

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL KGZ 1/2024
(Please use this reference in your reply)

15 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 52/9, 51/8, 50/17 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged crackdown against independent media in Kyrgyzstan, including searches against several independent news outlets and homes of journalists, and the arrest of associated staff and journalists.

24.KG is an independent news agency based in Bishkek. It is one of Kyrgyzstan's biggest private news outlets, known for its reporting on corruption, its criticism of the government and satire. **Ms. Asel Otorbaeva** is the general director of 24.KG, and **Ms. Makhinur Niyazova** and **Mr. Anton Lymar** are the chief editors of the outlet.

Temirov Live is an independent news channel which reports on alleged cases of corruption in Kyrgyzstan. It was founded by award winning, anti-corruption journalist and human rights defender **Mr. Bolot Temirov**, who as a result of his journalistic work on corruption in the country, was criminalised, had his citizenship cancelled and was deported from Kyrgyzstan in 2022.

Kloop Media is a Kyrgyz news website, established in 2007, consisting of majority students and graduates of the Kloop Media Public Foundation School of Journalism. It is an independent media outlet, registered as a public foundation for developing journalism and fostering political awareness among youth. It is known for publishing reports on alleged corruption within governmental bodies and providing training on fact-checking and investigative journalism to national and international journalists. Kloop Media is also a partner of the global investigative network Organized Crime and Corruption Reporting Project (OCCRP), which frequently publishes investigative reports critical of Kyrgyz authorities. On 27 October 2023, we raised our concern about the judicial harassment, threat of closure and imposed website blocking against Kloop Media. We regret that we have not received a response from your Excellency's Government to this letter ([AL KGZ 5/2023](#)).

According to information received:

24.KG

On 15 January 2024, at approximately 10.40 am, the office of 24.KG in Bishkek was searched by officers from Kyrgyzstan's State Committee for National Security (SCNS). At approximately 11 am, four defence lawyers of 24.KG arrived at the office. Only one of the four lawyers were allowed inside at approximately 12.30 pm when the search was almost completed, thus the 24.KG director, editors and staff were denied access to the qualified legal assistance during the search. After the search, Mr. Otorbaeva, Mr. Niyazova and Mr. Lyamar were taken to the SCNS building and were interrogated as witnesses for four hours. According to reports, at least one of the journalists was allegedly obstructed access to the defence lawyer during the first 40 minutes of the interrogation. Upon their release, the three journalists said they were unable to share details of the interrogation, as they were required to sign a non-disclosure agreement, allegedly without the required written justification that should be provided by the investigator on what exact information cannot be disclosed, on which grounds and during which period of time such restriction will apply.

During the search, the officers seized mobile phones, computers, laptops, electronic media and other materials and equipment belonging to the agency and the staff members. These personal gadgets and all office equipment remain seized by the SCNS as evidence. The officers sent the remaining staff and journalists home and sealed the office.

The search was allegedly approved by the investigative judge of Pervomayskiy District Court in Bishkek on 9 January 2024. It was allegedly carried out as part of a criminal investigation initiated into alleged "war propaganda" charges, under article 407 part 1 of the Kyrgyz Criminal Code, in connection to the outlet's reporting on the war in Ukraine. The charge carries a prison sentence of up to five years or heavy fines. The criminal case was initiated based on the results of an SCNS-solicited linguistic expert review conducted in September 2023, however the date of when the criminal case was initiated remains unknown. This expert review analysed parts of a 24.KG article and concluded that it 'incites people's desire to go and participate in the war on the side of Ukraine.' Copies of the state expert analysis were not provided to 24.KG director, editors and their defence lawyers; they were only allowed to read them on the day when the search was conducted. Since 26 February 2024, a motion of the defence lawyers to receive a copy of this expert analysis has been rejected by the SCNS investigator, as reportedly, the Criminal Procedure Code does not grant such a right to persons who are questioned as witnesses in a criminal investigation.

On 22 January 2024, the SCNS investigator refused to satisfy the motion of the 24.KG Director, Mrs. Otorbaeva in which she asked the investigator to allow access of the 24.KG staff to their sealed office in order to continue their work. Lawyers of 24.KG appealed to the Pervomayskiy District Court against the investigator's decision to seal off the office. On 6 February 2024, the Pervomayskiy District Court also rejected this motion. On 19 February 2024, the Bishkek City Court rejected the 24.KG media complaint that challenged

the failure of the Pervomayskiy District Court's decision to annul the decision of the chief SCNS investigator from 22 January 2024.

On 6 February 2024, the Pervomayskiy District Court rejected a complaint by 24.KG lawyer which challenged the legality and justification of the SCNS searches conducted in the 24.KG office on 15 January 2024. The Pervomayskiy District Court ruled that, despite the fact that three 24.KG lawyers were denied access (denied legal assistance) to the office 20 minutes after the search, the fact that one lawyer signed the protocol of search meant the complaint of 24.KG was baseless.

On 6 February 2024, the Pervomayskiy District Court's also rejected Mrs. Otorbaeva's complaint in which she questioned legality and justified nature of the action of the SCNS investigator that obliged her, after having questioned her as a witness in the registered criminal case, to sign a non-disclosure agreement. This agreement bans her from disseminating information related to the ongoing pre-trial investigation. The investigative judge ruled that there were no signs of coercion or pressure that might have been exerted on Mrs. Otorbaeva by the SCNS investigator; and that on 15 January 2024 the investigator allegedly issued a reasoned decision on non-disclosure obligation, concluding that provisions of the Criminal Procedure Code of Kyrgyzstan had not been violated.

On 29 February 2024, the Bishkek City Court rejected two appeals of the 24.KG lawyer regarding legality and reasoned nature of the earlier decisions/actions of the investigator of the SCNS. The appeals challenged the Pervomayskiy District Court's decisions from 6 February.

Reportedly, prior to this hearing, the SCNS investigator, allegedly with support of a prosecutor from Bishkek City Prosecutors' Office, asked judges to hold hearings on the 24.KG lawyer's complaints behind the closed doors. On 29 February, the Bishkek City Court's judicial panel partially satisfied this motion ordering the public to leave the court room only during the presentation of arguments by the SCNS investigator.

Criminal cases against 11 journalists and media workers

Between 6 - 8 am on 16 January 2024, in Bishkek, investigators of the Ministry of Interior Chief Investigative Department searched the homes of journalists and media workers associated with Temirov Live and its sister project Ait Ait Dese, including the director Ms. **Makhabat Tajibek kyzy**, Temirov Live reporter Ms. **Aike Beishekeeva**, camera operator Mr. **Akyl Orozbekov**, Ait Ait Dese journalist Mr. **Sapar Akunbekov**, as well as Mr. **Azamat Ishenbekov**, a folk singer who collaborated with Ait Ait Dese. The search was also conducted in the homes of six former Temirov Live staff members, including: Mr. **Aktilik (Madaanbek) Kaparov**, Mr. **Tynystan Asypbekov**, Mr. **Saipidin Sultanaliyev**, Mr. **Maksat Tajibek uulu**, and Mr. **Jumabek Turdaliev**. Reportedly, reasons for the searches, seizure of equipment and the ensuing de facto arrests were not explained, and the defence lawyers were not present during these investigative activities.

According to reports, at around 10.30 am the police officers then took Ms. Tajibek kyzy to the Temirov Live office where they conducted a search and at around 12.00 pm confiscated computer equipment and sealed off the office, without the lawyer present. One of the police officers conducting the search reportedly told the media present that Ms. Tajibek kyzy had refused the lawyer's assistance. When Ms. Tajibek kyzy has since stated that she had not refused a lawyer. According to reports, the search and Ms. Tajibek kyzy's detention is related to the Temirov Live and Ait Ait Dese reporting on the Minister of Interior and a member of Parliament. At 12.40 pm Ms. Tajibek kyzy's defense lawyer reported that he was not able to get access to his client who had been taken to the Ministry of Interior investigative Department for questioning.

After the searches, around 9-10 am, the other above-mentioned journalists were taken and interrogated as witnesses at the Ministry of Internal Affairs headquarters in Bishkek. Their lawyers were reportedly informed of the de facto arrests by the third parties. Subsequently, access of several defence lawyers to the police premises was obstructed for a few hours as they were unable to reach relevant investigators who were supposed to grant them access to the building. As the first interrogations of the journalists during the day time of 16 January 2024 were conducted in their status as witnesses, they were reportedly not read their rights, and moreover, as witnesses, they were not entitled to benefit from the right not to self-incriminate themselves and could not refuse the questioning.

Allegedly, protocols of arrest for 48 hours as the suspects were issued only after 9 pm on 16 January 2024, allegedly not mentioning the exact time of the factual arrests which occurred earlier that morning.

Reportedly, all protocols of detention as suspects quoted Article 96, part 2, para 1 of the Criminal Procedure Code of the Kyrgyz Republic which allows detention of persons as suspects only if they are "caught in the act of committing a crime or immediately after its commission". Several defence lawyers still had not received copies of the protocols of the search and seizure, and some of them were reportedly obliged by the police investigators to sign non-disclosure agreements.

According to the press release of the Ministry of Interior issued on the morning of 16 January 2024, the searches and detentions were made under the charges of "active disobedience to the lawful demands of representatives of the authorities and for mass riots, as well as calls for violence against citizens", which carries a criminal penalty from five up to eight years in prison.

The Ministry of Internal Affairs also reported that on 30 December 2023, during monitoring of social media pages of Ait Ait Dese and Temirov Live, investigators of the Ministry of Interior found video messages from Ms. Tajibek kyzy containing calls for mass riots. In response, on 12 January 2024, the Ministry of Interior commissioned a forensic linguistic examination, which concluded that Ms. Tajibek kyzy's video messages "exhibited signs of incitement to mass riots, as determined by the Forensic Expert Service under the Ministry of Justice of the Kyrgyz Republic". A criminal case was then

registered on the basis of the results of this state-solicited forensic linguistic expert examination.

Reportedly, formal charges and protocols implicating the detained journalists and media workers as the accused were filed by the investigators in the course of 17 January 2024.

On 17 January 2024, at approximately 6.30 pm all of the detained journalists and media workers were taken to the Pervomaiskiy district court. Only relatives were allowed to attend the court hearings. Media were not allowed into the courtroom.

On 17 January 2024, by approximately 10 pm the Pervomaiskiy District Court of Bishkek confirmed legality of all detentions, and sanctioned the two-month pre-trial detention for all the detained journalists as the accused in the criminal case investigated under Article 278 part 3 of the Criminal Code.

Reportedly, investigative judges of the Pervomaiskiy District Court did not establish the exact time of actual arrests and did not examine the defense lawyers' arguments pointing to procedural violations during the arrests. All court decisions blanketly satisfied motions of the investigators of the Ministry of Interior, supported by Prosecutors from the Office of Prosecutors of Pervomaiskiy District of Bishkek, using the gravity of the incriminated crime as the main reason for sanctioning pre-trial detention.

Allegedly, the fact that several of the detained journalists had not been working for Temirov Live and Ait Ait Dese at the time when the media content used as the basis for the criminal charges had been produced were not considered. Other personal circumstances of the detained journalists, including their age, health status, minor children or other dependents, the fact that none of them had been ever before implicated in any offences were also allegedly not considered by the court. Finally, the court decisions did not examine whether the accused could abscond from the investigative authorities or could otherwise obstruct the investigation if they were subjected to a non-custodial pre-trial restraint measure.

Between 16 January 2024 and 29 January 2024, the journalists were reportedly kept in a temporary detention facility (IVS) under the jurisdiction of the Ministry of Interior, despite the national legislation's provisions that oblige investigative authorities to transfer pre-trial detainees to the pre-trial detention center (SIZO) under the State Penitentiary Service's (within the Ministry of Justice) jurisdiction promptly after the court's ruling on the pre-trial detention. Conditions at the temporary detention facility are allegedly unsuitable for long-term detention, as was noted by the National Center for the Prevention of Torture after two preventive monitoring visits to the detained journalists. Transferring pre-trial detainees under authority of another state body not involved in the investigation is an important safeguard against ill-treatment that could be exerted on detainees. Reportedly, complaints of several defence lawyers against this violation had not been addressed by the General Prosecutors' Office.

While in police custody at the IVS for 12 days, the detained journalists were allegedly subjected to unlawful questioning by the Ministry of Interior investigators and asked to provide passcodes to their previously seized equipment.

During public court hearings which took place between 1-6 February 2024, the Bishkek City Court rejected all appeals filed by the 10 journalists and their lawyers challenging the legality of their arrests and two-month pre-trial detention. All arguments of defence lawyers remunerating procedural violations during the search of private homes and the office of Temirov Live, as well as during seizure of equipment and documents, ensuing detention and investigation, including the failure of investigators to provide required copies of procedural documents on conducted searches, were reportedly not duly examined by the three judges' panels. Prosecutors reportedly did not pay attention to any of the arguments of the defence lawyers, including references to personal circumstances of the detainees.

During these separate appeal hearings, the 10 journalists and media workers were brought into the courtroom in person. Several of the journalists were brought in and escorted out of the courtroom in handcuffs, and heavy convoy was present during all hearings. All journalists were kept in a cage and some of them were not allowed any physical contact with their relatives present in the courtroom.

On 29 January 2024, the Deputy Chair of the Cabinet of Ministers described the recent arrest of journalists and media workers "as a measure for education and discipline" in a radio interview. He also emphasized Kyrgyzstan's commitment to free speech. This statement followed the President's earlier comments, labelling the detained journalists as "unprofessional bloggers who misuse social media and potentially threaten national security."

On 7 February 2024, the President stated that freedom of speech is not under pressure, and that there is "active spread of information by NGOs and independent media that sow confusion by propagating things that do not correspond to mentality and traditions of the country".

As of 26 February 2024, reportedly, all complaints of the defence lawyers claiming violations of procedural rights of their clients have been rejected by the Ministry of Interior lead investigator and by the courts.

On 12 March 2024, the Pervomayskiy District Court of Bishkek held a short hearing to review the pre-trial detention of the detained media workers. Mr. Turdaliev, Mr. Orozbekov and Mr. Akunbekov were released under strict conditions including house arrest and promises not to leave the country. The pre-trial detention of the remaining journalists was extended for two more months by the court. Reportedly, the motion of the investigators to extend the pre-trial detention of the remaining media workers dated 6 March 2024 was not given to the media workers' lawyers prior to the hearing. The lawyers will appeal the decision.

Kloop Media

On 9 February 2024, the Oktyabrskiy District Court of Bishkek ruled to liquidate Kloop Media Foundation, satisfying the motion of the Bishkek City Prosecutors' Office filed in August 2023.

During preceding court hearings on this civil case, the court examined testimonies of experts from the State Service for Forensic Expertise that were used as the basis of the Prosecutors Office's claim to shut down Kloop Media Foundation. As was widely reported, these experts conducted initial expert reviews in the framework of the registered criminal case under Article 327 of the Criminal Code "Public calls for violent seizure of power". These expert reviews were reportedly initially solicited by the SCNS. The same experts conducted the repeated forensic expert reviews upon the request of the Bishkek City Prosecutors' Office voiced during the civil claim review on 12 December 2023. The court ordered a new linguistic and the repeated psychological-psychiatric expert examinations.

During the 27 January 2024 court hearing, lawyers of the Kloop Media Foundation claimed that under the Kyrgyz version of the Civil Code there were no legal grounds for the civil suit of the Prosecutors demanding the liquidation of the Kloop Media Foundation. The lawyers asked the court to send an official request for the interpretation of Article 96 part 2 para 3 of the Civil Code by the Parliament of the Kyrgyz Republic. The judge rejected this motion.

During the 5 February 2024 hearing, two psychiatrists and two linguistic experts were questioned. Two authors of the linguistic expert review ordered by the court in December 2023, stated that they did not find in the articles of Kloop Media any calls inciting inferiority or aggression of one ethnic or social group towards the other. Reportedly, the testimonies of the linguistic experts concluded that there were no grounds for the initial criminal case.

One of the two questioned psychiatrists who had prepared the psychological-psychiatric expert examination stated that he had never authored the psychological-psychiatric expert conclusion, and that he was only a leader of the group of experts and only signed the expert conclusion. Thus, he claimed that he was not in a position to respond to the questions of the defence lawyer.

During the oral testimony of the second psychiatric expert, he stated that Kloop Media's reporting was "socially irresponsible" and was "leading to increased mental illness within the country". He also stated that "media in general was increasing mental illnesses in Kyrgyzstan".

The hearing reportedly began at 4.15pm and lasted until 7.40pm, despite a motion filed by the Kloop Media Lawyers to postpone the hearing to align with the court's official working hours. Furthermore, the judge allegedly did not warn the experts of criminal liability for perjury, stating that there was already a criminal liability pledge signed by them before and there was no need to repeat it at the trial.

At the start of the hearing on 9 February 2024, the Prosecutor filed a motion demanding to annul the recent re-registration of Kloop Media (this re-registration was done by the Ministry of Justice in December 2023, based on the application of Kloop Media Foundation and the renewed Charter with a new composition of founders), and to prohibit any further actions aimed at future re-registration of Kloop Media Foundation. The judge partially satisfied the motion of the Prosecutor, stating that the recent reregistration would stay in force; but any future re-registration should be prohibited.

During ensuing questioning of three psychologists (expert witnesses) one of them claimed that “Kloop Media received money from the West, and therefore was fulfilling the orders from the West” and that “in Kyrgyzstan, a secular state, there should be no criticism of the authorities”. All of these experts, when pressed by the Kloop Media’s lawyer, admitted that they had never read any of the Kloop Media’s reports.

During the same hearings, the representative of the Ministry of Justice reiterated that Kloop Media was registered as a foundation, not as a mass media outlet, and thus was not authorised to produce media content.

During both hearings on 5 and 9 February 2024, it was ascertained that none of the involved five experts who conducted a joint psychological-psychiatric expert examination possessed required official certificates from the Ministry of Justice. Moreover, none of the five questioned experts provided any statistical data or any hard evidence based on past research to confirm their claims and conclusions about the harmful effect of the Kloop Media articles on the Kyrgyz population. However, the Prosecutor maintained during both hearings that all the experts had given “clear responses to all the questions of the defence lawyers.”

Late on 9 February 2024, the judge ruled to liquidate Kloop Media Foundation as a public foundation under the Law “On Non-Commercial Organizations”; and appointed a tax officer of the Oktiabrskiy District of Bishkek’s Tax Service Department as an official liquidator. The lawyer of Kloop Media plans to file an appeal with Bishkek City Court. Kloop’s lawyers still have not received detailed minutes on the 9 February court session.

At the same time, the Bishkek Administrative Court is considering a case on the administrative claim of Kloop Media Foundation against two decisions from September 2023 ordered by the Ministry of Culture, Sport and Youth Policy to remove one article from the Kloop's website and to block the website itself under the Law “On the Protection from Unreliable (False) Information”. The Ministry of Culture invoked the Law on False Information following the complaint lodged by the SCNS that claimed that the Kloop Media’s article about alleged inhumane treatment of one of the detainees under the SCNS investigated cases was false and had undermined the SCNS reputation.

On 20 February 2024, preliminary hearings in this case were concluded. The judge granted the Ministry of Culture’s request to postpone proceedings in order to prepare its defence and adjourned the hearing until 18 March 2024.

Without wishing to prejudge the accuracy of the above allegations, we are concerned that the targeting of independent journalists and news outlets appear to come as a direct result of their independent and investigative reporting. We are concerned that the reported allegations take place in a context of a wider pattern of lawsuits and restrictions targeting independent media in Kyrgyzstan, which in turn has a chilling effect on journalists, independent media outlets and human rights defenders who fear they cannot exercise their rights to freedom of expression, peaceful assembly and association, and carry out their legitimate work free from intimidation or reprisals.

We are concerned that this latest bout of searches severely undermines media freedoms in the country, which has already been subject to legal reforms limiting freedom of expression, judicial harassment and searches against independent media, which we previously raised with your Excellency's Government. (AL KGZ 5/2023, OL KGZ 4/2023, OL KGZ 3/2023, AL KGZ 3/2022, AL KGZ 1/2022). In this context, we welcome the recent decision by the President to withdraw the draft law "On the Mass Media" from Parliament for further revisions. We urge for full respect of international norms and standards related to freedom of expression, in the light of our previous communications, as well as recommendations from the OSCE/ODIHR and the Venice Commission of the Council of Europe.

In relation to the arrest and pre-trial hearings of the 10 aforementioned journalists associated with Temirov Live and Ait Ait Dese, we raise our concern over possible violations of international human rights law. We remind your Excellency's Government of its obligations, specifically under the International Covenant on Civil and Political Rights, which states that: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"(article 14[2]) and "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial" (article 9[3]). Regarding the circumstances of arrest and ongoing legal proceedings against the above-mentioned journalists, we remind your Excellency's Government of its obligation under Article 14 to ensure that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and everyone has the right to effective legal assistance.

We are also concerned about the confiscation of equipment from both 24.KG and Temirov Live offices during the above-mentioned searches, as this might lead to the disclosure of confidential sources and information. We are also concerned about the sealing of 24.KG offices and the subsequent denial of entry of their staff, making it very difficult for them to carry out their work.

Finally, we are concerned that the ruling to liquidate Kloop Media represents a serious blow to independent media in Kyrgyzstan. In addition to our previous concerns raised in [AL KGZ 5/2023](#), we are concerned about the procedure applied, which does not seem to comply with the requirement of a due process.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about legal and factual basis justifying the search of 24.KG office and the subsequent de facto arrest and interrogation as witnesses of Ms. **Asel Otorbaeva**, Ms. **Makhinur Niyazova** and Mr. **Anton Lymar** as well as the ongoing criminal investigation implicating the 24.KG media outlet in the propaganda of war.
3. Please provide information about the legal and factual basis justifying the search of Temirov Live office and the homes of current and former staff members. Please explain the legal and factual basis for their subsequent arrest and the two-month pre-trial detention handed down to the 10 journalists affiliated with the news outlet.
4. Please provide detailed information on the legality of the Ministry of Culture's decision to block Kloop Media's website and how this complies with Kyrgyzstan's obligations under international human rights law, in particular articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) relating to freedom of expression and freedom of association.
5. Please provide information about measures taken to ensure that civil society and human rights defenders in Kyrgyzstan, including those working on anti-corruption issues, can exercise their rights to freedom of expression, peaceful assembly and association, and carry out their peaceful and legitimate activities without fear of intimidation, harassment, undue restrictions or reprisals.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Matthew Gillett
Vice-Chair on communications of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards: We would like to refer your Excellency's Government to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Kyrgyz Republic on 7 October 1994, which guarantees the right to freedom of opinion and expression. Article 19 requires the States to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on public affairs, discussion of human rights, and journalism (Paragraph 11). Free press and other media should be able to comment on public issues without censorship or restraint and to inform public opinion, and the public has a corresponding right to receive media output (Paragraph 13).

We would like to also remind your Excellency's Government of Human Rights Council resolution 12/16 (A/HRC/RES/12/16), in which the Human Rights Council expresses its concern that violations of the rights to freedom of opinion and expression continue to occur, often with impunity, including arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence, increased abuse of legal provisions on surveillance, search and seizure, and censorship against persons who exercise, seek to promote or defend these rights, including human rights defenders. In resolution 12/16, the Human Rights Council calls upon the States to respect and ensure the respect for these rights, take all necessary measures to put an end to violations of these rights, bring to justice those responsible and ensure that victims of violations have an effective remedy.

In this regard, as indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR.¹ According to the Human Rights Committee in General Comment No. 35² and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. The Human

¹ CCPR/C/GC/34 para. 23.

² CCPR/C/GC/35, para 17

Rights Committee recalled that the relationship between right and restriction and between norm and exception must not be reversed. Furthermore, the Human Rights Committee clarified that “penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government, can never be considered to be a necessary restriction of freedom of expression” (CCPR/C/GC/34, para 42).

Additionally, in her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression raised concern about the rise in the criminalisation of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation. In this report, the Special Rapporteur emphasised “the societal relevance of independent, free and pluralistic news media – as a pillar of democracy, a tool to support accountability and transparency, and a means to sustain open deliberation and encourage the exchange of diverse views – underscores the importance of journalism as a public good. Journalists are not above the law, but by virtue of their function and the public interest in disclosure, they are entitled to specific legal protection. States are obliged not only to refrain from arbitrary restraints, but also to put in place legislative and regulatory measures in line with international human rights standards to enable journalists to carry out their work safely and without hindrance.”

The Human Rights Committee has held that “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenants rights” and that it constitutes “one of the corner stones of a democratic society”. Free, independent and pluralistic media are also crucial to achieve sustainable development. 4 There is a corresponding right of the public to receive media output. The press and other media should be able to comment freely on public issues without censorship. 5 States must ensure the independence and plurality of media, both traditional and online media, including by guaranteeing editorial freedom and ensuring that funding does not undermine the media’s independence. (CCPR/C/GC/34, para 40.)

Additionally, we would also like to recall that article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the right of association but also have a positive obligation to facilitate and protect the right in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that freedom of association is enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the ICCPR).

Moreover, we would like to remind your Excellency’s Government of its obligations under Article 14 of the ICCPR, according to which, in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and

public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Furthermore, we bring to your attention the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would like to draw particular attention to the following provisions of the Declaration:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we draw your attention to the report of the Special Rapporteur on the situation of human rights defenders, At the heart of the struggle: human rights defenders working against corruption (A/HRC/49/49), in which the Special Rapporteur highlighted the targeting of journalists and bloggers working on anti-corruption, as well as the trends of impunity for attacks against them. In this report, the Special Rapporteur calls on States to “Ensure that human rights defenders working against corruption are protected from being attacked, threatened, intimidated or criminalized for their work.”