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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

JOINT OPINION

ON THE DRAFT LAW ON PEACEFUL ASSEMBLIES

OF THE KYRGYZ REPUBLIC

by
THE VENICE COMMISSION
and
OSCE/ODIHR

Adopted by the Venice Commission
at its 85th Plenary Session
(Venice, 17-18 December 2010)

on the basis of comments by

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I. Introduction

1. On 8 October 2010, the OSCE/ODIHR was requested by the Ministry of Justice, belonging to the then provisional government of the Kyrgyz Republic, to review a new Draft Law on Peaceful Assemblies (version of 21 September, 2010, see CDL (2010)132). The Draft is currently being under discussion in the Working Group on Bringing Legislation into conformity with the new Constitution (hereinafter “the Draft Law”), adopted by referendum on 28 June 2010. The same request for review was addressed to the Venice Commission for Democracy through Law of the Council of Europe (hereinafter, the “Venice Commission”), of which the Kyrgyz Republic is a member.

2. The Draft Law under development is based on a draft of the law from the year 2009, which was then developed under the auspices of the Ombudsman of the Kyrgyz Republic. The 2009 draft was reviewed in the OSCE/ODIHR - Venice Commission Joint Opinion-Nr: FOA/KYR/128(2009) [CDL-AD(2009)034], adopted on 22 June 2009 (hereinafter referred to as “2009 Joint Opinion”). The 2009 draft law sought to improve the Act currently in force, that is, the Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, adopted in 2008. The Act currently in force was also subject to a OSCE/ODIHR-Venice Commission Joint Opinion-Nr.: FOA – KYR/111/2008 [CDL-AD(2008)025] in the year 2008.

3. Therefore, the OSCE/ODHIR, through its Expert Panel on Freedom of Assembly, and the Venice Commission have carried out this assessment jointly.

4. This Opinion has been prepared on the basis of an unofficial English translation of the Draft Law (CDL (2010)132).

5. The Opinion was approved by the OSCE/ODIHR Expert Panel on Freedom of Assembly as a collective body and should not be interpreted as endorsing any comments on the Draft Law made by individual Panel members in their personal capacities. The present Opinion was prepared on the basis of the comments by Mr Bogdan Aurescu and Ms Finola Flanagan for the Venice Commission, and Mr David Goldberger, Mr Neil Jarman, Mr Sergei Ostaf and Mr Vardan Poghosyan of the OSCE/ODIHR Expert Panel on Freedom of Assembly. It was adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010).

II. Executive Summary

6. The Draft Law appears to reflect a clear understanding of the basic principles of freedom of assembly and generally complies with the relevant international standards. It is solidly based on the ECHR and the Guidelines, and has generally taken into account many of the OSCE/ODIHR and the Venice Commission recommendations provided in the 2009 Joint Opinion.

7. Nonetheless, there is room for improvement in the Draft Law. Adequately taking the comments below into account would help avoid arbitrary implementation of its provisions.

8. The recommendations can be summarised as follows:

General recommendations

A. It is recommended to expand the principles enunciated in the Draft Law, in order to include, amongst others, the principles of legality and proportionality, and for the Draft Law to stipulate that any restrictions to this fundamental freedom may only be imposed in accordance with the law and in pursuit of legitimate aims, and may not exceed within the limits defined by international agreements;

B. It is recommended to amend the definition of a public assembly to reflect that provided by the Guidelines;

C. It is recommended to revise and complete the list of definitions of terms provided in the Draft Law, in particular the definition of a spontaneous assembly, and to clarify the term “public events”;

D. It is recommended that the Draft Law govern assemblies which are open to the general public to attend;

E. It is recommended that the Draft Law provide for reasonable exceptions to notification requirements;

F. It is recommended that the length and conditions for the notification procedure be reasonable in relation to both the authorities and organizers and participants. The draft Law should also allow for adequate time in order that judicial review may take place, if needed before the scheduled assembly date;

G. It is recommended that the Draft Law require a prompt response of the authorities following receipt of the notification;

H. It is recommended to revise all provisions which may amount to blanket prohibitions;

I. It is recommended that the Draft Law stipulate that content-based restrictions are permissible only where an “imminent threat of violence” may be established;

J. It is recommended, in order to eliminate any ambiguity and repetitions, to revise the provisions related to obligations and liability of the state and local self-government bodies;

K. It is recommended to use the language of the Kyrgyz Constitution and refer to “everyone” throughout the Draft Law, in order to ensure that all persons (and not just citizens) are vested with the right to freedom of assembly;

L. It is recommended to re-structure the Draft Law so that the provisions on notification precede provisions on obligations of the various parties, in order to better reflect the reality of occurrence of assemblies and eliminate any transpiring repetition;

M. It is recommended to spell out that unlawful, but peaceful assemblies, should still be facilitated by law-enforcement bodies;

N. It is recommended to remove from the ambit of the Draft Law events organized by public authorities or the State;

O. It is recommended to establish one authorised body from state and/or local self-government agencies to deal with assemblies, with whom organisers would be able to effectively coordinate their plans;

P. It is recommended to ensure that both the organiser and the involved state agency have a right to address the court, and the burden of proof lies with the restricting body, not the party submitting the appeal/being restricted.

III. Scope of review

9. The scope of this Opinion covers only the Draft Law on Peaceful Assemblies. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing freedom of assembly issues in the Kyrgyz Republic.

10. This Opinion analyzes the above-mentioned Draft in terms of its compatibility with relevant international and regional standards and OSCE Commitments, and in light of Article 34 of the Constitution of the Kyrgyz Republic, as amended on 28 June 2010, which guarantees everyone the right to assemble peacefully.[1]

11. This Opinion raises key issues and provides indications of areas of concern. In the interests of brevity, the focus of the Opinion will be on areas where shortcomings are noted. Nevertheless, it is understood that the Draft Law displays many positive features and has taken on board some of the recommendations contained in the 2009 Joint Opinion.

12. The suggested recommendations are based on international agreements and commitments ratified and entered into by the Kyrgyz Republic, in particular, the International Convention on Civil and Political Rights (ICCPR)[2], which guarantees the right to peaceful assembly[3]. Furthermore, while not binding on the Kyrgyz Republic, the Opinion refers also to the European Convention on Human Rights (ECHR), which guarantees the right to assemble in similar terms to the ICCPR[4]. Therefore, the extensive jurisprudence of the European Court of

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[1] The Constitution, Article 34 reads that
"*1. Everyone shall have the right to freedom of peaceful assembly. No one may be forced to participate in the assembly.*
2. In order to ensure the conduct of a peaceful assembly everyone shall have the right to submit notice to state authorities. Prohibition and limitation on conduct of a peaceful assembly shall not be allowed; the same applies to refusal to duly ensure it failing to submit notice on conduct of free assembly, non-compliance with the form of notice, its contents and submission deadlines.
3. The organizers and participants in peaceful assemblies shall not be liable for the absence of notice on the conduct of a peaceful assembly, non-compliance with the form of notice, its contents and submission deadline.

[2] Entered into force in the Kyrgyz Republic in 2000

[3] Article 21 of the ICCPR, in particular, reads:
"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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."

[4] Article 11 of the ECHR, in particular, reads:
"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Human Rights (ECtHR), which establishes important benchmarks in this regard, serves an advisory and persuasive function herein.

13. This Opinion also refers to OSCE commitments pertaining to freedom of peaceful assembly[5] and makes extensive use of the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010 (hereinafter referred to as "the Guidelines").[6] http://www.venice.coe.int/docs/2008/CDL-AD(2008)025-e.asp - _ftn1#_ftn1

IV. Analysis and specific recommendations

A. General principles

14. Article 2.1 of the Draft Law states that "*[i]n ensuring the right to peaceful assembly the organs of state power and local self governance bodies shall be guided by the Constitutionn of the Kyrgyz Republic, the present law, international human rights treaties to which the Kyrgyz Republic is a party and which have duly come into force as well as universally recognized principles and norms of the international law.*" While it is positive that the Draft Law clearly states the supremacy of universally recognized principles and international law, the Draft Law should also state that any restrictions to this fundamental freedom may only be imposed in accordance with the law and in pursuit of legitimate aims, and may not exceed the limits defined by international agreements.

6. It is recommended that a provision be included stressing the importance of the effective application of the principle of proportionality in the implementation of the law. This would ensure that any restrictions imposed on freedom of assembly would need to pass the proportionality test, that is, be considered as the least intrusive means of achieving the legitimate purpose, in order to remain permissible.

7. It is also recommended that a prohibition of discrimination based on sexual orientation[7] be added to the principle already stipulated in Article 7.1.

17. The presumption in favour of holding an assembly is included in the Draft Law (Article 16.3 of the Draft Law) and this is welcomed.

B. Application, Title and Definitions

8. Articles 1.2(2) and 1.2(3) of the Draft Law are welcomed, as they extend the applicability of the Draft Law to those assemblies that are related to elections, referendums as well as relating to religious needs, thus following the recommendations made in the 2009 Joint Opinion[8].

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[5] Paragraph 9(2) of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) reasserts that: "*Everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by Act and consistent with international standards.*"

[6] The full text of the revised OSCE/ODIHR-Venice Commission Guidelines is available at http://www.osce.org/odihr/item_11_23835.html

[7] Article 7.1 of the Draft Law reads that "*[s]tate power organs and local self governance bodies are obliged to respect and promote the right to freedom of peaceful assemblies without whatsoever differentiation on the basis of race, ethnic background, gender, language, belief, age, political and other convictions, social background, proprietary status, birth as well as any other circumstance.*" Also, see OSCE/ODIHR-Venice Commission Guidelines, para.2.5, 48-49; *Nicholas Toonen v. Australia*, UN Human Rights Committee, No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (04/04/94), para.8.7; *Kozak v Poland* (2010), para.92.

[8] See Joint OSCE/ODIHR – Venice Commission Opinion on the Draft Law on Assemblies of the Kyrgyz Republic [CDL-AD(2009)034], para. 20

19. The title of the Draft Law reflects the recommendation on the title made in the 2009 Joint Opinion[9], and this is welcomed. The OSCE/ODIHR and the Venice Commission, would like to note, that since that time, in their assessment of legislation on freedom of assembly, they have recommended, in relation to laws relating to assembly that they have examined, that the title be "law on freedom of assembly". By removing the term "peaceful", legislation acknowledges and covers not only peaceful assemblies, but also addresses the cases where assemblies are not peaceful, or degenerate into non-peaceful assemblies. Ideally therefore, the title of the law should be amended to "Law on Freedom of Assembly".

20. The prohibition on the adoption of sub-statutory normative legal acts to limit the right to peaceful assembly is also positive in that this means that laws on assembly must be passed by parliament.[10] Any further guidelines or implementing regulations should be fully in line with the law on freedom of assembly and the guarantees contained therein.

21. Article 3.1 of the Draft Law defines assemblies as *"public events with the participation of citizens, initiated by citizens or organizations for the purpose of attracting attention of organs of state power and local self governance as well as public attention, including the expression of opinion on certain issues"*. It is recommended that this definition be reconsidered for the reasons set out below. Firstly, unfortunately, the said provision of the Draft Law does not define the term "public events" although this term is used throughout the text. It is therefore not clear whether it refers to government-sponsored assemblies, all assemblies, including government-sponsored ones, or other types of assembly. Further, since the Draft Law does not provide a definition of "public events", it is not clear what kind of assemblies or events are being referred to in its Article 6 which speaks of "other public events". It is therefore recommended that a definition of "public events" be included in the Draft Law.

22. Secondly, given the ambiguity in the definition of the term "public events" found in Article 3 of the Draft Law and "other public events" found in Article 6 of the Draft Law, it is not clear what type of event is included in or excluded from the operation of the law. Therefore, it is strongly recommended that the appropriate clarifications be made.

23. Furthermore, the definition of assembly, which refers to public events as events initiated by citizens or organizations (presumably other than by the authorities) appears to be in conflict with the language of Article 1.2(1), which includes government agencies. Therefore it is recommended that events organized by public authorities (government agencies or self-government bodies) be removed from the scope of the Draft Law. It should be noted in this respect that executive or local self-government bodies as entities cannot be participants of public assemblies covered by this law. This is distinct from individual civil servants working in the executive or in local self-government bodies, who should benefit from the right to freedom of assembly in their personal capacity. The wording of Article 1.2(1) should therefore be reconsidered. In this connection, Article 5 of the Draft Law appears to be redundant and should be deleted[11].

24. Further to the above, it is recommended that the definition of a public assembly provided by the Guidelines be used. This states that "*an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose"*[12].

[9] See Joint OSCE/ODIHR – Venice Commission Opinion on the Draft Law on Assemblies of the Kyrgyz Republic [CDL-AD(2009)034], para. 16
[10] Draft Law., Article 2.2
[11] Article 5 of the Draft Law covers public events organized by state power organs and local self governance bodies.
[12] See OSCE/ODIHR-Venice Commission Guidelines, para. 1.2

25. The definition of “peaceful assemblies” provided for by Article 3 (2) includes "*assemblies which are non-violent and unarmed in their nature and which do not pursue illegal purposes*". The context and intention behind this definition is well understood by the OSCE/ODIHR and the Venice Commission. Nevertheless, as already indicated in the 2009 Joint Opinion[13], the term “illegal purposes” remains vague and broad and, as such, could result in the exclusion of certain assemblies, which, while peaceful, could carry a message being, in substance, against the law. Therefore, references to "illegal purposes" should only appear in connection with legitimate grounds for restriction of an assembly. For this reason, it is recommended to revise the abovementioned definition.

26. The definitions of “simultaneous assemblies”[14] and “counter-demonstrations”[15] are welcome. In order to ensure consistency, the definition of “spontaneous assembly” should be transferred to Article 3 of the Draft Law.

27. Importantly, however it is recommended that the definition, in Article 4, of a “spontaneous assembly” be improved. Firstly, the current wording provides that only citizens can initiate spontaneous assemblies, to the exclusion of other actors (for instance legal entities or unregistered associations). The definition would benefit from stating the essence of a spontaneous assembly as being one which cannot be notified and which would not achieve its aim if it were to adhere to notification requirements[16].

28. The definition of “planned assemblies” should also be reconsidered as the current wording focuses on organizations as initiators of planned assemblies and refers to individuals in a subsidiary manner only[17]. Such delineation appears to be artificial and redundant.

9. The definition of organizers of a planned assembly provided in Article 3.8 would benefit from clarification. It is not clear what kind of “proof” this provision refers to by stating that “*[i]n case a planned assembly at the initiative of citizens is held, then the representation of citizens is assumed and does not require proof*”.

30. Article 14 of the Draft Law establishes that the Draft Law is applicable also to assemblies on private property. It is recommended that the Draft law be confined to assemblies on every space open to the public.

C. Enjoyment of freedom of peaceful assembly by non-nationals and other groups

10. Article 1.1 of the Draft Law states that it regulates “*social relations which are linked to the implementation of the right of each person to peaceful assembly”.* In the rest of the text, however, the Draft Law explicitly refers only to citizens who can organize and /or participate in an assembly, excluding, thereby, non-nationals or stateless persons. Being aware of the fact that the concept of “citizen” might, in some jurisdictions, refer also to individuals who are not citizens of the respective State, the Venice Commission nevertheless recommends that the word “everyone” be used throughout the draft. This will also be in harmony with Article 34.1 of the Constitution of the Kyrgyz Republic, which states that everyone has right to peaceful assembly. Furthermore, the Guidelines emphasize that “*[t]he freedom to organize and participate in public assemblies must be guaranteed […] to both nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists).*”[18] In order to

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[13] Page 5, Paragraph 21
[14] Draft Law, Article 3.4
[15] *Id.,* Article 3.3
[16] See OSCE/ODIHR-Venice Commission Guidelines, para. 4.2
[17] Draft Law, Article 4.2
[18] OSCE/ODIHR-Venice Commission Guidelines, para. 55.

remove the ambiguity, it is strongly recommended that the language of the Kyrgyz Constitution be used, which also coincides, by referring to "everyone", with the language of the ICCPR.

D. Notification of planned assemblies

11. Article 13 of the Draft Law sets forth the notification requirements. From the point of view of legislative drafting technique, it is recommended that this provision be placed after Article 6 as logically; provisions on notification of assemblies should precede provisions which cover matters that arise *after* notifying the authorities of the intent to hold an assembly. It might also allow, for some provisions in the Draft Law that are considered redundant, to be removed.

12. Article 13.2 of the Draft Law provides that notification should be submitted in written form, no earlier than two weeks, and no later than 48 hours, prior to the planned event. Article 13.4, which allows for the possibility of oral notification, is welcome as it provides flexibility.

13. It is recalled that, in terms of time limits for notification, the Guidelines state that *[t]he notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant State authorities to plan and prepare for the event in satisfaction of their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged. If the authorities do not promptly present any objections to a notification, the organisers of a public assembly should be able proceed with their activities according to the terms notified and without restriction.*"[19] Providing 48 hours as the minimum time for submitting notification is positive and therefore welcome as a general rule[20], as it enables the authorities to prepare and make adequate arrangements that might be necessary in order to ensure the maintenance, protection and promotion of the right of assembly. For the sake of practicability, it is recommended that the "48 hours" period be changed to "two working days, as a rule". When the notification is submitted on Friday afternoon, the weekend might not be sufficient to facilitate the administration of all required procedures by the relevant state bodies. It is recommended that this be made explicit.

14. However, setting the maximum period for notification at two weeks appears to be unnecessary and might preclude advance planning for large assemblies. As the Guidelines state, "*[w]hen a certain time limit is set out in the law, it should only be indicative*"[21]. The earlier the authorities know about the intention of holding an assembly, the better. In some cases, more than two weeks may be required to plan and organize large assemblies attended, for instance, by participants from different geographical locations: in addition to logistical preparations, such assemblies are costly for organizers and the latter should have the right to know that the venue will be available well ahead of time. The authorities, too, would need more time to take all required measures. In case the drafters believe that a maximum period should be established in order to prevent efforts to unfairly monopolize a venue by filing advance notices, it is recommended that the maximum period be at least 120 days. Efforts to monopolize a venue, however, could also be handled on a case-by-case basis, since the Draft Law correctly allows not only for the "main" assembly but also for simultaneous assemblies and counter-demonstrations.

[19] See OSCE/ODIHR-Venice Commission Guidelines, para. 4.1
[20] Also see OSCE/ODIHR-Venice Commission Joint Opinion of the Draft Law on Assemblies of the Kyrgyz Republic, CDL-AD(2009)034, para. 33
[21] See OSCE/ODIHR-Venice Commission Guidelines, para. 116

15. Article 13.5 of the Draft Law explicitly provides that a lack of notification does not lead to an automatic prohibition of an assembly, and that neither executive authorities nor local self-government are vested with an absolute right to ban or restrict an assembly due to a lack of notification. This provision is in line with the relevant standards. Unfortunately, however, Article 16.2 appears to directly contradict this principle, by stating that an ongoing assembly may be restricted if it has not been notified within the 48 hours timeframe stipulated in Article 13.2 of the Draft Law. This discrepancy should be corrected to ensure that lack of notification does not automatically result in prohibition or other restriction. [22]

16. The Draft Law makes notification an important obligation of the organizer. For this reason, the Draft Law should go further in specifically addressing the exceptions to such notification requirements (for instance, spontaneous assemblies).

17. Article 13.6 of the Draft Law establishes that, upon submission of a notification, the organizer may request the executive and local self-government authorities to issue a written confirmation of receipt of such notice on the same day. This confirmation should contain the title of this body, full name and signature of an official who received the notice as well as the date and time of receiving the notice. This is a very positive provision as it will avoid potential misunderstandings.

E. Restrictions of assemblies

18. As mentioned above, in relation to notification of assemblies (and consequences thereof) Article 13.5 of the Draft Law provides that "*[t]he organizers and participants in peaceful assemblies shall not be liable for the absence of notification on holding a peaceful assembly, non-compliance with the form of such notice, its contents and deadlines for the delivery.*" This provision is then directly contradicted by the text of Article 16.2, providing that an "*assembly with a notice furnished with the violation of 48 hours' period before the time of its holding, may be restricted in time, venue of holding or route of movement or may be banned by local self governance bodies, local public administration or internal affairs agencies*". The fact that the notification was not submitted in 48 hours prior to the assembly is not a sufficient reason to restrict or ban an assembly. Thus, as recommended above, the text should be modified.

40. Article 16 of the Draft Law, contains the procedure for imposing restrictions on an assembly. This does not appear to require a prompt response from the authorities, in relation to the imposition of restrictions or a ban, if applicable, following notification of the assembly. This means that the regulatory body might impose a restriction on the assembly long *after* the day on which notification is filed and shortly before the date of the planned assembly. It is strongly recommended that this shortcoming be addressed in the Draft Law. This would imply inclusion of language requiring a prompt regulatory decision and automatic notice of that decision to the organizer, thereby permitting a challenge to the decision and/or judicial review.

41. Article 17.2 of the Draft Law appears to give power to the authorities to regulate the content of an assembly's message. The provision covers a number of grounds based on which assemblies may be prohibited and is highly problematic, as it includes a number of instances where such restrictions cannot be justified.

42. First, this provision allows the prohibition of assemblies during election campaigns and campaigning on referendum issues. It is not clear why assemblies should be prohibited during such events. On the contrary, assemblies are an integral part of the election or referendum process, as they allow candidates, parties and others to publicize their views and mobilize

[22] See ECtHR, *Oya Ataman and Others v. Turkey Judgment*

support. Prohibition of assemblies at such times would amount to a restriction on the wider democratic process.

43. Second, this provision allows for prohibition of assemblies that involve "*campaigning on referendum issues outside the time established for electoral campaigning*". It is not clear why there should be a time limit for campaigning in relation to referenda or elections, unless it is clearly set down in other related laws, for instance in the Election Code. If this is the case, a reference to the specific law should be provided.

19. Third, assemblies making public calls to war, inciting hatred towards racial, ethnic, religious or other groups, or for other manifestly bellicose purposes would be deemed unlawful; their prohibition would therefore be justified in the light of the requirement to balance the freedom of assembly against other human rights, including the prohibition on discrimination. There is, however, a fine line between the degree of restriction necessary to safeguard other human rights, and an encroachment on the freedom of assembly and expression. The test is the existence of an imminent threat of violence[23]. Thus, calls to violent overthrow of the constitutional order would be deemed anti-democratic and a sufficient ground for banning an assembly, whereas expressing an opinion that the constitutional order be changed through non-violent means would deserve protection extended by the law to free speech. Furthermore, speech should not be prohibited when in abstract form; for example, a speech should not be prohibited because it advocates military action if, in the future, the nation is attacked. It is recommended that this provision be revised.

45. Furthermore, a prohibition of assemblies based on a "*call for the disruption of the state territorial integrity*" amounts to a content-based restriction. As such, it is not a legitimate restriction permitted by Article 11(2) ECHR and therefore should be deleted. The issue of territorial integrity may be a legitimate subject for public debate and discussion, provided that such debate is carried out in a peaceful manner and there is no incitement to violence and no imminent threat of violence present.

46. Article 18.3 states that measures to restrict or terminate an assembly require "*prior notification of people on the territory of holding an assembly*". This provision needs to be more precise since the notice must be delivered to the organizers and participants. Notice to others is irrelevant, unless they, too, are engaged in conduct related to the assembly.

47. The requirement that the use of force to terminate an assembly should only intervene as a measure of last resort, stipulated in Article 19 of the Draft Law, is a positive provision.

48. It is also recommended for the Draft Law to stipulate that unlawful but peaceful assemblies must nevertheless be facilitated by law-enforcement authorities and should be treated as being lawful as long as they remain peaceful[24].

F. Blanket prohibitions

49. Article 10.3 prohibits individuals working for internal affairs agencies to participate in peaceful assemblies. This provision is *prima facie* too broad and lends itself to the interpretation that for instance, police officers are barred from participation in an assembly even when they are off-duty. This is a blanket prohibition not covered by the restrictions provided for in Article 11(2) of the European Convention. If the purpose of the prohibition is to prevent improper and/or undercover surveillance of the assembly by law-enforcement officials, this should be expressly stated. Otherwise, there is no reason to exclude such individuals from taking part in public

[23] OSCE/ODIHR - Venice Commission Guidelines, para. 95
[24] OSCE/ODIHR - Venice Commission Guidelines, para. 163

assemblies in their personal capacities when such participation is not connected with the fulfilment of their professional duties. According to the Guidelines, it is permissible to impose some lawful restrictions on police who participate in assemblies, but only when the reasons for restriction are directly connected with their service duties, and "*only to the extent absolutely necessary in light of considerations of professional duty*"[25].

50. Article 7.5.6 of the Draft Law prevents state representatives from taking photographs or videos of an assembly[26]. At the same time, according to Article 10.12 of the Draft Law, internal affairs agencies are not allowed to prevent participants and others from photographing or video filming assemblies. Such a prohibition on state officials cannot be justified, although it might be considered desirable by civil society actors, particularly when there may be a history of abuse of such forms of surveillance. Further, in light of Article 10.12, it discriminates against state bodies. The right to privacy, to which the Draft Law makes reference, does not actually cover participation in public assemblies. Such a blanket prohibition will also prevent law-enforcement personnel from recording their operations or violations that might occur during assemblies. According to the Guidelines, photographing or video recording of participants by law-enforcement personnel is permissible. What is not permissible is the recording of such data and the systematic processing or preserving the record, as it might give rise to violations of privacy[27]. According to the Guidelines, *"[l]aw-enforcement agencies should develop and publish a policy related to their use of overt filming/photography at public assemblies*"[28]. Thus, it would be preferable to address this issue through a review of the control of the authorities' scope for action in relation to processing, storing and using such data, which is beyond the remit of this Draft Law.

51. Article 8.6 of the Draft Law provides for the possibility of restrictions on the sale of alcohol near an assembly venue. This issue was raised in the 2009 Joint Opinion and still requires clarification[29] as the concerns persist. The scope of potential temporary prohibition is very vague. It is not clear what drafters have in mind when referring to "*places of assemblies with a large number of participants*" or "*in close proximity to them*", leaving this provision open to possible abuse by the authorities and potentially amounting to a blanket restriction. Similarly, the timeframe for the restrictions "*for the duration of the assembly*" is vague. It is not clear whether the time should be counted from the moment when the assembly starts or from the moment when people begin to gather. In case alcohol consumption at assemblies is a serious problem, the scope for restrictions should be clarified and preference might be given to controlling public drunkenness, possession of alcohol or drinking in a public place rather than to attempting to control sales of alcohol.

G. Responsibility and liability of the authorities

52. Articles 7, 8 and 9 of the Draft Law address several layers of government, which makes the procedure according to which the organizer has to co-operate with several agencies at the same time, cumbersome. It is recommended to bring more clarity to the procedure by establishing one agency as the authorized body to deal with assemblies. It is preferable for the organizer to only deal with one body and, in case other agencies have to be involved, the burden of coordinating this involvement should lie with the authorized body.

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[25] *Id.,* para. 60
[26] Draft Law, Article 7.5(6)
[27] ECtHR, *Rotaru v. Romania Judgment* , *Amann v. Switzerland Judgment*
[28] OSCE/ODIHR-Venice Commission Guidelines, para. 169
[29] See OSCE/ODIHR - Venice Commission Joint Opinion of the Draft Law on Assemblies of the Kyrgyz Republic, CDL-AD(2009)034, para.43

53. Article 7.4 of the Draft Law provides that government officials that regulate an assembly "*should personally meet the citizens, review their demands in essence, make necessary decisions in accordance with legislation and inform interested parties about them*". Unless it is an issue of translation, this provision poses a problem. To the extent that it requires officials to *formally* address the objections to a public assembly by outsiders, it could be construed as giving them standing to go to court to challenge the right of organizers to have the assembly, and to participate in any court proceedings involving the assembly. There will always be objectors to any assembly, and giving them legal standing will permit them to disrupt the entire process. Informal consideration of outside complaints is always a possibility, thus providing the above described standing is recommended to be reconsidered.

54. Article 8.7 provides that "*bodies of local self government*" shall communicate to other relevant public officials "*about the causes of the assembly*." It is not clear what is to be communicated here or to whom. It is for the organizers and participants to communicate their message, and officials should not be given any formal obligation to communicate it. In any event there would be no guarantee that the officials will communicate accurately.

55. Article 9.7 of the Draft Law provides that the law-enforcement personnel shall remove individuals inciting unlawful acts upon the request of the organizers and participants. The wording should be revised to ensure that, first, this removal occurs after efforts to dissuade the misconduct have been unsuccessful, and second, the law-enforcement personnel is also vested with the right to make an independent assessment of the situation. This is necessary in order to prevent removal of, for example, counterdemonstrators whose behavior might be provocative but lawful. It is also important to ensure that this measure is taken as a measure of last resort.

56. The Draft Law obliges internal affairs agencies to "*inform participants of the assembly at their request about the measures taken to ensure the provision of the peaceful assembly and other matters related to the holding of the assembly.*"[30] This provision might prove to be overly burdensome, if hundreds of participants, in the period immediately prior to the assembly, are contacting the internal affairs agency for information about the assembly. This information should be provided to participants by the organizers. This provision might oblige the authorities to provide members of the media and public with such information promptly. However, this is an issue that might be addressed through legislation pertaining to freedom of information.

H. Judicial review

57. The Draft Law states that an assembly *"may be restricted in time, venue of holding or route of movement or may be banned by a court in case there are reasons envisaged in the present law"*[31]. Article 16.2 of the Draft Law provides for judicial review of regulatory limits on assemblies. This provision appears to be quite difficult to understand and would benefit from clarification. It should be explicit that both organizers and the state agency involved should be able to appeal any adverse decision.

58. It is also recommended that Article 16.5 be amended. The current wording provides that the burden of proof in court in respect of reasons for a ban or restriction of an assembly rests with the applicant. This provision is somewhat ambiguous since both the organizers and the authorities can appeal to the court and the burden of proof should lie with the body imposing the restriction and not the party contesting it. Article 16.8, which requires the decision on banning or restricting an assembly to be immediately notified to the organizer in written form is positive as it alleviates potential misunderstandings between the authorities and the organizer/s.

[30] Draft Law, Article 9.8
[31] Draft Law, Article 16.1

59. Article 20.4 of the Draft Law, which provides a defence for participants charged with taking part in an unlawful assembly, whether planned or spontaneous, if they were unaware of the unlawful nature of the event, is positive.