

AMNESTY INTERNATIONAL PUBLIC STATEMENT

8 February 2024

EUR 58/7684/2024

KYRGYZSTAN AT A CROSSROADS: UNPRECEDENTED CRACKDOWN ON CIVIL SOCIETY THREATENS COUNTRY'S STANDING ON HUMAN RIGHTS AND INTERNATIONAL COOPERATION

The space for freedom of expression, peaceful assembly and association in Kyrgyzstan has shrunk significantly in recent years. Over the past 18 months in particular the authorities have intensified their campaign to stifle all forms of legitimate public criticism and peaceful dissent in defiance of significant and substantiated objections from civil society and international governmental and non-governmental organisations. Journalists and activists critical of governmental policy have faced increasing attacks on social media, arbitrary detentions, unfounded prosecutions, and unfair trials. The authorities have deployed discriminatory legislative initiatives promoting vaguely defined notions of cultural traditions and national values to undermine the rule of law and unduly restrict freedom of expression. They have also used overly broad definitions of political activity to curb the right to freedom of association.

Kyrgyzstan has long prided itself on providing conditions for a thriving civil society, including independent media. This civil society, able to operate freely and without fear, is an irreplaceable asset to any country, especially in the face of economic and climate crises. The developments of the last 18 months, however, put this civil society's future in peril and severely threaten Kyrgyzstan's reputation and record on human rights and its international cooperation. The authorities should take all steps to foster civic engagement and not penalise the exercise of fundamental human rights.

STIFLING FREEDOM OF ASSOCIATION

Two parallel draft bills proposed by the presidential administration and members of parliament aim to tighten existing restrictive legislation regulating the activities of non-governmental organisations and strengthen state control over civil society. Both would violate Kyrgyzstan's international human rights obligations pertaining to the right to freedom of association, freedom of expression, and other related human rights and pose an acute threat to the ability of civil society organisations to offer vital support to all people, particularly at-risk groups, in accessing their rights.

UN Special Rapporteurs warned in an October 2023 joint letter that the wide powers the draft legislation grants to the authorities "could be used against organizations that voice criticism or dissent against the Government, and that, if adopted, it "could have a chilling effect on the operations of all associations".¹

DRAFT LAW ON "FOREIGN REPRESENTATIVES"

On 25 October 2023 parliament passed in a first reading a draft "Foreign Representatives" law despite significant objections from 2022 onwards by civil society, government representatives, the Human Rights Ombudsperson, the Supreme Court, the Prosecutor General and international experts.² The contested draft law obliges all organisations who receive funding from abroad and engage in vaguely defined "political activity" to register as "foreign representatives" and introduces a new category of "foreign non-governmental organisations" (FNGO). Under the proposed legislation the authorities could suspend the activities of an NGO for six months without a court decision or deregister the organisation if it failed to register as a "foreign representative". The draft law also imposes onerous, semi-annual, and annual reporting obligations on all "foreign representatives", regardless of the size of the organisation, its purpose, and the scope of its operations, making compliance with these requirements extremely difficult and costly, especially for smaller NGOs. Fundraising by NGOs, whether registered or not, is protected under Article 22 of the ICCPR, including seeking and

¹ <https://kyrgyzstan.un.org/en/248422-un-special-rapporteurs-have-urged-government-kyrgyz-republic-reconsider-and-withdraw-draft>

² ODIHR criticised the restrictions imposed in the draft law on Foreign Representatives in an urgent interim opinion issued in December 2022 as "not prescribed by law nor necessary in a democratic society, and therefore not compliant with the right to freedom of association." Opinion issued by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in December 2022: https://org.legislationline.org/sites/default/files/2022-12/451-452_NGO_KGZ_12Dec2022_en.pdf

receiving funding from individuals and organisations based abroad. Most NGOs in Kyrgyzstan rely on foreign grants due to a lack of domestic funding opportunities.

In accordance with international human rights law, restriction to the exercise of the right to freedom of association must be set out by laws that are not arbitrary or unreasonable and are formulated with sufficient precision to enable any individual to regulate their conduct accordingly. The broad and problematic definition of “political activity” contained in the draft law raises concern that NGOs will be penalised for legitimate human rights advocacy on public policies and the peaceful exercise of the right to participate in public affairs and decision-making.

The draft law describes the concept of an organization conducting *political activity* as “the non-commercial organization that regardless of the goals and objectives specified in its constituent documents, participates (including through financing) in the organization and conduct of political actions with the aim of influencing the adoption by state bodies of decisions that are targeted at changing the course of the implemented by them state policy, as well as with the aim of shaping the public opinion for the abovementioned purposes.”

On 23 January 2024 the parliamentary Committee on Constitutional Legislation approved further amendments to the draft law and sent it to parliament for a second reading. While the Committee reduced the penalties faced by NGOs that are found in breach of the legislation, it expanded significantly on the troubling definition of what constitutes “political activity”. The Committee specified that “activities of a political nature” are those that “fall within the sphere of the state system” and relate, among others, to “the protection of the constitutional order, national security, foreign policy and socioeconomic development”. Under the final draft sent to parliament any NGO that engages in any of the following actions will need to register as a “Foreign Representative”:

- participating in holding or organising public events, such as meetings, rallies, marches, debates, speeches
- participating in activities related to elections and referenda, including monitoring elections
- issuing public appeals or engaging in advocacy to influence the adoption of laws or amendments to laws and policies
- disseminating opinions on laws and policies adopted by government
- conducting public opinion polls and sociological research and publishing the results
- involving citizens, in particular young people, in any of these activities
- funding any such activity.

Such vague, expansive, and ambiguous language gives the authorities excessively discretionary powers to target NGOs for carrying out their legitimate work, including advocacy on public policies that affect the whole spectrum of human rights, including the right to a healthy environment.

The proposed amendments also include a new criminal offense with penalties of up to five years’ imprisonment for civil society activists who establish, participate in, or promote an NGO or an affiliate of a foreign NGO, if the authorities find that the organization is committing what is vaguely defined as ‘inciting citizens to refuse to perform civic duties or to commit other unlawful deeds.’

DRAFT LAW ON NGOS

2022

In November 2022 the Presidential Administration submitted new draft revisions to the Law on Non-Profit Non-governmental Organisations. The draft law significantly increased state control over NGOs, obliging all NGOs to register with the authorities to operate lawfully in-country, and those already registered to re-register or face liquidation. Grounds for refusing registration were broadly formulated, such as the founding documents of the NGO contradicting Kyrgyzstan’s Constitution and legislation, or the name of the NGO “offending the morals, ethnic and religious feelings of citizens”, increasing the risk of arbitrary interpretation by the authorities.

In December 2022 OSCE/ODIHR concluded in an expert opinion that “the majority of the provisions of the Draft Law [were] overly and unduly restrictive to the right to establish associations and to carry out their activities free from state interference” and were “incompatible with international human rights standards.”³ Amongst other things the draft law

³ Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organisations” and Draft Amendments on “Foreign Representatives”

discriminates against foreigners and stateless persons by prohibiting them to establish or join NGOs, introduces more onerous reporting requirements in addition to already existing complex obligations and grants overbroad monitoring and supervisory powers to state bodies, such as the right to conduct unannounced inspections, participate in NGO activities, and obtain financial information about the NGOs from banks. ODIHR warned that “[the draft law has] introduced unchecked power to certain state bodies in their application of oversight over ‘non-profit NGOs’.”

2023

In response to international concerns and criticism the Presidential Administration established a working group with 15 NGO representatives to revise the draft law. In December 2023 the Presidential Administration sent an updated version of the draft to be reviewed by the working group within four weeks. While the working group had only met once in person, NGO representatives had sent extensive comments and suggestions in writing to the Presidential Administration. The new draft failed to take any of them into account. Instead, the draft proposes – in a concerning and confusing move – to divide NGOs into organisations of “political orientation” and “social orientation”, with only “political” NGOs specifically given the right to advocate publicly for changes in policy and law and to receive foreign funding. “Socially oriented” NGOs, under which the draft lists organisations that “provide legal assistance and activities for the protection of human and civil rights and freedoms”, are not given the right to hold public meetings or rallies and to lobby for policy change. The revised draft is unclear on whether they are eligible to receive foreign funding. Confusingly these amendments contradict those proposed in the problematic draft Foreign Representatives legislation.

In accordance with international human rights law, restriction to the exercise of the right to freedom of association must be set out by laws that are not arbitrary or unreasonable and are formulated with sufficient precision to enable any individual to regulate their conduct accordingly.

The authorities must ensure that any legislative initiatives affecting NGOs fully comply with international human rights law and standards, do not discriminate, and are the result of genuine consultation with civil society representatives and international experts.

Parliament must drop the draft law on “Foreign Representatives”.

The Presidential Administration must ensure that the revision of the draft law on NGOs takes full account of the proposals made by civil society representatives and international experts, including recommendations by the working group and the OSCE/ODIHR Urgent Interim Opinion, and that it is not submitted to parliament unless and until it is fully compliant with international human rights law and standards.

RESTRICTING PEACEFUL ASSEMBLY

The right of peaceful assembly, as other human rights, is increasingly under severe threat. Since March 2022, a series of court decisions have progressively limited where peaceful gatherings can be held, by banning meetings in central areas of Bishkek, apart from one park. Initially, the authorities attempted to justify these restrictions as temporary and necessary “to prevent and suppress possible mass riots on inter-ethnic basis” in the context of Russia's full-scale invasion of Ukraine in February 2022. They were subsequently extended until the end of March 2024, and applied to peaceful public actions and gatherings that the authorities considered of a “political nature”, i.e., critical of state actions or policies, in proscribed central locations in Bishkek. The restrictions did not apply to state organized rallies. In September and October 2023 courts imposed similar blanket bans on protests in central public places in_Uzgen town and_Chon-Alai district in Osh region.

Despite the restrictions, human rights defenders and activists have held repeated protests in Bishkek expressing solidarity with Ukraine and protesting unlawful restrictions on the right of peaceful assembly. Police have continued to arbitrarily detain peaceful protesters, including in the one park in the capital exempted from the ban. Human rights monitors and journalists covering the protests have also been detained. Some activists and monitors have been released without charge, others fined for breaching the rules on holding peaceful protests, some have been sentenced to administrative detention.

https://org.legislationline.org/sites/default/files/2022-12/451-452_NGO_KGZ_12Dec2022_en.pdf

THE KEMPIR ABAD CASE

In January 2023, the presidents of Kyrgyzstan and Uzbekistan finalised a border demarcation agreement which included a contentious deal on joint management of the Kempir Abad (Andijan) freshwater reservoir.

When the proposal was first made public in October 2022, 27 people, among them human rights defender Rita Karasartova, were arbitrarily detained for peacefully expressing concerns about Kyrgyzstan ceding control of a vital natural resource. The defendants in what became known as the Kempir Abad case were detained on charges of organizing mass disorder (despite no evidence having been presented that they had anything other than peaceful intentions). In January 2023 the Ministry of Internal Affairs classified the case as “secret,” limiting defendants’ and their lawyers’ access to case materials and denying them the right to a fair and transparent public trial. In April, the defendants were arbitrarily charged with attempting to violently overthrow the government, which carries a maximum sentence of 15 years’ imprisonment. Legal proceedings started in July 2023 and are ongoing.

While 16 defendants were transferred to house arrest, 11 remain in a pretrial detention centre in Bishkek in conditions that could amount to torture or other ill-treatment. Rita Karasartova was placed under house arrest in June after spending eight months locked in a small unventilated cell with 10 people for 23 hours a day. She was not provided with necessary medical treatment for her deteriorating health condition and denied visits and telephone conversations with her family.

The authorities should drop all charges against the Kempir Abad defendants that stem solely from their exercise of the rights to freedom of expression and peaceful assembly; ensure they are all immediately released.

They should respect, protect and facilitate the right to peaceful assembly and ensure that any restrictions are provided for by a law formulated with sufficient precision, and are necessary and proportionate to a legitimate aim under international human rights law.

CURBING MEDIA FREEDOMS

Independent media and journalists critical of government policies or investigating allegations of corruption have come under increasing pressure, including facing politically motivated criminal charges, arbitrary detentions and imprisonment. Websites of independent news sites have been arbitrarily blocked and the authorities have attempted to close down media organizations because of their independent reporting.

In July 2023, a European Parliament Resolution expressed grave concern at the deteriorating human rights situation in Kyrgyzstan and urged the authorities to “respect and uphold fundamental freedoms, in particular those related to media and expression”.⁴

Kyrgyzstan fell 50 places to rank 122 out of 180 countries in Reporters Sans Frontières’s (RSF) 2023 Press Freedom Index.⁵

PROBLEMATIC DRAFT MEDIA LAW

In May 2023 the Presidential Administration issued a revised version of a restrictive 2022 draft media law for public consultation following critical independent expert reviews by the OSCE Representative on Freedom of the Media, ODIHR and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression amongst others. The new draft, however, failed to remove problematic clauses giving government undue control of media regulation, extending media registration requirements to online resources, and prohibiting the dissemination of “materials that harm the health and morality of the population”. The UN Special Rapporteur on freedom of expression had advised the government that “... such vague and overly broad terms can easily be abused to unduly limit the freedom of expression”, and that the law “would have severe implications for freedom of expression in Kyrgyzstan.”, echoing the long-held concerns of civil society activists.

⁴ European Parliament resolution of 13 July 2023 on the crackdown on the media and freedom of expression in Kyrgyzstan (2023/2782(RSP)) https://www.europarl.europa.eu/doceo/document/TA-9-2023-0290_EN.html

⁵ <https://rsf.org/en/index>

MISUSE OF LAW ON “FALSE” INFORMATION

In December 2022 the UN Human Rights Committee called on the authorities to revise the 2021 Law on Protection from False Information and ensure the implementation of effective safeguards against its misuse.⁶ The law grants the Ministry of Culture highly subjective powers to order the removal of any published materials deemed to contain “false” information without a court order. Failure to comply with the Ministry’s request can lead to the suspension of websites. The authorities have used the law from 2021 to the present to increasingly restrict the activities of media outlets.

MEDIA ORGANISATIONS AND WORKERS TARGETED

In April 2023, the Leninsky District Court of Bishkek granted the Ministry of Culture's petition to terminate Radio Azattyk’s operations in relation to the publication on Radio Azattyk’s social media channels of a video produced by the radio’s sister organization, Current Time TV, which covered violent clashes involving residents and border guards on both sides of the border with Tajikistan in September 2022. The Kyrgyzstani authorities had claimed that the video violated the law “On the Mass Media,” which forbids “propaganda of war, violence and cruelty, national, religious exclusivity and intolerance to other peoples and nations” and demanded that the video be removed even though it was based on information provided by the government. Radio Azattyk agreed a settlement with the Ministry of Culture in July 2023, removed access to the video on its website, and was able to continue its operations.

In September 2023, the Ministry of Culture blocked the website of the independent Kloop Media Public Foundation after the State Committee for National Security (GKNB) complained that an article profiling an opposition politician contained “false” information on torture in GKNB detention. In addition, Kloop faced legal proceedings after a Bishkek city prosecutor filed a petition with court to close its operations. The petition argued that Kloop was not registered as a media outlet and that its publications contained “sharp criticism” of government policies and “caused harm” to public health and well-being.⁷

Another example of the alarming escalation of the crackdown on media freedom saw police on 16 January 2024 raid the homes of 11 journalists known for their past and current involvement with investigative journalist Bolot Temirov, who was stripped of his Kyrgyzstani citizenship and forcibly removed to Russia in 2022. All 11, including Bolot Temirov’s wife, were detained for questioning and taken to the Ministry of Internal Affairs. They were denied access to a lawyer while in police custody, and on 30 January all 11 were transferred to the pretrial detention centre SIZO 1 in Bishkek.

The Ministry of Internal Affairs stated that the mass searches and detentions were part of a criminal investigation into alleged “calls for active disobedience [...] and for mass riots, as well as calls for violence against citizens” (Article 278(3) of the Criminal Code) stemming from non-specified “content on social media.”⁸ In public comments President Sadyr Japarov declared that the detainees were not professional journalists, but “bloggers who use social networks and irresponsibly publish information, including such that pose a threat to the national security of the country.”⁹

On 15 January 2024 GKNB officers conducted a search at the 24.kg news agency in Bishkek, confiscating equipment and sealing the office as part of a criminal case under “propaganda of war” (Article 497 of the Criminal Code). The agency’s top management were detained for questioning but later released. They were summoned for interrogation at the GKNB again on 17 January. 24.kg offices remained sealed as of 31 January.

The authorities should immediately and unconditionally release the 11 journalists and all others who have been detained solely for exercising the right to freedom of expression, withdraw their order to block Kloop’s website and drop the

⁶ Human Rights Committee Concluding observations on the third periodic report of Kyrgyzstan CCPR/C/KGZ/CO/3, 9 December 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx

⁷ <https://kloop.kg/blog/2023/08/28/srochno-prokuratura-bishkeka-podala-isk-v-sud-o-likvidatsii-kloopa/>

⁸ <https://www.amnesty.org/en/latest/news/2024/01/kyrgyzstan-authorities-escalate-crackdown-on-freedom-of-expression-with-raids-on-journalists-offices-and-homes/>

⁹ <https://kloop.kg/blog/2024/01/29/sledovатели-otobrali-svidetelstvo-o-rozhdenii-syna-glavy-temirov-live-mahabat-tazhibek-kyzy/>

petition to close the organisation altogether; refrain from bringing politically motivated prosecutions against independent media outlets, stop the harassment and intimidation of journalists and government critics, and fully respect, protect and fulfil the right to freedom of expression for all media in Kyrgyzstan in accordance with international human rights law.”

They should also step up efforts to disseminate reliable, accessible, evidence-based and trustworthy information, which is crucial to counter false and misleading information and to build trust among the population in the integrity and reliability of the journalistic environment.

DISPROPORTIONATE RESTRICTIONS TO “PROTECT” CHILDREN

In June 2023 Parliament expedited the adoption of a draft law “On Protection of Children from Harmful Information” prohibiting the dissemination of information alleged to be harmful to the health of children, broadly defined as harming “family values”, encouraging “disrespect for parents” and “justifying unlawful behaviour”.¹⁰ In October 2023 the UN Committee on the Rights of the Child expressed deep concern “about various legislative measures introducing the censorship of information that is considered false, or contradictory to family and traditional social values, or is considered to promote disrespect for family members.” The Committee urged the authorities to “guarantee the right of children to access information and exercise their right to freedom of expression by preventing disproportionate restriction.”

In accordance with international human rights law everyone shall have the right to hold opinions without interference. Restrictions on freedom of expression must be provided by a law and be necessary and proportionate to a legitimate aim. States have an obligation to prohibit speech, though not necessarily criminalize, when it constitutes advocacy of national, racial, or religious hatred that incites to discrimination, hostility or violence, ensuring such restrictions comply with international human rights law and that procedural safeguards against abusive imposition of restrictions are in place.

While it is important that children are protected from exposure to harmful content and prohibited speech, legislation should not unduly restrict the dissemination of and access to information under the pretext of protecting public health or morals, or in this case the health of children and family values. This can prevent children from accessing information or services, such as educational materials on sexual and reproductive health, gender-based violence and discrimination, or discrimination against minority or marginalized groups, which in turn can negatively impact children’s enjoyment of a range of other human rights.

The authorities should revise the legislation to make sure that it is consistent with Kyrgyzstan’s international human rights obligations, including the rights of the child and the principle of non-discrimination.

UNDERMINING THE INDEPENDENCE OF THE JUDICIARY

In September 2023 Parliament, amidst widespread controversy, rushed to approve a bill proposed by the presidential administration that gave the President the power to overturn decisions of the Constitutional Court if they went against “moral values and the social conscience of the people.” The President signed the bill into law on 3 October 2023. Human rights organisations expressed concern that the amendments would expose the Constitutional Court to undue political pressure.

The bill was reportedly prompted by a July 2023 Constitutional Court ruling that adults could choose to form the middle name required for official use from their mother’s name – a “matronymic” – rather than being restricted to using their father’s name to form a patronymic.

The case was brought on discriminatory grounds by feminist activist and artist Altyn Kapalova, an action publicly condemned by senior government officials, including the Head of the Committee for National Security (GKNB) and the President. Altyn Kapalova has faced attacks, including death threats, on social media for exercising her right to freedom of expression and opinion and challenging discriminatory policies and practices.

The authorities should guarantee the independence of the judiciary and ensure it is allowed to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The authorities must repeal any legislation that undermines the independence of the judiciary and only adopt new legislation if it helps to be more compliant with international law and strengthen civil society.

¹⁰ <http://www.kenesh.kg/ru/draftlaw/634430/show>