Kyrgyzstan: Withdraw draft law threatening NGOs

18 November 2022

International Partnership for Human Rights (IPHR) and CIVICUS call on the authorities of Kyrgyzstan to withdraw the highly restrictive draft law on NGOs, which was recently introduced, and to ensure that any legislation affecting freedom of association that is adopted is in line with the country’s international human obligations.

The draft NGO law, elaborated by the presidential administration, was put forward for public discussion on 2 November 2022 after it was prepared in what appears to have been a rushed manner without adequate consultation with experts and civil society representatives. The draft significantly increases state control over NGOs, provides for excessive restrictions on the operations of such organisations, and raises concerns that it could be used to target groups working on issues which are sensitive to authorities.

“This draft law mirrors NGO legislation seen in other, more repressive countries in the post-Soviet region. Going ahead with this initiative would seriously endanger the operating freedom of NGOs in Kyrgyzstan and undermine hard-won gains in terms of civil society participation in the country,” said Brigitte Dufour, Director of IPHR. “The Kyrgyzstani authorities should drop this ill-considered draft law and focus instead on securing an environment in which human rights and other NGOs can carry out their crucial work without hindrance and intimidation.”

The introduction of the draft law is particularly worrisome as it comes in the context of a worsening environment for free speech and civic space in Kyrgyzstan. In recent months, the authorities have widened their campaign against critical voices, including through mass arrests and criminal charges initiated against activists, journalists and human rights defenders who have spoken out against the government. Activists and bloggers have also been intimidated and warned because of social media posts critical of the government – most recently a veteran human rights activist was singled out for pressure.

The draft law requires all NGOs, including branches and representations of foreign NGOs, to register with the authorities in order to operate lawfully in the country, unlike existing legislation that does not require compulsory state registration of such organisations. NGOs that are already registered would have to re-register within seven months after the law enters into force; otherwise, they would be liquidated. At the same time, some of the grounds on which NGOs may be denied registration are vaguely worded. For example, applications for registration could be rejected if the name of NGOs is considered to “offend” “morality” or “national and religious feelings of citizens” or – in the case of branches of foreign NGOs – if they are deemed to “pose a threat” to “national unity and identity” or to “cultural heritage and national interests”. As these terms are not defined by the law, authorities would have wide discretion to apply them and potentially use them to deny registration to groups working on minority rights or other sensitive issues.

Moreover, the draft law grants broad powers to authorities to oversee NGOs’ compliance not only with national law but also with their statutes, thus affording state bodies the role of controlling and assessing whether NGOs “correctly” implement their own mandates. As part of their oversight functions, state bodies
would be able to request access to a range of NGO documents, including bank information; to send representatives to attend any events organised by NGOs; and to carry out annual inspections of NGO activities. In this way, they would be able to interfere in the internal affairs of NGOs and potentially put pressure on groups they do not like, including by issuing written warnings to them or threatening them with closure.

In accordance with the draft law, authorities would be able to request courts to close NGOs because of even minor violations of national laws; activities considered to be contrary to their statutes; or “systematic” failures to provide required information. Authorities would not be expected to exhaust other, less harsh measures prior to taking this step. These provisions are inconsistent with international human rights standards, under which the forced dissolution of NGOs should only be used as a last resort when necessary and proportionate in response to serious misconduct. The implementation of these provisions could result in arbitrary decisions to close down NGOs which challenge public policies and seek accountability for human rights violations and other misconduct among officials.

Additionally, the draft law creates confusion by regulating the activities of “non-governmental non-commercial organisations”, although this term is not used in pre-existing legislation, which only distinguishes between commercial and non-commercial organisations. Several other provisions of the draft law create uncertainty for affected organisations because of their unclear and ambiguous wording. For example, the draft law states that “restrictions” on permissible types of activities for NGOs, as well as on their income “might be established” by national legislation without providing any further information on what such restrictions might be.

The draft law contains several discriminatory provisions, in particular provisions which prohibit foreign citizens and stateless persons from acting as founders of NGOs and which impose requirements and obligations on NGOs that do not apply to other types of non-commercial or commercial organisations. While the initiators of the draft law claim that one of its objectives is to ensure transparency of NGOs, this objective is already met by existing legislation, which sets out extensive reporting obligations for non-commercial organisations, including through a new, controversial financial reporting scheme introduced in 2021.

“If adopted, the draft NGO law would deal a serious blow to Kyrgyzstan’s vibrant civil society. It is so broadly worded that it can easily be used to arbitrarily obstruct the work of organisations that are ‘thorns in the side’ of those in power because they criticise government policies, expose human rights violations or stand up against injustice,” said Aarti Narse, Civic Space Research Officer at CIVICUS.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the Kyrgyzstani authorities have an obligation to protect the right to freedom of association in a non-discriminatory manner and ensure that any restrictions on this right meet strict requirements of necessity, legality and proportionality. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasised that associations should not be required to register in order to legally carry out their work and that registration procedures should be viewed as an exercise of notifying rather than asking for permission from authorities. Previously registered groups should not be required to reregister under newly-adopted laws to protect them against arbitrary rejection and any rejection of an application for registration must be clearly motivated.

States are also obliged to avoid measures that disproportionately target or burden civil society organisations and to ensure that such groups are able to carry out their activities without unwarranted
state interference. In its recently adopted concluding observations on Kyrgyzstan’s implementation of the ICCPR, the UN Human Rights Committee specifically called on the authorities to ensure that any legislation governing NGOs “does not lead in practice to undue control over or interference in the activities of NGOs”. Authorities must ensure that the involuntary dissolution of NGOs is only used when there is a clear and imminent danger resulting in a flagrant violation of national law and other, less drastic measures have been insufficient.

The draft law runs counter to the commitments made by the Kyrgyzstani government prior to its recent election as a member of the UN Human Rights Council for the period 2023-2025. As part of its membership bid, the government specifically undertook to enhance the capacity of civil society in the country. The draft law also endangers Kyrgyzstan’s GSP+ status, under which it enjoys generous trade preferences with the EU. In order to maintain this status, Kyrgyzstan is required to effectively implement its obligations under international human rights conventions, including the ICCPR.

The current public consultation on the draft NGO law will last at least one month, in accordance with national legislation. Following this, it will go to parliament for consideration and is planned to enter into force on 1 May 2023. The draft law has already been severely criticised by NGO representatives, human rights defenders and lawyers.

The draft NGO law was put forward shortly after another problematic draft law concerning media, also elaborated by the presidential administration. According to media reports, the presidential administration has now agreed to revise the draft media law based on feedback from the media community, as well as to submit it to the Council of Europe’s Venice Commission for an expert assessment.

We urge the Kyrgyzstani authorities to put a halt to the consideration of the draft NGO law in its current format and to ensure that any draft legislation affecting NGOs is elaborated through close and effective consultation with civil society representatives and national experts. The authorities should also request and welcome international expert comments on such draft legislation from the Venice Commission, the OSCE’s Office for Democratic Institutions and Human Rights, and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.