ARTICLE 19

Kyrgyzstan: Law on Countering Extremist Activity

December 2015

Legal analysis

Executive summary

In November 2015, ARTICLE 19 analysed the Kyrgyz Law on Extremism Activity (the Law). The review of the Law was prompted by recent proposal for the amendments to the Laws, initiated by the Ministry of Transport and Communications. The amendments are currently being debated in the Working Group involving various government institutions as well as civil society organizations The proposal to update the Law comes amidst growing concern domestically and internationally about increased radicalisation and violent extremism in the country, following evidence of Kyrgyz citizens fighting for Daesh (or so-called 'Islamic State').

According to the Ministry of Transport and Communications, the Law should be amended to develop clear procedures for blocking Internet resources containing materials of an extremist nature. In a statement issued on their website, the Ministry expressed concern that the internet enables prompt and anonymous dissemination of information to diverse users, rendering it vulnerable to abuse by destructive and extremist influences. At the same time, a lack of uniform legal practice, difference in understanding and interpreting the law by state bodies has led to a number of incidents of unjustified blockings of websites, without a court decision. The aim of this analysis is to assist the Working group to reform the law in line with international standards.

In the analysis, ARTICLE 19 concludes that the Law is drafted in such vague language that it allows for disproportionate restrictions to be imposed on freedom of expression, freedom of association and assembly and freedom of religion. In particular, the Law fails to give a sufficiently precise definition of 'extremism". Instead, it provides for a mishmash of terrorism-related language with references to incitement to discrimination, hostility or violence on discrimination grounds without ever defining any of those terms.

Given the broad powers of the authorities and the courts to liquidate NGOs and religious organisations, which seem to be particularly targeted by the government, the Law is almost certain to have a chilling effect on freedom of expression. It is also hard not to see the adoption of this Law as an illegitimate attempt by the Kyrgyz government to restrict civil space and shut down minority voices. We therefore recommend that the Law should be re-drafted in its entirety.

Recommendation:

- The Law should be withdrawn and re-drafted in its entirety in line with international standards on freedom of expression.

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Introduction

In November 2015, ARTICLE 19 analysed the Kyrgyz Law On Countering Extremist Activity.[1] The amendments were initiated by the Ministry of Transport and Communications at the request of the government, and are currently being debated in a working group involving the Ministry of Transport and Communications, the Ministry of Internal Affairs, the Government National Security Committee, the State Committee for Religious Affairs, and the Office of the Prosecutor General as well as civil society organizations. The proposal to update the Law comes amidst growing concern domestically and internationally about increased radicalisation and violent extremism in the country, following evidence of Kyrgyz citizens fighting for Daesh (or so-called Islamic State).

According to the Ministry of Transport and Communications, there is a need to update the law to develop clear procedures for blocking Internet resources containing materials of an extremist nature. In a statement issued on their website, the Ministry expressed concern that the internet enables prompt and anonymous dissemination of information to diverse users, rendering it vulnerable to abuse by destructive and extremist influences.[2] At the same time, a lack of uniform legal practice, differences in understanding and interpretation of the law by state bodies has resulted of unjustified blockings of websites, without a court decision. The aim of this analysis is to assist the working group to reform the law in line with international standards as presented here.

ARTICLE 19's analysis is based on international freedom of expression standards. In particular, we highlight how "extremism" has been approached under international law. The analysis also outlines how the provisions of the Law fail to meet these standards. Our conclusion is that the Law should be re-drafted in its entirety.

We call on the Working Group to consider concerns outlined in this analysis and address them in its revision of the Law. ARTICLE 19 stands ready to provide further assistance in this process.

[1] The analysis is based on the unofficial translation into English. ARTICLE 19 does not take responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation

[2] Justification of the Draft Law of the Kyrgyz Republic "On amendments and additions to some legislative acts of the Kyrgyz Republic", the Ministry of Transport and Communications (16 July 2015); available at http://mtc.gov.kg/kg/page/1142.html

International standards on freedom of expression

The protection of freedom of expression under international law

The right to freedom of expression is protected by a number of international human rights instruments that are binding on Kyrgyzstan; in particular, Article 19 of the Universal Declaration of Human Rights (UDHR)[3] and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)[4] that elaborates upon and gives legal force to many of the rights articulated in the UDHR. Kyrgyzstan acceded to the ICCPR on 07 October 1994 and is therefore legally bound to respect and to ensure the right to freedom of expression as contained in Article 19 of the ICCPR.

In September 2011, the UN Human Rights Committee (HR Committee), as treaty monitoring body for the ICCPR, issued General Comment No 34 in relation to Article 19.[5] General Comment No.34 constitutes an authoritative interpretation of the minimum standards guaranteed by Article 19 ICCPR.[6] It states that Article 19 ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.[7] In other words, the protection of freedom of expression applies online in the same way as it applies offline.

As a state party to the ICCPR, Kyrgyzstan must ensure that any of its laws attempting to regulate electronic and Internet-based modes of expression comply with Article 19 ICCPR as interpreted by the HR Committee and that they are in line with the special mandates' recommendations.

Limitations on the right to freedom of expression

While the right to freedom of expression is a fundamental right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to be restricted in the following respects:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order, or of public health or morals.

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[3] UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR is not directly binding on states; however, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption; see, e.g. *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

[4] GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. Article 19 reads " 1. Everyone shall have the right to freedom of opinion. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice."

[5] See, CCPR/C/GC/3 available at http://bit.ly/1PQeoF6.

[6] ARTICLE 19, UN: ARTICLE 19 Welcomes General Comment on Freedom of Expression, 5 August 2011, available at http://bit.ly/1SJhjPi.

[7] General Comment No.34, *op.cit.,* para 12.

UN: ARTICLE 19 Welcomes General Comment on Freedom of Expression

Restrictions on the right to freedom of expression must be strictly and narrowly tailored and may not put in jeopardy the right itself. The determination whether a restriction is narrowly tailored is often articulated as a three-part test. Restrictions must:

- be provided by law, i.e. formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly;[8]
- pursue a legitimate aim as exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR; and
- conform to the strict tests of necessity and proportionality, i.e. if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.[9]

The same principles apply to electronic forms of communication or expression disseminated over the Internet. In particular, the HR Committee has said in its General Comment No 34 that:

> 43. Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.[10]

Extremism under international law

No agreed definition

There is no agreed definition of extremism under international law. Nonetheless, the term has been used in a number of resolutions of the UN General Assembly (GA)[11] and the UN Security Council (UNSC).[12] For instance, UNSC Resolution 2178 (2014) provides:[13]

> 15. *Underscores* that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment, and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters, and *calls upon* Member States to enhance efforts to counter this kind of violent extremism;

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[8] HR Committee, *Leonardus J.M. de Groot v. The Netherlands*, No. 578/1994, UN Doc. CCPR/C/54/D/578/1994 (1995).
[9] HR Committee, *Velichkin v. Belarus*, Communication No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).
[10] HR Committee, Concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR).
[11] For example, A/Res/68/127 available at http://bit.ly/1MX8mlg.
[12] UNSC Resolution 2178 (2014) is available at http://bit.ly/1EJ51QW.
[13] *Ibid.*

> Following the adoption of this resolution and in response to the threat of terrorism from groups such as ISIL and Al-Qaeda, a number of UN documents and various best practices have emerged to deal with 'extremism'.

Similarly, a number of UN working groups and task forces focusing on counter-terrorism have published reports on extremism and radicalisation.[14] A number of governments and international organisations have also agreed memoranda on good practices to combat violent extremism at the Global Counter-terrorism forum.[15] For instance, the Ankara memorandum on good practices for a multi-sectoral approach to combatting violent extremism recommends that

> [A]ny CVE programme should avoid the identification of violent extremism with any religion, culture, ethnic group, nationality, or race".[16]

The memorandum promotes shared understandings of the nature of violent extremism among governmental agencies and non-governmental actors. At the same time, none of these documents provide a working definition of 'extremism' or 'violent extremism', or what the difference between these concepts might be.

Given the lack of clarity around these notions, ARTICLE 19 believes that 'extremism' is best understood as a socio-political – rather than legal – concept used to describe an ideology (i.e. opinions) or actions, including the dissemination of opinions, which fall short of acts of terrorism or incitement to terrorism and may therefore be lawful both from a domestic law and international law perspective. In general, however, we note that to characterise a point of view as 'extreme' is merely pejorative without saying anything about the content of those views.

'Violent extremism' is equally undefined as a legal concept. It may be described as a subset of 'extremism', i.e. any view regarded as extreme *and* involving the use or promotion of violence, including the use of force. In that sense, it is closely related to terrorism or 'incitement to terrorism'. In the absence of a definition of 'extremism', however, merely qualifying 'extremism' of being 'violent' does not really help clarify what 'violent extremism' is intended to cover.

For this reason, ARTICLE 19 believes that using the term 'violent extremism' instead of more established terms such as 'terrorism' or 'incitement to violence' is unhelpful. Moreover, given the difficulties in defining 'terrorism' and 'incitement to violence' internationally (see further below), ARTICLE 19 believes that a positive case would have to be made as to why the use of the term 'violent extremism' adds anything useful to the terms 'terrorism' or 'incitement to violence'. If nothing else, 'violent extremism' is merely broader and less defined than 'terrorism' and 'incitement to violence' and more likely to create confusion, particularly when it comes to the adoption of criminal offences to deal with this phenomenon.

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[14] See e.g. Counter-Terrorism Implementation Task Force, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes*, available at http://bit.ly/1NFVnRm.
[15] For more information about the Global Counter-Terrorism Forum, see http://bit.ly/1NFVoVj.
[16] The Ankara Memorandum is available at http://bit.ly/1PQeT23.

Terrorism and incitement to acts of terrorism
Like extremism, there is no universally agreed definition of terrorism under international law.[17] At the same time, UN human rights bodies have highlighted the tension between freedom of expression and counter-terrorism measures. In particular, General Comment no. 34 clearly provides:

> 46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities.

In addition, the Johannesburg Principles on National Security Freedom of Expression and Access to Information 1996 (Johannesburg Principles)[18] and in the Tschwane Principles on National Security and the Right to Information[19] consider extensively the types of restrictions that can be imposed on freedom of expression for the purposes of national security. While the Johannesburg Principles set out how expression that may threaten national security should be assessed as well as a non-exhaustive list of protected expression, the Tschwane Principles focus on access to information.

Prohibiting incitement to discrimination, hostility or violence
Finally, it is important to note that Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law. At the same time, inciting violence is more than just expressing views that people disapprove of or find offensive.[20] It is speech that encourages or solicits other people to engage in violence through vehemently discriminatory rhetoric.

At international level, the UN has developed the Rabat Plan of Action, an inter-regional multi-stakeholder process involving UN human rights bodies, NGOs and academia - which provides the closest definition of what constitutes incitement law under Article 20 (2) ICCPR.[21] In particular, the Rabat Plan clarifies that regard should be had to six factors in assessing whether speech should be criminalised by states as incitement. These include the general context, the speaker, intent, content of the message or its form, the extent of the speech at issue and the likelihood of harm occurring, including its imminence.

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[17] See e.g. UNODC, *Frequently Asked Questions on International Law Aspects of Countering Terrorism*, 2009, at page 4, available at http://bit.ly/1PQeTiC. See also UNODC, *The Use of the Internet for Terrorist Purposes,* 2012, para 49, available at http://bit.ly/1X1yiTo.
[18] ARTICLE 19, The Johannesburg Principles on Freedom of Expression and National Security, available at http://bit.ly/1Oi176F.
[19] The Tschwane Principles, available at http://osf.to/1jag6nW.
[20] European Court of Human Rights, *Handyside v the UK*, judgment of 6 July 1976, para.56
[21] See UN Rabat Plan of Action (2012), available at http://bit.ly/1T2efOV.

Analysis

Overbroad definitions

Article 1 of the Law lays down the definition of 'extremist activity', 'extremist organisations, 'extremist materials' and 'symbols and attributes of extremist organisations'.

- **'Extremist activity'** is defined as activities involving the planning, organisation and performance by any individual or organisation, including non-governmental organisations, religious organisations or mass media of "any" actions directed to, among other things: "the forced modification of the foundations of the constitutional order and violation of the integrity of the Kyrgyz Republic, the destruction of the security of the Kyrgyz republic, the seizure or appropriation of power authorisation, the creation of military formations, carrying out terrorist activities, incitement to social, race, national or religious hatred related to violence or calls for violence, breach of national dignity, the carrying out of mass disorders, violence, acts of vandalism on the grounds of ideological, political, race, national or religious hatred or enmity on grounds of hatred or enmity in relation to any social group, propaganda of exclusiveness, superiority or inferiority of citizens on account of their religious orientation, social, race, national, religious or language origin".
  The definition of 'extremist activity' also includes "propaganda in support of extremist activities, public calls to support such activities and their financing".

- **'Extremist organisations'** are defined as any organisation whose activities have been prohibited or which has been liquidated on grounds of extremism by the courts. NGOs and religious organisations are singled out as falling within the definition of 'extremist organisation'.

- **'Extremist materials'** include any documents or information on any media calling for or justifying extremist activity, including publications that justify or explain supremacist views on grounds of race or nationality or justify military action or other crimes aimed destroying particular ethnic, social, racial, national or religious groups.

- **'Symbols and attributes of extremist organisations'** are characterised as extremist by the courts due to a determination that the organisation at issue carries out extremist activities. Extremist symbols may however be used for scientific purposes.

In ARTICLE 19's view, the definition of the above terms is extremely broad and is in breach of the legality requirement under international human rights law. In particular, it covers anything from actual terrorist activities, to any potential threat to national security, to incitement to discrimination, hatred and violence on various discrimination grounds to national pride. As such, it may be used to silence not only terrorist groups but also a broad range of opinions and activities which are perfectly legitimate.

In particular, the definition of "extremist activity" lumps together 'extremism' and 'terrorism' without explaining how they are different and despite the fact that there is no agreed definition of terrorism at international level. It also conflates 'extremism' with 'incitement to violence or hatred on grounds of race' without ever explaining the distinction between the two. Far from giving a definition of 'extremism', the Law merely uses 'extremism' as an umbrella term to describe all sorts of activities, which are either exceedingly vague in their scope or should exist as separate criminal offences, which should themselves be properly defined.

These definitions are made worse by the fact that they are not limited to various actions but also include any public call for support or justification for such actions. We are deeply concerned that the Law might be used to crackdown on NGOs criticising or merely holding different views from that of the government. In particular, the definition of 'extremist materials' suggests that the government is giving itself the power to prevent access to any material which it does not approve of.

Recommendation:

- To the extent that these definitions serve as the basis for the imposition of sanctions, whether civil or criminal, on individuals or organisations, they should be entirely removed.
- Instead, terrorist acts and incitement to discrimination, hatred or violence on discriminatory grounds should be prohibited in accordance with international standards on freedom of expression.

Vague policy objectives and strategy

Article 2 of the Law lays down the basic principles of countering extremist activity. These rightly include the protection of human rights and freedoms as well as the principles of legality. Other principles include cooperation between states as well as cooperation with NGOs and religious organisations. The 'unavoidability of punishments for extremist activity' is also mentioned.

In ARTICLE 19's view, however, simply mentioning these principles is meaningless if the Law itself fails to respect them. The principle of legality presupposes that the law must be sufficiently clear to enable individuals to foresee the consequences of their conduct. This is most emphatically not the case of the Law given the overbroad definition of 'extremist activity'. Similarly, the protection of 'human rights and freedoms' - and freedom of expression in particular - requires that any restriction on those freedoms must be provided law, pursue a legitimate aim and be necessary and proportionate to that aim. As currently drafted, the Bill is a real threat to freedom of expression in the Kyrgyz Republic given the breadth of expression that may be potentially criminalised as a result of its excessively broad definitions.

More generally, we believe that there is nothing to be gained from the principles laid down in Article 2 as currently drafted. This provision entirely fails to provide guidance or explain the overall purpose of the Law. As such, we believe that it should be removed.

Similarly, we fail to understand the purpose of Article 3 of the Law, which provides for the 'Principal directions of countering extremist activity'. In our view, this Article belongs to a strategy document (assuming 'extremism' is properly defined and used as political rather than legal concept) rather than the law. We recall that the purpose of the law is not to set out in broad terms how the government intends to combat terrorism or even 'extremism'. Rather, the law should (a) clearly define the types of conduct, which are not permitted in the Kyrgyz Republic, and (b) define the types of measures that may be imposed by the authorities in order to enforce the law in compliance with the requirements of legality, legitimacy, necessity and proportionality.

More specifically, we are concerned that Article 3 indicates the use of "preventive measures," which are not defined elsewhere in the Law. The reference to vague "educational and propaganda measures aimed at the prevention of extremist activity" in Article 5 does not help to clarify the concept. Although it is perfectly legitimate for the government to seek to prevent

acts of terrorism, in our experience, 'preventive measures' insofar as the dissemination of expression is concerned is often synonymous with 'prior restraint' and/or severe restrictions on the freedom of the media to impart information on national security matters. Similarly, any duty on schools, universities or local authorities to prevent extremist activity or people being drawn into terrorism could have a serious chilling on academic freedom. For these reasons, we believe that Articles 3 and 5 should be removed.

Recommendation:

- Articles 2, 3 and 5 should be removed.

Improper and unjustified use of cautions

"Announcement of caution against extremist activity" – Article 6

Under Article 6, prosecutors may caution any organisation or individual involved in 'extremist activity' in circumstances where there is "sufficient and previously confirmed data on forthcoming unlawful acts", including "any" signs of extremist activity, but there are insufficient grounds to prosecute. Individuals and/ organisations served with a caution may be held liable "as established by law" for failure to comply with its requirements.

In ARTICLE 19's view, it is unclear what the purpose of these cautions is. In common law countries, such as the United Kingdom, a caution is a formal alternative to prosecution as a way of offering a proportionate response to low-level offences where the offender has admitted the offence.[22] Article 6, however, seems to propose a similar scheme in circumstances where no offence has been committed and/or there is insufficient evidence to bring a prosecution and no admission of guilt has been made. In other words, the circumstances in which a caution may be used under Article 6 are unduly broad. Cautions should not be used as a substitute for prosecutions in circumstances where the authorities lack sufficient evidence to bring a prosecution. In any event, the use of cautions as currently drafted is likely to be counter-productive in that it would warn actual 'terrorists' that the authorities are investigating them but do not have enough evidence to prosecute them.

Finally, the law does not state whether failure to comply with a caution would entail civil or criminal liability. To the extent that such failure to comply may lead to criminal or other sanctions, they should be provided for in the Law rather than being defined at some indeterminate point in future.

Recommendation:

- Article 6 should be removed.

Caution on the impermissibility of extremist activity – Article 7

Article 7 provides for the use of cautions by prosecutors "in cases of any finding that confirms any signs of extremism" in the activities of NGOs, religious organisations or any other organisations or individuals. Cautions should be made in writing and specify the "violations" made as well as remedial action to be taken, if any. In the case of NGOs and religious

[22] UK Ministry of Justice, *Guidance on Simple Cautions for Adult Offenders*, April 2015, available at http://bit.ly/1PQf4KQ.

organisations, the executive or relevant local authorities may also caution them. Article 7 further provides for a right of appeal against cautions.

At the same time, if the company or organisation at issue fails to comply with a caution or any new facts come to light, which confirm that the organisation in question is linked to 'extremist' activity, it shall be liquidated. If an entity may not be liquidated by virtue of its legal status, its activities shall be prohibited.

ARTICLE 19 is deeply concerned by this provision. Given the breadth of the definition of 'extremist activity' and the penalties for failure to comply with such "cautions", Article 7 is equivalent to giving the government *carte blanche* to shut down legitimate expression that it disagrees with. According to the Law, "any sign" of "extremist activity" may be a ground for a caution. In other words, simply having the wrong connections on social media may potentially expose individuals and groups to a caution.

We are also concerned that the Law seems to single out NGOs and religious organisations as targets of the government's 'counter-extremism' efforts. This is very worrying, particularly for organisations working with minority or marginalised groups and for the protection of civic space more generally.

While ARTICLE 19 recognises that it may be legitimate for the government to proscribe designated terrorist organisations - as long as it is done in line with international standards on freedom of expression - we cannot think of any circumstances under which Article 7 could be considered a legitimate restriction on freedom of expression or freedom of religion.

Recommendation:

- Article 7 should be removed.

Caution on the impermissibility of the distribution of extremist materials – Article 8

Article 8 of the Law grants powers to state authorities or the Prosecutor General to issue cautions against organisations or individuals disseminating 'extremist materials'. Such cautions must include the reasons for the caution as well as steps to be taken to remedy the 'violations' identified in it. There is no right of appeal and failure to comply with the requirements of the caution is sanctioned with the 'termination of the activity' of the mass media at issue.

In ARTICLE 19's view, this provision is overly broad and an illegitimate restriction on freedom of expression. First of all, as noted previously, the definition of 'extremist materials' is unduly vague and liable to include any information or viewpoints that the government disagrees with. Secondly, given their lack of independence, it is highly improper for public authorities, including the office of the prosecutor, to make determinations as to whether or not material is unlawful. Any such determination as well as any remedial action to be taken should be ordered by the courts.

Moreover, terminating the activity of 'mass media' organisations for failure to comply with a caution is a disproportionate sanction in circumstances where less restrictive measures could be applied, for instance a court order requiring the removal of the unlawful content at issue. More generally, we think that the use of caution to warn mass media organisations about content considered to be 'extremist' by the authorities is highly likely to have a chilling effect on freedom of expression.

Recommendation:

- Article 8 should be removed in its entirety.

Disproportionate restrictions on freedom of expression

Liquidation and/or suspension of organisations involved in extremist activity – Articles 9 -10

Article 9 of the Law prohibits the establishment of NGOs, religious organisations or any other organisation whose purpose is to carry out extremist activities. If an organisation is carrying out extremist activities in violation of "human rights and freedoms, personal tort, harm to human health, the environment, public order, public security, property, legal economic interests" or the threat of such harm, the Prosecutor's office may make an application before the courts for such organisation to be liquidated. In relation to NGOs or religious organisations, a court may order that they cease their activity or that they be liquidated upon application by relevant public authorities.

Article 10 further provides for the suspension of the activities of NGOs and religious organisations pending the determination of an application under Article 9. An application for suspension of activity may be made on the same grounds as those provided for under Article 9. If the application is granted, it has wide-ranging consequences, since the organisation is then prohibited from "using state and municipal media, to organise and hold meetings, political meetings, demonstrations, picketing, and other mass actions or public events etc." However, there is a right of appeal against the decision.

Although the above provisions do not apply to political parties, ARTICLE 19 considers that they are overbroad and constitute a disproportionate restriction on freedom of expression. Articles 9 and 10 enable the authorities and the prosecutor's office to demand the dissolution of NGOs and religious organisations in undefined circumstances. In the absence of a clear definition of 'extremist activity' or what constitutes a "violation of human rights, public order etc." this is a very broad power, which is not offset by the fact that the courts decide whether or not to order the dissolution of such organisations. It is also particularly concerning that both NGOs and religious organisations are singled out for the purposes of liquidation orders. This seems to suggest that they are viewed by the state as representing a threat to various interests, from national security to the environment and legal economic interests.

Recommendation:

- Articles 9 and 10 should be removed entirely.

Restrictions on distribution of 'extremist' material – Articles 11, 12 and 13

Article 11 of the Law provides for the responsibility of mass media for the distribution of extremist materials and carrying out extremist activity. Under Article 11, public authorities in the field of mass media or the Prosecutor's office may apply to the courts to request the termination of these organisations' activities. The grounds for making such an application are the same as those under Articles 9 and 10. In addition to ordering the cessation of the organisation's activities, the courts may also order the suspension of the sale of periodicals or grant an injunction to prevent the further distribution of extremist materials.

Article 12 further prohibits the use of communication networks for the purposes of carrying out extremist activities. Failure to comply with this prohibition may lead to the application of

unspecified measures "subject to the peculiarities of the Communication Legislation of the Kyrgyz Republic."

Article 13 goes on to prohibit the publication, storage, transportation or distribution of printed, audio, audio-visual and other material that contain "any of the signs" provided for under Article 1 (1) of the Law. The courts determine whether or not the materials at issue are to be regarded as "extremist" for the purposes of the Law. Such materials are added to a list of 'extremist materials', which is periodically published in mass media and on official websites. Inclusion in the list of 'extremist materials' may be appealed before the courts. Organisations which are found to repeatedly produce 'extremist materials' forfeit their right to publish and 'any person' involved in the production, distribution, transportation or storage of such materials may be held administratively or criminally responsible.

In ARTICLE 19's view, the above provisions suffer from the same flaws as the rest of the provisions we have already analysed in this Act. As already noted, the lack of precise definition of 'extremist activity', 'extremist materials' and 'extremist organisations' is a fatal flaw, which is not remedied by the fact that the courts decide whether or not material should be deemed 'extremist' and make the orders restricting the dissemination of 'extremist' publications. The termination of the activities of mass media organisations is a particularly harsh measure.

Furthermore, key measures and terms are not specified in Articles 12 and 13. It is highly unclear, for instance, what measure may be applied in circumstances where either an individual or an organisation may use communication networks to disseminate "extremist materials". No distinction is made between the primary responsibility of the authors of the materials and the secondary liability of various communications providers (if any). It is unclear whether criminal or civil sanctions should be applied, what procedure should be followed in order to restrict access to such "extremist" materials.

Similarly, Article 13 refers in broad terms to "any sign" of extremist activity as provided for under Article 1(1). Since the definition of "extremist activity" is so broad as to cover perfectly legitimate activities, any comment on any matter of public interest - however insignificant – could potentially be flagged as 'extremist'.

Recommendation:

- Articles 11, 12 and 13 should be removed in their entirety.

Forced "right of reply"

Under Article 15 of the Law, anyone, including stateless persons and foreign citizens may be held liable for carrying out extremist activities under Kyrgyz Law. Article 15 further provides that individuals convicted for extremist activity may be barred from certain professions such as law enforcement and access to certain public services (which are undefined). Article 15 goes on to impose a duty on NGOs, religious organisations or any organisations to distance themselves from any statement made by a director or member of the managing board of the organisation in circumstances where that statement amounts to incitement to extremism and the maker of the statement has failed to specify that it was made in a personal capacity.

In ARTICLE 19's view, this provision is both unduly vague and a disproportionate restriction on freedom of expression. Ironically, it seems aimed at protecting organisations from "extremist" statements made by its directors by forcing them to publicly - and formally -

distance themselves from such statements. However, if an organisation disagrees with a point of view expressed by a member of the organisation, it should be free to put out a press release explaining or clarifying its stance on the matter. The government should not compel it to do so.

Recommendation:

- Article 15 should be removed as being unduly vague and a disproportionate restriction on freedom of expression.

Restrictions on the right to protest

Article 16 provides that "extremist activity is prohibited during meetings, political meetings, demonstrations and picketing". It goes on to prohibit the participation of extremist organisations as well as the distribution of extremist materials or the use of extremist symbols during "mass actions" or protests. If the organisers of protests fail to take immediate "remedial action", the department of internal affairs can end the protest.

Like the rest of the provisions of the Law, this section is both vague and unclear in its purpose. It generally seems to be aimed at prohibiting the activities of NGOs or other organisations involved in civic space. As such, it constitutes a disproportionate restriction on the rights to freedom of expression, freedom of association and assembly and the right to protest.

Recommendation:

- Article 16 should be removed.

Restrictions on foreign NGOs and organisation deemed to be involved in extremist activity

Article 17 contains a catalogue of restrictions to be imposed on foreign NGOs and other foreign entities deemed to be engaged in 'extremist activity'. This includes loss of accreditation, prohibition on staying in the territory of the Kyrgyz Republic, prohibition on the publication in mass media of any materials on behalf of any prohibited organisation and the like.

In ARTICLE 19's view, this provision seeks to control and unduly limit the activities of foreign NGOs on the territory of the Kyrgyz Republic, despite the fact these may be perfectly legitimate. As such, it constitutes a disproportionate restriction on the right to freedom of expression.

Recommendation:

- Article 17 should be removed.

Other restrictions

We further note that Article 14 of the Law imposes some undefined liability on public officials for making statements or generally failing to carry out anti-extremist measures. In our view, this section is incomprehensibly broad: it fails to define the type of conduct deemed problematic by the government, as well as the sanctions that may be imposed or any avenues of appeal that may be available to the aggrieved individual. Worse still, this provision ultimately seems to be aimed at encouraging public officials to crackdown on civil society or any other organisation, which may be critical of the government. In our view, it is in clear

breach of international standards on freedom of expression and should be withdrawn from the Law.

Finally, we note that Article 18 provides that the Kyrgyz government shall prepare a list of NGOs, religious organisations or any organisations deemed 'extremist' under the Law. This seems to be in plain contradiction with the provisions of the law according to which such determinations must be made by the courts upon application by the Prosecutor's Office or other public authorities. Given the overall lack of clarity of the Law, we believe that this provision should be removed entirely along with the rest of the Law.

Recommendation:

- Articles 14 and 18 should be removed.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at http://www.article19.org/resources.php/legal.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org. For more information about the ARTICLE 19's work in Kyrgyzstan and Central Asia, please contact Katie Morris, Head of Europe, at katie@article19.org.