draft law gives the registration authority the ability to demand documents dealing with the details of an organization’s governance, including day-to-day policy decisions, supervision of the organization’s management, and oversight of its finances.
- ***The power to send representatives to an organization’s events.*** The Draft Law allows the government to send a representative to all of an organization's events, without restriction. Thus, government representatives can attend strategy meetings of advocacy groups, board meetings, and other meetings that are strictly internal to the organization. This power will have a chilling event on the ability of organizations to hold events, and on the willingness of members, service recipients, and other people to attend. This provision is inconsistent with Article 17 of the ICCPR, according to which “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.” Guarantees of people’s basic rights are applicable to NCO, as it was repeatedly emphasized in the decisions of UN Committee on human rights.
- ***Broad discretionary power to determine whether activities are legal.*** The proposed amendments would give the Ministry of Justice plenary control over the activity of NCOs. This includes the right to determine that certain activities or expenses of an NCO did not correspond to the statutory goals of the NCO or were exceeded. For example, if an NCO stated in its by-laws that it will carry out educational activities, but failed to mention that it might also help orphans, helping orphans would be considered contradictory to the by-laws, and might be a reason for liquidation of an NCO.

According to international common practices, NCOs shall have a broad legal capacity to carry on any activities, not contradicting the law, similar to businesses. The only legitimate limitation is that the primary purpose of its activities shall not be the distribution of profit. Additional limitations can be imposed only on those few NCOs who are receiving substantial tax or other government benefits, but not on all NCOs. As long as an NCO’s activities are legal, it is the NCO’s internal business how closely it follows its own by-laws, and certainly not the authority of the government to second-guess

¹ The Federal Law of the Russian Federation # 18-FZ *On Introducing Amendments to Certain Legislative Acts of the Russian Federation* came into effect on January 17, 2006.

² Analysis of the Impact of Recent Regulatory Reforms on Non-commercial Organizations and Public Associations in Russia, by ICNL, December 2007. (Available at www.icnl.org , or, upon request, in English and in Russian).

Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”

ICNL

those determinations. These proposed provisions of the Draft Law are in violation of international obligations of Kyrgyzstan, including article 17 of ICCPR.

- **Discretionary authority to prohibit financing of local NCOs by branches and representative offices of FNCOs.** The Draft Law permits authorities to prohibit branches and representative offices of FNCOs from financing certain citizens and organizations “with the goal of protecting the bases of constitutional system, public morality, health, the rights and legal interests of other persons, ensuring the country’s defense and security of the state” (article 1.12 of the Draft Law). In this case, the Ministry of Justice has a right to send branch and representative office of FNCO in written form an order on the prohibition of transfer of money resources and other property to certain categories of recipients. As is the case with other new powers discussed in the Analysis, the Draft Law grants unlimited powers to the Ministry of Justice by its own discretion to decide on the termination of financing of NCO, as the Draft Law has no any criteria of assessing the activity of NCO.
- **Discretionary power to suspend or terminate the activity of NCO or liquidate NCO.** The Draft Law grants the power to the Ministry of Justice prior to court’s approval, to suspend the activity of NCO, thus in fact to terminate the activity and liquidate any NCO. The NCO law determines variety of grounds to terminate the activity or liquidate an NCO:
 - In case of violation of the legislation of the Kyrgyz Republic or actions by an NCO, or branch or representative office of an FNCO actions inconsistent with its statutory goals and tasks, the Ministry of Justice has a right to send to the NCO or branch or representative office of an FNCO a written warning indicating the purported violation and terms for its elimination, which must be within one month or less, at the discretion of the Ministry. A warning made by the Ministry of Justice can be appealed judicially (article 1.10 of the Draft Law). If the violation is not eliminated within the term established by the Ministry of Justice, the latter can suspend the activity of the NCO for a term until the violations are eliminated. Any violation, even a failure to submit the report in a timely fashion, or non-submission to the Ministry of Justice of requested information, can lead to a warning, and theoretically to suspension of the activity of the NCO. The Draft Law specifies only the maximum term for elimination of violations (one month), while leaving open the minimum term, i.e. it can be several hours, or other term during which it will be *a fortiori* impossible to eliminate a violation, if the Ministry of Justice wishes so. If the NCO is unable to eliminate a violation in a timely fashion, then the Ministry of Justice may suspend its activity until the violations are eliminated. Immediate elimination of a violation does not necessarily cancel suspension of activity, until the Ministry of Justice recognizes the fact of elimination.
 - “Repeated violation of statutory goals and tasks, the legislation of the Kyrgyz Republic, a failure on the part of NCO, branch or representative office of FNCO to provide information required in a timely fashion are grounds to cancel the registration of the NCO and bring a claim in court requesting a ruling that the NCO, branch or representative office of FNCO be liquidated.” This is an unprecedented provision, which does not appear in the legislation of any country. It is amazing both from the perspective of civil law and the principle of rule of law. To cancel the registration of an NCO means that organization never existed. All obligations in the name of the organization are invalid, and rights of all persons who made dealings with the NCO are violated (for instance, a lease contract). Moreover, if the Ministry of Justice cancels the registration

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

prior to court proceedings, then it is impossible to liquidate the entity, as the respondent – NCO as a legal entity—has ceased to exist.

In case of any repeated violation the organization can be judicially liquidated by the initiative of the Ministry of Justice. Liquidation of an NCO is like a death sentence for an individual, the most severe punishment that should be enforced only in exceptional cases. Only the most egregious violations of the legislation should lead to the application of such a severe sanction. By comparison, repeated failures to submit tax returns under the Kyrgyz Tax Code are punishable by fines, not by shooting an individual, or liquidation of taxpayer that is a legal entity. The enforcement of this provision in practice, for instance, the forced liquidation of an NCO that fails to submit a required report more than once, will undoubtedly be considered a violation of human rights and the international obligations of Kyrgyzstan according to ICCPR.

The Criminal Code and Code on Administrative Responsibility have already established responsibility and sanctions against persons who commit offences and crimes. Persons who commit these offences shall be liable irrespective whether they are working in a NCO, government service, in business, or do not work at all. There are no legal grounds to single out special responsibility for NCOs, as this responsibility applies to all legal entities.

2. *Prohibition on participation of NCOs in “political activity”.*

The Draft Law prohibits NCO from participating in “political activity and activity in the processes of nationwide referendum” (article 1.3 of the Draft Law). The Draft Law defines “political activity and activity in the processes of nationwide referendum” overly broad:

“Political activity - activity of political parties, created for implementation of political will of certain part of the population and setting as its major task participation in the administration of state affairs only in the forms, provided for by the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic “On political parties”, as well as through introduction of proposals to the state bodies on improvement of the system of administration of state and public affaires.

Activity in the processes of nationwide referendum – is an activity related to the participation in referendums and elections to the extent and in the forms, established by the legislation on elections and referendums in the Kyrgyz Republic.”

In all countries of the world with established democratic traditions, NCOs have a right to carry out a wide range of activities relating to public policy formation, including activities directed to promote legislative reforms, to oppose state policy on different issues, to participate as observers during elections or to assist the state in development of the policy in certain areas.

Certain limitations have a place in relation to a few types of organizations (for instance, political parties) and in relation to certain kinds of activities of NCOs (for instance, financial support of political parties and candidates of election campaigns to the state bodies). As a rule “support of political parties and candidates of election campaigns to the state bodies” is best interpreted as the prohibition only on providing material support (for instance, transfer of money resources, assistance in collection of means, assistance in posting agitation posters, granting office, automobiles, other equipment, regular and active participation in agitation campaigns etc.). It is a basic democratic principle, however, that NCOs, along

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”**

ICNL

with ordinary citizens, have a right to praise, or criticize state officials or candidates to elected state offices.

The policy of granting these rights to NCOs in the Kyrgyz Republic was arrived at through a democratic process, complying with international best practice: the state does not hinder NCOs to carry out various activities, but rather promotes such activity and cooperates with them. One recent example can be the regular public messages of the President of the Kyrgyz Republic addressed to political parties and civil society organizations to make constructive proposals on improvement of the nation’s life, practice of creation of public councils under different ministries and bodies of local self-administration (which are composed of representatives of NCO), inclusion of the representatives of NCO into different working groups on development of draft laws and policy-making etc.

Another positive example is provided in provisions of the new Tax Code of the Kyrgyz Republic, where definitions of the notions “charitable organizations” and “grant” were amended to make clear that there is no prohibition on all “political activity”, but rather only a prohibition on “participation in the support of political parties and candidates of election campaigns”. Here it is applied a clear formulation of the prohibition, which has a narrow meaning and fully complies with international law and international best practice.

The proposed amendments to the NCO Law would impose a total prohibition against NCOs participating in political activity and activity in the processes of nationwide referendums. If the given provision is adopted, NCO will be “*prohibited from making proposals to state bodies on improvement of the system of administration of state and public affairs and taking part in the processes of nation wide referendums*” (i.e., during elections or referendums). At the same time the legislation of the Kyrgyz Republic has no restrictive rule for commercial organizations. A question arises: why is it bad that NCO will make proposals to state bodies on improvement of the system of administration or will organize trainings for election observers before the elections or will observe the election process as neutral independent organizations? The proposed amendments contradict fundamental principles of democracy.

3. Broad grounds for rejection of registration of a branch or representative office of a FNCO.

While the current NCO Law already provides for a sufficiently broad list of reasons for denial of registration of NCOs, the Draft Law would expand the list of reasons for denials of registration of a FNCO. The most serious ground for refusal in registration is when the Ministry of Justice is of opinion that “*goals and tasks of creation of the branch or representative office of a FNCO create a threat to the sovereignty, political independence, territorial integrity, national unity and originality, cultural heritage and national interest of the Kyrgyz Republic*” (article 1.8 of the Draft Law).

This provision would give the discretionary power to the Ministry of Justice to assess intentions, not actions, based on mere suspicion or conjecture. This approach is very subjective and will be a huge burden as for FNCOs that are seeking to be registered, as well as to the Ministry of Justice itself. The Ministry of Justice has available to it only those documents submitted for registration. Certainly, none of the FNCOs will voluntarily confess and show in documents submitted for registration that it is going to

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

carry out illegal activity. Under such situation, the Ministry of Justice will find it safer not to register at all, because ‘who knows the intentions of these foreigners’, and the responsibility is imposed on an officer of the Ministry of Justice. It is the prerogative of law-enforcement authorities, not of a registering body, to find out and punish illegal activity.

4. Possible limitations on creation and participation in informal associations.

The Draft Law eliminates provisions stating that individuals and legal entities have the right to create non-registered (informal) NCO, (article 1.2 and 1.5 of the Draft Law). On its own, the amendment does not prohibit informal groups and associations. The right to freedom of association is a fundamental human right which cannot be granted or taken away. In compliance with article 13 of the Constitution of the Kyrgyz Republic (article 13): *“1. The main freedoms and rights of man belong to everybody from birth. The freedoms and rights of a man are considered to be in effect legally. They are recognized as absolute and inalienable, and define the essence and content of the activity of the legislative and executive branch, as well as local administration bodies, and are protected by law and court.”*

Correspondingly, many countries do not have specific statutory language relating to informal (non-registered) NCOs, but permit them unconditionally within their constitutional and international obligations to guarantee the freedom of association. We hope that Kyrgyzstan respects its own Constitution and international obligations on human rights. Nevertheless the deliberate elimination of the provision stating the right to create non-registered organizations definitely raises anxiety in the light of undemocratic amendments to the NCO Law, proposed in the Draft Law. We hope that absence of a provision on non-registered organizations will not lead to unconstitutional repressions in relation to informal groups.

5. Restriction and possible prohibition for foreigners to be founders and members of NCOs.

The Draft Law requires foreign citizens and stateless citizens to be physically present within the Kyrgyz Republic in order to be founders or members of NCOs (article 1.6 of the Draft Law). This requirement raises a number of troubling questions. Kyrgyzstan has an obligation under the ICCPR, article 22, according to which:

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

This kind of limitation for foreigners is proposed to be introduced only in case of creation of NCOs, not of commercial organizations. This approach openly discriminates not only against foreigners compared with Kyrgyz citizens, but also against NCOs compared with commercial entities, and is in contradiction to the norms of international law, as well as international best practices. In the majority of developed countries, including the Group of Eight nations, the system permits foreigners to be founders and members of NCOs irrespective of a place of location.

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

At the very least, this new provision is of a special concern as it will create many problems with its implementation, and at worst it might result in complete prohibition for foreigners to participate in NCOs, and severe penalties for Kyrgyz NCOs themselves. The issues with its implementation include:

- *Time frame for “physically present within the Kyrgyz Republic”.* It is unclear whether the requirement of physical presence in Kyrgyzstan only applies to the time frame of the constituent meeting or the term during which the documents are being processed in the registration agency or any other set period of time or the whole life span of the organization. Would this imply that as soon as a foreign founder or organization member has left the territory of Kyrgyzstan, the NCO in question will have to undergo a new registration or terminate that person’s status of a founder, member or participant?
- *Confirmation of “physical presence”.* Will an NCO have to prove to government agencies that all of its founders, members and participants are physical present in Kyrgyzstan (after registration, in the process of organization’s activity)? Many public associations have hundreds of members and will be incapable of confirming the legitimate nature of their founders’, participants’ and members’ presence in the country.
- *Sanctions for violation.* In case of any violation of the legislation, an NCO can be liquidated. If the Draft Law is adopted in the present version, all NCOs with foreign founders and members can be liquidated or can be liquidated because they left the country or because NCO is incapable to present to the Ministry of Justice the evidence that a foreigner on legal grounds is physically present in Kyrgyzstan.
- *Consequences for existing NCOs.* Restrictions for foreigners are bound to create legal uncertainty for a number of existing NCOs. It is unclear what to do if an NCO’s founders once legally resided in Kyrgyzstan but then left the country or if an NCO was founded by the Kyrgyz citizens who later on became foreign nationals.
- *The new norm unjustifiably restricts the opportunity for former Kyrgyz citizens who are residing abroad from participating in public life, and from carrying out charitable activity in Kyrgyzstan.*

The best international practice is a legislation that guarantees and ensures the right to association for all people, regardless of their citizenship and place of residence.

6. Additional limitations on the types of persons who can be founders and members of NCOs.

The Draft Law also contains provisions that limit the rights of individuals and legal entities to be founders and members of NCO. In paragraph 6 of the article 1 of the Draft Law it is proposed to supplement the NCO Law with new article 6-1, part 3, as follows:

- “3. *The following categories of persons cannot be founder (sharer, member) of noncommercial organization:*
- *foreign citizen or stateless person in cases and on the grounds provided for by article 7 of the Law of the Kyrgyz Republic “On external migration”;*
 - *individual or legal entity, in cases and on the grounds, provided for by articles 9 and 10 of the Law of the Kyrgyz Republic “On resistance to extremist activity”;*
 - *individual and legal entity, included into the list in compliance with subparagraph 2 of paragraph 2 of the article 6 of the Law of the Kyrgyz Republic “On resistance to the terrorism financing and legalization(laundering) of incomes, received by criminal means”;*

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

- *person, kept in the places of imprisonment according to the court’s decision;*
- *on other grounds, provided for by the legislation of the Kyrgyz Republic.”.*

Paragraph 1 of part 3 of the proposed article 6-1 would prohibit foreign citizens to be founders (members) of NCO, *on the grounds, provided for by article 7 of the Law of the Kyrgyz Republic “On external migration”*. As it was earlier mentioned, in compliance with intentional best practice, the right to create NCO shall be granted irrespective of the place of residence or citizenship of an individual. Due to this, application of article 7 of the Law of the Kyrgyz Republic “On external migration” is not relevant, as this article is about rules of entry into Kyrgyz Republic and departure from Kyrgyz Republic of foreign citizens. The grounds for entry into Kyrgyz Republic and departure from Kyrgyz Republic are not an appropriate limitation on founders of both commercial and noncommercial organizations.

Paragraph 2 of part 3 of proposed article 6-1 contains the prohibition for individuals and legal entities to be founders (members) of NCO, *on the grounds, provided for by article 9 and 10 of the Law of the Kyrgyz Republic “On resistance to extremist activity”*. Inclusion into the NCO Law of the given provision also adds nothing to the current body of law and creates unnecessary confusion. Articles 9 and 10 of the Law of the Kyrgyz Republic “On resistance to extremist activity” contain provisions for holding existing public and religious organization responsible for carrying out extremist activity. The new article 6-2 proposed by the Draft Law lists grounds, prohibiting individuals to be founders (members) of NCO, i.e., it regulates relations arising during the creation of an NCO. As regards legal entities, the law prescribes rules for prohibiting the creation and activity of public associations or religious organizations, other organizations, goals or action of which are directed at carrying out extremist activity. Repetition of these provisions in the NCO Law serves no useful purpose.

Paragraph 3 of the part 3 of proposed article 6-1 prohibits individuals and legal entities, *included into the list in compliance with subparagraph 2 of paragraph 2 of the article 6 of the Law of the Kyrgyz Republic “On resistance to terrorism financing and legalization (laundering) of incomes, received criminal means”* from being founders or members of an NCO. Inclusion into the NCO Law of the given provision makes no sense. The list referred to is a list of states, not the list of citizens and legal entities.

Paragraph 4 of the part 3 of proposed article 6-1 prohibits from being a founder an individual, *kept in places of imprisonment according to the court’s decision*. In international best practice the right to association (union) with other persons is granted to every person without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Such international documents as ICCPR, UDHR and European Convention for the Protection of Human Rights and Fundamental Freedoms do not deny so called “convicted persons” the right to be founders or members of NCO.

7. Requirement that foreign-based NCOs purchase and maintain insurance.

In paragraph 7 of the article 1 of the Draft Law it is proposed to supplement article 9 of the NCO Law with a new part 4, which imposes a new requirement that *branch or representative office of foreign noncommercial organization, registered on the territory of the Kyrgyz Republic, is subject to insurance on the territory of the Kyrgyz Republic in the amount not less than one million soms during the period of a month from the day of*. A key question arises: insurance from what? From fire in the office or from

**Analysis of proposed amendments to the Law of the Kyrgyz Republic
“On noncommercial organizations”
ICNL**

hijacking of automobile of the branch or from something else? The goals and meaning of this sentence are not clear. Current NCO Law does not require insurance for local NCOs. Adoption of this proposed provisions will impose unfair and discriminatory barriers for foreign NCOs which carry out public benefit activities: to help needy and lonely people of advanced age, homeless children who are left without parental custody, the disabled etc.

Conclusion

Analysis of the Draft Law shows that proposed amendments to the NCO Law are discriminative; they limit the rights of NCOs, and individuals and legal entities who are founders and members of NCOs.

The most troublesome aspects of the proposed amendments to the NCO Law are (1) prohibition against NCOs to participate in political activity, (2) granting to the Ministry of Justice the overly broad rights to control NCO, including to suspend their activity and cancel the registration without court order, (3) broad grounds for rejection of registrations (4) limitations on the rights of people to form organizations and operate informally without registration; and (5) creating confusion and redundancy in the legal system by adopting redundant provisions and provisions in the NCO Law that properly belong in other laws (Tax Code, Law on social services contracting, registration law, etc).

The proposed amendments contradict the ICCPR, acceded by Kyrgyz Republic³ and other major sources of international law⁴. Even though drafters of the Draft Law refers to the fact that amendments to the Law are being proposed *in the interests of state or public safety, public order, the protection of public health or morals of the population or the protection of the rights and freedoms of others*, however, these amendments do not comply with international best practice and principles of international law.

Adoption of proposed amendments will lead to inevitable applications to the UN Committee on Human Rights, which will likely embarrass the Kyrgyz Republic before the world community. In a worst-case scenario, the state will be perceived as having transformed into an undemocratic country, resulting in refusals by international donors to lend external economic assistance, which is granted only to the countries with democratic regimes.

ICNL is grateful for the given opportunity to express its commentaries on proposed amendments to the Law of the Kyrgyz Republic “On noncommercial organizations” and hopes for further cooperation.

³ Kyrgyz Republic acceded to International Covenant on Civil and Political Rights (New York, 1966) on October 7, 1994.

⁴ Universal Declaration of Human Rights (article 20) (1948), European Convention for the Protection of Human Rights and Fundamental Freedoms (article 11) (1950), as well as International Covenant on Civil and Political Rights (Article 22) (1966) contain almost the same provisions.