**Preliminary observations by the United Nations Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye at the end of his visit to Tajikistan**

**Dushanbe, 9 March 2015**

At the invitation of the Government, I spent the past week in Tajikistan to explore key components of the freedom of expression under international human rights law, that is, the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media.

During my visit, I met with the Minister of Justice, the Minister of Culture and the Human Rights Ombudsman as well as high representatives from the Ministry of Foreign Affairs, Ministry of the Interior, Parliament, Supreme Court, Constitutional Court, Office of the Prosecutor General, State Committee for National Security, State Committee on Television and Radio and Khovar News Agency. I express my gratitude to the Ministry of Foreign Affairs for the support in the preparation of the visit and all authorities for their time and consideration and underline my desire to continue the dialogue initiated during this visit.

In addition to meetings with the Government authorities, I met with representatives from the United Nations Country Team, the Organization of Security and Cooperation in Europe and the international community. Finally, I met members of non-governmental organizations, journalists, media associations, families of individuals detained, and lawyers. I thank the UN Office in Dushanbe for also supporting my visit. Finally, I am especially grateful to all of the activists, journalists, lawyers, and others who shared their perspectives and often painful stories with me over the past week.

**Introduction**

It is clear that Tajikistan is at a critical turning point on its long road from Soviet rule, civil war, and a transitioning political system. The domestic economy is in decline. The country's lengthy border poses real questions for national security. Government officials speak of their concern that young Tajik men may be attracted to join ISIS.

National security and public order are clearly legitimate grounds of concern for any government. International law permits a government to restrict expression when provided by law and when necessary and proportionate to protect legitimate interests such as the rights of others, public order, and national security. Even so, I am deeply concerned that existing and proposed restrictions fall short of international standards.

I have found that a climate of fear has descended upon key sectors of civil society, stifling free expression in ways that will only lead to resentment and insecurity. Constitutional protections exist, and the Government has taken some positive steps, such as decriminalizing defamation. Tajikistan is a party to the International Covenant on Civil and Political Rights (ICCPR), which protects the freedom of expression under Article 19, and it participates in the mechanisms of the United Nations, including the Human Rights Council. There exists in Tajikistan an infrastructure for the rule of law, in particular as Article 10 of the Constitution recognizes that treaties such as the ICCPR are component parts of domestic law. The Constitutional Court, moreover, has the power to review laws and regulations for their compliance with human rights law.

But laws, decrees and policies -- particularly those concerning terrorism, extremism and national security -- are eroding those protections, undermining the free press and intimidating journalists, limiting citizen access to government information, and blocking critical sources of information on the Internet. Members of one prominent and recently banned political party, the Islamic Renaissance Party of Tajikistan (IRPT), have been imprisoned, subjected to closed trials and limited access to legal representation or their families. Those who exhibit religious beliefs in ways that differ from so-called traditional practices are reportedly harassed.

Despite this very difficult situation, I must underline that during my visit I have had the benefit of candid discussions with officials. With the purpose of engaging in a constructive dialogue with the Government, I am identifying not only specific concerns about the pressures on freedom of expression but also noting possible changes in law, policy and practice that could promote a free society.

Before highlighting these specific concerns and recommendations, I want to emphasize one key point: Open space for freedom of expression is a tool for personal development, education, accountability, and public participation. But it is also a tool for security and economic growth. Shrinking civic space and punishing dissenting views lead inexorably to alienation and frustration among the people, particularly the young.

**Restrictions on opposition voices**

The pressures on the political environment of Tajikistan extend across the spectrum of activities, from independent media, the Internet and mobile communication to civil society, lawyers and religious people. The ramifications of the shrinking space for alternative voices are particularly serious for political parties, in particular the IRPT. It is clear that Tajikistan's basic legal framework -- its Constitution and obligations under international human rights law -- deserves the strongest possible reinforcement. For notwithstanding these protections, new laws and practices have permitted a crackdown on political alternatives as part of a process of intimidation, detention and closed criminal proceedings.

The restrictions on opposition voices come in a fragile context in which national security officials express serious concerns about terrorism and extremism. But they also have emerged in advance of a Constitutional referendum in May of 2016 that, if amendments are adopted, would seek to permanently undermine the plurality of voices in the country. In particular, proposed amendments to Article 8 of the Constitution would restrict the establishment of parties on religious or nationalistic grounds.

Existing restrictions on parties and associations stem from several legal provisions. Article 8 of the Constitution already prohibits social associations that encourage nationalism, racism, and religious enmity, as well as those that advocate the forcible overthrow of Constitutional structures and the formation of armed groups. Article 4 of the Law on Political Parties prohibits the establishment of political parties that seek to forcibly overthrow the constitutional order. The Laws on Combating Terrorism (1999) and the Law on Fighting against Extremism (2003) also criminalize groups and individuals that the Government links to extremism or terrorism. I am especially concerned that the counter-terrorism and extremism laws do not sufficiently define “extremism” or “terrorism,” investing broad discretion to the Prosecutor General and leaving the judiciary with limited tools to constrain the use of these laws against parties and associations.

Using these laws, the Prosecutor General and the Supreme Court have declared that two political groups (Group 24 and IRPT) are extremist or terrorist organizations. In turn, the Government has launched criminal proceedings against individuals who have attempted to participate in the political process as members of these parties. In August 2015, the Ministry of Justice ordered the closure of IRPT, giving the party ten days to shut down its activities. The Government linked violent events on 4 September 2015 with IRPT, though the events themselves are shrouded in mystery and extremely limited public information or independent confirmation. The pressure culminated on 29 September 2015, when, at the request of the Prosecutor General, the Supreme Court officially declared IRPT an extremist and terrorist organization and banned all future activities by the party under the counter-terrorism law. According to the ruling, distribution of the party newspaper, video, audio recordings, literature and leaflets of is prohibited. The party's website has been blocked since that time.

In turn, according to information I have received, at least thirteen members of the IRPT leadership and lawyers have been detained and charged with various offenses such as participation in a criminal group, incitement of national, racial or religious hatred, murder, terrorism, appeals to violent change of the constitutional order, illegal possession or transfer of weapons, and armed rebellion. Others, including allegedly at least ten relatives of IRPT chair Muhiddin Kabiri have been detained and released. At least one of the thirteen detainees, Zarafo Khujaeva (Rahmoni), is understood to be suffering from serious health problems with limited access to medical attention. On 28 September 2015, Buzurgmekhr Yorov, a lawyer for detained IRPT members, was reportedly himself arrested. According to reports, Yorov was investigated on extremism-related charges. He remains detained on uncertain charges and evidence. In turn, Yorov's lawyer, Nuriddin Mahkamov, was himself arrested on fraud charges.

I regret that the Government did not respond to my requests to visit the IRPT detainees and other detained lawyers and journalists. They are generally held with extremely limited access to family and subjected to secret proceedings allegedly allowing them almost no access to the evidence against them.

Other recognized political parties appear to have also become targets of government pressure. Reports indicate that one leader of the Social Democratic Party has been detained and one forced to resign from his position. A political activist and former member of the Dushanbe City Council, Zayd Saidov, was arrested in May 2013. Sources suggest his arrest was connected to his establishment of the New Tajikistan Party. Following a closed trial, Mr. Saidov was convicted and sentenced to 29 years in prison. Some of the lawyers who attempted to defend Mr. Saidov were also detained and subjected to other forms of government pressure and retaliation.

In January 2015, a court sentenced human rights lawyer and deputy head of the Social Democratic Party, Shukhrat Kudratov, to nine years in prison on charges of fraud and bribery. A few months before being jailed, Kudratov had served as the attorney for Mr. Saidov.

On 9 October 2014, the Supreme Court declared Group 24 “extremist". Persons accused of association with the group became subject to investigation, potential criminal charges, and detention. On 5 March 2015, after receiving several death threats, Group 24's leader, Umarali Kuvvatov, was murdered in Turkey. While his alleged killer, a Tajik national, has been convicted by a Turkish court, the Prosecutor General's Office indicated to me that it has not opened an investigation to determine if the killing was connected to persons in Tajikistan.

Preliminary Recommendations:

* I urge the Government not to proceed with the proposed May 2016 Constitutional referendum. The banning of faith-based political parties would appear to be incompatible with the right to freedom of association as set out in article 22 of the ICCPR.
* The law should provide clear legal definitions of, and clarify what evidence is sufficient to prove, “extremism” and “terrorism”.
* Law and government policy should allow peaceful opposition groups to operate freely and exercise the freedom of expression, and religion, in accordance with Constitution and international law.
* Groups and parties such as the IRPT and Group 24 should be given full access to the evidence serving as the basis for the determinations banning them as extremist or terrorist organizations. They should also be granted the opportunity to present contrary evidence and arguments.
* All political detainees and their lawyers should be released. In the absence of their release, their trials should be open to ensure due process rights and fair trials, and the evidence against them should be subject to public and independent scrutiny.

**Restrictions on media freedom**

I take note of the extensive numbers of state and private media in Tajikistan. Officials highlighted that the law of Tajikistan guarantees the freedom of expression. Article 30 of the Constitution is explicit: “Each person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden.” Specific implementing laws have the purpose of ensuring these protections.

Despite these formal legal protections, members of independent media and non-governmental organizations tell a different story, shared worrying reports of intimidation and self-censorship. Atop the legal framework of protection are both legal and extra-legal pressures, exerted by a number of government agencies, to limit criticism. At the present time, I understand that at least five reporters are being detained, some of whom are detained as members of IRPT as well.

Several trends related to media freedom deserve immediate attention:

*Defamation and insult*: Parliament decriminalized defamation and insult in 2012. Nonetheless, Criminal Code Articles 137 and 330 continue to include the offense of defamation and insult of the President and State officials. The mere existence and scope of such provisions deter criticism, while recent changes in the title of the President, "leader of the Nation," since 9 December 2015, reinforce the fear that any criticism could subject a person to criminal process.

Despite decriminalization, journalists are reportedly harassed by suits for defamation under the civil code. The law provides the presiding judge with discretion to assess the amount of a fine, which is reported to be typically disproportionate and onerous. Reporters subject to such suits often lose their jobs and the prospect for further work. Examples include a 30,000 Somoni fine in 2014 against an *Asia-Plus* editor and the Asia-Plus Media Group on allegations of libel and causing “physical and mental suffering” to the country’s intelligentsia, and a 50,000 Somoni fine in 2013 against *Imruz News* for “moral harm” under Article 174 of the Civil Code.

*Extra-legal Harassment*: I was told of numerous instances of harassment of journalists arising over the past several years, focused on pretexts such as fraud, extortion, organized crime or extremism. I heard significant allegations of intimidation by security and law enforcement officials against journalists who cover the political situation in the country. Editors and publishers reported being pressured to fire reporters who wrote critical articles.

In an apparent sign of distrust of independent media, a 2015 Governmental Decree requires that government news be reported only by the state-run Khovar News agency; independent news outlets are required to source such news from Khovar reports.

*The threat of censorship*: The existing registration procedures with the Ministry of Culture are not consistent with international standards. Recently the Parliament discussed amendments to the Law on the Media to allow for the suspension of media licenses by the Government without a court order for three-month periods upon the finding of any legal violation. I applaud the Parliament for obtaining the views of independent media in its consideration of the proposed amendment and for deciding not to adopt the proposal, which would amount to a dangerous power of censorship that would undermine constitutional and human rights protections. The adoption of any mechanism for media suspension would not only be unnecessary but also likely inconsistent with international standards.

Preliminary recommendations:

* To bring the law into line with international standards, decriminalize defamation as it pertains to the President and state officials (repeal of articles 137 and 330 of the Criminal Code).
* Investigate and respond to allegations of harassment of journalists and the media.
* Establish strict limits with regard to fine amounts in civil cases of defamation.
* Ensure that suspension of media outlets cannot occur without judicial procedures on the basis of strict necessity and proportionately.

**Restrictions on the Internet and Mobile Communications**

Neither Internet nor mobile access is legally protected in Tajikistan. The amended Law on the State of Emergency authorizes the government to block mobile services and access to the Internet without a court order following the announcement of a state of emergency. 2015 Amendments to the Law on Combating Terrorism allow for blocking the Internet and telephone systems during "counterterrorism operations," particularly if these mediums are spreading “forbidden information". Presidential Decree 765 provides for a “Unified Electronic Communications Switching Center,” which requires that all Internet and mobile communication be run through a single, state-owned telecom provider (Tojiktelecom). Decree 765 will bolster the Government's power to shut down and block services without obtaining the assistance of service providers.

I note with concern the reports on the blocking of multiple websites, social media and search platforms (such as Facebook, Vkontakte, YouTube and Twitter) that officials consider to be promoting extremism. TeliaSonera, the owner of mobile provider TCell, has reported that the government requested the blocking of 84 websites. I have also learned of numerous instances in which mobile services were blocked on orders of the Government. For instance, in October 2014, the Government reportedly ordered the blocking of all SMS messaging just as a political organization was calling for peaceful public protests. Similarly, beginning on 4 September 2015, mobile phone users reportedly were denied access to service for ten days.

We heard multiple credible reports of the Government's frequent requests to monitor Internet and mobile telecommunications traffic. The interference of Government in communications and the reports of the plans to expand surveillance capacity through a single gateway harm the entire society. Reducing access to information undermines not only public debate but the innovation necessary to build a free and growing economy.

Preliminary Recommendations:

* Adopt legislation that would impose strict restrictions on the Government's ability to block Internet and mobile communications and conduct surveillance in line with international standards.
* Reverse disproportionate measures such as the blocking of websites and the monitoring of communications.
* Establish an independent non-governmental regulator of the telecom industry.

**Narrowing the space for activism and civil society organization**

Recent legal developments and practices put significant pressure on civil society actors, narrowing the space for non-governmental organizations and peaceful demonstrations in the country. The 2014 Law on assembly, meetings, demonstrations and street rallies requires organizers to obtain permission 15 days prior to a mass gathering (Article 12) and restricts gatherings close to government buildings, historical and cultural monuments, national parks and cemeteries, and bans protest at night entirely (Articles 14 and 15). These provisions make it almost impossible for protesters to make their voices heard by authorities and the general public.

Amendments to the Law on Public Associations came into force in 2015. These amendments require NGOs to provide the Ministry of Justice with information about funds received from international sources prior to conducting their activities. In the absence of implementing regulations, civil society organizations lack real clarity about the purpose and use of such financial disclosures. However, I have received information that certain NGOs that have disclosed their funding sources have been questioned or pressured by the government where those funding sources have ties to foreign organizations or movements.

My concerns about changes in the legal framework are heightened by the reported increase in intrusive inspections on numerous NGOs by authorities from multiple bodies, including the State Committee of National Security, the Tax Committee, the Ministry of Justice, and the Prosecutor General’s office. Various interlocutors noted that official inspections recently became more frequent and intrusive, generating a climate of fear that has a powerful chilling effect, particularly affecting human rights organizations.

Even before the adoption of the amendments of 2015, NGOs had their work affected by official interference. For example, in 2013 the Association of Young Lawyers, Amparo, was dissolved by a court order after allegedly failing to comply with the Ministry of Justice’s auditing process. My predecessor and other UN experts expressed their serious concerns on the lack of transparency and clear procedural guidelines regarding the conduct of the audit that led to the dissolution of the NGO.

As noted above, lawyers defending members of political parties have faced particular harassment and prosecution. In this connection, the 2015 Law on Advokatura has required a complete recertification of the defense bar and introduced some restrictions on who can practice law, furthering fears of possible interference in the independence of their work.

Preliminary Recommendations:

* Revise the law on assembly to align with international standards.
* Registration requirements should be clear, simple and transparent, and designed to foster an environment conducive to the establishment of a vibrant civil society.
* Government officials should refrain from surprise inspections, onerous requests for information and other tactics which intimidate and overburden NGOs.
* The tax code, funding disclosure requirements and other administrative provisions should not be used as tools to pressure or harass NGOs**.**

**Limiting religious expression**

Article 26 of the Constitution guarantees the right to express religious beliefs freely through participation in religious customs and ceremonies. However, numerous reports allege widespread harassment of religious men and women, including the forcible shaving of beards and removal of hijabs, which officials justify as important to deter radicalization. Reports also suggest that directives have been issued to law enforcement around the country to demand documents from men with beards and women wearing the hijab. Women and children, moreover, are denied religious expression and access to religious education. A 2004 ruling issued by the Council of Ulema prohibits women from praying in mosques, while individuals under the age of 18 are not permitted to enter mosques pursuant to the 2011 Law on Parental Responsibility for Education and Upbringing of Children. The Ministry of Education forbids women from wearing the hijab in schools and universities.

Preliminary Recommendations:

* Harassment of religious individuals should be prohibited and complaints subject to investigation.
* Reform laws that unduly restrict the rights of individuals to express their religious beliefs, including the Law on Parental Responsibility for Education and Upbringing of Children and the the Law on Regulation of Traditions and Ceremonies.