

Name: Citizens Against Corruption (CAC)

Country: Kyrgyzstan

Date of submission: 18/06/2012

Questionnaire:

Point 1:

A) Does your country have a specific legal framework, laws or codes to assist or protect activities of human rights defenders?

Please, fully cite names of any laws or codes applicable

Answer: Yes, there are certain laws. Activities of non-governmental and non-commercial organizations is regulated by the Law “On non-governmental organizations” from October 15, 1999 no. 111. Kyrgyz Constitution also guarantees creation and functioning of civic assemblies in Kyrgyzstan (Article 4, part 2). The state guarantees non-governmental organizations appropriate conditions to fulfill aims laid out in their charters (Law on Non-Commercial Organizations, Article 5, Paragraph 1 and Article 15).

Unfortunately, there is no separate regulation or other document on advancement of human rights work, including assistance or protection of human rights defenders’ work, in accordance with UN Declaration on human rights defenders, OSCE and EU Guidelines on human rights defenders

B) Please specify how these laws and charters correspond to international legal standards, including, but not limited to, Declaration on Rights of Human Rights Defender

Answer: Norms of Kyrgyz Constitution and the Law on Noncommercial Organizations regarding civic unions in general do correspond to international legal standards.

B) Please specify which legal and administrative guarantees are being implemented to prevent unjustified legal action against human rights defenders and/or criminal persecution of them

Answer: In Kyrgyzstan all are equal before law and court (Constitution, Article 16, part 3). State bodies that attempted to constraint activities of human rights organizations bear responsibility before law (Law on Noncommercial organizations, articles 5 and 15). Unfortunately, obsolescence of laws and discrepancies between Codes of Administrative and Criminal Liability allow for loopholes that officials could use to legally punish journalists, human rights defenders and activists. Due to imperfections in the judicial system, courts often make politically motivated decisions, illustrative example is the case of a well-known human rights defender Azimzhan Askarov who was denied access to justice and whose statements about torture and rough treatment were not taken into account by the court. Currently he is in penitentiary colony no. 47 serving a life sentence.

Point 2:

A) Please describe measures adopted, if any, to ensure that national security legislation (including laws on public security and order, respect for morals, antiterrorism) are not used to limit activities of human rights defenders.

Answer: the new Constitution of Kyrgyz Republic (adopted 2010) does not limit activities of human rights defenders. At the same time, national legislation on security and order do circumscribe access of human rights defenders to penitentiary facilities (pretrial detention facilities, investigative detention facilities). Often national security service officials would nto return bodies of dead 'terrorists' who have been eliminated during special operations. The national security service system is underreformed and the danger is that suspects detained on political and business grounds might be kept out of access and in isolation, especially in accordance with latest amendments to Criminal Procedure Code which necessitate the approval of investigators before the lawyer has access to the suspect.

B) Please explain how national security legislation related to respect for human rights, to freedom of speech and opinion

Procedural norms are often violated and often innocent people become victims of the repression machine on political or economic grounds. Very often the law is applied selectively, especially regarding ethnic minorities (Kyrgyz south tragedy, June 2010).

We find national security legislation to fall short of these criteria. To make them adequate, a very careful thorough analysis (domestic and international) of legislation is needed. Kyrgyz laws, e.g. Criminal and Criminal Procedure Code remain in the format of Soviet legislation.

Point 3:

A) Please specify any measures taken to ensure that norms of Criminal Code and other national laws are not vague and broad and do not allow for arbitrary interpretation, thus limiting HRDs activities

Answer: In 2008 the government attempted to amend the Law on Noncommercial organizations and limit activities of human rights defenders. The public and defenders were against and government's actions did not have to be stopped by public protest. Currently some officials are privately claiming that some NGO activities pose danger to national security and want to monitor and control actions of HRDs, as is done in Russia and Kazakhstan.

B) Please specify what legal or administrative guarantees are provided to ensure that human rights defenders are not discriminated against in the administration of justice, be it through disproportionate verdicts, unjustified prolongation of criminal or court proceedings or any other means

Kyrgyzstan cannot provide for independent justice and access to fair court. Therefore unjust and disproportionate verdicts are given on criminal and administrative cases. One example of such a verdict is a criminal case against human rights defender Azimzhan Askarov. According to human rights defenders and his lawyers he is unjustly convicted and his right to defense was violated, the procedural regulations were not followed.

Point 4:

A) Please specify if your country implements any specific laws and administrative rules regarding registration, activities and finance of non-governmental organizations. Please fully cite names of any laws or charters.

Answer: According to the Law on Registration of Legal Persons, non-governmental organizations are to be registered with Justice Ministry. There is no law on financing of non-governmental organizations, but according to the Law on State's Social Procurement the state can place procurement orders for social services with non-governmental organizations.

B) Please explain how such legal and administrative regulations related to international obligations regarding human rights and freedoms to form associations.

Answer: The two laws mentioned above in general do not contradict international obligations. The state financing can come in the form of targeted financing of certain socially useful program of non-governmental organizations. In practice, however, only loyal NGOs get those procurement orders, i.e. pro-governmental NGOs. Therefore, placement of such orders has to be brought into accordance with international principles and standards of good governance.

Point 5:

A) Are there other criminal and other legal or administrative sanctions taken towards HRDs working individually or against associations whose members are not registered?

Answer: there are no such sanctions. But there are cases when officials initiated criminal or administrative proceedings against HRDs with independent status.

B) If such legislation exists, does it limit types of activities done by HRDs? If yes, please provide further details.

Point 6:

Please specify measures, if any, taken to ensure that internal security and state secrets legislation is not used to human rights defenders' access to information and to punish them for efforts to find and distribute information on human rights standards.

Answer: Laws on Access to information managed by state and local organizations in Kyrgyz Republic and on State Secrets disproportionately limit rights of HRDs to seek and distribution information on following human rights standards. We possess official replies from state organizations that deny information even on the number of convicted women, referring that such information is for 'internal use only' or secret.

Point 7:

A) Please specify measures, if any, aimed at preventing defamation, libel and blasphemy laws from being used to circumscribe defenders' freedom of opinion and expression

Answer: criminal liability for libel is eliminated. "No one can be criminally persecuted for distribution of information that tarnish honor and dignity of individuals" (Constitution, Article 33 part 5).

Б) How is it assured that such laws, and laws on press, censorship and the like are in correspondence with human rights standards and not used against human rights defenders carrying out their work.

Answer: International agreements signed by Kyrgyz Republic, universally recognized principles and norms of international law are a constituent part of Kyrgyz legal system. Norms of international agreements on human rights have direct application and priority over norms of other agreements (Constitution, Article 6, part 3). Unfortunately, in real life they do not function, since courts and the police base their decisions predominantly on national legislation. The process of appeal ends with Supreme Court, whose decisions are final and can not be appealed.

Point 8:

Please specify the adopted measures, if any other type of legislation is used to regulate activities of human rights defenders in your country and how application of such legislation affects the work of defenders. Please fully cite name(s) of such legislative acts.

Answer: Activities of human rights defenders are not regulated by any laws except for those cited above

Ashirov A., CAC legal expert

Tolekan Ismailova, expert on rights of women human rights defenders (FrontLine and FIDH)

May 29, 2012