



**ARTICLE 19 and PEN International
Joint Submission to the UN Universal Periodic Review of Kyrgyzstan**

For consideration at the 21st Session of the UN working group in January/February 2015

14 June 2014

Executive Summary

1. ARTICLE 19 and PEN International welcome the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Kyrgyzstan. The submission focuses on Kyrgyzstan's compliance with its international human rights obligations in respect to freedom of expression and freedom of peaceful assembly.
2. Since 2010, the government has taken a number of positive steps to advance protections for the rights to freedom of expression and freedom of peaceful assembly, addressing several of the recommendations made during the last UPR. These include:
 - The adoption of the 2010 Constitution, with greater protection for the right to freedom of expression and the right to freedom of peaceful assembly;
 - The decriminalisation of defamation;
 - Improvements to the legislation on freedom of assembly;
 - An improved environment for the safety of journalists.
3. Notwithstanding these improvements, this submission identifies the following concerns:
 - New mechanisms for criminalising public interest expression;
 - Continued cases of impunity for crimes against journalists;
 - Restrictions on Internet freedom;
 - Attacks on the freedom of expression rights of minority groups.

Advancing protections for freedom of expression and assembly

Constitutional reforms

4. The adoption of a new Constitution on 27 June 2010 has been a significant step forward in protecting the right to freedom of expression and freedom of peaceful assembly.
5. The 2010 Constitution provided the basis for decriminalising defamation, with Article 20(6) guaranteeing against the use of criminal prosecution for "the dissemination of information which encroaches on the honour and dignity of a person."
6. Article 34 of the 2010 Constitution lifted the ban on "unsanctioned gatherings." It also removed restrictions on spontaneous gatherings, and removed requirements for seeking approval for holding assemblies, including excessive administrative requirements relating to the form, content and deadline for seeking permission. It replaces this with a system of notification, but there is no liability for failing to comply with the requirements for notification.

Decriminalisation of defamation

7. In compliance with the 2010 Constitution, in July 2011 the Parliament of Kyrgyzstan amended the Criminal Code to remove Article 127, which provided for up to three years of imprisonment for defamation.

Improvements to legislation on freedom of assembly

8. The Constitutional reform process prompted the adoption of the Law of the Kyrgyz Republic on Peaceful Assembly on 23 May 2012. Broad consultations during the legislative process with domestic civil society organisations and international experts ensured that the law largely reflects Kyrgyzstan's obligations under international standards, including the International Covenant on Civil and Political Rights.
9. Key positive features of the law include the establishment of:
 - A presumption in favour of the holding of peaceful assemblies, and the obligation of the State to protect peaceful assemblies;
 - A system of notification, whereby individuals have a right/possibility to notify (rather than seek permission) for a peaceful assembly;
 - Protections against discrimination on the basis of gender, race, ethnicity, belief, age, political convictions, economic or other status or circumstance.
10. It is now paramount that this law is effectively implemented, and law enforcement authorities and the judiciary receive comprehensive training to this end.

Concerns relating to freedom of expression and assembly

11. Despite evidence of liberalisation and a renewed commitment to human rights since the 2010 revolution resulting in the ousting of then President Kurmanbek Bakiyev, internal and regional dynamics show substantial efforts by some actors to re-establish repressive methods of governance, with the latest draft law proposing a 'foreign agent' law for NGO's receiving foreign funding as an example.
12. On 26 May 2014, a draft law titled "On Introducing Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic" targeting foreign-funded non-commercial organisations (NCOs) was registered in the Kyrgyz Parliament. If adopted, this 'foreign agents law' would stigmatise NCOs engaging in 'political activities' that receive funding from international and foreign sources by requiring them to label themselves and to register as 'foreign agents'.
13. The 'foreign agent' law would establish wider government control over the activities of NCO's and allow their suspension for up to 6 months, as well as introduce criminal liability for non-compliance with the law. The introduction of such measures has been widely condemned, including by the Venice Commission, which during a revision of a previous, similar, draft stated that "these measures constitute an interference into several human rights, especially freedom of association and freedom of expression. For such interference to be lawful, it needs to meet the criteria of legality, legitimacy and necessity in a democratic society."
14. These concerns should be considered in light of the backlash that occurred on human rights following the 2005 revolution in Kyrgyzstan, when recourse to corrupt practices following an initial period of optimism contributed to the 2010 revolution and ensuing ethnic conflict in the Ferghana Valley in southern Kyrgyzstan.
15. Substantial efforts are therefore required to consolidate democracy and respect for human rights, and specifically anti-discrimination measures in the country, and to enhance processes for civil society participation in decision-making.

Criminalising publication of “knowingly false messages about the commission of crimes”

16. On 16 April 2014 the Parliament of Kyrgyzstan passed the Law on introducing amendments to some legislative acts of the Kyrgyz Republic amending the Criminal Code to criminalise the dissemination of “knowingly false messages about the commission of crimes.” On 17 May 2014 the law (#68 – 2014) was signed by the President.
17. The new law substitutes Article 329 of the Criminal Code on “knowingly false denunciation about the commission of crimes” with the broader language of “disseminating knowingly false messages about the commission of crimes.” It imposes criminal fines for false reports of the commission “of a serious or grave offence” and is punishable by up to three years imprisonment. No defences are provided for this offence, for example, on the basis that the expression at issue was in the public interest.
18. This reform negates the gains made in Kyrgyzstan since the decriminalisation of defamation, and violates the protection from criminal prosecution in Article 20(6) of the 2010 Constitution for critical expression about individuals. The provision will likely be exploited to limit criticism and public interest discussions on the conduct of public officials and other actors, with a profound chilling effect on freedom of expression. In particular, investigative journalism and blogging will likely suffer as a consequence.
19. In both its original and amended forms, Article 329 of the Criminal Code is an unnecessary and disproportionate restriction on the right to freedom of expression. Any harm caused to an individual’s reputation through false assertions that they have committed criminal conduct can adequately be addressed through civil law.

Restrictions of freedom of expression on the Internet

20. In the aftermath of the ethnic clashes that occurred in the Ferghana Valley, southern Kyrgyzstan in June 2010, parliament issued a decree on 16 June 2011 entitled, “On Information Provided by the Deputy Commissioner to Investigate Circumstances and Conditions that Led to the Tragic Events Which Occurred in the Republic Between April - June 2011 and Their Political Assessment.” The effect of this decree has been to increase restrictions on freedom of expression online.
21. The decree required the Ministry of Culture and Information, the Ministry of Justice and the Office of the Prosecutor General to investigate “nationalist and extremist” content in print and electronic media, targeting southern Kyrgyzstan. It included a recommendation to block the website Fergana.ru in the whole country. The reason for blocking Fergana.ru was not given, however it is believed to reflect official views that the website was aimed at “inciting ethnic hatred”. No evidence has been provided to suggest content on the website reached the threshold of incitement under Article 20 of the ICCPR, or that the blocking measure was necessary and proportionate under Article 19 (3) of the ICCPR.
22. Six months after the issuing of the decree, the Kyrgyz parliament (Zhogorku Kenesh) raised the issue of its implementation. In response, the government of Kyrgyzstan issued an order to the State Agency for Communications (subordinate to the government of Kyrgyzstan) to block the website Fergana.ru. Internet Service Providers were given an order to block the website, which was finally blocked on 21 February 2012 through an expedited process. Court proceedings, which were aimed at objecting to the decree, lasted over five months and ended because of the expiration of the statute of limitations. Later, the State Agency sent a letter to providers saying that the order was simply a recommendation to them and this allowed them to reopen access to the website.
23. At the time of the issuance of the decree there were no legal mechanisms in place for blocking websites in national legislation, which were only introduced in 2013. The law “On Countering Extremist Activities” outlines in Article 1(1) that “extremist activities” are those “aimed at planning, organising and committing actions with the intention of [...] inciting racial, national or

religious hatred, as well as social hatred, related to violence or calls for violence". It also prohibits "humiliation of national dignity, the implementation of riots, acts of hooliganism and vandalism motivated by ideological, political, racial, national or religious hatred or enmity, or by hatred or hostility toward a social group; on propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, social, racial, national, religious or linguistic identity". Article 12 specifically prohibits the use of communication networks for extremist activities and Article 13 prohibits the publication of "extremist materials", which includes materials by organisations deemed extremist, publications by individuals who have been sentenced for war crimes or crimes against humanity, and other materials which contain elements of "extremism" as stated in Article 1 of the law.

24. With a reference to Articles 12 and 13 of the law "On Countering Extremist Activities," in September 2012 the State Agency for Communications blocked access to the video "Innocence of Muslims" on YouTube. On 19 September, the Office of the Prosecutor General filed a claim with the Pervomay district court of Bishkek based on an expert analysis of the video carried out by the State Commission for Religious Affairs, which confirmed that the video contains signs of the propaganda of ethnic hatred that is one of the grounds to ban the dissemination of this video in the Internet space of Kyrgyzstan. On 20 September, Zhogorku Kenesh issued a decree that bans the screening or dissemination of the video in Kyrgyzstan until the court issues a decision. On 21 September, the court issued a ruling which declared the video as being "extremist" and banned its dissemination in Kyrgyzstan. A few hours later, access to the video was blocked by order of the State Agency for Communications.

Impunity for attacks on journalists

25. While the level of violence to which journalists are exposed has decreased since 2010, there have been instances of attacks, and impunity remains a problem.
26. Shohruh Saipov, the brother of journalist Alisher Saipov, who was murdered in 2007, was attacked by a group of unknown men at the Osh airport on 10 August 2011. Saipov required medical treatment for a concussion and the loss of several teeth. Like his brother, Saipov is also known for being a critical journalist, and he is the chief editor of UzPress.kg, which actively reported on the ethnic tensions between the Kyrgyz and the Uzbek communities. It is widely believed the attack was related to his professional activities, a conclusion supported by the fact that none of his belongings were stolen during the incident. The authorities have not identified who is responsible despite the fact that the attack was carried out in such a public place.
27. Alisher Saipov, a well-known Kyrgyz journalist of Uzbek origin who published critical materials about Uzbek President Karimov's regime, and worked with Voice of America and Fergana.ru in Kyrgyzstan, was shot dead at close range in October 2007 in Osh. In May 2010, following the court's conclusion that the murder of Saipov was a domestic dispute and not a politically motivated crime, former policeman Abdulfarit Rasulov was sentenced to 20 years of imprisonment. The family of Alisher Saipov did not believe that Rasulov was the actual killer and insisted that the murder of Alisher was politically motivated. In October 2012, the Supreme Court of Kyrgyzstan overturned the sentence and the criminal investigation into his killing resumed. To date the killing remains unsolved.

Attacks on the freedom of expression and information rights of minority groups

28. Religious and ethnic minorities, and lesbian, gay, bisexual, transgender (LGBT) people, continue to face systematic discrimination in the exercise of their freedom of expression and information rights.
29. Minority individuals or groups are not represented in the media, and issues of concern to them rarely receive media coverage. Criminal provisions on "incitement" are also abused to suppress critical discourse on the position of minorities in society in the name of promoting

“nationalism”. These problems are compounded by the exclusion of minority groups from public platforms for political participation.

30. While much discrimination is structural and cultural, there have been recent attempts to explicitly embed prejudice within the legal framework. Although the 2010 Constitution provides protection against discrimination (Article 16b), it has not been implemented through legislation, and therefore there is no effective institutional policy response to ensure the freedom of expression rights of minority groups.
31. In a move emulating the Russian Federation, parliament is currently considering amendments to prohibit the so-called “propaganda” of “non-traditional” (i.e. same sex) relations through the draft law “On Introducing Additions to Some Legislative Acts of the Kyrgyz Republic” proposed by a group of MPs on 15 April 2014. This would amend the Criminal Code, the Code of Administrative Responsibility, the law on Peaceful Assembly and the Law on Mass Media. The amendments seek to ban the creation of positive attitudes or creating interest in “non-traditional” sexual relationships, or drawing equivalence between homosexual and heterosexual relationships. While this prohibition applies generally, it also specifically targets the media and assemblies.
32. The draft law provides criminal penalties of up to six months imprisonment for violations by the media. In relation to assemblies, propaganda will be met with administrative fines of 10 – 16 monthly-calculated indexes (currently 19 – 30 USD).
33. The amendments, if passed, will target any positive discourse around diverse sexual orientations and gender identities in the public arena. It will certainly lead to the media avoiding any positive coverage of issues that affect LGBT people, and similar censorship would likely be seen in the fields of education and health care provision.
34. International standards are clear that bans on “propaganda” of same-sex relations violate the right to freedom of expression and information, which is enjoyed by all people regardless of their sexual orientation or gender identity. Such bans not only limit discourse on matters in the public interest, but restrict access to information to all people that is essential to enjoyment of other rights – in particular the right to health and the right to education. Where similar bans have been adopted, they have been shown to normalise discrimination against LGBT people and are linked to an increase in the climate of hostility and violence experienced by LGBT people.
35. ARTICLE 19 and PEN International reiterate that discriminatory prohibitions on the right to freedom of expression and information cannot be justified by reference to arguments around public morality. Similarly, attempts to frame such prohibitions as necessary to protect children from harm are contrary to all available evidence. The Human Rights Committee, the Committee on the Rights of the Child, the Venice Commission for the Council of Europe, and the European Court of Human Rights have all formally adopted positions that support this conclusion.
36. The right to freedom of expression and freedom of information of religious minorities is also subject to various restrictions. The law “On Freedom of Belief and Religious Organisations in the Kyrgyz Republic” adopted in 2008 imposes restrictions on the dissemination of religious literature in public places, including educational institutions (Article 22 (6)), and prohibits proselytism (Article 5), and also establishes complicated procedures to register missionaries in the country.
37. Inter-ethnic tension in the country, which culminated in clashes between the Uzbek and Kyrgyz communities in Ferghana Valley, southern Kyrgyzstan in June 2010, is also frequently used as an excuse to censor discussion relating to ethnicity. Most media outlets either avoid these topics or adopt majority view, which include Kyrgyz nationalistic editorial lines that discriminate against other ethnic and national minorities. Those entities that publicly diverge from the

nationalistic narrative face criticism for being unpatriotic or for inciting ethnic hatred, tending towards an environment of self-censorship.

38. On 3 July 2012, independent journalist Vladimir Farafonov was found guilty of charges of humiliating the Kyrgyz nation and disseminating propaganda of ethnic hatred under Article 299 of the Criminal Code and fined 50,000 Som (approximately USD 1,000). Article 299 of the Criminal Code, "Inciting National, Racial, Religious or Regional Hatred" provides for fines and up to five years of imprisonment as punishment. Farafonov is a popular journalist, known for his analytical materials in which he sharply criticises Kyrgyz politicians and the spread of nationalism in the Kyrgyz society.
39. Ethnic Uzbek human rights defender and journalist Azimjan Askarov remains in prison serving a life sentence. On 15 September 2010, following an unfair trial in which his complaints of torture and other ill-treatment were not properly investigated, he was convicted and sentenced for his alleged involvement in the murder of an ethnic Kyrgyz police officer and incitement to violence. Azimjan Askarov was known for his investigations into police torture and recorded human rights violations during the ethnic clashes in the Ferghana Valley in June 2010. Some local human rights defenders believe that Azimjan was sentenced in retaliation for his reporting, in particular for documenting how police following the clashes took no action to stop violence and looting. None of Azimjan's co-defendants implicated him at the scene of the crime, and an investigation by the government's own Human Rights Ombudsman concluded that there was no evidence linking Azimjan to the crimes and that the charges against him were politically-motivated. Over the past four years, local and international human rights groups have made significant efforts to help release him. On 30 April 2014, Oktyabr district court of Bishkek decided that a new investigation into Azimjan's case based on newly-discovered evidence had been ineffective and issued a decision to reopen the investigation.
40. On 10 April 2013, the President issued a decree enacting the "Concept for Enhancing the Unity and Ethnic Relations in the Kyrgyz Republic for the period 2013 - 2017." The Concept provides for early prevention of ethnic conflicts and forming a unified civic identity. However, it has been widely criticised by domestic civil society organisations for failing to address the root causes of ethnic tensions.

Recommendations

41. In response to these concerns, ARTICLE 19 and PEN International call upon UN Member States to put forward specific and strong recommendations to address the on-going restrictions on the right to freedom of expression and assembly in Kyrgyzstan, namely to:
 - Repeal Article 329 of the Criminal Code, decriminalising the offence of disseminating "knowingly false messages about the commission of a crime", making clear that public officials are expected to tolerate more, not less, criticism than non-public officials;
 - Reject current proposals to introduce a 'foreign agent' law, as proposed on 26 May 2014 through the draft law "On Introducing Amendments and Changes to Some Legislative Acts of the Kyrgyz Republic" and its proposed revisions to the Law on Non-commercial Organizations, the Law on State Registration of Legal Entities, and the Criminal Code.
 - Ensure that any mandatory blocking of websites, IP addresses, ports, network protocols or types of use (e.g. social networking) is in accordance with international standards;
 - Repeal the law on Countering Extremist Activities, and enact legislation to protect national security that comply with Article 20(2) ICCPR and the Rabat Plan of Action;
 - Release human rights defender and journalist Azimjan Askarov, quash his conviction, and investigate effectively and impartially the allegations of torture and other ill-treatment with the view to providing adequate redress;
 - Carry out an independent and effective investigation into the 2007 murder of the journalist Alisher Saipov and bring the responsible perpetrators and instigators to justice;
 - Protect the freedom of expression and association rights of groups at risk of discrimination, in particular ethnic minorities, LGBT people, and religious minorities, and specifically:
 - Amend Article 299 of the Criminal Code on incitement to conform with Article 20(2) of the ICCPR, removing references to "humiliating the Kyrgyz nation" and ensuring the

protection of public interest expression that is critical of the State, as outlined in the Rabat Plan of Action;

- Reform the Law “On Freedom of Belief and Religious Organisations in the Kyrgyz Republic” (2008), removing Article 5 on “proselytism”, Article 22(6) restricting the dissemination of religious materials, and provisions that restrict the registration of religious missionaries;
- Reject legislative initiatives to restrict positive expression in relation to non-heterosexual relationships, in particular the draft law “On Introducing Additions to Some Legislative Acts of the Kyrgyz Republic”.