



**ARTICLE 19, English PEN, and PEN International
Submission to the UN Universal Periodic Review of Tajikistan**

**For consideration at 25th Session of the
UPR working group in April/May 2016**

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Executive Summary

1. ARTICLE 19, English PEN and PEN International welcome the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Tajikistan. The submission focuses on Tajikistan's compliance with its international human rights obligations in respect to freedom of expression and freedom of peaceful assembly since the last UPR review in 2011.
2. During its first review, Tajikistan accepted all six recommendations it received relating to freedom of expression.
3. We acknowledge positive reforms to legislation in Tajikistan since the first review, including the decriminalisation of two defamation and insult provisions and the adoption of a law on the print press and other mass media, which is widely considered as more compliant with international human rights standards than its predecessor.
4. However, despite positive legislative changes, in practice the situation regarding freedom of expression has not improved.
5. The submission addresses the following threats to freedom of expression:
 - Legal harassment of journalists and mass media, including the retention of criminal provisions for defamation and insult and the abuse of civil defamation lawsuits
 - Access to information
 - Blocking access to the Internet
 - Potential threats to freedom of expression in the run up to digital switch over in Tajikistan
 - Restrictions on the right to peaceful assembly.

Legal Harassment of Journalists and the Mass Media

6. We welcome the passage of Law No. 961 'On periodical press and other mass media' in 2012. The Law contains a number of positive features, including recognition of Tajikistan's obligations as a signatory of the ICCPR to promote and defend freedom of expression, the establishment of legal liability for the violation of media freedom, and a prohibition on censorship and political persecution of the expressing of critical opinions. However, despite this positive development, journalists remain subject to legal harassment, with criminal and civil charges frequently brought against critical voices and those working on the issues of corruption, extremism, and religion.

7. Provisions within the Criminal Code are unfairly applied against journalists and bloggers, exerting a profound chilling effect on freedom of expression. At least three criminal prosecutions have been filed against journalists in Tajikistan for fraud (Article 247), extortion (Article 250), treason (Article 305), criminal liability as a 'companion to a crime' (Article 36), and participation in the activities of a banned extremist organisation (Article 307.3) of the Criminal Code have been filed against journalists in Tajikistan.

- On 28 October 2014, **Makhmadyusuf Ismoilov**, a journalist from Asht district, was sentenced to 11 years imprisonment on charges of extortion (Article 250 of the Tajik Criminal Code) and fraud (Article 247), ordered to pay a fine of 5,000 Somoni (approximately USD 800) and banned from working as a journalist for three years. In 2011, Ismoilov had previously been barred from journalistic work for three years, and ordered to pay 35,800-somoni (approximately USD 7,100) for defamation, incitement to hatred and extortion. Both sets of charges are believed to be related to his legitimate journalistic activity, in particular articles criticising local authorities for corruption.
- On 16 June 2014, **Alexander Sodiqov**, a Canada-based researcher and blogger, was arrested by the State Committee of National Security (GKNB) in Khorog, a town on the Tajik-Afghan border and charged with treason (Article 305 of the Criminal Code), punishable by imprisonment of up to 20 years. The GNKB issued a statement accusing Sodiqov of espionage for an unnamed foreign country. Sodiqov was released on 22 July 2014 and subsequently allowed to return to Canada. However, the charges have not been withdrawn and the case remains open.
- On 13 June 2011, **Urunboy Usmanov**, a BBC journalist, was arrested on suspicion of membership of the banned organisation Hizb-ut-Tahrir, and of spreading extremist propaganda. The charges were based on Article 36 ('types of companions in a crime'¹) and Article 307 (3) ('participation in the activities of a banned extremist organization'), punishable by up to five years in prison. On 14 July 2011, Usmonov was released on bail and the charges against him were later reclassified due to lack of evidence. On 14 October 2011, Usmonov was found guilty by the Regional Court of Soghd region of failing to report his contact with Hizb-ut-Tahrir and sentenced to three years' incarceration, but was immediately amnestied and released.

Defamation and Insult

8. Tajikistan has not fully decriminalised defamation and insult, and disproportionate civil defamation lawsuits are frequently filed against journalists to silence critical voices.
9. During the 2011 UPR review, Tajikistan accepted recommendations on decriminalising defamation and insult, and has subsequently amended the Criminal Code by removing two of four criminal provisions on defamation and insult. Article 135 on 'defamation' and Article 136 on 'insult' have been repealed. However, the reforms did not repeal Article 137 on 'public insult or defamation of the President of Tajikistan', punishable by up to two years' imprisonment or five years' correctional labour, or Article 330 on 'insult of a public official', punishable by a fine of up to 1500 monthly calculated indexes (approximately USD 10,000), detention of up to 6 months or incarceration in a penal colony of up to 2 years.
10. Under international freedom of expression standards, criminal sanctions for defamation and insult are never acceptable, as they are open to abuse by the powerful and exert a chilling effect on freedom of expression. Moreover, civil defamation provisions can provide adequate

¹ 'Types of companions in a crime' covers those who are recognised as 'companions' to a criminal offence, it includes the person or persons who committed the criminal act, the person or persons who orchestrated the crime, and the person or persons who assisted others to commit the crime.

protection and redress for any harm caused to reputation. The retention of criminal sanctions for defamation and insult of public officials is particularly worrying. International human rights bodies have consistently ruled that public officials should tolerate more, rather than less, criticism, given the importance of ensuring public scrutiny of government actions.²

11. As a consequence of the partial decriminalisation of defamation, civil defamation lawsuits seeking excessively high compensation have become more widespread. Vague and broad civil defamation provisions, allowing for uncapped financial remedies for the publication of defamatory statements, including those considered to be inflicting moral, rather than financial, harm, are frequently filed against journalists and media outlets working on corruption or other sensitive cases, greatly impeding investigative journalism in Tajikistan.
12. The legal basis for civil defamation in Tajikistan is stipulated in Articles 170, 171, 174, 1115 and 1116 of the Civil Code. These Articles do not conform to international standards on freedom of expression, and threaten to exert a chilling effect on the exercise of this right. The concept of “reputation” protected in the Civil Code is very broad
13. Article 174 protects honour, dignity, and business reputation and provides remedies, including compensation for “moral damages” (in conjunction with Articles 171, 172, 1115 and 1116 of the Civil Code).
14. Article 174 presumes that defamatory information is false, unless the defendant can prove that the information is true. In a number of countries, requiring the defendant to prove that allegedly defamatory statements are true has been held to place an unreasonable burden on the defendant, at least in relation to statements on matters of public concern, on the basis that it exerts a significant chilling effect on freedom of expression³. As such, in cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.
15. The Civil Defamation provisions provide for excessive financial compensation for defamatory statements – including for moral damages regardless of the culpability of the defendant in certain cases. Article 171 provides that if “moral damage” is inflicted on a citizen, the court can order the violator to pay financial compensation. Regarding defamatory statements, Article 174(6) of the Civil Code specifically states that, in addition to demanding a refutation of the statement, the citizen has a right to demand compensation for moral damage. Articles 171 and 1116(2) provide that, in determining the amount of compensation, the court must take into account the extent of the moral suffering of the victim and the violator’s guilt (when guilt is the basis for compensation) as well as principles of reasonableness and fairness. Most worryingly, Article 172(3) further provides that compensation may be claimed for infringement of personal non-property rights “regardless of the guilt” of the violator and Article 1115(2) states that moral damage is compensated “regardless of the guilt of the inflicting person if [...] damage is inflicted by disseminating information defaming honour, dignity and business reputation.” Such remedies are disproportionate to the need to protect reputation and have the potential to exert a chilling effect on freedom of expression. Moreover, no one should be required to pay moral damages without a finding of guilt that they had prior knowledge that the information was false.
16. The Civil Code of Tajikistan does not provide for adequate defences against defamation claims, nor does differentiate statements of fact from statements of opinion, whereas under international law statements of opinion have been accorded very significant protection. This is because statements of opinion, which do not contain factual allegations, cannot be proven true or false; the law should not decide which opinions are correct and which are not, but should allow citizens to make up their own minds. Moreover, there are weak provisions for the defence

² See, for example, UN Human Rights Committee, General Comment No. 34 – Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, 12 September 2011, at para. 38.

³ See ARTICLE 19, *Defamation ABC. A simple introduction to key concepts of defamation law*, <https://www.article19.org/data/files/pdfs/tools/defamation-abc.pdf>

of 'reasonable publication', which establishes whether it was reasonable in the circumstances for a person to have disseminated a given statement. In determining whether dissemination was reasonable, the Court takes into account the importance of freedom of expression with respect to matters of public concern and the right of the public to receive timely information relating to such matters.

17. Civil defamation lawsuits are frequently brought against critical journalists in Tajikistan, and courts issue disproportionate sanctions against them, with the intention of silencing journalists and sending a warning to others. Examples include:
 - On 25 February 2013, a Dushanbe district ordered the newspaper, Imruz News, to pay 50,000 Somoni (approximately USD 8,000) in compensation for "moral harm" under Article 174 of the Civil Code and to publish an apology. The cassation and appellate courts upheld this decision. The case concerned an article published in 2012 about Amanulo Khukumov, the son of Rustam Khukumov, head of the Tajik Rail Road, who was sentenced to nine and a half years' imprisonment in Russia for involvement in narcotics trafficking and later released in a prisoner exchange for Russian pilots in Tajikistan. The defence argued that it was reasonable to publish the article in the given circumstances, as it did not contain any offensive material, and was based on information published in many Russian newspapers.
 - On 25 February 2014, a Dushanbe district court ordered a journalist working with one of the few remaining opposition newspapers, *Asia Plus*, to apologise for the use of a Vladimir Lenin quote referring to the 'Intelligentsia' in derogatory terms and pay 30,000 Somoni (approx. USD 6000) in compensation for "moral damages" to three people – unnamed within the article – who claimed they were members of the intelligentsia. The Cassation Board upheld the decision on 30 April.

Access to information

18. The right to information is constitutionally protected in Tajikistan, and Law No. 411 'On Access to Information', passed in 2008, governs access to state-held information. Law No. 961 "On the Periodical Press and other Mass Media", adopted in December 2012, further strengthened access to information legislation by reducing the period within which government bodies must respond to information requests from one month to three days.
19. However, implementation of this legislation is poor and, since 2012, the government has increasingly sought to control access to information, including through the adoption of new legislation and the frequent blocking of online information resources.

Internet blocking

20. In July 2014, Tajikistan introduced amendments to Law No. 94 "On the Legal Regime of the State of Emergency", enabling the government to block mobile services and access to the Internet without a court order, following the announcement of a state of emergency. The government justified these amendments on the grounds of "ensur[ing] tranquility" of the population during emergency situations.
21. There have been also been a number of incidents of mass blocking of access to internet resources/websites without court decisions in order to suppress political and social activism.
 - In July 2012, a number of Internet resources were blocked in Tajikistan, including the news sites Asia Plus, Ria Novosti, Vesti, - CentrAsia, Lenta.ru and Pamir Vesti; as well as YouTube and Taj Tube. The blocking followed the online publication of videos showing protests against a security operation carried out against a criminal group in the autonomous region of Gorno-Badakhshskoy, in which the head of the State Committee of

National Security General Abdullo Nazarov was allegedly killed. The websites remained blocked for 42 days.

- On the evening of 4 October 2014, social media platforms Facebook, V Kontakte, as well as Wikipedia, Amazon.com, Mail.ru, Lenta.ru, CA-NEWS, Ozodagon, Radio Ozodi, Asia-Plus, and proxy and anonymiser sites became inaccessible. Although the government denied it had anything to do with the blocking, staff working at internet service providers unofficially stated that the official reason for restricting access to the websites was a verbal order from the government's communications service.⁴ The blocking followed the publication of critical reports about the government of Tajikistan as well as open letters by the opposition movement "Group 24", based outside Tajikistan, calling on people to gather for an anti-government rally in Dushanbe.
- On 28 May 2015, many Internet users of Tajikistan could not access social networks VKontakte, Facebook, YouTube, the websites of some Russian news media, Wikipedia and some other news sites which had posted ISIS videos. The head of the Association of Internet Providers of Tajikistan said that ISPs received a verbal order to block the websites from the Government's Communication Service, following the publication of a video message by Gulmurod Halimov, the former commander of police squad, who had joined ISIS and fled to Syria.

22. In June 2015, minutes from a government meeting ordering all government officials to share information with state-run news agency Khovar, which would then be responsible for further distributing information to other media outlets were disclosed by the news agency Ozodagon. In particular, the document required the "Deputy Prime Minister, President's assistant on the social issues and public relations and other government bodies (...) to provide all information on government sessions, working visits of the President both inside and outside the country, other international and inter-governmental meetings to the state-run news agency Khovar, which will further disseminate it to other mass media." This limits other journalists' access to information, while providing Khovar an unfair monopoly on information. This completely contradicts the principle of proactive disclosure of information to the public that is to ensure that information should be accessible to all rather than be disseminated through a State owned or run media. A State should not own or run any broadcaster.

Switch to digital broadcasting

23. In 2006, Tajikistan signed the International Telecommunication Union treaty in Geneva, which set 2015 as the deadline for Tajikistan to switch from analogue to digital broadcasting. While the institutional and legal framework for digitalisation remains unclear, there are a number of risks to freedom of expression and access to information accompanying the process, in particular for independent media and for the media access of rural and poor communities.
24. Poorer citizens of Tajikistan may have their access to information broadcast on television curtailed, as digitalisation may impose an unmanageable financial burden on the population. They will have to purchase digital converter boxes (commonly known as decoders), which will be unaffordable for many. This particularly concerns the rural population, whose economic situation is less advantageous than that of urban residents.
25. The criteria used for allocating frequencies remains unclear and it is feared that the process will be biased, to select channels with ties to the government, undermining media independence and plurality.

⁴ <http://www.vedomosti.ru/technology/articles/2014/11/05/tadzhikistan-bez-socsetej>

26. The switch to digital broadcasting will impose an additional financial burden on television stations based in different regions. They have already paid fees for the unlimited use of analogue frequencies. This money will not be returned after the digitalisation process is complete, and they will no longer be able to make use of analogue frequencies. In order to get into the digital multiplex, all will need to take part in the government-organized competition that will likely exclude many television stations from digital broadcasting, further limiting access to diverse information.
27. The current law on TV and Radio Broadcasting fails to meet international standards and should be revised in light of the digital switchover. The Law provides that 'regulation and control' in the field of radio and television broadcasting is the responsibility of the Government and should be exercised through a governmental Committee on Television and Radio. The Government endorses decisions of the Committee. The Committee holds responsibility for controlling the implementation of the Law by media houses and for controlling TV and radio programmes. The Committee is a subdivision of the Government, and as such is not established as an independent regulatory body. Independence of the regulatory authority is essential for democratic regulation of broadcasting, and in order to allow for pluralism and diversity in broadcasting.
28. The current law on TV and Radio broadcasting does not respect international freedom of expression standards, and undermines the editorial independence of media companies, including from commercial influence. Regulation of broadcasting should respect the freedom and editorial independence of the sector and should target a limited set of objectives and areas - such as the promotion of pluralism and diversity, or the protection of consumers.

Restrictions on freedom of peaceful assembly

29. During 2011's UPR, Tajikistan accepted one recommendation regarding facilitation of the right to peaceful assembly. However, protests remain rare in Tajikistan. The government continues to present any form of protest as a security threat and has introduced legislation that further curtails the exercise of collective expression rights.
30. In December 2014, the president approved a new law "On Meetings, Gatherings, Demonstrations and Street Marches", placing significant restrictions on the right to freedom of peaceful assembly.
31. Article 12 of the law replicates problematic requirements in Tajikistan's previous law governing assemblies, stipulating that organisers must obtain permission 15 days prior to organising a mass gathering. States should never impose prior authorisation requirements on assemblies; the law should recognise that there are times when gatherings may take place spontaneously, and as long as they are peaceful, the gathering should not be dispersed. At the most, states may request notification of protest in order to facilitate the gathering and ensure the safe exercise of rights, but this should never be used to prevent a peaceful meeting going ahead.
32. Article 14 and Article 15 limit the time and place where gatherings may take place, turning many areas of Tajikistan, such as areas close to government buildings, historical and cultural monuments, national parks and cemeteries, into no-protest zones and banning protest at night entirely. Limitations on the time and place of assemblies should not amount to preventing the assembly from communicating its message to its intended audience. The prohibition on holding gatherings in close proximity to government bodies would prevent gatherings from achieving their very purpose.

33. Article 10 bans foreign citizens and stateless persons from organising mass events or gatherings. Discrimination in the enjoyment of the right to freedom of assembly on the basis of nationality is incompatible with Articles 2(1), 21, and 26 of the ICCPR.⁵

34. Article 10 also prohibits persons who have a record of administrative violations, mostly relating to violations of the laws on public gatherings, from organising mass gatherings. This blanket ban on persons with record of administrative offences is clearly targeted at people with a history of protest, rather protecting a legitimate aim under Article 21 of the ICCPR.

Recommendations

35. ARTICLE 19, English PEN, and PEN International call on the government of Tajikistan to significantly improve the conditions for freedom of expression and assembly in the country. In particular, the government should:

Legal Harassment of Journalists and the Mass Media

- i. Release immediately and unconditionally all journalists arbitrarily detained, including those convicted, for exercising their freedom of expression rights, and refrain from abusing powers of arrest or criminal charges to harass and intimidate journalists

Decriminalisation of defamation and insult

- ii. Fully decriminalise defamation by repealing the two remaining defamation and insult provisions from the Criminal Code (Articles 137 and 330)
- iii. Amend Articles 171, 172, 174, 1115 and 1116 of the Civil Code, pertaining to defamation, to conform to international standards, ensuring that:
 - No one should be liable for the expression of an opinion;
 - In relation to statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements alleged to be defamatory;
 - The law recognises a proper defence of reasonable publication;
 - That financial compensation in civil defamation cases is capped, and only awarded where proportionate, considering the impact on the right to freedom of expression.

Access to information

- iv. Ensure that the 2008 law on access to information is fully implemented, including by:
 - Training government officials at all levels on their obligations under access to information legislation;
 - Increasing public awareness of the right to information and how to exercise it;
 - Improving legal oversight of implementation of access to information legislation.

Switch to digital broadcasting

- v. Ensure that the switch to digital is a transparent, participatory and inclusive process and that regional media outlets are not excluded from the broadcasting market as a result of the transition, e.g. that regional media outlets should be included in a free multiplex
- vi. Ensure that the switch to digital does not entail additional financial burdens on media users, particularly among rural and poor individuals
- vii. Reform the law on TV and radio broadcasting, to bring it in line with international standards on freedom of expression. This would include establishing an independent regulatory body; ensuring respect for freedom of editorial policy; and promoting diversity and pluralism

⁵ See also, UN Human Rights Committee, General Comment No. 15.

Restrictions on freedom of peaceful assembly

- viii. Amend the current law on “On Meetings, Gatherings, Demonstrations and Street Marches” to facilitate the exercise of the right to freedom of peaceful assembly by undertaking the following:
- Replace requirements for “permission” for assemblies with the requirement of notification no less than 48 hours in advance of an assembly, providing exemptions for spontaneous assemblies;
 - Repeal blanket restrictions on the time and location of assemblies;
 - Allow all individuals, regardless of nationality status, to organise an assembly.