



ARTICLE 19

**Submission to the UN Human Rights Committee
in advance of the review of Tajikistan at its 146th Session**

By ARTICLE 19 and Khoma

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Introduction

ARTICLE 19 and Khoma welcome this opportunity to contribute to the Human Rights Committee (“the Committee”) review of Tajikistan.

Our submission responds to two of the listed issues put to Tajikistan by the Committee during the its 146th Session, covering:

Freedom of expression and peaceful assembly (arts. 19 and 21)

21. *In connection with the previous concluding observations (para. 22), please respond to consistent reports of arbitrary restrictions on the freedom of expression in law and in practice, and explain how regulations and practices such as the following are compatible with the State party’s obligations under article 19 of the Covenant: (a) criminalization of insult or libel against the President/Leader of the Nation (art. 137 and 137(1) of the Criminal Code) and insult against other State officials (art. 330 of the Criminal Code); (b) State control over the media resulting in self-censorship by media outlets and journalists; (c) regulations of February 2017 requiring all new periodicals and printing houses to register with the State Committee for National Security; (d) the use of registration requirements to close down media outlets critical of the Government; (e) periodical blocking of media platforms, such as the British Broadcasting Corporation (BBC), the cable News Network (CNN) and Ferghana.ru for promoting extremism, of news websites, social media and search platforms, such as Facebook, Vkontakte, YouTube and Twitter, and of mobile and texting services to prevent, inter alia, the dissemination of critical statements about the President or his family; and (f) the written official approval required for any book that is brought into or taken out of the country.*

22. *Please respond to reports of harassment of independent journalists and media workers for critically reporting on State policies and on other matters of public interest, including through intimidation, the use of civil defamation suits and the imposition of disproportionate sanctions as a result, and prosecutions on allegedly trumped-up charges, including fraud, extortion and extremism. Please report on the measures taken to address the lack of independence of the broadcasting and licensing authority, the State Committee for Television and Radio Broadcasting. Please provide information about the powers given to the Prosecutor General or the body authorized to regulate registration under the 2016 amendments to the Periodical Press and Other Media Act (2013) to request from a court an order to suspend the activities of a mass media outlet.*

Following his official visit to Tajikistan in March 2016, the UN Special Rapporteur on the right to freedom of opinion and expression, David Kaye, noted that “the pressures on the political environment of Tajikistan extend across the spectrum of activities, from independent media, the internet and mobile communication to civil society, lawyers and religious people...new laws and practices have permitted a crackdown on political alternatives as part of a process of intimidation, detention and closed criminal proceedings.”¹ Three years on from his visit, there have been no visible improvements with regard to the freedom of expression situation in Tajikistan.

While the Constitution of Tajikistan gives limited protection for freedom of expression, this means little in practice. The government has repeatedly harassed or shut down independent media outlets. Defamation is a criminal offense, and the criminal code prohibits “insulting” the president. The authorities engage in periodic blocking of online news sources and social media platforms. The closure of Tajikistan’s remaining independent and opposition media outlets and the paralysing restrictions on civil society organisations’ registration, activities and financing have obstructed the work of journalists and human rights defenders, and been accompanied by targeted harassment.²

Our submission bases its analysis on international standards on the rights to freedom of expression and to access to information, drawn from the International Covenant on Civil and Political Rights (“ICCPR”) itself and the guidance the Committee has previously provided to States, as well as other sources of international human rights law.

Constitutional safeguards for freedom of expression and the right to information (List of Issues 21)

Article 30 of the Constitution of Tajikistan guarantees the right to freedom of expression in the following terms:

¹ “Preliminary observations by the United Nations Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye at the end of his visit to Tajikistan”, OHCHR, March 2015, (full report forthcoming), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17193&LangID=E>

² See also, ARTICLE 19, English PEN, & PEN International. (2015). [Online] *Submission to the UN Universal Periodic Review of Tajikistan*. Available at: http://www.upr-info.org/sites/default/files/document/tajikistan/session_25_-_may_2016/js1_upr25_tjk_e_main.pdf

“Article 30: Everyone is guaranteed freedom of speech, the press, the right to use the media. Propaganda and agitation, inciting social, racial, national, religious and linguistic enmity and hostility, are prohibited. State censorship and prosecution for criticism are prohibited. The list of information constituting a state secret is determined by law.”³

This Constitutional guarantee for free expression is out of step with the requirements of Article 19 ICCPR. While the prohibitions on “censorship” and “prosecution for criticism” are positive, this guarantee does not reflect the reality of national legislative provisions or their enforcement. The guarantee would be bolstered if Article 30 more precisely reflected the three-part test of Article 19(3) ICCPR, and required that limitations be (i) provided for by law; (ii) be for the purpose of one of an exhaustive list of legitimate aims; and (iii), be necessary and proportionate. Similarly, the clause on propaganda and incitement imitates but fails to accurately capture the State’s obligation to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence (Article 20(2) of the ICCPR). The concepts of “enmity and hostility” are imprecise, and disconnected from any requirement for authorities to show that incitement should be intended to and have the effect of inciting action, as per the OHCHR-backed Rabat Plan of Action.⁴

The Constitutional protection for access to information is similarly weak. Article 30 does not refer to the explicit right to information and provides only that restrictions on access to “State Secrets” be “determined by law”, rather than comply with the principle of legality, and without reference to requirements of legitimate aim, necessity or proportionality. Article 25 of the Constitution suffers from the same weaknesses, allowing the authorities to limit the supposed “right” simply by legislating for it, rather than requiring strict adherence to the requirements of Article 19 ICCPR:

Article 25. State bodies, public associations, political parties and officials are obliged to ensure that everyone has the opportunity to receive and familiarize himself with the documents relating to his rights and interests, except as required by law.

It is essential that the Committee addresses the weaknesses of these Constitutional safeguards, as this is at the root of the freedom of violations detailed in the remainder of this submission.

Restrictions on Freedom of Expression in the Penal code (List of Issues 21(a) and 22)

Defamation and Insult

In 2012, Tajikistan’s Parliament partially decriminalised defamation with the repeal of **Articles 135** and **136** of the Criminal Code, relating to defamation and insult respectively.⁵ However, provisions that provide public officials with additional protection from criticism were retained: **Article 330** criminalising the ‘insult of a public official’,⁶ and **Article 137**, which criminalises ‘public insult or defamation of the President of Tajikistan’.⁷ These offences are punishable by fines or imprisonment of up to two years or five years, respectively. In addition, **Article 346** criminalises ‘knowingly false denunciation’, providing for up to seven years’ imprisonment.⁸

³ The Constitution, without the 2016 amendments, may be found at: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=1

⁴ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 5 October 2012, A/HRC/22/17/Add.4; available at: https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

⁵ *Criminal Code of the Republic of Tajikistan*. (2018). [Online]. Available in Russian and Tajik here: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=23

⁶ Article 330. Insulting a representative of the authorities: 1) A public insult of a representative of the authorities in the performance of his official duties or in connection with their performance is punishable by compulsory work for a period of one hundred eighty to two hundred and forty hours or a fine of from five hundred to one thousand indicators for calculations or arrest for up to six months or correctional labor for a period of two months to one year; 2) Insults contained in a public speech, a publicly demonstrated work, the media or the Internet, are punished with a fine of from one thousand to one thousand five hundred indicators for calculations or arrest for a term of two to six months or imprisonment for up to two years .

⁷ Article 137. Public insult of the President of the Republic of Tajikistan or slander of him: 1) Public insult of the President of the Republic of Tajikistan or slander against him is punishable by a fine in the amount of one hundred to five hundred indicators for payment or correctional labor for up to one year; 2) The same actions committed using the press, other mass media or the Internet are punishable by correctional labor for up to two years or by imprisonment for a term of two to five years.

⁸ Article 346. Knowingly false denunciation. 1) knowingly false reporting of a crime - is punishable by a fine in the amount of from five hundred to one thousand indicators for calculations or restriction of freedom for up to two years (ZRT of 05/17/2004 No. 35, of 6/10/2008 No. 422). 2) The same act committed: a) with a charge of a grave or especially grave crime; b) with the artificial creation of evidence of the prosecution; c) for mercenary motives; d) in the interests of an organized group - shall be punished with correctional labor for a term of up to two years or imprisonment for a term of up to five years (ZRT of June 13, 2013 No. 966). 3) The actions provided for in the first or second part of this article: a) committed against a judge, prosecutor, investigator, or inquirer (LRT dated March 15, 2016 No. 1274); b) resulting in serious consequences - shall be punished with imprisonment for a term of five to seven years (ZRT of 17.05.2004 N35).

In October 2016, amendments to the Criminal Code created a new offence seeking to shield current and former Presidents from criticism.⁹ **Article 137(1)** criminalises ‘insulting the Leader of the Nation through the media through print, online or other media’, punishable by up to five years’ imprisonment.¹⁰ The title of ‘Leader of the Nation’ is conferred on Presidents upon taking office, and is a life-long title.

Media outlets and journalists have been taken to court, seemingly for writing about Public Officials or political issues, but without being informed of the specific content that is considered to be defamatory. The ambiguity surrounding what content may be considered defamatory or insulting is reported to lead to self-censorship, in particular relating to commentary concerning the President, his family, public officials, or sensitive issues such as corruption. Although threats of prosecution under the criminal law for defamation are not always pursued, such intimidation nevertheless constitutes harassment, and is often connected to harassment through other channels, notably through arbitrary fire safety regulation and tax inspections.

For example, in October 2016, independent newspaper, Nigokh, was threatened with being charged under Article 137.¹¹ *Tajikistan’s Ministry of Culture submitted a complaint to the National Media Council, against Nigokh in relation to an article published on 5 October 2016.*¹² *In the headline, the word ‘president’ had been misspelled ‘presidLent’ which the Ministry deemed tantamount to defamation and insult, under Article 137. The Ministry warned that as a result of the insulting article it would shut down Nigokh. Although the criminal insult prosecution was not ultimately pursued, the complaint coincided with a series of tax and fire safety inspections at the paper’s offices. Alleged violations uncovered through those inspections led to Nigokh’s offices being sealed, and the forcible closure of the paper in early November 2016.*

International human rights standards are clear that public officials should tolerate more, rather than less, criticism, given the importance of ensuring effective public scrutiny of government actions.¹³ We encourage the Committee to clearly articulate the incompatibility of amendments to the Criminal Code with Tajikistan’s obligations under the ICCPR. Recommendations should also address the abuse of fire and tax inspections and sanctions as alternatives to use of the Criminal Code.

Defamation and insult provisions in the Civil Code

While insult and defamation have been decriminalised, their counterparts in the Civil Code provide overbroad protection to the “honour and good name”, “dignity”, and “reputation” of both individuals and business, through Articles 174 and 174(1).¹⁴ The provisions have been applied against media organisations.

The available remedies include substantial compensation for “moral damages” - which are generally between USD 10,000 to USD 100,000 – in conjunction with Articles 171, 172, 1115 and 1116 of the Civil Code, including the correction of the information in the media. Article 174 places a burden on the defendant to prove that the

⁹ *Law of the Republic of Tajikistan 14 November 2016, No. 1358 “On the introduction of amendments to the Criminal Code of the Republic of Tajikistan”*. 920160. [Online]. Available in Russian and Tajik here: http://www.adlia.tj/show_doc.fwx?Rgn=128054

¹⁰ Article 137 (1): 1) Public insult of the Founder of Peace and National Unity - Leader of the Nation or slander against him, is punishable by a fine in the amount of one hundred to five hundred indicators for payment or correctional labor for up to one year; 2) The same actions committed using the press, other media or the Internet are punished with correctional labor for up to two years or imprisonment for a term of two to five years.

¹¹ Centre-1 (2016) *Tajik newspaper closed due to misspelling of the word ‘President’?* [Online]. Available from: <http://centre1.com/tajikistan/tadzhikskuyu-gazetu-zakryli-iz-za-opechatki-v-slove-prezident/>

¹² The National Media Council of the Republic of Tajikistan is allegedly a self-regulatory body mandated with promoting professional ethics in Tajik journalism and responding to violations but there remain serious concerns about its independence.

¹³ <https://www.article19.org/resources/defining-defamation-principles-on-freedom-of-expression-and-protection-of-reputation/>

¹⁴ **Article 174:** Protection of honor, dignity and business reputation: 1) A citizen has the right to demand the court to refute the defamatory information, dignity, or business reputation of the information, if the information disseminated does not prove that they correspond to reality. At the request of interested persons, the defense of honor and the honor of a citizen is allowed after his death: 2) If information discrediting the honor, dignity or business reputation of a citizen is disseminated in the media, it must be refuted free of charge in the same media. If the specified information is contained in a document originating from the organization, such document shall be replaced or withdrawn. The procedure for refutation in other cases is established by the court; 3) A citizen, in respect of whom the mass media published information that infringes his rights or interests protected by law, has the right to publish his answer free of charge in the same mass media; 4) The requirement of a citizen or a legal entity to publish a refutation or a response in the mass media is considered by the court if the mass media agency refused such publication, or did not publish it within a month, as well as in the event of its liquidation; 5) If the court decision is not executed, the court has the right to impose a fine on the violator, in the amount and in the manner stipulated in the procedural legislation, to the income of the Republic of Tajikistan. Payment of the fine does not relieve the offender from the obligation to perform the action specified in the court decision; 6) A citizen, in respect of whom information spreading his honor, dignity or business reputation is disseminated, has the right, along with the refutation of such information, to demand compensation for damages and moral damage caused by their distribution; 7) If it is impossible to identify a person who disseminated information discrediting the honor, dignity or business reputation of a citizen, a person in respect of whom such information is disseminated has the right to apply to the court for recognition of the common knowledge that is not true; 8) The rules of this article on the protection of the business reputation of a citizen respectively apply to the protection of the business reputation of a legal entity. **Article 174(1):** Protecting honor and dignity in insult and slander: Honor and dignity and business reputation in defamation, that is, the deliberate dissemination of false information, discrediting the honor and dignity and reputation of another person or insult, that is, humiliation of honor and dignity and reputation of another person expressed in indecent form, protected in accordance with the requirements of Articles 170, 171, and 174 of this Code.

information is true, placing an unreasonable burden on the defendant undermining their right to a fair trial.¹⁵ The Committee should make clear that, in cases involving statements on matters of public concern, the ICCPR requires the plaintiff to bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.

Article 171¹⁶ provides that if “moral damage” is inflicted on a citizen, the court can order the violator to pay financial compensation. Article 172(3)¹⁷ and Article 1115(2)¹⁸ further provide that compensation may be claimed for damage to reputation, honour and dignity, “regardless of the guilt” of the violator. Allowing for penalties against a person’s for sharing opinions or ideas without establishing liability has a significant chilling effect on expression.

Moreover, the Civil Code does not provide for adequate defences against defamation claims, nor does it differentiate statements of fact from statements of opinion, whereas under international law statements of opinion have been accorded heightened protection. Moreover, there are weak provisions for the defence of ‘reasonable publication’, though the court is required to consider the importance of freedom of expression in this assessment.

Over the past four years, the total number of civil defamation cases has abruptly declined in Tajikistan with an almost complete cessation in the claims of moral damages filed against journalists and media organisations. We submit this is a result of editorial self-censorship to avoid lawsuits and liability for damages, which would threaten the continued operation of many media outlets. The most recent civil defamation lawsuit was in 2016 against TV company *Tanin* of the Sughd region. The court awarded 23,000 Tajik Somoni in moral damages (around USD 2000), following a claim by the plaintiffs for 800,000 Tajik Somoni (USD 100,000).

The Committee should make clear to the Tajikistan government that extensive reforms to civil defamation laws are required to bring its laws in compliance with Article 19 of the ICCPR, recommending a cap to “moral” damages, and ensuring sufficient defences in line with international human rights standards.

Counter terrorism and “extremism” provisions

Numerous restrictions on “terrorism” and “extremism” in the Tajik legal framework, raising significant freedom of expression concerns. The Law on Combating Terrorism (1999)¹⁹ and the Law on Fighting against Extremism (2003)²⁰ broadly define “terrorism” and “extremism” and give extensive powers to authorities to severely curtail freedom of expression, and the work of civil society groups and the media, under the guise of national security.

Article 3 of the Law on Combating Terrorism defines “terrorism” as “violence or threat of violence against individuals (...) legal entities (...) the destruction of or threat to destroy property and other material objects (...) which threaten to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or influencing the

¹⁵ Principle 5 of the (revised) Defamation Principles, ARTICLE 19, 2017; available at: [https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-\(online\)-.pdf](https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf)

¹⁶ Article 171. Compensation for Moral Harm: If a citizen suffered moral damage (physical and moral suffering) by actions that violate his personal non-property rights or infringe upon other intangible benefits belonging to the citizen, as well as in other cases stipulated by law, the court may impose on the violator the obligation to compensate for the specified harm. In determining the amount of compensation for non-pecuniary damage, the court takes into account the degree of guilt of the offender and other circumstances worthy of attention. The court must also take into account the degree of physical and moral suffering associated with the individual characteristics of the person who has been harmed.

¹⁷ Article 172. Protection of personal non-property rights: 1) A person whose personal non-property rights are violated, in addition to the measures provided for in Article 12 of this Code, has the right to compensation for moral harm according to the rules of this Code; 2) Protection of personal non-property rights is carried out by the court in the manner prescribed by civil procedural legislation; 3) Personal non-property rights are subject to protection regardless of the guilt of the person who violated the rights. The person who has filed a claim for protection must prove the violation of his personal property right; 4) A person whose non-property right has been violated may, at his choice, demand that the violator should eliminate the consequences of the violation or, at the expense of the violator, independently perform the necessary actions or entrust them to a third party.

¹⁸ Article 1115. Non-pecuniary damage: 1) Moral harm is compensated by the causer in the presence of guilt of the causer, except as provided for in paragraph 2 of this article; 2) Moral damage is indemnified regardless of the fault of the causer in the following cases: a) the harm is caused to the life and health of a citizen by a source of increased danger; b) harm has been inflicted on a citizen as a result of his unlawful conviction, unlawful criminal prosecution, unlawful use as a measure of restraint in custody or on his own recognizance, unlawful imposition of administrative penalty in the form of arrest or corrective labor; c) the harm is caused by the dissemination of information discrediting honor, dignity and business reputation. And also in other cases stipulated by law; 3) Moral damage caused by actions (inaction) that violate the property rights of a citizen is not refundable, except as required by law.

¹⁹ Legislation of the Republic of Tajikistan (2015) *Law on Combatting Terrorism*. [Online]. Available in Russian from: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=63

²⁰ Legislation of the Republic of Tajikistan (2014) *Law on Fighting Extremism*. [Online]. Available in Russian from: http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=112

adoption by state organs of decisions advantageous to terrorists, or satisfying their unlawful material and (or) other interest (...).²¹

Article 4 includes in its definition of terrorist acts the extremely vague concept of “the dissemination of threats in any form and by any means; other actions creating a danger of loss of life; significant damage to property, or other socially dangerous consequences.” According to this definition, acts of terrorism could encompass expressive acts.

Article 3 of the Law on Fighting against Extremism, emulates Russian Federation 2002 legislation by defining “extremism” broadly as “the manifestation by legal entities and physical persons of expression of extreme forms of the actions calling for destabilization, change of the constitutional system in the country, seizure of power and assignment of its powers, incitement of racial, race, social and religious strife.”

Extremist activities, as defined in the law, include vague conduct that could extend to criticism of the government or its policies, or reporting on extremism and acts of terrorism. For example, among the activities considered extremist are the “promotion of exclusiveness, superiority or inferiority of citizens on the basis of their relation to religion, social, racial, national, religious or language identity”; “humiliation of national advantage”; and “undermining safety of the Republic of Tajikistan”. “Public calls” for any of the above activities, or preparation of those activities, is also classified as extremist.

Our organisations are particularly concerned that the law provides for any organisation – including non-profit organisations, religious groups, and associations – that finances so-called ‘extremist activities’, or otherwise “assists” in extremist activities, which can include printing or other forms of communication, to be liquidated.

Extremist materials are further broadly defined in the law in the following terms:

[T]he information or documents calling for implementation of extremist activities or proving intended for promulgation or justifying the need of implementation of such activities, publications proving or justifying national and (or) racial superiority or justifying practice of making of the war or other crimes directed to complete or partial extermination of any ethnic, social, racial, national or religious group.

General Comment No. 34 clearly provides:

*States parties should ensure that counter-terrorism measures are compatible with [Article 19 para 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 penalised for carrying out their legitimate activities.*²²

The Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted by international and regional freedom of expression mandates in 2015, also insists on the need for States to “refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.”²³ Similar concerns have been expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who in her February 2019 report focused on the impact of such provisions on civil society space.²⁴

The broad and imprecise wording of what constitutes “terrorism”, “terrorist action”, “extremism”, “extremist activities” and “extremist materials” grants too wide a discretion in its interpretation and application, leading to arbitrariness. Thus framed, the laws criminalise behaviours that would not otherwise constitute terrorism and

²¹ **Article 3.** Definition of terrorism: **Terrorism** - is violence or the threat of violence against individuals, compulsion or threat of compulsion against legal entities, and also the destruction (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities, which threaten to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or influencing the adoption by state organs of decisions advantageous to terrorists, or satisfying their unlawful material and (or) other interests; attempts on the lives of statesmen or public figures perpetrated with a view to weakening the foundation of the constitutional order and security of the state or with a view to ending their state or other political activity or out of revenge for such activity; attempts on the life or infliction of a bodily harm to statesmen, public figures or representatives of authorities perpetrated because of their political or public activity, with a view to destabilizing the public order or influencing the adoption of decisions by organs of power or obstructing the political or public activity; attacks on representatives of foreign states or staffers of international organizations enjoying international protection, or members of family living together, and also on the offices, dwelling places or vehicles of persons enjoying international protection if these actions are committed with a view to provoking war or complicating international relations (<https://www.legislationline.org/documents/id/6924>).

²² General Comment 34, *op.cit.*, para 46.

²³ Available at: <https://www.osce.org/fom/154846>

²⁴ Report A/HRC/40/52, 18 February 2019.

result in disproportionate restrictions on the exercise of freedom of expression. As a result, the government of Tajikistan has abusively applied these provisions to suppress independent voices, including journalists, opposition figures, and representatives of peaceful religious groups.²⁵

The laws further grant broad discretion to the Prosecutor General and leave the judiciary with limited tools to constrain the misuse of these laws against parties and associations.²⁶

The Unified Concept of the Republic of Tajikistan on the Fight Against Terrorism and Extremism was introduced in 2006 by the decree of the Tajikistani President.²⁷ The phrase “terrorism and other forms of extremist manifestation” is used throughout the text of this Decree, conflating overly broad definitions of terrorism and extremism.

Counter-terrorism provisions in the Criminal Code

In addition to the dedicated legislation on terrorism and extremism, provisions in the criminal code additionally contain ill-defined offences that can be applied abusively against media, civil society, and others.

Amendments to the Criminal Code signed into law on 14 November 2016 provide for imprisonment from five to ten years for the vaguely-defined speech offence of public ‘justification’ of terrorist or extremist activity (**Article 179(3)**).²⁸ This is defined in a note to the provision as “public propaganda on the recognition of the correctness of the ideology and practices of terrorism and extremism and inviting people to follow or support it.”

In August 2018, Article 179(3) was further revised by Law No. 1538 to strengthen sanctions for offences committed online or through the mass media. Individuals can as a result face prosecution on terrorism charges for simply ‘liking’ or ‘reposting’ material on social networks.

This amendment builds on a series of amendments introduced by the law of 14 November 2016 No. 1359, that extended the definition of terrorist and extremist acts to explicitly include those committed online or through the media, with strengthened sanctions:

- **Article 179 (1) paragraph 2** of the Criminal Code, relating to ‘Involvement in the commission of crimes of a terrorist nature or other assistance in their commission’, was amended to establish an aggravated sentence of up to fifteen years’ imprisonment where the offence is committed ‘using the media or the internet.’²⁹
- **Article 307(1)** of the Criminal Code criminalises ‘public calls for extremist activity and (or) public justification of extremism,’ punishable up to five years’ imprisonment, increasing to ten years if committed ‘using the Mass Media or Internet’.³⁰

²⁵ Preliminary observations of the Special Rapporteur on freedom of opinion and expression, *op. cit.*

²⁶ *Ibid.*

²⁷ Unified Concept of the Republic of Tajikistan on the Fight Against Terrorism and Extremism, Approved by the Decree of the President of Tajikistan No. 1717, (Mar. 28, 2006), available at http://www.geneva-academy.ch/RULAC/pdf_state/Concept-of-Combating-Terrorism-and-Extremism-TJ.pdf (in Russian), archived at <http://perma.cc/9FZ2-CEQ2>

²⁸ Article 179 (3). Public calls for terrorist crimes and (or) public justification of terrorist activities (as amended by the Law of November 14, 2016 No. 1359): 1) Public calls for crimes under Articles 179, 179 (1), 179 (2), 181, 182, 184, 184 (1), 184 (2), 184 (3), 184 (4), 185, 193, 194, 194 (1), 194 (2), 194 (3), 194 (4), 194 (5), 310 and 402 of this Code, as well as the public justification of terrorist activities (as amended by the Law of 14.11.2016 No. 1359), is punished with imprisonment for a term of five to ten years; 2) The same acts committed using the mass media or the Internet (as amended by the Law of 03.08.2018 No. 1538) are punished with imprisonment from ten to fifteen years (as amended by the Law of 18.06.2008 No. 386) Note: The concept of public justification of terrorist activities is understood as public propaganda recognizing the correctness of the ideology and practice of terrorism, a proposal to imitate and support it (as amended by the Law of November 14, 2016 No. 1359).

²⁹ Article 179 (1). Involvement in the commission of crimes of a terrorist nature or other assistance in their commission: 1) Involvement of persons in the commission of crimes under Articles 179, 179 (2), 179 (3), 181, 182, 184, 184 (1), 184 (2), 184 (3), 184 (4), 185, 193, 194, 194 (1), 194 (2), 194 (3), 194 (4), 194 (5), 310 and 402 of this Code, or declination of the face to participate in the activities of a terrorist organization, arming, or training individuals to commit these crimes, as well as providing other assistance, is punishable by imprisonment for a term of five to ten years (ZRT of June 18, 2008 No. 386); 2) The same acts committed (as amended by the Law of November 14, 2016 No. 1359): a) again; b) by a group of persons by prior agreement; c) using official position; d) using the media or the Internet - shall be punished with imprisonment for a term of ten to fifteen years with deprivation of the right to occupy certain positions or engage in certain activities for up to five years (as amended by the Law of 14.11.2016 No. 1359). 3) The acts stipulated in parts 1 or 2 of this article, if they are committed during a dangerous or especially dangerous relapse (as amended by the Law of 11/14/2016 No. 1359) are punished with imprisonment of fifteen to twenty years with deprivation of the right to hold certain positions or to engage in certain activities for up to five years (as amended by the Law of November 14, 2016 No. 1359).

³⁰ Article 307(1). Public calls for extremist activity and public justification of extremism (as amended by the Law of 14.11.2016 No. 1359): 1) Public calls for extremist activity and (or) public justification of extremism are punishable by imprisonment for a term of three to five years. 2) The same acts committed using the mass media or the Internet are punishable by imprisonment for a term of five to ten years. 3) The acts provided for by parts 1 or 2 of this article, if they are committed: a) repeatedly; b) in case of dangerous or especially dangerous relapse - shall be punished with imprisonment from eight to twelve years with deprivation of the right to occupy certain positions or engage in certain activities for up to five years. Note: The concept of public justification of extremism is understood as public propaganda recognizing the correctness of the ideology and practice of extremism, a proposal for imitation and its support (as amended by the Law of November 14, 2016 No. 1359).

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- **Article 307** of the Criminal Code prohibits '[p]ublic appeals for violent change of the constitutional order of Tajikistan', amended to provide for aggravated punishment of up to 20 years' imprisonment where the offence is carried out through media and the Internet.³¹

“Incitement to hatred”

Article 189 of the Criminal Code prohibits 'arousing national, racial, local or religious hostility', punishable by a maximum sentence of 12 years' imprisonment,³² and is routinely used against journalists and political opposition members, as well as the lawyers who defend them, often in conjunction with 'extremism' charges.

The broadly worded formulation of Article 189 does not align with Article 20(2) ICCPR, and is a prime example of the type of law abused to illegitimately target expression that is not intended to incite and has no risk of causing hostility, violence or discrimination. Concern at the abuse of such laws to suppress criticism, while allowing impunity for expression actually inciting discrimination, hostility, or violence against groups on the basis of their protected characteristic, was a founding concern of the Rabat Plan of Action.³³

On 8 December 2017, Khayrullo Mirsaidov, a freelance journalist and former correspondent for independent Tajik media organisation *Asia Plus* and *Deutsche Welle*, was charged variously with 'misappropriation of state funds' (Article 245(4)(b)), 'incitement to hatred' (Article 189(2)(g)), 'forgery' (Article 340(1)), and 'false denunciation' (Article 346(2)(a)).³⁴

The charges against Mirsaidov are believed to have been in retaliation for his public criticism of corruption by local government officials in the Sugd region. The Prosecutor's Office of the Sugd Region brought the charges after he wrote a public letter in November 2017 to President Emomali Rahmon, calling upon him to address government corruption.

Mirsaidov was held in pre-trial detention for seven months following his arrest in December 2017, although he posed neither a flight risk, nor a credible threat to public safety. He was ultimately convicted of embezzlement and misuse of state funds, and false denunciation, and sentenced in July 2018 to 12 years in jail. His family was ordered to pay the local government 124,000 Tajik Somoni (approximately 11,350 EUR or 13,000 USD) in financial damages, more than 10 times the average yearly salary in Tajikistan.³⁵ On 22 August 2018, by the decision of the Khujand City Court, Mirsaidov was released. The Regional Court amended the recommended punishment and his sentence was reduced to community service and a fine of 80,000 TJS (approximately 8,500 USD).³⁶

In another high-profile case, on 6 October 2016, Dushanbe City Court sentenced human rights lawyers Buzurgmehr Yorov and Nuriddin Makhkamov to 23 years in a penal colony and 21 years in prison respectively. They had been providing defence counsel to members of the banned Islamic Renaissance Party of Tajikistan (IRPT). They were both charged with 'arousing national, racial, local or religious hostility' (Article 189), 'fraud' (Article 247), 'public calls for violent change of the constitutional order of the Republic of Tajikistan' (Article 307), and 'public calls for undertaking extremist activities' (Article 307(1)).

³¹ Article 307. Public appeals for a violent change of the constitutional order of the Republic of Tajikistan: 1) Public appeals for the forcible seizure of state power or its forcible retention or forcible change of the constitutional order, or forcible violation of the territorial integrity of the Republic of Tajikistan and also assistance in committing these acts (the wording of the Law of 14.11.2016 №1359), shall be punished with imprisonment for a term of three to eight years (ZRT of 13.06.2013 №966). 2) The same action committed: a) repeatedly; b) an organized group; c) using his official position; d) using mass media or the Internet (ZRT dated July 30, 2007, No. 301); e) in case of a particularly dangerous relapse, - shall be punished with imprisonment for a period of eight to fifteen years with deprivation of the right to occupy certain positions or engage in certain activities for up to five years or without (ZRT of December 2, 2002, N89). 3) Acts stipulated in the first or second part of this article, committed on the instructions of hostile organizations or representatives of foreign states, shall be punished with imprisonment for a term of fifteen to twenty years or with deprivation of the right to hold certain posts or engage in certain activities for a period of three to five years (ZRT of December 2, 2002, No. 89, of June 13, 2013, No. 966).

³² Article 189. Incitement of national racial, regional or religious hatred: 1) Actions aimed at inciting national, racial, local or religious hatred or enmity, humiliation of national dignity, as well as propaganda of the exclusivity of citizens based on their attitude to religion, national, racial or local affiliation, if these actions were performed publicly or with the use of mass media, shall be punished by restriction of liberty for a term of up to five years, or imprisonment for the same term. 2) The same actions committed: a) repeatedly; b) with the use of violence or the threat of its use; c) using official position; d) by a group of persons or by a group of persons by prior agreement - shall be punished with imprisonment for a term of five to ten years with the deprivation of the right to occupy certain posts or engage in certain activities for a period of up to five years or without it. 3) The actions provided for in the first or second part of this article, if they: a) are committed by an organized group; b) due to negligence caused the death of a person or other serious consequences; c) resulted in the forcible expulsion of a citizen from his permanent place of residence; d) committed in case of a dangerous or especially dangerous relapse - shall be punished with imprisonment for a term of eight to twelve years with deprivation of the right to hold certain posts or engage in certain activities for up to five years or without it.

³³ Rabat Plan of Action, *op. cit.*

³⁴ See, for example: <https://www.article19.org/resources/tajikistan-pre-trial-detention-journalist-extended/>

³⁵ See, for example: <https://www.article19.org/resources/tajikistan-us-eu-must-press-to-free-journalist/>

³⁶ See, for example: <https://rus.ozodi.org/a/29763397.html>

Yorov was additionally charged with forgery (Article 340)³⁷ and was later sentenced to an additional five years' imprisonment on charges of fraud (Article 247), 'disrespecting' the court, insulting government officials (Article 330) and insulting 'the leader of the Nation' (Article 137(1)). He has made credible allegations of torture and other ill-treatment in detention.³⁸

It is common for individuals perceived to be a threat to the government to be detained under multiple charges, with extremism-related charges used strategically to increase the maximum available punishment.

The written official approval required for any book that is brought into or taken out of the country.

In March 2017, Tajikistan's Culture Ministry announced that books may not be brought into or taken out of the country without written approval, regardless of the language of the texts. Travelers are required to fill out an application "citing the name of the books, stating their language, the place of publication (and) the name of the authors..." Tajikistan's State Religious Affairs Committee and Interior Ministry compiled a blacklist of banned books, most religious in nature, but also including books of spells.³⁹

This decision, and the resulting "black list" of publications, violates the guarantee under the ICCPR that the right to freedom of expression must be enjoyed "regardless of frontiers". There is no basis under Article 19(3) of the ICCPR to justify these restrictions.

Misuse of criminal provisions relating to extortion, fraud, tax evasion to target expression

False charges of extortion, fraud and bribery are frequently made against persons expressing dissent or criticism. Convictions can carry large fines, which for many journalists and activists mean bankruptcy, as well as long prison sentences.

Among the most widely applied charges are:

- 'Misappropriation of funds or embezzlement' (**Article 245**)⁴⁰ of the Criminal Code provides for up to 12 years' imprisonment and fines of up to 2190 monthly calculated indexes (around 15,000 USD).
- 'Forgery' (**Article 340**)⁴¹ of the Criminal Code provides for up to seven years' imprisonment and fines of up to 912 monthly calculated indexes (around 6,000 USD).
- 'Fraud' (**Article 247**)⁴² of the Criminal Code provides for up to 12 years' imprisonment and fines of up to 2190 monthly calculated indexes (around 15,000 USD).

³⁷ Amnesty International (2016) *Tajikistan: Further information: Lawyers jailed on politically motivated charges: Buzurgmehr Yorov and Nuriddin Makhkamov*. [Online]. Available from: <http://www.amnesty.org/en/documents/eur60/4973/2016/en/>

³⁸ Amnesty International (2017) *Tajikistan: Further information: Torture fears for detained human rights lawyer: Buzurgmehr Yorov*. [Online]. Available from: <http://www.amnesty.org/en/documents/eur60/7205/2017/en/>

³⁹ See, for example: <https://www.rferl.org/a/tajikistan-books-religious-extremist-material-culture-ministry/28434892.html>

⁴⁰ Article 245. Misappropriation of funds or embezzlement 1) Misappropriation of funds or embezzlement, that is, theft of another's property entrusted to the perpetrator or under his jurisdiction - shall be punished with a fine of two hundred and fifty to three hundred and sixty-five indicators for calculations or restriction of liberty for up to two years or imprisonment freedom for the same period with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years (ZRT from 17.05.2004 N35, from 6.10.2008 № 422, from 21.07.2010 № 617). 2) The same actions committed: a) repeatedly; b) by a group of persons by prior agreement; c) causing significant damage to a citizen; d) with the use of official powers - shall be punished with a fine in the amount of three hundred sixty-five to nine hundred and twelve indicators for calculations or imprisonment for a period of from two to five years with deprivation of the right to occupy certain positions or engage in certain activities for up to three years (ZRT from 17.05.2004 N35, dated July 21, 2010, No. 617). 3) The acts provided for in the first or second part of this article, committed: a) on a large scale; b) by an organized group - shall be punished with a fine in the amount of from nine hundred twelve to one thousand four hundred and sixty indicators for calculations or imprisonment for a period of from five to eight years with deprivation of the right to occupy certain positions or engage in certain activities for up to four years (ZRT from 17.05.2004 N35, dated July 21, 2010, No. 617, dated June 13, 2013, No. 966). 4) The act provided for in the first, second or third part of this article, committed: a) in case of a dangerous or especially dangerous relapse; b) on a large scale - shall be punished with a fine in the amount of one thousand four hundred sixty to two thousand one hundred ninety indicators for calculations or imprisonment for a period of eight to twelve years with deprivation of the right to hold certain posts or engage in certain activities for up to five years from 17.05.2004 N35, from 21.07.2010 № 617, from 13.06.2013 № 966).

⁴¹ Article 340. Forgery, production or sale of forged documents, state awards, stamps, seals, forms: 1) Forgery of a passport of certificates or other official document representing or exempting rights for its use by a forger or another person, or sale of such document, manufacture or sale of fake state awards of the Republic of Tajikistan, the Tajik SSR, USSR, stamps, seals, blanks for the same purposes, as well as the use of a knowingly fake document (ZRT dated 01.08.2003. N33) - is punished with a fine in the amount of from two hundred fifty to three hundred sixty five indicators for calculations or correctional work for up to two years or imprisonment for the same period (3PT from 25.03.2011 №694). 2) The same acts committed: a) repeatedly; b) by a group of persons by prior agreement; c) with the use of computer equipment - shall be punished with a fine in the amount of from three hundred sixty-five to nine hundred and twelve indicators for calculations or imprisonment for a term of from two to five years (ZRT from 25.03.2011 №694). 3) Acts provided for in the first or second part of this article, committed for the purpose of trafficking in persons, shall be punished with imprisonment for a term of five to seven years (ZRT of 01.08.2003, N33)

⁴² Article 247. Fraud. 1) Fraud, that is, theft of another's property or the acquisition of the right to another's property by deception or abuse of trust - shall be punished with a fine of two hundred and fifty to three hundred and sixty-five indicators for calculations or restriction of liberty for up to 3 years or imprisonment for up to two years (ZRT dated July 21, 2010 No. 617). 2) Fraud committed: a) repeatedly; b) by

- ‘Bribery’ (**Article 279**)⁴³ of the Criminal Code provides for up to five years’ imprisonment and up to 2000 monthly calculated indexes (around 13,500 USD).

Journalists, media outlets, and members of civil society have been charged under these provisions, often in conjunction with criminal charges for content-based offences, as in the cases of the paper Nighkov and journalist Mirsaidov.

Lawyers defending independent media and civil society organisations have also been imprisoned on these types of trumped-up charges. This has an impact on the legal profession, deterring would-be lawyers from defending clients targeted for the exercise of their rights.

On 13 January 2015, Shukhrat Kudratov, a Dushanbe court sentenced a human rights lawyer to nine years in prison for fraud and bribery. Kudratov was known for taking on politically sensitive cases, including representing victims of police torture and people accused of ‘extremism’. He had also provided legal defence for the independent news agency, Asia Plus, when it was sued by the Tajik authorities for defamation.⁴⁴ The charges against him appeared to be in retaliation for his work, in particular, for his role as defense counsel for the trial of Zaid Saidov, a businessman and former government minister. Kudratov has consistently denied the allegations against him. It was announced in 2016 that Kudratov would be released under a Presidential amnesty, however, the authorities subsequently claimed his charges didn’t meet the criteria for the amnesty and assigned him a new lawyer. He was finally released on 24 August 2018.⁴⁵

Harassment and threats against journalists and media workers

The State Committee for National Security frequently “invites” journalists and media workers for questioning and seek to influence their reporting or to make direct threats related to their work. Many have left the country to continue their work from exile.⁴⁶ In response, the Tajik authorities have sought to target family members, through threats and physical attack, in order to intimidate those reporting from outside the country.

Student journalists attending professional training seminars have also been targeted for criticising State policies. One student was interrogated by the state security services, beaten and threatened. During his detention he was not given the opportunity to contact his parents. As an active online journalist, posting on social media networks, his computer was confiscated and his online activities for the past five years were reviewed.

a group of persons by prior agreement; c) causing significant damage to the citizen; d) by a person using his official position - shall be punished with a fine in the amount of three hundred sixty-five to nine hundred and twelve indicators for calculation by imprisonment for a term of from two to five years with deprivation to occupy certain positions or engage in certain activities for up to five years or without it (ZRT from 17.05.2004 N35, from 21.07.2010 № 617). 3) Fraud committed: a) on a large scale; b) an organized group; c) in case of dangerous relapse - shall be punished with a fine in the amount of nine hundred and twelve up to one thousand four hundred and sixty indicators for calculations or imprisonment for a period of from five to eight years with deprivation of the right to hold certain posts or engage in certain activities for up to five years or without it (ZRT from 17.05.2004 N35, from 21.07.2010 № 617, from 13.06.2013 № 966). 4) Fraud committed: a) in a particularly dangerous relapse; b) on a large scale - shall be punished with a fine in the amount of one thousand four hundred sixty to two thousand one hundred ninety indicators for calculation or imprisonment for a period of eight to twelve years with deprivation of the right to hold certain posts or engage in certain activities for up to five years or without such (ZRT of 05/17/2004, No. 35, of 07/21/2010, No. 617, of June 13, 2013, No. 966).

⁴³ Article 279. Commercial bribery. 1) Illegal transfer to a person performing managerial functions in a commercial or other organization, money, securities, other property, as well as unlawful provision of property services to him for committing actions (inaction) in the interests of the giver in connection with his official position - shall be punished a fine in the amount of from three hundred to five hundred indicators for the calculations or the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to two years or restriction of freedom for a term up to two years or imprisonment for the same period (ZRT dated October 6, 2008 No. 422). 2) The same acts committed: a) repeatedly; b) by a group of persons by prior agreement; c) by an organized group - shall be punished with a fine in the amount of from five hundred to eight hundred indicators for calculation or restriction of liberty for up to three years, or arrest for up to four months, or imprisonment for up to four years (ZRT of October 6, 2008 # 422) . 3) Illegal receipt by a person performing managerial functions in a commercial or other organization of money, securities, other property, as well as unlawful use of property services for actions (inaction) in the interests of the official position giving in connection with this person’s position - is punishable by a fine in the amount of from eight hundred to one and a half thousand indicators for calculations or by deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years or by limiting one’s Ode for up to three years or imprisonment for the same period (ZRT of 6.10.2008g.№422). 4) The acts provided for in part three of this article, if they: a) are repeated; b) committed by a group of persons in a preliminary conspiracy or an organized group; c) are associated with extortion - are punished with a fine in the amount of one and a half to two thousand indicators for calculations with deprivation of the right to hold certain positions or engage in certain activities for up to five years or imprisonment for up to five years (ZRT of 01.03.2005 N86, dated October 6, 2008 # 422). Note: The person who committed the acts provided for in the first or second part of this article is exempt from criminal liability if there has been extortion against him and if this person voluntarily reported a bribe to the authority having the right to initiate a criminal case.

⁴⁴ Human Rights Watch (2016) Tajikistan: Free Human Rights Lawyers. [Online]. Available from: <http://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>.

⁴⁵ <https://rus.ozodi.org/a/29450621.html>

⁴⁶ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17193&LangID=E>

Despite the fact that Article 162 of the Criminal Code makes “Hindering the lawful professional activities of a journalist” a criminal offence, punishable by up to five years’ imprisonment, it has rarely been applied.⁴⁷ Instead of facing criminal prosecution, individuals who intimidate or interfere in journalists’ work are merely removed from their official posts and replaced. In the absence of significant consequences, such abuses of power continue largely unchecked.

Media Regulation

Press regulation

The registration of new periodicals and printing houses has become extremely complicated since new regulations were introduced, most recently in January 2019.⁴⁸ According to Article 11 of the amended Law On State Registration Of Legal Entities And Individual Entrepreneurs, new registrations now need to obtain a ‘no-objection certificate’ from the State Committee for National Security (SCNS) in order to continue their official registration process.⁴⁹ This enables the government of Tajikistan to use the withdrawal or refusal of permission as a way to control which media are free to establish and operate.

In theory, new periodicals and printing houses should be able to register through a simplified process created to facilitate registration of both commercial and non-commercial entities, set out by the Tax Committee under the Government of the Republic of Tajikistan,⁵⁰ in their *‘list of documents submitted for state registration of the establishment of a legal entity’*.⁵¹ However, clause seven of this document specifies that *“the opinion of the relevant authority in the case of registration of the media”* must be sought, in this case the Ministry of Culture. The Ministry of Culture requires the following documents for review to determine compliance with the law. Those wishing to register must provide:

- Statement of registration (‘Ustav’) and (for renewal) copy of original registration
- Rent contract including office address
- Copy of passport of the owner of the registered entity, address and telephone number
- Information about the activities of the entity (article topics etc.)
- Number of issues
- Language of publication
- Frequency of publication
- Audience
- Source of financing
- Personnel records
- Permission from the State Committee for National Security to register

In addition, applicants are required to pay USD150 for the registration process and an additional USD10 to receive the document of ‘permission’.

Media outlets who have followed this process report that there is corruption at every stage, with waiting times extended indefinitely if the required ‘fees’ are not paid. While there is no official fee other than the state fee required for the registration process, to receive ‘the opinion of the relevant authority’ specified in clause seven, media organisations report that the Ministry of Culture insists on bribes.

⁴⁷ Article 162. Hindering the lawful professional activities of a journalist 1) Hindering any kind of lawful professional activity of a journalist, as well as forcing him to spread or refuse to disseminate information, combined with the threat of violence, destruction or damage to property, spread of slanderous fabrications or disclosure other information that the victim wishes to keep secret, as well as by threatening the infringement of the rights and legitimate interests of the journalist - you punish tsya a fine in the amount of from five hundred to eight hundred indicators for calculations or correctional work for a period of up to two years (ZRT from 17.05.2004 N35, dated 06.10.2008 №422). 2) The same acts involving: a) violence; b) destruction or damage to property; c) using his official position - shall be punished with restriction of freedom for up to three years or imprisonment for up to five years with deprivation of the right to hold certain posts or engage in certain activities for up to three years or without it.

⁴⁸ Law of the Republic of Tajikistan On State Registration of Legal Entities and Individual Entrepreneurs http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=202

⁴⁹ 1. Law of the Republic of Tajikistan On state registration of legal entities and individual entrepreneurs (as amended by the Law of the Republic of Tajikistan of December 29, 2010 No. 669 of December 28, 2012 No. 912, of November 23, 2015 No. 1251, of May 14, 2016 No. 1319, of 02.01.2019 number 1586). Article 11. Documents submitted for state registration of the establishment of a legal entity: 7) the conclusion of the relevant body in the case of registration of mass media; 2. The procedure for state registration of publishing, printing enterprises and maintaining the State Unified Register. Approved by the Government of the Republic of Tajikistan on February 25, 2017, No. 97; 3. Accounting Procedure - b. Accounting subjects of publishing and printing activities is carried out in the presence of the following documents: - certificate of the State Committee on National Security of the Republic of Tajikistan

⁵⁰ <https://andoz.tj/default.aspx>

⁵¹ <https://andoz.tj/docs/reg/registration-legal.pdf>

The registration regulations and procedure described above effectively prevents media outlets critical of the Government from establishing or continuing operations, either through refusal of permissions from the State Committee for National Security, the inability of media outlets to pay both formal fees and bribes for the process, or through indefinite procedural delays. The legislation regarding registration sets out that the registration takes up to three days, however in some cases registration has taken entities up to six months, and some have been delayed indefinitely.

Accreditation of individual journalists is also used to control the media and censor reporters critical of the government.⁵² These restrictions extend to international journalists, the government's official website explaining this process still displays the outdated provisions,⁵³ which have since been replaced by new legislation from 2013.⁵⁴ In their expert analysis of the 2013 amendments,⁵⁵ the OSCE calls for the concept of accreditation (outlined in Article 30 of the Media Law) to be refined and for the law to ensure that the criteria and guarantees of accreditation are clear, including the possibility to appeal refusals to provide accreditation. These recommendations have not been acted upon.

Misuse of tax legislation to harass media

Tajikistan has increasingly made use of tax legislation to target media outlets which receive foreign funding. Independent media organisations are required under Article 27(2) of the Law on Public Associations⁵⁶ to report all foreign grants to a special state registry before they can access them. Alleged failure to comply with registration of grants can lead to warnings, fines and even liquidation lawsuits.⁵⁷

In addition, on 2 January 2019, Amendment No. 1575⁵⁸ was introduced to the Law on Public Associations, further requiring these organisations to:

- Upload onto their own websites (or to the websites of registering authority) each year financial reports containing detailed information on their income and outgoings;
- Store data on completed activities, both locally and internationally, for at least five years after the conclusion of the associated grant;
- Store and submit to the registering authority information on the personal identities of individuals managing the activities of the organisation, including founding members and members of governing bodies.

The registering authority is also obliged, according to Amendment No. 1575, and in accordance with the requirements of the Law of the Republic of Tajikistan On Countering The Legalization (Laundering) Of Proceeds From Crime, Terrorist Financing And The Proliferation Of Weapons Of Mass Destruction, to submit information to the authorized body to counter legalization (laundering) of criminally obtained income and financing of terrorism and the proliferation of weapons of mass destruction, if there is suspicion that a public association is a cover for raising funds for a terrorist and extremist organization or is used as a channel for financing terrorism, extremism or the proliferation of weapons of mass destruction, or to avoid asset confiscation or to hide or disguise a secret diversion of funds otherwise intended for lawful purposes, but redirected for the benefit of terrorists and extremists or terrorist and extremist organizations." While government bodies highlight that these changes are to bring Tajik legislation in line with the recommendations of the Financial Action Task Force on Monitoring, Tajik non-governmental organisations are concerned that

⁵² Article 30 [of the Law on Press and other Mass Media]. Accreditation of mass media journalists: 1) The mass media, in coordination with state bodies and organizations, regardless of their organizational-legal and property form, may accredit their representatives in them as a journalist; 2) The authorized journalist has the right to participate in meetings and other events of these state bodies and organizations, in accordance with the procedure established by the legislation of the Republic of Tajikistan, familiarized with the transcript, protocol and other documentation and, as necessary, copy them.

⁵³ <http://mfa.tj/?l=ru&cat=57&art=82>

⁵⁴ http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=293

⁵⁵ <https://www.osce.org/ru/fom/100831?download=true>

⁵⁶ http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=173 THE LAW OF THE REPUBLIC OF TAJIKISTAN ABOUT PUBLIC ASSOCIATIONS Article 27. Sources of formation of the property of a public association: 1. The property of a public association is formed on the basis of admission and membership fees, if their payment is provided for by the statute, voluntary contributions and donations, grants, and proceeds from the established procedure and the charter of the public association of lectures, exhibitions, auctions, sports and other events, income from business, not prohibited by law, other activities of the public association; 2. Voluntary and charitable contributions, grants, property received by public associations from foreign states, foreign legal entities, legal entities established with the participation of foreign entities, international organizations and international public movements, as well as through other individuals and "legal entities" are subject to registration by registering authorities in the Register of Humanitarian Assistance to Public Associations of the Republic of Tajikistan, the procedure for which is determined by the Government of the Republic of Tajikistan . Projects funded by these entities, public associations made after notification of the registration authorities. The form of notice specified by the Ministry of Justice of the Republic of Tajikistan (in edition of the Law RT from 08.08.2015g. №1210).

⁵⁷ CIVICUS (2017) *In 2016, respect for civic space declined dramatically in Tajikistan*. [Online]. Available from: <http://monitor.civicus.org/newsfeed/2017/02/28/worsening-conditions-independent-dissent-tajikistan/>

⁵⁸ https://base.spinform.ru/show_doc.fwx?rgn=113495

this broadly-worded legislation could be used to target organisations engaged in activities undesired by state authorities.

There has been an increasing number of intrusive inspections of media and civil society organisations in recent years following the introduction in 2015 of the Law 'On the Inspection of Activities of Economic Entities'.⁵⁹ This concern was also raised by the UN Special Rapporteur on freedom of expression at the conclusion of his visit.⁶⁰

On 16 March 2017 regional offices of media organisations with offices in the city of Khujand in northern Tajikistan (Asia Plus, Zamon, Tajikoni Jahon and National Association of Independent Mass Media in Tajikistan, known as NANSMIT) were subject to spot tax inspections. Tax officials ordered employees to leave and sealed the organisations' offices claiming that the organisations had violated national tax legislation requirements. Their employees were accused of having paid income tax in the Tajik capital of Dushanbe, rather than in Khujand. Despite complaints and media attention on these incidents the Tax Committee maintained that the original inspections were lawful and justified.⁶¹ On January 16, 2018, the President issued Decree No. 990 stating that until 1 January 2021, a moratorium would be declared on all types of inspections of activities of business entities in the Republic of Tajikistan.⁶² Despite this, state representatives have continued to carry out non-scheduled inspections of independent media organisations.

Broadcast regulation

The framework for broadcast licensing is complex, and made more so by insufficient information provided for applicants on the relevant government websites. Information about applying for and receiving broadcast licences can be found in the 2007 Regulation on the specifics of licensing certain types of activities.⁶³ According to this regulation, the authorised body should provide information on how to obtain licenses. However, the State Committee for TV and Radio (the Committee), which would be the authorised body in this case, does not provide any relevant information in its website, making it difficult for applicants to follow the correct procedure.

Chapter 8, Article 1 of the legislation requires that the authorised body make a decision on the license application within thirty days, however, this provision is frequently violated in practice with critical independent media outlet, radio *Asia Plus*, waiting 18 months to receive their license. When licenses are provided, their terms are often unclear and contradictory. *TRK Asia* hold a license for broadcasting and producing audio-visual material but have been targeted by the government for producing films, which the authorities say they do not have the right to do. It is suspected that this ambiguity is exploited as much to raise revenue as to control content.

Following the recommendation made by journalists and civil society organisations that the Prosecutor General suspend mass media outlets' activities only through court order, there have been no occasions where media outlets have been closed through this process. These recommendations provided the basis for the February 2017 amendments to Article 11 of the Law 'On Periodical Press and other Mass Media'.⁶⁴ Those media outlets which have closed since these amendments have been closed 'voluntarily' by their owners, following targeted intimidation and harassment.

⁵⁹ http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=326

⁶⁰ Kaye, D. (2017) *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression – Mission to Tajikistan (A/HRC/35/22/Add.2) Advance Unedited Version*. Human Rights Council. [Online]. Available from: www.ohchr.org/EN/HRBodies/HRC/.../Session35/.../A_HRC_35_22_Add_2_EN.docx p.7

⁶¹ IPHR (International Partnership for Human Rights), Nota Bene and the Lawyers' Association of Pamir (2017) *Persecution of civil society continues with worrying new legislation on the horizon*. [Online]. Available from: <http://monitor.civicus.org/newsfeed/2017/04/25/persecution-dissidents-continues-worrying-new-laws-horizon/>

⁶² <http://investcom.tj/ru/eventsru/495-ukaz-prezidenta-respubliki-tadzhikistan-o-vnesenii-izmenenija-v-ukaz-prezidenta-respubliki-tadzhikistan-ot-16-janvarja-2018-goda-990.html>

⁶³ https://base.spininform.ru/show_doc.fwx?rgn=17301

⁶⁴ THE LAW OF THE REPUBLIC OF TAJIKISTAN ON PERIODICAL PRESS AND OTHER MASS-MEDIA

Article 11 (1). Suspension of the activities of the media (as amended by the Law of the Republic of Tajikistan on 14.05.2016 No. 1314): 1. When any cases are detected by the mass media that violate their statutory goals, the authorized state body for recording mass media sends written notices to the founder (founders) or the editors of these media and sets the time for their elimination (as amended by the Law of the Republic of Tajikistan on February 24, 2017 No. 1407); 2. In the case of non-compliance by the media with the provisions of the legislation of the Republic of Tajikistan, the Prosecutor General of the Republic of Tajikistan or prosecutors subordinate to him shall send to the founder (founders) or the editorial staff of the media a written order on the elimination of offenses and set a time frame for their elimination (as amended by the Law of the Republic of Tajikistan on February 24, 2017 No. 1407); 3. If, within the prescribed period, the offenses that served as the basis for issuing a written order or written notice are not eliminated, the Prosecutor General of the Republic of Tajikistan, the prosecutors subordinate to him or the authorized state accounting body of mass media shall have the right to apply to the court to suspend the activities of the media in established by the legislation of the Republic of Tajikistan; 4. The procedure for suspending the activities of the media in the event of a state of emergency is determined by the legislation of the Republic of Tajikistan (as amended by the Law of the Republic of Tajikistan of 14.05.2016 No. 1314). (http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=293)

For example, *Ozodagon* was closed in this way, with economic restrictions forcing the outlet to shut down. *Nigokh* was also closed on charges of ‘having violated fire safety regulations,’ however this is not considered to be a sufficient legal justification with closure as by law the media outlet was entitled to attempt to correct identified fire safety violations and this provision was not respected.

Online expression.

Blocking is regularly used in Tajikistan in response to criticism of the President and his family online. There is no legislation which specifies under what circumstances government agencies can take action to block websites with all blocking carried out by the State Communications Service. Additional government departments, attached to the Ministry of Internal Affairs and the State National Security Committee, have nevertheless been established to carry out blocking. Several websites were blocked in advance of Tajikistan’s May 2016 referendum and access to them remains restricted, in clear violation of international standards.

In addition, websites of both international and domestic media are regularly blocked following incidents which the government of Tajikistan considers may result in critical reporting. For example, in Khudjand in November 2018,⁶⁵ a number of independent news websites were blocked for reporting on prison riots. Asia Plus is frequently targeted. These blockings are often explained by the government and providers as the network being ‘down for repair,’ however access to such websites is still available through proxies and other applications which can circumnavigate these restrictions.

The National Centre for Law in Tajikistan instigated a working group to develop draft legislation which would provide for blocking only in the case of a court order, however these recommendations were not accepted by the Government.

In addition, the State Communications Service has included Tajiktelecom, the public Internet provider, in Register of Subjects of Natural Monopolies, with its actions therefore governed by the Law on Natural Monopolies.⁶⁶ This not only provides for greater Government control over the internet, as it effectively prevents independent private providers, but also significantly restricts access to the Internet through the high cost of connection and data use. On 4 March 2019, the Tajik Government’s Antimonopoly Service further restricted internet access through Order No. 31 “On changes in the cost of mobile communication services”. According to this bylaw, all mobile companies are required to increase the price of the Internet data to 62 Tajik Somoni per GB (approximately USD6.50). This was a huge amount, especially given the low income of the majority of Tajik citizens, with around 31.5% below the poverty line.⁶⁷ Following outrage at the raise in prices, this Order was eventually dropped.

The government of Tajikistan has abused concerns about national security and preventing extremism to silence dissent online. In November 2016, a ‘unified communications centre’ was established in Tajikistan under the auspices the state-owned Tajik Telecom company, purportedly to improve information security. All Internet and telecommunications services are required to be passed through this centre. However, the fact that the centre is controlled by the Tajik government gives the authorities wide-ranging access to Internet and mobile phone communications.⁶⁸

Access to Information

The right to access information, while given limited Constitutional protection, is further set out in Tajikistan’s 2008 Law on the Right to Access Information,⁶⁹ with a separate right for the media established in Article 23 of Tajikistan’s Media Law.⁷⁰ However there are inadequate mechanisms for enforcement and associated State

⁶⁵ <https://www.ozodi.org/a/29588271.html>

⁶⁶ http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=164
http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=164

⁶⁷ https://www.indexmundi.com/Tajikistan/economy_profile.html

⁶⁸ CIVICUS (2017) *In 2016, respect for civic space declined dramatically in Tajikistan*. [Online]. Available from: <http://monitor.civicus.org/newsfeed/2017/02/28/worsening-conditions-independent-dissent-tajikistan/>

⁶⁹ http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=195

⁷⁰ Article 23. Right to receive information. 1) Any person has the right to receive reliable information through the media about the activities of state bodies, organizations and their officials; 2) Mass media have the right to receive information from state bodies, organizations and their officials in the manner established by the legislation of the Republic of Tajikistan. State bodies, organizations and their officials, passing the necessary information to the mass media, provide favorable conditions for familiarizing themselves with documents; 3) State bodies, organizations and their officials are obliged to respond to the necessary official information, critical and analytical materials of the media that do not require additional study within up to three working days after contacting or publishing (broadcasting) the relevant information. State bodies, organizations and their officials promptly provide urgent information of public importance, not included in the list of information constituting state secrets and other information protected by law and not requiring additional study; 4) Heads of state bodies and organizations are obliged information to respond to critical and analytical material related to their activities and requiring additional study, within a period not more than two weeks after their publication (broadcast); 5) In the event that the heads of state bodies and organizations refuse to provide information, a representative of the mass media may file a complaint with higher authorities or in accordance with the procedure established by the legislation of the Republic of Tajikistan, to the court.

Secrets Act,⁷¹ includes overly-broad provisions for restriction of the right to information such as information on the state budget and ‘the health and personal life of the President of the Republic of Tajikistan and his family members.’

Legislation providing for access to information for the media provides for a response within three working days with applicants notified of an extension to this period in case further time is needed. Legislation provides for various routes for journalists to gain access to government-held information.

However, there is insufficient oversight over this right to information with no specific individual assigned within government departments to deal with access to information requests or complaints following refusals to respond to requests. In general, the media have limited access to information held by the government in the public interest and require legal support to challenge violations.

Journalists and media outlets in Tajikistan find that their requests for information are frequently rejected by government agencies with the justification that the information requested is a state secret. Periods within which government representatives are required to respond to requests are also violated.

About the Submitting Organisations

ARTICLE 19

ARTICLE 19 is an international human rights organisation. Founded in 1987 and headquartered in London, it also has offices in New York and Washington DC, as well as regional offices in Brazil, Mexico, Senegal, Kenya, Tunisia, Bangladesh and Myanmar. ARTICLE 19 takes its name from the corresponding article of the Universal Declaration of Human Rights, and advocates for freedom of expression and access to information as a fundamental human right.

Khoma

Khoma was established in 2003 with the aim of promoting the professional development of the media in Tajikistan. Khoma is a non-governmental, non-profit organization which works to develop strong economic, environmental, social journalism in Tajikistan and provides pro bono legal support for media outlets and individual journalists. Khoma also takes part in a number of government working groups providing legal analysis and recommendations on legislative reforms affecting the media.

⁷¹ http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=308