

ARTICLE 19

Tajikistan: Protection of freedom of expression online

Country report

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ARTICLE 19 works for a world where all people everywhere can freely express themselves and actively engage in public life without fear of discrimination. We do this by working on two interlocking freedoms, which set the foundation for all our work. The Freedom to Speak concerns everyone's right to express and disseminate opinions, ideas and information through any means, as well as to disagree from, and question power-holders. The Freedom to Know concerns the right to demand and receive information by power-holders for transparency, good governance, and sustainable development. When either of these freedoms comes under threat, by the failure of power-holders to adequately protect them, ARTICLE 19 speaks with one voice, through courts of law, through global and regional organisations, and through civil society wherever we are present.

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This report is produced by ARTICLE 19 in the framework of the programme *Defending Digital Rights in Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan* implemented by ARTICLE 19 together with the local partners from these countries in 2021–2022. This is one of the four country reports which are based on the digital rights monitoring conducted locally in each of the target countries.

The programme's overall goal is to promote freedom of expression and the related rights in digital environment in Central Asia by challenging restrictive legislation, policies and practices both domestically and internationally through strengthening ability of civil society organisations working in the field of the media to promote and protect digital rights, increasing the availability of quality digital rights training resources and capacity, encouraging governments and legislative bodies to address laws and policies restricting online freedom of expression through coordinated national and international advocacy.

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Contents

Executive summary	5
Recommendations	7

Introduction	10
Applicable international human rights standards	12
The right to freedom of expression	12
The right to privacy	13
Access to the internet and digital technologies	14

Protection of human rights online in Tajikistan	18
New legislative developments concerning freedom of expression online	18
Extremism charges as a weapon against dissent	19
Crackdown on dissent for criticism online	22
Access to information	25
Right to privacy online	26
Government intrusion in the Internet infrastructure	27
Restrictions on freedom of expression by social media platforms	29
Using digital technologies in protests	31
Safety of journalists and activists online	33

ARTICLE 19's recommendations	34
Appendix: Monitoring framework	37
Freedom of expression online	37
Right to privacy online	37
Internet infrastructure	38

Use of digital technologies in protests	39
Safety of journalists and activists online	39
<hr/>	
Endnotes	40

Executive summary

In this report, ARTICLE 19, highlights the key concerns with the protection of the right to freedom of expression online – both in law and in practice – in Tajikistan in 2021 based on available local sources. Overall, freedom of expression online is impaired in Tajikistan and raises legitimate concerns in terms of the shrinking space for public debate and related democratic freedoms.

The report looks at the national legislation concerning digital technologies. It finds that a number of laws are problematic from a freedom of expression perspective as they do not comply with international freedom of expression standards. In particular:

- In late 2020, Tajikistan amended a range of existing legislation that touched on freedom of expression online, namely the Criminal Code and the Code of Administrative Offences. The new provisions prohibit incitement to social, racial, national, regional, and religious enmity or discord and increased the sanctions. In the Criminal Code, the offence is punishable by imprisonment and the administrative sanctions provide for fines or administrative detention. The sanctions exist alongside each other. The wording of the new provisions is broad and leaves room for misuse and heavy combined sanctions.
- The Criminal Code also includes provisions on incitement to/justification of extremism and on incitement to/justification of terrorism. ARTICLE 19 argues that these provisions are vague and overbroad. In particular, ‘extremism’ has no definition in international law and should not be used as a legal basis for restrictions on freedom of expression.
- In 2021, a new law was adopted on access to information about the activities of the courts. While the law increased access to court documents and took several other positive steps forward, there is still a broad category of ‘classified’ information which remains inaccessible to the public and journalists.

The application of these laws and others is equally problematic:

- 'Extremism' legislation is often misused to persecute dissenting voices and curtail freedom of expression online. Courts fail to understand that speech that may be shocking, disturbing and not overly favourable is protected by freedom of expression standards. Moreover, the courts often over-rely on linguistic expertise instead of carrying out a proper judicial analysis of the context of the case. Monitoring has shown that this failure has led to many cases of individuals being prosecuted for sharing controversial information or opinions online.
- The provisions of the Criminal Code have been used to prosecute and intimidate individuals who speak out against the Tajik Government. There is a very low tolerance shown for criticism of public officials, particularly against the President. Lawyers, human rights activists, and journalists have been taken to court and sentenced on trumped-up or bogus charges after voicing criticism against public officials. This creates not only a severe chilling effect on freedom of expression but also hinders the role that the media and other actors have in a democratic society.
- Public authorities, and in particular law enforcement officers, violate individuals' right to privacy and do not seem to exercise due care in terms of personal data protection. Despite being guaranteed in the Constitution, as well as in the Personal Data Law, research shows that state authorities have failed to properly investigate violations of online privacy committed by third persons.
- Entire social networks and websites have been blocked or suspended. For example, in situations of popular public protests, internet access has been completely shut down in certain regions for a prolonged period of time. There have also been several reports of websites being completely blocked in the country, particularly news websites.
- Speaking out online about gender equality and the emancipation of women in Tajikistan remains risky as it is often met with bullying and online threats.

Recommendations

- Articles 307(1) and 307(3) of Tajikistan’s Criminal Code, which prohibit incitement to/justification of extremism and on extremist organisations, respectively, should be repealed. These provisions are vague, overbroad, and subject to abuse. Any prohibitions on freedom of expression should fully meet international freedom of expression standards.
- The speech-related offences in the Criminal Code should be revised for their compliance with international freedom of expression standards. In any criminal or administrative case concerning speech online, the courts should ensure that a sanction applied is proportional and that their judgments satisfy the requirement of necessity and proportionality.
- The courts and law enforcement authorities should minimise their reliance on linguistic expertise in ‘extremism’ and ‘hate speech’ cases. They should only seek expert opinions when specialist knowledge is truly needed to interpret or assess particular evidence. The courts should never substitute their own assessment for the analysis performed by experts.
- State authorities should make a greater effort to appreciate the importance of freedom of expression for democracy and the special watchdog role which independent media play in a democratic society. For this purpose, specialised training programmes for public officials should be developed and implemented, and dialogues involving civil society and media representatives should be organised on a regular basis. Government should create more platforms for inclusive public discussion both online and offline.
- The government should create an enabling environment for freedom of expression and cease various forms of attacks on dissent, critics, and political opposition, including via smear campaigns or trumped-up charges (such as fraud).

- Access to information could be further enhanced by defining classified information narrowly and precisely and securing swift access to public information. Access to information requests coming from journalists and media should be considered and answered within shorter periods of time due to the specificities of the media profession.
- Public authorities should refrain from internet shutdowns since blanket bans on access to the internet could never be justified. In exceptional cases, access to illegal content online could be restricted; however, such an extreme measure can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense that it is proportionate, there are no less intrusive alternative measures which would protect the interest, and it respects minimum due process guarantees.
- Public authorities should strive to secure accessible and quality internet access for all, including rural communities, people in need of socioeconomic support ,and other potentially vulnerable groups.
- Dominant digital companies and social networks should ensure that their content moderation policies and practices comply with the *Santa Clara Principles 2.0* and that they safeguard human rights online proactively rather than reactively responding to the ongoing violations. They should provide clear and detailed information about why certain content and/or accounts were blocked, and there should be an easily accessible appeal procedure available to the users who disagree with content moderation decisions. Social media companies should have operational and accessible contact focal points for all countries that they work in, including in Tajikistan.
- The right to protest should be safeguarded both online and offline, and people should not be identified, harassed, or persecuted by the authorities because they participated in a protest. No one should be penalised for disseminating information about protests, including online posts and social media publications.

- Public authorities should implement systemic awareness-raising and educational policy to counteract gender discrimination, harassment, and bullying online. Female voices should be empowered, and all cases of serious online attacks and threats should be properly investigated with perpetrators brought to justice.

Introduction

In recent years, freedom of expression in Central Asia has become increasingly restricted, especially in relation to digital technologies. As physical civic space becomes more and more controlled by governments and with the Covid-19 pandemic heightening the risk of in-person engagements, the internet has become one of the last bastions of civic space in the region. A free and inclusive online environment is increasingly necessary for people to conduct activism, access health services and education, find employment, and promote gender equality. However, broadly-worded legislation providing for disproportionate sanctions, combined with abuse of this legislation by governments and their law enforcement agencies, has been having a chilling effect on freedom of expression. Independent media websites are often being blocked, either temporarily or permanently, without legal recourse to appeal. Journalists are having cases brought against them for public comments on their online articles. Members of the public are being arrested for 'liking' or 'reposting' information on social media networks; and journalists are victims of trolling and cyberbullying, particularly women, leading to self-censorship.

The defence of freedom of expression online is compounded by the fact that relatively few lawyers in Central Asia specialise in media law and have 'digital rights' expertise. Journalism and law faculties in higher education institutions across the region do not include human rights and digital environment training in their educational programmes and, as a result, graduates are ill-equipped to uphold and defend these rights.

According to ARTICLE 19's *Global Expression Report*, Tajikistan is a country where freedom of expression is 'in crisis' and is ranked at the 149th place.¹ Its freedom of expression situation has been raising serious concerns as dissenting voices have been persecuted and national legislation is abused to silence government critics. Promoting and protecting freedom of expression and related rights in digital space in Tajikistan is, therefore, more important than ever. With increasing restrictions and crackdowns on rights online, there is a tight window of opportunity in the target countries to ensure that the internet remains

free of interference and repression. As such, it must be protected through activism, advocacy initiatives, and legal reform.

With this report, ARTICLE 19, together with its partners in Tajikistan, aims to contribute to such initiatives. Following a comprehensive training course on freedom of expression and the related rights in the digital environment, partners engaged in regular and disaggregated monitoring of digital rights violations in the country throughout 2021, based on the agreed monitoring and research methodology. The monitoring also covered emerging legislation and regulatory activities (such as new draft laws and amendments to existing laws), cases of impeded or distorted practical realisation of rights online either because of incorrect interpretation of the respective laws or because of technical barriers to implementation, and court cases raising the issues of implementation or violation of rights online. Monitoring findings were assembled quarterly and informed the ongoing advocacy activities.

This report presents the key findings from the monitoring and recommendations on how to ensure better protection of human rights online. It does not aim to cover all possible incidents of violations of freedom of expression and the related rights in the digital space. Instead, it focuses on high-profile cases – those which had justified publicity and/or those that local partners considered to be strategic in terms of their potential influence over the online sector.

This report is intended to support advocacy efforts of the local civil society at the national, regional, and international levels. It will also inform international assistance programmes to Tajikistan in the area of freedom of expression and serve as a guideline for the reform of media law and policy in the country.

Applicable international human rights standards

The right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights,² and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR)³ and in the regional treaties.⁴

The scope of the right to freedom of expression is broad and applies to all forms of electronic and internet-based modes of expression. It requires states to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice. Under international human rights standards, the legal framework regulating mass media should consider the differences between the print and broadcast media and the internet,⁵ as the telecommunications and broadcasting sectors could not simply be transferred to the internet.⁶ States should adopt a tailored approach to address illegal content online and promote self-regulation as an effective tool in redressing harmful speech online.⁷

Under international human rights standards, states may, exceptionally, limit the right to freedom of expression, provided that such limitations conform to the strict requirements of the three-part test. This requires that limitations be:

- **Provided for by law:** any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly (requirement of *legality*);
- **In pursuit of a legitimate aim:** listed exhaustively as the respect of the rights or reputations of others, or the protection of national security or public order (*ordre public*), or of public health or morals (requirement of *legitimacy*); and
- **Necessary and proportionate in a democratic society:** requiring inter alia that if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the less restrictive measure must be applied (requirement of *necessity*).⁸

Further, Article 20(2) of the ICCPR provides that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must be prohibited by law. The same principles apply to electronic forms of communication or expression disseminated over the internet.⁹

The **right of access to information** is recognised as an element of the right to freedom of expression. The UN Human Rights Committee, a body tasked with interpreting the ICCPR, interpreted the scope and limits of the right to information in 2011, stating that Article 19 of the ICCPR ensures the right to information held by public bodies. It requires that states proactively disseminate information in the public interest and that the access is ‘easy, prompt, effective and practical’.¹⁰ The Committee also stipulated that States must enact “necessary procedures” such as legislation to give effect to the right to information and that fees for access must be limited, responses to requests must be timely, authorities must provide explanations for withholding information, and States need to establish appeals mechanisms.¹¹

The right to privacy

The right to privacy, as enshrined in Article 17 of the ICCPR, includes the right of individuals to respect for their private and family life, home, and communications and the right to the protection of the law against arbitrary or unlawful interference or attacks against them. The right to private life extends to aspects relating to personal identity, such as a person’s name, images, or physical and moral integrity; it is primarily intended to ensure the development, without outside interference, of the personality of each individual in their relations with other human beings.¹²

The right to personal data protection, which may be derived from, and be related to, the right to privacy, regulates the way information about individuals, which may be either private or public, is collected, processed, stored, and retained electronically by both public and private bodies. Personal data must be processed lawfully and fairly for specified purposes and on the basis of the informed consent of the person concerned, or some

other legitimate basis laid down by law. Everyone should have the right of access to data held by third parties (data controllers) concerning them, and the right to have it rectified or deleted, subject to legitimate exceptions.

Guaranteeing the right to privacy in online communications is essential for ensuring that individuals have the confidence to freely exercise their right to freedom of expression.¹³ The inability to communicate privately substantially affects individuals' freedom of expression rights.

This was recognised in several reports by David Kaye, the UN Special Rapporteur on Freedom of Expression, in which he expressed concerns over states and private actors monitoring and collecting information about individuals' communications and activities on the internet. These practices can constitute a violation of internet users' right to privacy, and ultimately impede the free flow of information and ideas online.¹⁴ The Special Rapporteur on Freedom of Expression also recommended that states should ensure individuals can express themselves anonymously online and refrain from adopting real-name registration systems.¹⁵ Further, he recommended that states should not make the identification of users a precondition for access to digital communications and online services and from requiring SIM-card registration for mobile users.¹⁶ He also recommended that corporate actors reconsider their own policies that restrict encryption and anonymity (including through the use of pseudonyms).¹⁷

Access to the internet and digital technologies

As the internet has become a vital communications medium which individuals use to exercise their right to freedom of expression and other human rights, states, in cooperation with the private sector and civil society, should develop strategies which promote sustainable economic growth via competitive market structures in order to stimulate investment into critical internet resources and information and communications technologies, especially in areas with a low communication and information infrastructure.¹⁸

International human rights bodies have expressed their deep concern about blocking/filtering measures.¹⁹ In particular, the four special mandates on freedom of expression in their 2011 Joint Declaration on Freedom of Expression on the internet held that:²⁰

- Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.
- Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.
- Products designed to facilitate end-user filtering should be required to be accompanied by clear information to end users about how they work and their potential pitfalls in terms of over-inclusive filtering.

At the same time, the Special Rapporteur has recognised that website blocking may be justified in limited circumstances in order to deal with categories of content which are prohibited under international law, namely: child sex abuse images (child pornography); incitement to commit genocide; advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence; and incitement to terrorism.²¹ In the case of child pornography, he opined that this was one of the clear exceptions where website blocking may be justified.

Nonetheless, he made it absolutely clear that blocking measures must always comply with the three-part test under Article 19(3) of the ICCPR.²² In this respect, he laid down some minimum criteria that must be met in order for website blocking and filtering to be justified under international law, namely:²³

- Blocking/filtering provisions should be clearly established by law.
- Any determination on what content should be blocked must be undertaken by a competent judicial authority or body which is independent of any political, commercial, or other unwarranted influences.
- Blocking orders must be strictly limited in scope in line with the requirements of necessity and proportionality under Article 19(3).
- Lists of blocked websites together with full details regarding the necessity and justification for blocking each individual website should be published.
- An explanation as to why a page has been blocked should also be provided on a page that is substituted in for the affected websites, and HTTP status code 451²⁴ should be served.

These standards have been echoed by regional mechanisms for the protection of human rights, including the Council of Europe,²⁵ the European Court of Human Rights²⁶ and the Organization of American States Special Rapporteur on Freedom of Expression.²⁷ Importantly, they have confirmed that:

- Search engines and other intermediaries should not be required to monitor their networks proactively in order to detect possible illegal content.²⁸
- It should be possible to challenge blocking and filtering orders before an independent and impartial tribunal and seek clarification and remedies.²⁹ In this regard, the Human Rights Committee has clarified that there should be no generic bans on the operation of sites or systems.³⁰

More generally, international human rights bodies have recommended that filtering should be end-user controlled, and that at minimum, users should be informed when a filter is active and given as much control as possible over the level of filtering.³¹



Protection of human rights online in Tajikistan

New legislative developments concerning freedom of expression online

In late 2020, Tajikistan amended the provisions of Article 189 of the **Criminal Code** which prohibits inciting social, racial, national, regional, religious (confessional) enmity or discord.³² The amendments inter alia changed the sanctions for this crime: violations (including in online space) are now punishable by imprisonment of 2–5 years.

The related amendments were also introduced in the **Code of Administrative Offences** under the pretext of ‘proportionality and humanity’.³³ The new Article 462(1), prohibiting ‘incitement to social, racial, national, regional or religious enmity or discord’, has been added with fines of 50–100 calculation units or administrative detention from 5 to 10 days. The administrative sanctions will exist alongside the criminal provisions. It should be noted that in the region, there was a trend of replacing criminal offences with administrative ones. This widespread practice in the post-Soviet region has been largely considered a positive element of legal reforms. It meant that certain criminal offences from the Soviet period were transferred to the codes of administrative offences after former Soviet republics obtained their independence and started reforming their national legislation. At the same time, administrative sanctions are normally easier to apply and thus, there could have been no reports about the implementation of these provisions of the Administrative Code.

In December 2020, Tajikistan also amended the **Tax Code**.³⁴ The amendments regulate internet services provided by foreign companies/individuals operating in Tajikistan. The new provisions state that ‘foreign persons directly providing electronic services to individuals are subject to registration (re-registration) on the basis of submission of applications and other documents in the format approved by the authorised state body’ and ‘foreign persons providing electronic services on the territory of [Tajikistan] must submit an application in a form approved by the authorised state body’. A new Chapter 31(1) Peculiarities of Taxation of Electronic Services Provided by Foreign Persons was

added. On the one hand, a state's desire to better regulate the delivery of internet communication services and to secure proper taxation is understandable. However, implementation of these provisions will be crucial to assess the real impact of this regulation. There is a risk that the established bureaucratic procedures will create additional pockets of corruption or will be used to ensure that service providers allowed into the market will be loyal to the government requests with regard to data disclosure or content blocking.

Extremism charges as a weapon against dissent

As of 2016, Tajikistan's Criminal Code includes the provisions on public incitement to or justification of extremism and terrorism including via internet networks. Since then 'likes' or other forms of 'support' expressed for the social media posts which could be deemed 'extremists' or 'terrorists' by the authorities are often considered as a 'justification of extremism and propaganda of extremist ideas' by law enforcement and courts.

ARTICLE 19 has warned on numerous occasions that 'extremism' is a sociopolitical category and not a legal one. Therefore, it could not be defined with the sufficient precision and clarity and any limitations of freedom of expression based on 'extremism' will fail to satisfy the requirement of legality (provided by law) of the three-part test. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism called the use and application of the term 'extremism' in national law 'prima facie non-human rights compliant practice' and expressed grave concerns about the use of the terminology of 'extremism' and its expanding ambit in both policy and law. There are serious concerns that the term lends itself to illegitimate judgments about what extremism is and that this can lead to the inclusion of non-violent groups on executive lists of 'extremist' entities.³⁵

Local experts claim that two articles of the Criminal Code (on incitement to/justification of extremism and on incitement to/justification of terrorism) are used to persecute dissenting voices.³⁶ Authorities dismiss these allegations³⁷ but the monitoring findings

demonstrate a clear pattern of misuse of the provisions on extremism to persecute political opposition and stifle public discourse online.

An analysis of cases identified during monitoring shows that the prohibitions of 'extremism' are misinterpreted and abused to curtail freedom of expression online. First, courts do not make reasonable exceptions for philosophical satire and humour and fail to recognise that freedom of expression standards protect not only favourable speech but also speech which may offend, shock, and disturb. The sanctions applied are often disproportionate and would fail to meet the requirement of necessity of the three-part test. Furthermore, overreliance on linguistic expertise in such cases is unacceptable since a specialised expertise cannot substitute a proper judicial analysis which is supposed to assess the context and content of the speech, personality, and status of the speaker and other elements of the six-part test proposed by the Rabat Plan of Action and is helpful in assessing the severity of speech-related offences.³⁸ Such total and totally misplaced reliance on linguistic expertise shifts de facto responsibility from the courts and law enforcement authorities to forensic experts who by definition are unqualified and unauthorised to make determinations on points of law. The following examples can be used to demonstrate these problems.

- At the institutional level, the Islamic Revival Party of Tajikistan, Group 24, and the National Alliance of Tajikistan, an organisation that unites Tajik opposition abroad, were declared by the government as terrorist and extremist organisations. Their Facebook pages and YouTube channels have been banned in the country and any collaboration with these organisations triggers severe penalties. Most criminal cases prosecuted under prohibitions of 'extremism' and terrorism concern viewing, liking, or reposting online videos of these organisations.³⁹
- In March 2021, Rustam Mamadjonov, a former activist of the Democratic Party was detained by state security forces in March 2021 for sharing videos of one of the leaders of the Tajik opposition, Sharofiddin Gadoev, on his Facebook page in late 2019. Two of the videos mentioned President Emomali Rahmon's family. Three months later he was

sentenced by the Sino District Court of Dushanbe to 7 years in prison. Rustam Mamadjonov did not admit his guilt and claimed that the videos had ended up on his page by accident since he had not known how to use Facebook properly.⁴⁰

- On 2 April 2021, Saimuddin Dustov, a former head of the editorial board of *Nigoh* analytical newspaper and a founder of information agency TojNews, was sentenced *in absentia* to 7 years of imprisonment following a 40-minute-long trial. Dustov lives in Poland where he has a refugee status. He left Tajikistan in October 2016 after Tajik authorities closed down the offices of *Nigoh* and TojNews for their critical reporting of the President and government. In 2019, Dustov became the head of the board of the European Congress of Tajik Journalists and Bloggers (EUCTJ), a non-governmental organisation opposing the current government, limitations on freedom of expression, and other violations of rights and freedoms in Tajikistan. Dustov was accused of public incitement to and justification of extremism. His lawyer later learned from the materials of the case that he was accused of membership to the oppositional National Alliance of Tajikistan and engaged in inciting extremism via expressing public support to the Alliance. Dustov vehemently rejected these charges saying that he had been against the Islamisation of Tajik's liberation and oppositional movements ever since 1992. Since Dustov had left the country by the time the trial took place, his 72-year-old father and four neighbours were summoned to the court to be present at the court proceedings. Law enforcement officers allegedly threatened Dustov's father by saying that his younger brothers would be accused and sentenced too if Dustov did not return to Tajikistan. It is considered to be a pattern of persecution in the country to exert pressure and intimidate relatives of dissidents in exile to suppress their voices. In May 2020, MediaMarker online resource, created by Dustov, was blocked in Tajikistan; this resource features inter alia a list of medical professionals who supposedly died from Covid-19 in the country. The news site of EUCTJ was blocked in September 2020. Dustov says he periodically receives messages from the state agents calling upon him to stop criticising the government and President's family.

- In June 2021, Shokhmansur District Court in Dushanbe convicted Abdulmajid Rizoev, a local lawyer, to 5.5 years of imprisonment for his Facebook posts.⁴¹ Abdulmajid Rizoev is a former employee of the human rights organisation Amparo and he also worked for the public association Durakhshon Guruh which offers legal advice and assistance to people. Dilafruz Samadova, Rizoev's lawyer, said that prosecutors analysed several posts on his Facebook page and accused Rizoev of 'hidden public calls for extremist activities that could destabilize national security'. For example, prosecutors saw 'hidden extremism' in Rizoev's post featuring aphorism: 'A wise government combats the root causes of a protest while an ignorant government combats the protesters.' Several other Rizoev's posts of 'philosophical nature' were also included in the verdict following linguistic expertise. There seems to have been no evidence provided to demonstrate the intention of Rizoev to incite extremism or destabilise national security and no harm to the latter could have been reasonably caused or expected as a result of Rizoev's posts.
- In March 2021, three students from a local school were detained on suspicion of responding to a call from 'extremist groups' in the city of Istaravshan. The 'response' was supposedly inferred from the 'likes' and some other forms of 'support' on social media and allegedly other instances of 'cooperation' with these groups. There were no details available about the extremist groups which allegedly deceived these students, and law enforcement authorities did not comment on the media reporting about the case.⁴² The Education Department of Sughd Province, Istaravshan, confirmed that the students had been detained, and according to unverified reports, students were eventually released. This case is disturbing for two reasons. First, there was a profound lack of transparency regarding the circumstances of the case, no clear information seems to have been provided about the alleged offence and how exactly those students supported 'extremist' groups. Second, when dealing with minors it is crucial to ensure that wherever possible, educational measures are used rather than legal persecution since radicalisation is most effectively counteracted with education and awareness-raising at the early stage.

Crackdown on dissent for criticism online

Another broad category of concerns for restrictions on freedom of expression online comprises multiple cases where online criticism of the President, government, or judiciary resulted in legal harassment or criminal prosecution of the critics. This is typically on bogus or trumped-up charges. One striking feature of the cases described next is the apparent arbitrariness in interpretation and application of the national legislation: if there is a perceived need to silence a critical voice, nearly any random article of the Criminal Code would suffice to proceed with the charges. This means that the level of tolerance towards public criticism of those in power is low and that law enforcement and judiciary seem to be profoundly dependent on the decisions of the executive branch of power.

Unfortunately, these cases demonstrate that among the Tajik ruling political forces there is still a serious lack of understanding and appreciation of the role and significance of freedom of expression and freedom of the media in a democratic society.

- At the end of 2020, Saidnuriddin Shamsiddinov, a lawyer who regularly criticised actions of some prosecutors and judges on social media, was sentenced in Vakhsh to 8.5 years imprisonment.⁴³ The court found him guilty under seven articles of the Tajik Criminal Code, including illegal land dealings, fraud, and dissemination of knowingly false information. Shamsiddinov claims that he was sentenced on bogus charges. For instance, the prosecution claimed he had illegally sold a plot of land, while Shamsiddinov's family are confident that the lawyer was punished for his criticism of the authorities and fight for justice. Saidnuriddin had been posting on social media under the nickname Saidi Sadr and some of his posts were harshly ironic towards the Tajik judiciary and talked about how social inequality provoked injustice. Furthermore, in June 2021, Shamsiddinov was additionally accused of 'collaboration with extremist groups' under Article 307(1) of the Tajik Criminal Code on criminalising public incitement to and justification of extremism.⁴⁴
- Izzat Amon, a prominent Tajik human rights activist and head of the Tajik Centre in Moscow, has been an active critic of the Tajik Government policies in online space, though his criticism has been always dismissed by the authorities. In October 2020,

Moscow police searched the office of the Tajik Centre headed by Izzat Amon on suspicion of 'propaganda of religious extremism'. A search warrant stated that Izzatullo Kholov (Izzat Amon) could have been 'carrying out propaganda of religious extremism'. The human rights activist himself said on his Facebook page that police officers were looking for extremist literature in his office and he considered it to be a 'warning' to him for his efforts to protect migrants' rights which both the Russian and Tajik Governments disapproved of. On 25 March 2021, Russian authorities stripped Izzat of his citizenship and expelled him from the Russian Federation to his native Tajikistan where he had not been for the past 25 years. Tajik authorities rushed to charge Amon with fraud allegedly related to his activities in Moscow and initiated the respective criminal proceeding.⁴⁵

- At the end of October 2021, eight members of the US Congress sent a letter to Tajik President Emomali Rahmon, urging him to help end pressure and threats against journalists of Radio Ozodi, the Tajik service of Radio Free Europe/Radio Liberty, and their families.⁴⁶ The US congressmen listed the issues faced by Radio Ozodi journalists in Tajikistan. In particular, security officers often visit the workplaces and homes of Radio Ozodi employees and demand that they stop cooperating with the radio, warning that they could face serious consequences otherwise. Security officers also visit the workplaces and homes of relatives of Radio Ozodi employees and try to intimidate them. Radio Ozodi documented several cases when security officials had visited relatives of the journalists to persuade them to stop working for this media. Radio Ozodi struggles to employ interns and receive long-term accreditation (radio employees are either refused accreditation or granted a short-term 3-month accreditation in violation of the Tajik national legislation which prescribes 1-year accreditation for local journalists of the foreign media).
- In early November 2021, Ahmad Ibrohim, chief editor of *Paik* newspaper, an independent publication in Khatlon Province, complained in a letter to the Prosecutor General's Office and the Presidential Administration of Tajikistan about police pressure on his staff allegedly caused by a critical article published by his media.⁴⁷ In the letter, Ibrohim said the Kulyab authorities tried to exert pressure on him as revenge for his

critical reporting. In particular, at the beginning of November, *Paik* published an article revealing the poor sanitary condition of one of the local kindergartens. An employee of the local sanitary inspection service told *Paik* that the prosecutor's office had threatened them not to inspect the kindergarten. Ibrohim claimed that the article irritated local authorities and there were attempts to pressurise the newspaper and its staff with the help of local police. The head of the Kulyab Police Department denied any allegations. However, since 3 November 2021, police officers have been tracking the author of the critical article (who is the son of an editor) and have visited his home several times. The police finally tried to summon the journalist for enlistment in the army almost a month after the start of the conscription campaign which strangely coincided with the publication of the critical article. The journalist, Muhammad Musavi, was exempted from military service for medical reasons but he said that the doctors had been repeatedly requested by the city police to declare him healthy and fit for duty. Ibrohim informed the media that he also faced intimidation and pressure from the police after he sent his letter to the presidential administration and the attorney general's office. This is not the first time that *Paik* has faced trouble following its reporting. Previously, a fire inspection fined *Paik's* office, and a prosecutor's office suspended *Paik's* work for some time. The newspaper *Paik* has been published in Kulyab for almost 10 years and is the only independent publication available in Khatlon Province.

Access to information

In May 2021, the Tajikistan parliament approved the law proposed by the government on access to information about the activities of courts.⁴⁸ The new law was intended to ensure transparency and fairness of trials and to enhance the relationship of the Tajik courts with the media.

In the past, court proceedings often took place behind closed doors or in pretrial detention centres, and judicial authorities barred media representatives from attending certain trials or denied them information on the pretext that the case in question contained classified

information. The Head of the Supreme Court of Tajikistan, Shermuhammad Shohiyon, specifically mentioned that the bill was developed to facilitate interaction between the judiciary and the media and to improve the functioning of the courts' websites.⁴⁹

ARTICLE 19 notes that the law contains a number of positive aspects that are welcome from a free expression perspective. For example, an obligation of courts to proactively disclose a substantial range of information online can potentially bring Tajikistan closer to the established minimum standard of access to official documents.⁵⁰ It is also positive that information could be provided in an electronic form and that a separate chapter of the law is devoted to the interaction with media.

At the same time, apart from being allowed to be present at the open court proceedings, the media do not seem to be granted additional access to information guarantees or privileges. A 30-day deadline established for the provision of information by courts is evidently too lengthy a period for a journalist whose job is to produce and disseminate quality information instantly. It is also concerning that vaguely defined categories of 'information with limited access' and 'information which constitutes interference in the administration of justice' will remain inaccessible to the public.

Right to privacy online

The right to protection of privacy is guaranteed in the Constitution,⁵¹ the Civil Code,⁵² as well as in the Personal Data Law.⁵³ However, as demonstrated by the research, state authorities are either reckless about violating an individual's privacy rights in the course of their actions or fail to properly investigate and remedy violations of online privacy committed by the third persons. As is often the case, women are disproportionately affected by such actions.

For instance, Manija Nazarova, a Tajik female beauty blogger with more than 48,000 Instagram followers, plans to sue the police after her photo was published on the police website in the section featuring the offenders.⁵⁴ On 3 December 2021, she complained to the police about harassment attempts committed by a young man. The man was further

detained by the police and placed under administrative arrest for five days for ‘immoral acts’. At the same time, Manija Nazarova herself was also charged with the administrative offence for verbally insulting her offender when she harshly responded to his harassment attempts in public. Allegedly, police advised the offender to submit a counter-complaint against Nazarova. Since all photos of the offenders are currently published on the Tajik police website, Nazarova soon discovered her photo online among other offenders despite the fact that the police who had made the photo reassured her that it would not end up on the web. In Tajikistan, appearing publicly on the ‘online register of the offenders’ is seriously damaging not only to an individual’s reputation but also to the social stance of their family and relatives, and hence Nazarova’s forthcoming wedding was cancelled. Under Tajik law, the publication of photographs in such instances is not allowed. However, Tajik authorities tend to comply with this legal provision only where it concerns minors; in most other cases the requirements of the law are largely ignored.

Government intrusion in the Internet infrastructure

Tajikistan’s online space is marked by periodical disruptions in access to social networks and independent media as well as by complete shutdowns in certain regions as a backlash against popular protests. Tajikistan was ranked 104th out of 110 countries in the Digital Index and Quality 2021. According to this study, the country ranked 80th in internet accessibility, 93rd in e-security, and 105th in e-government. Social networks are also periodically blocked in Tajikistan.

The most significant examples of alleged government-ordered restrictions of access to internet and online information resources include the following:

- Access to online radio Asia Plus was blocked two years ago. Asia Plus has been reaching its audiences via social networks since then.⁵⁵ It has about 150,000 readers on Facebook, more than 200,000 subscribers on Instagram, 130,000 subscribers on YouTube, and more than 20,000 readers on Telegram. The government’s Communication Service does not admit to having blocked access to the site, instead

they claim it is a 'technical issue' with the website itself. All negotiations with the authorities and public calls to restore access to Asia Plus did not achieve the desired result.

- In the Gorno-Badakhshan Autonomous Region (GBAO), the internet was completely switched off after massive protests broke out on 25 November 2021 following the murder of Gulbiddin Ziyobekov, a resident of the Roshtqala district. After some time, banks and government institutions came back online but internet access was not fully restored for the residents. By the end of 2021, the internet was still unavailable in Khorog, the administrative centre of the province, while only Darwaz, Vanj, and Murgab districts of the province came back online. The authorities promised to restore internet access in the region as part of their negotiations with the protesters in late November 2021 but did not deliver on their promise. Local residents again appealed to the government demanding full internet access and citing the UN standards, but law enforcement officials only responded with concerns about possible re-escalation of the tense situation in the region. Civil society activists said in return that the situation was tense only because the authorities did not rush with the investigation of Ziyobekov's death as a major trigger of the November protests and that the delay in investigation is caused by the alleged involvement of the authorities in his death. Disruption of internet access in GBAO led to a multitude of negative consequences for the local residents as well as for local businesses and the economy of the region more generally. Residents complained about not being able to withdraw money from their bank cards for at least a month and having to spend TJS 150 (USD 15) to travel to the administrative centre to withdraw TJS 200 (USD 20) from their bank accounts. Students struggled to apply for university placements since they had to travel to another region with functional internet access to submit an online application. Retrieving basic medical test results also took much longer than normal. Internet disruption in GBAO also negatively impacted business viability in various sectors: banking operations, time-restricted tax reporting obligations, IT outsourcing, and the activities of the International University of Central Asia in Khorog. Finally, communication companies lost millions of somonis in revenue.

Local business actors claimed that the region was paralysed and that the reputational damage was irreparable. Local lawyers raised their voices and called internet shutdowns without proper basis in law illegitimate.⁵⁶

- In January 2021, users complained that Facebook and Instagram were not accessible. Government officials claimed that everything was working as usual while mobile network operators confirmed there were disruptions with accessing social networks due to technical reasons.⁵⁷ However, human rights groups claimed that this is typical as Tajikistan's authorities generally deny blocking social networks and websites and attribute access restrictions to technical reasons. Government opponents accuse authorities of censorship while regular internet users actively exchange information on how to circumvent restrictions by using proxy servers, etc.

These examples show that the restrictions of internet access imposed by the authorities often had no evident basis in law and were largely unsubstantiated and disproportionate. Such restrictions of freedom of expression and access to information online violate the requirements of legality, necessity, and proportionality, especially since blanket bans and complete internet shutdowns could not be legitimately justified.

Restrictions on freedom of expression by social media platforms

In a number of cases, blogs or social media groups were removed by social networks for unspecified reasons. These are usually popular Tajik Facebook groups which discuss pressing social issues and criticise the authorities. The lack of transparency by social media companies over their decisions is particularly problematic in the region. Decisions seem to be taken arbitrarily and there is an impression that moderators do not have adequate language knowledge and understanding of the local context(s). If there was some kind of cooperation with the authorities where it concerns content moderation and/or removal, that was not openly disclosed. There is seemingly a pattern of organised 'technical' attacks against 'unwanted groups' when submitting multiple complaints results in an automatic ban. There are also cases where bans of certain resources on social

networks take place amidst broader repressive action against the dissenting voices. For instance:

- In the summer of 2021, Facebook blocked Tsavar Kuen, one of the most popular Facebook groups in GBAO, allegedly for violating community standards.⁵⁸ The group had more than 61,000 followers at the time of its closure and thousands of users took part in online debates on Badakhshan and Tajikistan in this group. Facebook did not provide any detailed explanation with regard to the reason why the group had been closed down and which of the group posts had violated community standards. Groups administrators believe this could be the result of an organised attack against the group when a mass of complaints is sent to trigger an automated ban.
- The group 'We Dushanbeans' was blocked several months before the ban was imposed on Tsavar Kuen. The group had more than 60,000 subscribers.⁵⁹
- On 22 August 2021, Rachabi Mirzo, a well-known journalist and founder and administrator of the group 'Akhbor Baroi Afkor/Food for Thought', reported that Facebook blocked the group and he was trying to address the blocking. The group was later unblocked after a Khoma lawyer and Tajik digital experts managed to reach through to the Facebook administration with a letter.⁶⁰ This is the only case when a blocking decision was reversed. The other Tajik Facebook groups remain blocked at the time of publication of this report, with no proper explanation provided for such blocking decisions.
- Isloh TV, a YouTube channel critical of the government and run by the opposition journalist Muhammadikboli Sadriddin, experienced online attacks for 2 days and was then blocked by YouTube for 24 hours.⁶¹ The channel has over 150,000 subscribers. The owner of the channel believes this is the result of the actions of Tajik officials who are often unhappy with the materials disseminated by Isloh TV. The Isloh.net website and Isloh TV are known for being critical of the authorities and revealing corruption; in return, public officials accuse these media of spreading 'unverified information'.⁶²

Several people in Tajikistan have been arrested and convicted for collaborating with Isloh TV. Muhammadikboli Sadriddin, Isloh chief editor and a son of Kalandar Saduridinzoda (one of the former leaders of the Islamic Renaissance Party currently banned in Tajikistan), has been granted political asylum in Europe. This fact has been used in an attempt to discredit Muhammadikboli Sadriddin and Isloh media via an SMS smear campaign organised against him. In October 2020, the Prosecutor General's Office of Tajikistan reported that a criminal case on fraud was opened against Muhammadikboli Sadriddin. The oversight agency claimed that the opposition journalist had embezzled USD 430,000 from three Tajik citizens. Sadriddin denies the charges.⁶³

Social media platforms have a long-term tendency of reactive rather than proactive approach towards improvement of their content moderation practices; across different regions it usually takes place only after they are faced with substantial criticism due to a lack of response to problematic content on the platforms.

Using digital technologies in protests

In Tajikistan, as well as in many other countries, digital technologies and social media are used in the context of protests. They are used for social mobilisation and preparation of a protest action but they may also constitute a legitimate protest venue on their own. Often, information about protests posted on social media triggers massive mobilisation online and helps organisers to promote their protest's cause far beyond an initial audience. In recent years, public authorities have increasingly taken action against the use of technology during protests.

For instance, in 2021, at least four persons were summoned for interrogation by the state security service following the online publication of a video from an offline protest about the unfair allocation of lands in Abdusalom farms of the Voseisky district.⁶⁴ In early March 2021, dozens of protesters, including women and children, gathered to express their grievances as they lost access to the agricultural lands now owned by Djamoliddin

Ikromov, a brother of a local public servant. People used to cultivate those lands and feed their families. The online publication of the video recordings of the protests caused a massive public outcry on social networks triggering broader discussions about the unfairness of the allocation of lands.

Authorities banned 66 people involved in protests in Khorog from leaving Tajikistan.⁶⁵ A list with their names was handed over to border checkpoints in order to prevent them from leaving the country. Authorities did not comment on the list but civil society activists in GBAO said that most of those on the list participated in the 25–28 November protests. The list contains the personal details of those restricted from travelling abroad: names and surnames, date and place of birth as well as place of residence and residence registration.

Subsequently, on 25 November 2021, following the death of Gulbiddin Ziyobekov, a resident of Tavdem village in the Roshtqala district, which resulted from a security operation, hundreds of people gathered outside the GBAO regional administration to protest. On the fourth day of the protest, the protesters agreed to stop the action only after the authorities promised to conduct an objective investigation into the death of Ziyobekov, refrain from prosecuting the protesters, and lift restrictions on internet access in the region. Civil society activists claim that the authorities did not keep their promises: internet access is still limited, Gulbiddin's death is still not properly investigated, and the authorities intend to harass protesters by compiling lists.

Although the protest itself took place offline, it is not clear what kind of technology had been used to identify the protesters and compile the alleged list of people banned from leaving Tajikistan. ARTICLE 19 would like to underline its vehement opposition to mass surveillance during protests and the use of intrusive digital technologies such as facial and emotional recognition due to the overwhelming chilling effect on both freedom of expression and freedom of assembly. The use of surveillance techniques for the indiscriminate surveillance of protesters and protest organisers, both offline and online, should be prohibited.⁶⁶

Safety of journalists and activists online

There is only scarce information about online safety concerns of media workers and civil society activists in Tajikistan. This might be explained by the fact that the feeling of shame and social stigma often prevents victims of such attacks from speaking out and seeking justice.

For instance, Shahzoda Nazarzoda, a Dutch journalist and writer born in Uzbekistan, received ‘death threats’ online after she talked in an interview about her new book devoted to emancipation and sexuality of Tajik women.⁶⁷ Her interview was published by Radio Ozodi on 8 March 2021, after which a flood of threats began to pour into social media against her, mostly originating from male Tajik nationals. A man named ‘Muhammad Niyazov’ wrote on his friend’s Facebook page referring to Shahzoda Nazarzoda: ‘She should have had petrol poured over her head and set on fire.’ The journalist is convinced that such threats should be taken seriously and dealt with since insulting words have a tendency of leading to serious crimes. Shahzoda believes that there should be zero tolerance towards physical violence against women.

ARTICLE 19 and local sources are not aware of any action taken by law enforcement and/or the judiciary to investigate this case and bring the online attackers to justice. It is possible to suggest that similar cases are quite widespread, and that comprehensive systemic public discussion and educational efforts are needed to address the issue of online harassment in a sustainable manner. Impunity for online threats can indeed lead to offline violence.

ARTICLE 19's recommendations

In order to address the violations of the right to freedom of expression online, ARTICLE 19 makes the following recommendations to the Tajikistan Government and other relevant stakeholders:

- Articles 307(1) and 307(3) of Tajikistan's Criminal Code, which prohibit incitement to/justification of extremism and on extremist organisations, respectively, should be repealed. These provisions are vague, overbroad, and subject to abuse. Any prohibitions on freedom of expression should fully meet international freedom of expression standards.
- The speech-related offences in the Criminal Code should be revised for their compliance with international freedom of expression standards. In any criminal or administrative case concerning speech online, the courts should ensure that a sanction applied is proportional and that their judgments satisfy the requirement of necessity and proportionality.
- The courts and law enforcement authorities should minimise their reliance on linguistic expertise in 'extremism' and 'hate speech' cases. They should only seek expert opinions when specialist knowledge is truly needed to interpret or assess particular evidence. The courts should never substitute their own assessment for the analysis performed by experts.
- State authorities should make a greater effort to appreciate the importance of freedom of expression for democracy and the special watchdog role which independent media play in a democratic society. For this purpose, specialised training programmes for public officials should be developed and implemented, and dialogues involving civil society and media representatives should be organised on a regular basis. Government should create more platforms for inclusive public discussion both online and offline.

- The government should create an enabling environment for freedom of expression and cease various forms of attacks on dissent, critics, and political opposition, including via smear campaigns or trumped-up charges (such as fraud).
- Access to information could be further enhanced by defining classified information narrowly and precisely and securing swift access to public information. Access to information requests coming from journalists and media should be considered and answered within shorter periods of time due to the specificities of the media profession.
- Public authorities should refrain from internet shutdowns since blanket bans on access to the internet could never be justified. In exceptional cases, access to illegal content online could be restricted; however, such an extreme measure can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense that it is proportionate, there are no less intrusive alternative measures which would protect the interest, and it respects minimum due process guarantees.
- Public authorities should strive to secure accessible and quality internet access for all, including rural communities, people in need of socioeconomic support, and other potentially vulnerable groups.
- Dominant digital companies and social networks should ensure that their content moderation policies and practices comply with the *Santa Clara Principles 2.0* and that they safeguard human rights online proactively rather than reactively responding to the ongoing violations. They should provide clear and detailed information about why certain content and/or accounts were blocked, and there should be an easily accessible appeal procedure available to the users who disagree with content moderation decisions. Social media companies should have operational and accessible contact focal points for all countries that they work in, including in Tajikistan.

- The right to protest should be safeguarded both online and offline, and people should not be identified, harassed, or persecuted by the authorities because they participated in a protest. No one should be penalised for disseminating information about protests, including online posts and social media publications.
- Public authorities should implement systemic awareness-raising and educational policy to counteract gender discrimination, harassment, and bullying online. Female voices should be empowered, and all cases of serious online attacks and threats should be properly investigated with perpetrators brought to justice.

Appendix: Monitoring framework

The research for this report was structured to monitor the following issues.

Freedom of expression online

This category included subtopics such as online hate speech, disinformation, online 'extremist' speech, regulation of social media platforms and intermediaries, online defamation, access to information on the internet, and media/journalistic activities online. Local partners were asked to report on the following developments (non-exhaustive list):

- Instances where hate speech, disinformation or extremism legislation was used to prosecute journalists, activists, or ordinary citizens for posting something online and how these laws were applied to the online environment;
- Instances where media were prosecuted for their online reporting;
- Defamation cases initiated for online statements;
- Legislative proposals to regulate social media/impose content moderation requirements; and
- Instances where online access to publicly important information was seriously impeded.

Right to privacy online

This category included subtopics such as online data protection, online surveillance, intrusive technologies like facial or emotional recognition, right to be forgotten, online anonymity, and encryption. Local partners were asked to report on the following developments (non-exhaustive list):

- Requests to remove or delist online information which allegedly infringes upon someone's reputation or privacy rights;

- Legislative proposals to introduce 'right to be forgotten';
- Introduction of facial or emotional recognition technologies (either via new regulatory acts or in practice) and application of these technologies in a way that is targeting individuals for their exercise of the right to freedom of expression (e.g. prosecution of protesters based on footage obtained via these technologies); and
- Legislative initiatives aimed at impeding or scrapping encryption and anonymity online and/or enabling simplified access of the law enforcement authorities to personal or private data online;

Internet infrastructure

This covered subtopics such as access to the internet, online shutdowns and blocking, net neutrality, regulation of Internet Service Providers (ISP), and commercial and business impediments to online freedom. Local partners were asked to report on the following developments (non-exhaustive list):

- High-profile cases of internet shutdowns or blocking (e.g. if supposedly politically motivated or related to important political processes like elections, protests, etc.).
- Systemic attempts to impede access to the internet or block certain content. Local monitors were asked to specify whether such instances were the result of the respective court decisions, administrative orders, or had no known legal basis whatsoever.
- Legislative initiatives to regulate ISPs, including imposing harsher sanctions on them for not complying with the blocking orders, and/or attempts to introduce broader legal grounds for blocking access to internet or to specific content online.
- Attempts to monopolise internet infrastructure by state or private actors.

Use of digital technologies in protests

This covered subtopics such as the right of assembly and right to protest online, regulation of online election-related expression, and political advertising and campaigning on the internet. Local partners were asked to report on the following developments (non-exhaustive list):

- Legislative proposals potentially restricting the right of assembly online;
- Prosecution of activists/citizens for participation in online protests/campaigns;
- Blocking access to online campaigns/protests websites;
- Regulatory proposals on online political advertising and/or campaigning; and
- Legislative proposals or social media companies' own initiatives aimed at restricting election-related information on social networks.

Safety of journalists and activists online

This covered subtopics such as cases of online harassment, bullying, or online smear campaigns with a special focus on the experiences of female journalists and activists. Local partners were asked to report on the following developments (non-exhaustive list):

- High-profile or systemic instances of online harassment, bullying, or smear campaigns against journalists, activists, and lawyers, especially if they are targeted for their critical views, political position or activism, or because they are women. Where possible, local monitors were asked to verify whether any action was taken in such cases by law enforcement or the courts.
- Instances of government or state-sponsored hacking of online accounts of journalists, activists, or media, especially if allegedly related to their critical reporting, journalistic investigations, or election coverage, etc.

Endnotes

¹ ARTICLE 19, [Global Expression Report](#), 2022.

² Through its adoption in a resolution of the UN General Assembly, the Universal Declaration of Human Rights is not strictly binding on states. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see [Filartiga v. Pena-Irala](#), 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

³ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, UN Treaty Series, vol. 999, p.171. Tajikistan ratified the ICCPR on 4 January 1999.

⁴ Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 September 1950; Article 9 of the African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981; Article 13 of the American Convention on Human Rights, 22 November 1969.

⁵ Human Rights Committee, [General Comment No. 34 on Article 19: Freedoms of opinion and expression](#), CCPR/C/GC/34, 12 September 2011, paras 12, 17, and 39.

⁶ The 2011 [Joint Declaration on Freedom of Expression and the Internet](#), adopted by the UN Special Rapporteur on freedom of opinion and expression (Special Rapporteur on FoE), the Organization for Security and Co-operation in Europe Representative on freedom of the media, the Organization of American States Special Rapporteur on freedom of expression (OAS Special Rapporteur on FoE), and the African Commission on Human and Peoples' Rights Special Rapporteur on freedom of expression and access to information, June 2011.

⁷ 2011 Joint Declaration. See also the Report of the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression to the General Assembly, [A/66/290](#), 10 August 2011, para 16.

⁸ Human Rights Committee, *Belichkin v. Belarus*, Comm. No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

⁹ General Comment No. 34, para 43.

¹⁰ General Comment No. 34, para 18.

¹¹ General Comment No. 34, para 19. The same language is repeated in regional human rights conventions, most notably Article 13 of the American Convention, Article 9 of the African Charter, Article 10 of the European Convention, and Article 23 of the Association of Southeast Asian Nations Human Rights Declaration.

¹² This provision should not be used to prevent states from providing full protection of rights as provided for by Article 18 of the ICCPR.

¹³ See Article 17 of the ICCPR. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has argued that, like restrictions on the right to freedom of expression under Article 19, restrictions of the right to privacy under Article 17 of the ICCPR should be interpreted as subject to the three-partite test; see the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, [A/HRC/13/37](#), 28 December 2009.

¹⁴ See Report of the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, Frank LaRue, [A/HRC/17/27](#), 16 May 2011, para 53.

¹⁵ A/HRC/17/27, para 84.

¹⁶ Report of the Special Rapporteur to the Human Rights Council on the use of encryption and anonymity to exercise the rights to freedom of opinion and expression in the digital age, [A/HRC/29/32](#), 22 May 2015, para 60.

¹⁷ A/HRC/29/32. See also the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, [Encryption and anonymity follow-up report](#), Research Paper 1/2018, June 2018.

¹⁸ Council of Europe, [Recommendation CM/Rec\(2007\)16 of the Committee of Ministers to Member States on measures to promote the public service value of the Internet](#) (Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), chapter II.

¹⁹ General Comment 34, para 43.

²⁰ 2011 Joint Declaration.

²¹ A/66/290.

²² A/66/290, para 81.

²³ A/66/290. See also A/HRC/17/27, paras 70 and 71.

²⁴ In computer networking, HTTP 451 Unavailable for Legal Reasons is an error status code of the HTTP protocol to be displayed when the user requests a resource which cannot be served for legal reasons.

²⁵ Council of Europe, [Recommendation CM/Rec\(2012\)3 of the Committee of Ministers to Member States on the protection of human rights with regard to search engines](#), para 12 ff.

²⁶ European Court of Human Rights, [Yildirim v. Turkey](#), App No. 3111/10, 18 December 2012.

²⁷ Inter-American Commission on Human Rights, [Freedom of Expression and the Internet](#), December 2013, p.36.

²⁸ 2011 Joint Declaration, para 22; Council of Europe, Recommendation CM/Rec(2012)3, para 13; European Commission, e-Commerce Directive, Article 15; and Council of Europe, [Declaration on Freedom of Communication on the Internet](#), May 2003, Principle 3. See also the Court of Justice of the European Union, [Case C-70/10 Scarlet Extended SA v. Societe belge des auteurs compositeurs et editeurs \(SABAM\)](#), 24 November 2011 and [Case C-360/10 Sabam v. Netlog](#), 16 February 2012.

²⁹ A/HRC/17/27, para 31; Council of Europe, [Recommendation CM/Rec\(2008\)6 of the Committee of Ministers to Member States on measures to promote the respect for freedom of expression and information with regard to Internet filters](#), 26 March 2008, Section III (vi); [Yildirim v. Turkey](#), para 64.

³⁰ General Comment No. 34, para 43; also [Yildirim v. Turkey](#), para 68.

³¹ Council of Europe, [Recommendation CM/Rec\(2008\)6](#), Section I; [Recommendation CM/Rec\(2012\)3](#), para 16.

³² The Law No. 1730 as of 17 December 2020.

³³ The Law No. 1726 as of 17 December 2020.

³⁴ The Law No. 1744 as of 17 December 2020.

³⁵ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [Human rights impact of policies and practices aimed at preventing and countering violent extremism](#), A/HRC/43/46, 21 February 2020, para 13.

³⁶ Information provided by the local sources. See also Asia Plus, [Tajik lawyer jailed for posting on Facebook](#), 16 June 2021 (in Russian).

³⁷ Asia Plus, Tajik lawyer jailed.

- ³⁸ Office of the High Commissioner for Human Rights, [The Rabat Plan of Action](#) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, February 2013.
- ³⁹ See the information published by the Commonwealth of Independent States Anti-terrorism Centre, [Tajikistan](#); or Asia-Plus, [Tajikistan updated the list of persons involved in terrorism and extremism](#), 29 May 2020.
- ⁴⁰ See e.g. Radio Ozodi, [In Tajikistan, a former activist of the Democratic Party was sentenced to seven years for reposting a video of an opposition leader](#), 6 July 2021 (in Russian).
- ⁴¹ See e.g. Asia Plus, [Tajik lawyer jailed for posting on Facebook](#), 16 June 2021 (in Russian).
- ⁴² See e.g. Asia Plus, [Why were the students of Istaravshan detained: For an unfortunate like or on suspicion of terrorism?](#), 6 April 2021 (in Russian).
- ⁴³ See e.g. Radio Ozodi, [Lawyer who denounced unfair court verdicts on social media sentenced to 8.5 years in prison](#), 13 January 2021 (in Russian).
- ⁴⁴ See e.g. Radio Ozodi, [The jailed lawyer and bailiff is accused of collaborating with Group 24. Relatives refuse](#), 7 June 2021 (in Russian).
- ⁴⁵ See e.g. Radio Ozodi, [Ministry of Internal Affairs of Tajikistan: Izzat Amon was wanted on charges of fraud](#), 27 March 2021; Habarho, [Moscow: Izzat Amon's office searched](#), 15 October 2020; Asia Plus, [Participants of a spontaneous rally near the Tajik embassy were detained in Moscow](#), 3 April 2021; or Radio Azattyq, [Court, deprivation of citizenship, deportation. How Russia expelled an activist who helped migrant workers](#), 31 March 2021 (all in Russian).
- ⁴⁶ See e.g. Radio Ozodi, [US congressmen urge Rahmon to stop pressure on Radio Ozodi](#), 12 November 2021 (in Russian).
- ⁴⁷ See Radio Ozodi, [‘It all started after the publication of a critical article’. The editor-in-chief of the newspaper ‘Paik’ complained about the pressure of police officers](#), 10 November 2021 (in Russian).
- ⁴⁸ The [Law of the Republic of Tajikistan on Access to Information on Activities of the Courts](#), Law No. 1783/2021, adopted on 25 June 2021.
- ⁴⁹ See e.g. Asia Plus, [The head of the Supreme Court of Tajikistan explained what information will remain inaccessible to the media](#), 14 May 2021.
- ⁵⁰ Council of Europe, [Convention on Access to Official Documents](#), Tromsø, 18 June 2009; ARTICLE 19, [Model Freedom of Information Law](#), February 1999.
- ⁵¹ The Constitution establishes that collection, storage, use, and dissemination of information about a person’s personal life without consent is not allowed. See the [Constitution of Tajikistan](#), Article 23.
- ⁵² The Civil Code establishes that citizens have the right to protect the confidentiality of personal life, including secrecy of correspondence, telephone conversations, diaries, notes, intimate life, information on adoption or birth, medical secrecy, attorney–client privilege, the confidentiality of deposits. See the [Civil Code](#), Article 175.
- ⁵³ Personal Data Protection Law, No.1537 of 3 August 2018.
- ⁵⁴ See Radio Ozodi, [Tajik blogger intends to sue the capital’s Ministry of Internal Affairs for publishing her photo on the agency’s website](#), 6 December 2021 (in Russian).
- ⁵⁵ See e.g. Radio Ozodi, [Umed Bobohonov: Closing the ‘Asia-Plus’ website has not benefited anyone](#), 2 April 2021 (in Russian).
- ⁵⁶ See e.g. Asia Plus, [GBAO authorities tell why Internet has not yet been restored in the region](#), 27 December 2021; Radio Ozodi, [How the lack of Internet affects the lives of people in GBAO](#), 21 December 2021 or Asia Plus, [Internet appeared in GBAO, but only partially](#), 21 December 2021 (in Russian).

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- ⁵⁷ See e.g. Radio Ozodi, [Access to Facebook and Instagram is restricted in Tajikistan. The communication service denies blocking social networks](#), 12 January 2021 (in Russian).
- ⁵⁸ See an interview with Aziz Mukairshoev, the founder and administrator of the group, Bomdod, [Facebook Closed the Group Tsavar Kuen with more than 61 Thousand Followers](#), 30 September 2021 (in Tajik).
- ⁵⁹ Information provided by local partners.
- ⁶⁰ Information provided by local partners.
- ⁶¹ See e.g. Radio Ozodi, [YouTube unblocked Islokh TV channel a day after its closure](#), 21 December 2021 (in Russian).
- ⁶² Radio Ozodi, YouTube unblocked Islokh TV channel.
- ⁶³ Radio Ozodi, YouTube unblocked Islokh TV channel.
- ⁶⁴ See e.g. Radio Ozodi, [Interrogation of four 'one video protests' in Vose. Is the land dispute becoming 'political'? VIDEO](#), 17 March 2021 (in Tajik).
- ⁶⁵ See e.g. Radio Ozodi, [Authorities ban 66 people who participated in protests in Khorog from leaving Tajikistan](#), 23 December 2021. A copy of this list was provided to Radio Ozodi on 22 December 2021 (in Russian).
- ⁶⁶ ARTICLE 19, [The Right to Protest: Principles on the protection of human rights in protests](#), 2016, Principle 14.
- ⁶⁷ See e.g. Radio Ozodi, [Shahzoda Nazarzoda says that after the interview about Tajik women 'she was threatened with death](#), 14 March 2021 (in Tajik).