

Challenges for the freedom of the media and
the freedom of information in Tajikistan

Mr. Asomudin Atoev
Chairman of the Association of
Internet Service Providers and IT Companies, Tajikistan

In the context of the freedom of media and freedom of information, with the reference to the 2015 HDIM Agenda, as a chairperson to the Association of ISPs and IT companies of Tajikistan I would like to address the following two issues:

- Internet and SMS/MMS blockings in Tajikistan that are violating the national and international laws;
- The needs of establishing an independent regulator in the fields of telecommunications and broadcasting with focus on human rights, WTO and other international commitments and economic interests of the country.

I) The practice of the indiscriminate and illegal blocking of access to Internet websites in Tajikistan continues. Since the late August, for example, Internet users in Tajikistan that make over 45% of country's population cannot access several websites, including social media like Youtube and Facebook. Later, in the beginning of September 2015 with mutiny of general Nazarzoda, number of other websites like Odnoklassniki and RFE/RL (ozodi.org) have been also blocked. Moreover, this practice has been applied twice to block SMS/MMS services since October 2014. First time it was blocked for almost a week (9 – 13 October 2014) and second time in September 2015 for about 2 weeks (4-17 September 2015). The above mentioned resources are not in the list of websites blocked by authorities, though without any legal procedure, that is available in the website of the Ministry of internal affairs (<http://mvd.tj/index.php/ru/glavnaya/7875-spisok-sajtov-zapreshchennykh-zakonodatelstvom-respubliki-tadzhikistan>).

The blocking of websites does not only deprive Tajik citizens of their rights of access to information and to media but also causes serious economic harm to internet service providers, mobile operators, and commercial companies like news agencies who are offering news and other information-based services on these platforms.

This practice is illegal by the fact that it violates the norms of the Constitution of Tajikistan, i.e. article 30, and the international legal commitments of Tajikistan like the ICCPR, i.e. article 2 and article 19.

The Constitution of Tajikistan:

Article 30. Everyone shall be guaranteed the freedom of speech, publishing and the right to use means of information.

Propaganda and agitation, kindling the social, race, national, religious and language enmity and hostility shall be prohibited.

State censorship and prosecution for criticism shall be prohibited.

Law shall specify the list of information constituting a state secret.

The ICCPR:

Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the

present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 19:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

This illegal practice also contradicts to the position of Tajikistan on Priority Issues of the Agenda of the 70th session of the UNGA as “ill-intended use of ICT” that impedes expanding of information exchange and mutual support in preventing illegal actions involving use of ICT.

Such a state of affairs also adds to the uncertainties in regulation of the telecommunications market that brings a range of economic challenges. Losing existing and potential domestic and international investors, uncompetitive national ICT industry, raised unemployment are some of those challenges. This is a paradox for a country who worked hard for 11 years to achieve membership of WTO.

As the OSCE Feasibility Study (Study) on Establishment of the Establishment of a Single, Converged Regulator for Telecommunication and Broadcasting Services in Tajikistan argues that it is the positive obligation of the Communication Service (CS) “to ensure access to the Internet for the public”, which is deeply rooted to Tajikistan's national and international legal commitments. In particular, the Study highlights:

“While the CS until the end of 2012 expressly instructed internet service providers and mobile operators, in writing, to block certain websites, in the last 2 ½ years the CS denies any responsibility for these blockings. This raises the interesting question - who is behind these coordinated activities which, in October 2014 alone, led to the blocking of hundreds of websites and the closing down of SMS services in the entire country. In this context it has to be recalled that under both, the Tajik Telecommunications Law and the WTO Reference Paper for Telecommunications Services, the incumbent telecommunications regulator is obliged to provide Universal Telecommunications Services for the public. Furthermore, Article 2 of the International Covenant on Civil and Political Rights, ratified by Tajikistan,

requires that each State Party to the Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant (e.g.: free access to information). In the light of these *positive* obligations it is simply not good enough for the incumbent regulator to reject any responsibilities for the complete dysfunction of parts of the telecommunication market in Tajikistan.” (page 7)

II) The second issue to address is the needs of establishing an independent regulator in the fields of telecommunications and broadcasting with focus on human rights, WTO and other international commitments and economic interests of the country.

Ladies and Gentlemen! My fellow compatriots! In order to harness the ICT in achieving sustainable development through bridging the digital divide and setting up information and communication infrastructures, strengthening of confidence and security, and preservation of cultural and linguistic diversity, as the Government of Tajikistan addresses to the UNGA meeting, the establishment of truly independent regulator in the fields of telecommunications and broadcasting is inevitable action. The establishment of such an agency is the action of the Post-WTO accession action plan approved by the Government Decree No.691 from 31 October 2014. The aforementioned Feasibility Study, as contribution of the OSCE Office in Tajikistan in implementation of this action plan, concludes that the regulatory framework of two incumbent regulators “is not in compliance with the international legal commitments of Tajikistan, which require the functional independence of these regulators”. However, the Study found it possible to establish of such an agency in the following three stages:

1. Some immediate and practical measures to achieve functional independence of two incumbent regulators;
2. Development of a comprehensive legislation to establish two truly independent regulators;
3. Convergence of the two regulatory authorities once the two independent regulators are fully operational.

In conclusion, I would like to point out that the Internet and other ICTs are not the end in themselves. They are means to the end, which is development of the country. To use the advantages of these means the following recommendations are important:

- The Government of the Republic of Tajikistan will take all necessary measures to cease, with immediate effect, the indiscriminate and illegal blocking of access to Internet websites within its jurisdiction;
- The Government of the Republic of Tajikistan will instruct the working group under the National Centre for Legislation under the President of Tajikistan to resume its work on the regulation of illegal content in the Internet with a view to create within a given deadline a legal basis which allows, in line with national and international legislation and best practice, to prevent access to illegal content in the Internet;
- The Government of Tajikistan will establish two multi-stakeholders working groups tasked to review the existing legal and regulatory frameworks for broadcasting and telecommunication services with the objective to draw up proposals for the speedy creation of two separate and truly independent regulatory authorities by taking into account best international standards for independent telecommunication and broadcasting regulatory authorities.

Thank You!