

**Joint submission to the Universal Periodic Review
of Kyrgyzstan by ARTICLE 19 and Media Policy
Institute**

For consideration at the 35th session of the Working
Group, December 2019

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Executive Summary

1. ARTICLE 19 (A19) and Media Policy Institute (MPI) welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Kyrgyzstan. In this submission, we highlight concerns relating to the right to freedom of expression and information in several key areas:

Legal framework:

- Defamation and moral compensation
- Incitement to hatred
- Extremism

Freedom of expression online

Media freedom and safety of journalists

Access to information

2. Though Kyrgyzstan has sought to cement a reputation as the most transparent in the Central Asian region, including by joining the Open Government Partnership in November 2017, there have in reality only been marginal improvements to the situation for freedom of expression in the period under review. Defamation lawsuits have been brought on behalf of the President resulting in disproportionate awards for damages, and prosecutions for incitement and extremism have been brought against journalists, who face numerous obstructions to their work.

Cooperation with UN mechanisms

3. The government noted all five recommendations received during the last UPR, to extend standing invitations to special procedures mandate holders of the Human Rights Council.¹
4. No standing invitation to UN special procedures has so far been issued.² While an invitation for an official country visit was sent in April 2019 to the UN Special Rapporteur on freedom of religion of belief, ARTICLE 19 notes that requests for visits received from the Special Rapporteurs on human rights defenders and on freedom of peaceful assembly and association remain outstanding. The concerns outlined in this submission also indicate that visits of the Special Rapporteurs on freedom of opinion and

¹ 119.7 (Turkey); 119.8 (France); 119.9 (Ghana); 119.10 (Latvia); 119.11 (Republic of Korea)

² Standing invitations, OHCHR, accessed on 18 July 2019; available at:

<https://spinternet.ohchr.org/layouts/15/SpecialProceduresInternet/StandingInvitations.aspx>

expression, and on the promotion and protection of human rights while countering terrorism, would be beneficial.

Recommendation

- Issue a standing invitation to all UN special procedures for official country visits, and respond positively to all outstanding requests from special procedures seeking to visit the country, and promptly set dates for those visits.

Legal Framework for freedom of expression

5. In 2015, Kyrgyzstan received 22 recommendations to bring national legislation and its implementation in line with international freedom of expression standards, accepting 13 and noting nine. These included five general recommendations to ensure that legislation is in compliance with international human rights obligations,³ to oppose legislation that is inconsistent with these human rights obligations,⁴ and create a monitoring system to follow up on such recommendations.⁵ More specifically on freedom of expression, Kyrgyzstan supported three recommendations to guarantee the right to freedom of expression, in particular for journalists.⁶ The government noted one recommendation to ensure freedom of expression online,⁷ and a further four related to the prevention and investigation of attacks on and harassment of the media.⁸ Recommendations noted by Kyrgyzstan include amending legislation to narrow criminal offences of “extremist activities.”⁹
6. Implementation of these recommendations has been limited, with legislative provisions on defamation, incitement, and extremism routinely used to target journalists and independent media, against Kyrgyzstan’s international human rights obligations.

Constitutional Protections

7. Article 20(5)(4) of the of the Constitution of the Kyrgyz Republic provides that “[e]veryone has the right to freedom of thought and opinion.”¹⁰ In addition, Article 31(2) states that “[e]veryone has the right to freedom of expression, freedom of speech and press”, and Article 33 sets out protections for the right of access to information.
8. Article 31(4) of the Constitution prohibits “[p]ropaganda of national, ethnic, racial, religious hatred, gender, and other social superiority that calls for discrimination, hostility, or violence.” This provision is problematic, providing the basis for criminal prohibitions on incitement that are broader than those foreseen in Article 20(2) of the ICCPR, which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence.

Restrictions on freedom of expression in the criminal and civil codes

Defamation and protection of “honour and dignity”

9. In 2010, Kyrgyzstan decriminalised defamation. Article 127 of the then Criminal Code, which provided up to three years’ imprisonment for defamation, was abolished, and Article 20(6), prohibiting criminal sanction for the ‘dissemination of information which encroaches on the honour and dignity of a person’,

³ 117.1 (Venezuela); 117.2 (Costa Rica); 117.3 (Russian Federation); 117.5 (Sweden); 118.28 (noted - Angola);

⁴ 117.6 (United States of America); 119.20 (noted - Belgium);

⁵ 117.28 (Paraguay)

⁶ 117.102 (Austria); 117.107 (France); 117.109 (Latvia)

⁷ 119.25 (noted - Estonia)

⁸ 117.10 (Slovenia); 117.111 (Uruguay); 117.112 (Latvia); 119.24 (Lithuania)

⁹ 119.23 (Germany)

¹⁰ Available at: http://www.gov.kg/?page_id=263&lang=ru

was added to the new Constitution. Protections against defamation in the civil law remain in place, however, and continue to be used to unduly restrict expression.

10. The Law on Guarantees for Activity of the President of the Kyrgyz Republic,¹¹ allows the Prosecutor General of the Kyrgyz Republic to initiate legal action under the civil law to protect the “honour and dignity” of the President of the Kyrgyz Republic, as well as to protect former Presidents from being “discredited”.¹² In October 2018, the Constitutional Chamber of Kyrgyzstan decided that the Prosecutor General must obtain authorisation from the President for the initiation of any suit.
11. The law raises a number of freedom of expression concerns. Firstly, the only legitimate purpose of civil defamation law is to protect an individual’s reputation from unwarranted attacks, and not to protect subjective feelings of an individual’s honour or dignity, or to protect a reputation for a person that they do not have or do not merit.¹³ Secondly, defamation laws should provide no special protection to public officials, who should tolerate a greater degree of public criticism than others, and should provide no special public assistance to such individuals to bring defamation actions.¹⁴ Public officials have ample means to correct false accusations or damage to their reputation, for example by speaking directly to the media, without needing to pursue litigation. Thirdly, no protection should be provided in law to the reputational interests of persons who are deceased.¹⁵ Fourthly, the Law does not provide any guarantees for defences that can be used in cases of defamation: a strong system of defences, including for example the defence of truth, the defence of opinion, or defence of reasonable publication, are essential to ensure that defamation laws do not unreasonably restrict the free flow of information and ideas.
12. The breadth of this law, and the special status it confers on the reputations of the current and former Presidents, has a chilling effect on freedom of expression concerning public officials. Suits brought under these provisions have resulted in wildly excessive awards for moral damages, with serious financial consequences for those attempting to defend against claims. The average monthly income in Kyrgyzstan is approximately 200 GBP per month, and damages awards have been in excess of 100 to 500 times this amount.
13. Emblematic civil defamation cases against the media using the abovementioned law in the period under review include:
 - In July 2015, the Prosecutor General filed a civil claim against journalist Dayirbek Orunbekov to protect the honour of the President, in relation to an article in which Orunbekov implied that the President was criminally implicated in the ethnic violence in Osh in 2010, in which hundreds of people were killed. In December 2015, the Chui regional appeals court ordered Orunbekov to pay 2 million Kyrgyz som (approx. £21,000) in moral damages and publish a refutation in 11 mass media and 3 information portals.¹⁶
 - In April 2017, the Prosecutor General filed a lawsuit against Cholpon Dzhakupova, head of the Adilet Legal Clinic and former member of Kyrgyzstan’s parliament, for a speech she made

¹¹ Law on Guarantees for Activity of the President of the Kyrgyz Republic. (2013); available in Russian from:

<http://cbd.minjust.gov.kg/act/view/ru-ru/1278>

¹² ARTICLE 19 (2017) *Legal analysis: Law on Guarantees for Activity of the President of the Kyrgyz Republic*; available at:

<https://www.article19.org/wp-content/uploads/2017/08/170825-Kyrgyzstan-analysis-on-Activity-of-President.pdf>

¹³ “Defining defamation: principles on freedom of expression and protection of reputation”, ARTICLE 19, 2017, at Principle 2; 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)

¹⁴ *Ibid.*, at Principle 11.

¹⁵ *Ibid.*, at Principle 2.

¹⁶ See, e.g. OSCE (2015) *Excessive fines for defamation a threat to media freedom in Kyrgyzstan, says OSCE Representative*. Available at: <http://www.osce.org/fom/210251>

during a roundtable on the right to freedom of peaceful assembly, organised by the human rights ombudsperson for Kyrgyzstan.¹⁷ The case concerned comments made by Dzhakupova in March, reported by Idinov in Zanoza, stating “that the president was a ‘personality with maniacal inclinations’ who should ‘read the constitution.’” The prosecution alleged Dzhakupova made “unjustified attacks on the president, alleging his ignorance and of breaking laws, while also accusing hm of abuse of power for personal gain, and of putting pressure on free speech by selectively applying laws”.¹⁸

- In March 2017, the Prosecutor General filed five cases against local media organisation ProMedia, which runs a popular online news agency (Zanoza.kg). Zanoza and its co-founder Naryn Idinov were accused of insulting the President in their reporting.¹⁹ The case concerned an October 2015 article titled “The President’s Millions: Who Really Paid For The Banquet?”, about the President’s “lavish lifestyle.” In June 2017, the Bishkek Court ruled against four defendants: it ordered Zanoza to pay the President damages of 15 million Kyrgyz som (approx. £169,500) and ordered Zanoza’s editor-in-chief to pay 3 million som (approx. £33,900).²⁰ In July 2017, the Bishkek court also found Zanoza and Idinov liable in another case and ordered each of them to pay the President damages of a further 3 million som (approx. £33,900).²¹

Recommendations

- Create an enabling environment for freedom of expression and press freedom, in particular in relation to matters of a public interest around the Presidency, including by urgently repealing the Law on Guarantees for Activity of the President of the Kyrgyz Republic, and ensure proportionality of awards for damages, including by instituting a cap on moral damages in all civil defamation cases.

Incitement to hatred

14. The Criminal Code of Kyrgyzstan,²² which came into force in January 2019, retains the offence of “incitement of racial, ethnic, national, religious or inter-regional hostility (discord)” in Article 313, which reads: “1. Actions aimed at inciting racial, ethnic, national, religious or interregional hostility (discord), humiliation of national dignity, as well as propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, national or racial identity, committed publicly or with using mass media, as well as through the Internet, are punished with imprisonment of category III (5 to 7.5 years)”
15. The substance of the offence remains unchanged from Article 299 under the old Criminal Code, but the new Criminal Code increases aggravated sentences for incitement committed through mass media or the Internet (5 to 7.5 years, compared to 4 to 7 years previously).
16. ARTICLE 19 remains concerned with the breadth of this incitement provision, as well as the increased aggravated sentences, as it may allow for the criminalisation of expression that should be protected under international human rights law.
17. In particular, the concept of “humiliation of national dignity” seeks to protect the reputational interests of the State, which is not a rights’ holder. It is not legitimate to limit the right to freedom of expression to protect the nation from criticism.

¹⁸ See, Human Rights Watch (2017) *Kyrgyzstan: President Targets Critics - Drop Lawsuits Against Rights Defender, Media Workers*, 12 May 2017. Available at: <https://www.hrw.org/news/2017/05/12/kyrgyzstan-president-targets-critics> .

¹⁹ ARTICLE 19 (2017) *Kyrgyzstan: Stop legislative harassment of Zanoza.kg and its journalists*. Available at: <https://www.article19.org/resources/kyrgyzstan-stop-legislative-harassment-of-zanoza-kg-and-its-journalists/>

²⁰ See, The Diplomat (2017) *Guilty Verdicts Crash in on Kyrgyz Media Outlet*.

²¹ Ibid.

²² Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111527?cl=ru-ru>

18. The concept of “propaganda of exclusivity, superiority or inferiority” is also too broad, enabling criminal penalties for a much broader category of expression than envisaged in Article 20(2) of the ICCPR, and against the requirements of Article 19(3) of the ICCPR. The provision does not specifically deal with incitement per se, and therefore lacks any requirement that the expression actually pose a real risk that it will cause others to engage in acts of hostility, discrimination or violence against individuals on the basis of a protected characteristic. The provision also lacks any requirement of intent for the incited outcome to occur against persons on the basis of a protected characteristic (rather than “attitude” towards a protected characteristic). Where applied against expression that does not constitute intentional incitement to hostility, discrimination or violence, the penalties imposed are grossly disproportionate, and there is no legitimate basis for imposing heightened restrictions for expression through mass media or online.
19. Article 313 of the Criminal Code has been abusively applied not to protect individuals from incitement to hostility, discrimination or violence based on who they are, but instead to protect the government from criticism that it does not like, from journalists and from other social media users, and to censor open debate and discussion on taboo subjects, such as interethnic conflicts.
20. On 23 June 2017, Ulugbek Babakulov, a freelance investigative journalist based in Kyrgyzstan, was charged under the then Article 299 of the Criminal Code, following the publication of an article in Ferghana News, in which he reported on an online conflict involving Uzbeks and Kyrgyz individuals. His report on the incident included translations of Facebook posts, which contained calls for violence against the ethnic Uzbek community in Kyrgyzstan. The State Security Services opened a criminal case against him for ‘inciting hatred’, whilst Babakulov argued he was reporting on the threat of nationalism in the country.²³ Fearing that he would not face a fair trial and risked being sentenced to up to seven years’ imprisonment, Babakulov left Kyrgyzstan in June 2017 and remains in exile.²⁴ The case against him has stalled but he fears it could be reinitiated if he returned.
21. On 12 September 2017, Pervomaisky District court in Bishkek sentenced the journalist Zulpukar Sapanov to four years’ hard labour in a penal colony, following his conviction for ‘incitement to religious violence’ under then Article 299 of the Criminal Code.²⁵ The case was brought against Sapanov following the publication of his book *Kydyr Sanzhyrasy*, which provided an analysis of the holy books of Christianity, Judaism and Islam. The book reviewed the history of religiosity and included a discussion on pagan belief systems. It was criticised by the Islamic community in Kyrgyzstan who saw it as an attempt to destabilise the country. Judges in Sapanov’s case held that the book ‘fostered a negative attitude towards Muslims.’²⁶

Counter-extremism and counter-terrorism provisions

Law on Countering Extremist Activities

²³ See, Exeter Central Asian Studies Network, Case of Babakulov, Ulugbek; available at: <https://excas.net/exile/babakulov-ulugbek/>

²⁴ Radio Free Europe (2017) *Kyrgyz Journalist Flees Country After Writing About Hate Speech*. Available at: <https://www.rferl.org/a/qishloq-ovozi-kyrgyz-journalist-babakulov-flees-hate-speech/28547100.html>

²⁵ 24KG (2017) *Journalist Sapanov sentenced to 4 years in reinforced regime colony*. Available at: https://24.kg/english/62517_Journalist_Sapanov_sentenced_to_4_years_in_reinforced_regime_colony/

²⁶ Reporters Without Borders (2017) *Call for release of Kyrgyz journalist sentenced to four years in prison*. Available at: <https://rsf.org/en/news/call-release-kyrgyz-journalist-sentenced-four-years-prison>

22. Kyrgyzstan's Law on Countering Extremist Activities (2005, amended in August 2016),²⁷ is drafted in such vague language that it allows for disproportionate restrictions to be imposed on freedom of expression, freedom of association and assembly and freedom of religion.²⁸ It provides, inter alia, for the liquidation and/or suspension of organisations involved in "extremist activities" (Articles 9-10), which includes activities "in violation of human rights and freedoms, personal tort, harm to human health, the environment, public order, public security, property, legal or economic interests", or the mere threats of such harms. It further imposes criminal responsibilities on the mass media for the distribution of extremist materials, or for carrying out extremist activities (Articles 11 – 13). Other provisions seek to restrict the activities of foreign NGOs (Article 17).
23. These extremely vaguely defined offences are based on broad definitions of key terms, and are in breach of the legality requirement under international human rights law:
24. 'Extremist activity' is defined in Article 1 of the Law as activities directed to, inter alia, "the forced modification of the foundations of the constitutional order and violation of the integrity of the Kyrgyz Republic," "the destruction of the security of the Kyrgyz republic," "carrying out terrorist activities," "incitement to social, race, national or religious hatred related to violence or calls for violence," "acts of vandalism on the grounds of ideological, political, race, national or religious hatred or enmity," "propaganda in support of extremist activities, public calls to support such activities and their financing," among others. In encompassing such a broad range of activities, from genuine acts of terrorism to acts of vandalism, this may be used to silence not only terrorist groups but also a broad range of opinions and activities which are perfectly legitimate.
25. 'Extremist materials' include any documents or information on any media calling for or justifying extremist activity, including publications that justify or explain supremacist views on grounds of race or nationality or justify military action or other crimes aimed destroying particular ethnic, social, racial, national or religious groups.
26. 'Extremist organisations' are defined as any organisation whose activities have been prohibited or which has been liquidated on grounds of extremism by the courts. NGOs and religious organisations are singled out as falling within the definition of "extremist organisation".
27. 'Symbols and attributes of extremist organisations' are characterised as extremist by the courts due to a determination that the organisation at issue carries out extremist activities. Extremist symbols may however be used for scientific purposes.
28. Far from giving a definition of 'extremism', the Law effectively uses 'extremism' as an umbrella term to describe all sorts of activities, which are either exceedingly vague in their scope or should exist as separate criminal offences, which should themselves be properly and narrowly defined. These definitions are made worse by the fact that they are not limited to various actions but also include any public call for support or justification for such actions. ARTICLE 19 is deeply concerned that the Law may be used to crackdown on NGOs criticising or merely holding different views from that of the government, and has a significant chilling effect on freedom of expression, association, and peaceful assembly.²⁹

²⁷ Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/1748>

²⁸ The Draft Law reviewed by ARTICLE 19 in December 2015, was ultimately adopted in its entirety. See: ARTICLE 19 (2015) *Legal Analysis: Kyrgyzstan Law on Countering Extremist Activity*. Available at: <https://www.article19.org/resources/legal-analysis-kyrgyzstans-law-on-countering-extremist-activity/>

²⁹ See: ARTICLE 19 (2015) *Legal Analysis: Kyrgyzstan Law on Countering Extremist Activity*. Available at: <https://www.article19.org/resources/legal-analysis-kyrgyzstans-law-on-countering-extremist-activity/>

Criminal Code Provisions

29. The new Criminal Code (January 2019),³⁰ included two new counter-terrorism and counter-extremism related articles:
- Article 310 criminalises ‘public calls for violent seizure of power’, with sentences of up to two and half years, where an offence is committed through the mass media or through information communication networks, including the Internet.³¹ The offence is not narrowly drawn to require that the person specifically intends to incite violence, and that violence is likely to result from the expression. The provision is most problematic in application, as it enables prosecutions of media and journalists reporting on terrorism and terrorist organisations.
 - Article 315 criminalises the ‘[p]roduction, distribution, transportation or transfer of extremist materials or their acquisition or storage for the purpose of distribution’ in similarly broad terms. The offence carries a sentence of up to five years’ imprisonment for the possession and distribution of such materials, when committed through the Internet. Given the broad meaning of “extremist materials”, indicated in the Law on Countering Extremist Activities, it is clear that a person may be convicted in relation to possessing or distributing materials that are not intended or likely to incite violent or other criminal acts. No exemptions are provided for persons who possess or share “extremist” content for non-violent purposes, such as journalism or academic inquiry.

Recommendations

- Ensure an enabling environment for freedom of expression, freedom of peaceful assembly, and freedom of association, by repealing the Law on Countering Extremist Activities in its entirety, and reforming the Criminal Code, to repeal Articles 310 and 315;
- Amend Article 313 of the Criminal Code to bring it into compliance with Articles 19(3) and 20(2) of the ICCPR, in particular to ensure it only prohibits expression that specifically intends and is likely to incite hostility, discrimination or violence against persons on the basis of a protected characteristic.
- Cease the judicial harassment of journalists, media workers, human rights defenders, media outlets and civil society groups, including by ensuring the immediate and unconditional release of all those arbitrarily detained for the exercise of their free expression, assembly, and association rights, quashing existing convictions, and dropping all outstanding charges.

Restrictions on Freedom of Expression Online

30. During its last UPR, the Government of Kyrgyzstan noted a recommendation related to ensuring freedom of expression online.³² Restrictions on freedom of expression online have intensified in the period under review.
31. The restrictions on freedom expression contained in the legislation outlined above (in particular Articles 313, 310 and 315, relating to incitement and extremism), can also be applied to online expression. Individuals convicted for online expression are subject to the harshest sentences available – 5 to 7.5

³⁰ Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111527/20?cl=ru-ru>

³¹ **Article 310.** Public appeals for violent seizure of power 1. Public appeals for violent seizure or forcible retention of power, as well as violently changing the constitutional order, - shall be punished by public work of category IV (between 280 and 360 hours for adults) or by deprivation of the right to occupy certain positions or engage in certain activity of category III (up to four years), or correctional works of category III (from 2 to 2.5 years), or a fine category IV (from 1800 to 2200 calculated indices – approx. 2000-2500 GBP). 2. The same acts committed: 1) using mass media or information and communication networks; 2) by a group of persons in a preliminary conspiracy - shall be punished with correctional work of the IV category (2.5 to 3 years) or a fine of the V category (from 2200 to 2600 calculated indices – approx.. 2500-3000 GBP), or imprisonment of the I category (up to two and a half years).

119.25 (Estonia)

years' imprisonment - as they are considered to have committed their offence through telecommunications channels, or through the 'mass media'. As a result, individuals who post through these channels, such as bloggers, or journalists expressing themselves on social media platforms are subject to prosecution under the abovementioned provisions, risk the most severe sentences available.³³ This has a significant chilling effect on expression online.

Website blocking

32. Website blocking in Kyrgyzstan to deliberately obstruct the free flow of information online has become more widespread in the period under review.
33. In practice, website blocking often occurs without a court order, through processes that are opaque. The lack of transparency around blocking, and the legal basis on which blocking orders are made, makes it very difficult for website owners to challenge decisions and restore their websites or content. The perceived risks of arbitrary blocking are encouraging significant self-censorship.
34. Independent media outlets have been particularly targeted: the government has blocked the entire websites of several outlets, justifying their actions by alleging the websites contain "extremist" or "terrorist" content, or content that "incites hatred".³⁴ The broad definitions provided for "extremist materials" means that websites can be blocked where they do not contain content that incites terrorist acts, violence, or discrimination. Even where such content does exist, the use of website blocking, without proper judicial oversight, clearly violates the right to freedom of expression.
35. The ongoing blocking of independent news website, Fergana.ru, is a case in point. In the aftermath of the 2010 ethnic violence in the south of the country, the parliament of Kyrgyzstan issued a decree on 16 June 2011 titled: '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 2010 and their Political assessment' (hereafter 'the decree'). The decree required the Ministry of Culture and Information, the Ministry of Justice and the Prosecutor General to investigate "nationalist and extremist" content in print and electronic media. It also included the recommendation to block access to the independent news website, Fergana.ru, across the whole country.³⁵
 - Six months after the 16 June 2011 decree, the State Agency for Communications blocked the website of Fergana.ru in Kyrgyzstan in line with the decree. It was finally blocked on 21 February 2012 through an expedited process and remained blocked for over a year on accusations of "incitement to ethnic violence" linked to its coverage of the violent ethnic clashes in southern Kyrgyzstan in June 2010. Following an appeal, the site was eventually unblocked in March 2013.³⁶ It was subsequently blocked again by court order on 8 June 2017, linked to charges of "incitement to ethnic violence" made against one of its correspondents, Ulugbek Babakulov for an article in which he reported on hate messages

³³ Human Rights Watch (2018) *"We Live in Constant Fear" Possession of Extremist Material in Kyrgyzstan*. Available at: <https://www.hrw.org/report/2018/09/17/we-live-constant-fear/possession-extremist-material-kyrgyzstan>

³⁴ Freedom House (2017) *Freedom on the Net 2017: Kyrgyzstan*. Available from: <http://freedomhouse.org/report/freedom-net/2017/kyrgyzstan>

³⁵ ARTICLE 19 & PEN International (2014) *Joint Submission to the UN Universal Periodic Review of Kyrgyzstan*. Available from: <http://www.article19.org/data/files/medialibrary/37657/ARTICLE-19-Joint-Submission-to-UPR-of-Kyrgyzstan.pdf>

³⁶ Yanokovskaya, M. (2013) *Kyrgyz state communications agency chief allows unblocking Fergana access*. Fergana.ru. Available from: <http://enews.fergananews.com/articles/2828>

targeting Uzbeks in Kyrgyzstan referenced above.³⁷ The website remains blocked at the time of writing.³⁸

36. The websites of independent media and civil society organisations critical of the government have been the victims of Distributed Denial of Service (DDoS) attacks.³⁹ These reportedly are strategically timed to occur during or around events in which the government fears critical information might be published. Journalists believe that these attacks are instigated or requested by government authorities seeking to interfere with the work of critical independent media organisations in the country.

Recommendation

- Unblock the news website Fergana.ru, and ensure that any State mandated blocking of websites, IP addresses, ports or networks or protocols is provided by law and is necessary to protect a human right or other legitimate public interest, is proportionate, and that it is only carried out pursuant to an order of a competent judicial authority or other independent body, respecting minimum due process guarantees.

Media Freedom and Safety of Journalists

37. The submitting organisations are concerned by the downgrading of the offence of “Obstructing the lawful activities of journalists’ (Article 151 of the old Criminal Code (in force until December 2018),⁴⁰ now Article 89 of the Code of Misconduct.⁴¹) The provision prohibits “hindering the lawful professional activities of journalists by forcing him to disseminate or by refusing to allow him to disseminate information”, punishable by a fine of 20,000 to 30,000 KGS (roughly 300 to 450 USD) and provides an aggravated sanction of an increased fine and a temporary ban on holding certain official posts, in the event that the offender holds an official position.
38. Whilst the fine remains substantial, in a context where the media independence is under sustained pressure from the government, we are concerned that the downgrading of this offence is an indicator of the lack of political will to protect journalists from interference in their work – with the risk that this might encourage such interference. This development has further eroded the enabling environment for the flourishing of independent and pluralistic media.
39. Article 10 of Kyrgyzstan’s Law on the Protection of Professional Activities of Journalists,⁴² establishes a

³⁷ Reporters Without Borders (2017) Kyrgyzstan censors leading news agency Fergana. [Online]. Available from: <http://rsf.org/en/news/kyrgyzstan-censors-leading-news-agency-ferghana>

³⁸ Megaline.kg (2018) List of blocked resources and reasons for their blocking. [Online]. Available in Russian here: <http://megaline.kg/klientam/zablokirovannyye-resursyi/>

³⁹ Denial of Service attacks occur when multiple systems flood the bandwidth or resources of a targeted system, usually one or more web servers. In practice, DDOS attacks prevent access to websites. DDOS are a technical rather than legal restriction on freedom of expression, and they may be applied by both private and state actors.

⁴⁰ **Article 151.** Obstructing the lawful professional activities of journalists. 1) Hindering the lawful professional activities of journalists by forcing him to disseminate or to refusing to allow him to disseminate information - shall be punished by a fine of fifty to one hundred calculated indicators. 2) The same act committed by a person using his official position -is punishable by a fine of one hundred to five hundred calculated indicators and deprivation of the right of that individual to occupy certain official posts or engage in certain activities for up to three years, or restriction of liberty for up to three years with deprivation of the right to hold certain posts or engage in certain activities for up to three years or without deprivation of this right

⁴¹ **Article 89.** Obstructing the legitimate professional activities of a journalist 1) Hindering the legal professional activities of a journalist by forcing him to disseminate or to refusing to allow him to disseminate information - shall be punished by a fine of category I. (Note: Category 1 fines are from 200 to 300 calculated indicators (this is from 20,000 to 30,000 KGS - roughly 300 to 450 USD). 2) The same act committed by a person using his official position -shall be punished by a fine of category II or deprivation of the right to occupy certain positions or engage in certain activities of category II (note: penalty category II: from 300 to 600 calculated indicators (30,000 to 60,000 KGS - roughly 450 to 850 USD); deprivation of the right to occupy certain positions or engage in certain activities of category II - for a period of one to two years). Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111529>

Article 10. Accreditation of a journalist. 1) A journalist, in agreement with the management of the print media, television and radio companies (radio stations), news agencies, and other media, has the right to be accredited with a government agency or a public association. 2) State bodies and public associations, in which journalists are accredited, are obliged to notify them in advance of their events and provide them with the necessary documents and materials. 3) A state body or public association

restrictive accreditation regime for journalists administered by the State, that excludes journalists not affiliated to a media outlet. Only accredited journalists are required to be notified by state bodies and agencies of relevant events and be provided with relevant documentation, in advance. The Law empowers the same state bodies and agencies to terminate the accreditation of journalists where they have broken the law, which, as described in previous sections, may apply to journalists critical of the government or reporting on sensitive matters. There is no appeals process.

40. In practice, even in the absence of criminal charges, independent journalists and media who have been critical of the government have reported that they or their media organisations have been refused accreditation or put on 'black lists' of ministries and state departments, who subsequently refuse their calls and omit them from mailing lists with invites to relevant events. It is perceived that only 'friendly' media receive accreditation for certain high-profile briefings.
41. Under international human rights law, accreditation requirements are only valid to regulate access to meetings where space is limited. In particular, the Human Rights Committee stated that the operation and application of accreditation schemes for this purpose "must be shown as necessary and proportionate to the goal in question and not arbitrary ... The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent."⁴³ Accreditation should never be used as a work permit for journalists to cover the work of public institutions.

Recommendations

- Ensure a safe and enabling environment for journalists and the media, including by reversing the downgrading of the offence of "obstructing the lawful activities of journalists" into the Code of Misconduct, and by reforming the Law on the Protection of Professional Activities of Journalists to ensure accreditation procedures are transparent and independently administered, and not applied to restrict reporting on public institutions;

Access to Information

42. As previously outlined, the Constitution provides strong protection for the right to information. However, this guarantee is undermined by legal procedures that obstruct exercise of the right.
43. There are over 40 laws and legislative acts which refer to the right to information in various forms, including N213 'On access to information held by state and local self-government bodies of the Kyrgyz Republic' (2006, amendment 2017).⁴⁴ The Law on State Secrets (No. 210, 2017), often cited in support of decisions refusing access to information, is ambiguous – with a broad range of information able to be classified as a state secret to restrict access.⁴⁵ The complexity of the legal framework appears intended to frustrate, rather than enable, the exercise of the right to information.
44. The OECD (2017) found that the country made 74 detrimental changes to Access to Information legislation in March 2017, including in particular the exclusion of the possibility to appeal to the

has the right to terminate the accreditation of a journalist if he violates the legislation of the Kyrgyz Republic or on the basis of a decision of this body or association. 4) The journalist of the Kyrgyz Republic may be accredited in a foreign country. 5) A foreign journalist may be accredited in the territory of the Kyrgyz Republic in coordination with the Ministry of Foreign Affairs of the Kyrgyz Republic. Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/588>

⁴⁴ <http://cbd.minjust.gov.kg/act/view/ru-ru/202010>

⁴⁵ <http://cbd.minjust.gov.kg/act/view/ru-ru/111719>

Ombudsman in case of government refusal to provide information.⁴⁶ According to an updated OECD report in 2018 Kyrgyzstan is 'non-compliant' with existing recommendations to reform access to information legislation and practice in the country.⁴⁷ Overall, the OECD has found Kyrgyzstan to be without a state policy to enable the effective exercise of the right to information and notes the absence of government coordination and monitoring of the right to information and complaints regarding violations of this right.

45. Independent media in Kyrgyzstan have reported a significant deterioration in their ability to access government-held information in the period under review. Where formal information requests are made, journalists noted that public officials often violate the 14-day window in which they should respond to information requests, which affects the relevance of the requested information, and that when responses are received, they are often of low quality, and/or not in the language the request was made in. In addition, many journalists report that state agencies increasingly refuse to answer even routine questions without their submitting formal information requests through the byzantine procedures. A number of journalists report being 'black listed' by government representatives.

Recommendation

- Adopt a comprehensive freedom of information law in line with international human rights standards, and reform other laws, including the Law on State Secrets, so that information requests are only refused on grounds consistent with Article 19(3) of the ICCPR.

⁴⁶ OECD (2017) *Istanbul Anti-Corruption Action Plan Third Round Of Monitoring Kyrgyzstan Progress Update*. Available at: <http://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-Progress-Update-September-2017-ENG.pdf>

⁴⁷ OECD (2018) *Fighting Corruption In Eastern Europe And Central Asia Anti-Corruption Reforms In Kyrgyzstan 4th Round Of Monitoring Of The Istanbul Anti-Corruption Action Plan*. Available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-ENG.pdf>