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MEDIA
DIALOGUE

Legal reform on Access to Information in Kyrgyzstan

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WFD

Executive Summary

Under the EU funded Media Dialogue programme, WFD conducted activities to support law reform around access to information in Kyrgyzstan, where the current laws prevent citizens and media from fully exercising the right of access to information guaranteed in international law and the Kyrgyz constitution. After conducting analysis on the current laws in 2020, WFD took the opportunity to engage with the working group set up to revise laws after adoption of the 2021 constitution. With expert support, the working group has developed a significantly improved draft law and WFD has conducted outreach towards the political stakeholders who will be responsible for passing it.

Context

Access to information – the right to seek, receive and impart information held by public bodies - is a fundamental human right, both as part of freedom of expression recognised by the UDHR, and as a right in itself recognised by many national constitutions¹. It underpins democratic principles by ensuring that all information held by governments and governmental institutions can be accessed, unless there are legitimate reasons (for example, privacy or security) for withholding it.

In Kyrgyzstan, Access to Information is a constitutional right, which is then implemented by two laws, passed in 1997² and 2006³ respectively. While these laws apply to a broad range of public authorities and situations, the legal framework has several weaknesses both in law and in the way the law is implemented. The lack of access to information creates barriers both for citizens and for the media to understand and report on the actions of government, and has been identified by civil society representatives as an important area for legal reform in the Kyrgyz context.

As part of the Media Dialogue programme, funded by the EU, WFD has supported engagement by local and international experts to assess the current legislation around access to information, and support development of a new, single draft law in line with international standards. This strand of work has developed beyond its original workplan due to the project's ability to adapt and take advantage of opportunities despite facing challenges from COVID-19 and the challenging political situation in Kyrgyzstan following the 2020 protests. In particular, the project adapted to support the large scale inventory of legislation in the Kyrgyz Republic following a presidential decree in February 2021 and designed to coincide with the new constitution approved in April 2021. The project engaged the working group responsible for redrafting the access to information laws at the right time to provide

¹ <https://en.unesco.org/themes/access-information-laws>

² <https://www.rti-rating.org/wp-content/uploads/2020/05/Law-on-ATI-Guarantees-Kyrgyzstan.pdf>

³ <https://www.rti-rating.org/wp-content/uploads/Kyrgyzstan.pdf>

significant inputs into the drafting process. This has enabled WFD's advice to have an immediate and substantial impact on new legislation at a point where it is being actively prioritised by the government.

Access to Information in Kyrgyzstan

Access to information in Kyrgyzstan is currently covered by two laws: the 1997 “Law on Guarantees and Freedom of Access to Information”, and the more comprehensive “Law of the Kyrgyz Republic on Access to Information Held by State Bodies and Local State Government bodies” passed in 2006. These laws, coupled with the guarantee to access to information enshrined in Kyrgyzstan’s Constitution, provide the legal groundwork for access to information in the country. Kyrgyzstan’s current legal framework for access to information scores 87 out of a possible 150 points on the Right to Information (RTI) rating, the leading global methodology for assessing the strength of legal frameworks for RTI, putting it 63rd out of the 136 countries assessed. While this places Kyrgyzstan in the middle of the pack on global RTI, it is notable that this score is lower than many countries whose Access to Information laws were passed at around the same time.

Several weaknesses exist in the legal framework for access to information in Kyrgyzstan. They include a lack of specialised access to information oversight bodies to ensure the law is applied appropriately, and a significantly overbroad regime of exceptions created through secrecy rules in other laws which the Access to Information Law preserves. In addition to weaknesses in the legal framework, interviews carried out during the project’s analysis phase (see below) uncovered areas where the framework is not being applied or respected, leading to practical issues faced by those seeking information under the two laws.⁴

What has changed?

Following the promulgation of a new Constitution for Kyrgyzstan in April 2021, the country began a broad legal inventory process of at least 356 “basic laws”, including those governing access to information. This initial inventory was followed by an evaluation, led by an Interdepartmental Expert Group (IEG) on the inventory of the legislation of the Kyrgyz Republic, established by the government. The IEG identified laws requiring further amendment and review, and passed those laws to a dedicated working group, working under the Ministry of Justice, which was tasked with revising the legislation. During this process, it was decided that the laws governing access to information should be redeveloped into a single law, which has been taken forward by the working group.

⁴ https://mediadialogue.kg/wp-content/uploads/2020/12/wfd_kg-ati-framework-analysis_eng-v9.pdf

The working group has met several times to discuss and propose a new draft “Law of the Kyrgyz Republic on the Right of Access to Information”, incorporating new elements that are not present in the existing legal framework and amending other aspects to bring them into line with international standards.

Having finalised the draft law, the committee has submitted it to the Ministry of Justice for review. In line with the legislative process in Kyrgyzstan, the law was then put to public discussion for a period of 30 days, before being passed to the Presidential Administration for feedback. Once approval is given, the law will be sent to parliament, who will be responsible for the final version which is passed into law.

Some of the new elements incorporated in the draft law:

- Ensuring the law on access to information takes priority over secrecy laws in case of conflict
- Strengthening the system of appeals for refusals to provide information by establishing an alternative jurisdiction to consider complaints about refusal to provide information. This process includes internal appeal to a higher authority or official, external appeal to an independent institution: the Ombudsman of the Kyrgyz Republic, and finally judicial appeal.
- Exceptions to the right of access have been elaborated in greater detail: e.g. incorporating a harm test, so that it is only where disclosing information would harm a protected interest that it may be withheld, and a public interest override, so that information should always be released where this is in the overall public interest
- Additional promotional measures to help ensure strong implementation of the law

WFD contribution

WFD’s support to the reform of access to information laws was delivered as part of the EU Media Dialogue Programme. The project’s contribution to reform has progressed in two main stages: an analysis phase, and a phase of engagement with the working group responsible for developing the law. This first phase was part of the original project plan, while the second has been a rapid adaptation to changing circumstances, and specifically the opportunity to work with the IEG working group at a critical point for law reform.

Analysis Phase

First, the project developed an analysis of the current legal framework governing access to information. This work was led by international expert Toby Mendel, Executive Director of the Centre for Law and Democracy, with support

from Kyrgyz expert Nargiza Abdraimova, and involved an assessment of the Kyrgyz legal framework against international standards using the RTI Rating methodology. A desk-based assessment was supplemented by

interviews with individuals who had requested information from the current system, to identify practical shortcomings in the way the law was being implemented. The analysis was finalised in April 2020, and published in December 2020 in English, Kyrgyz and Russian.

The initial workplan for the project was to use this research as an entry point to work with parliamentarians and advocate the need for amendments to the existing laws. However, multiple factors emerged which prevented this avenue of work. The most significant of these was the annulment of the 2020 parliamentary elections following extensive protests over the conduct of the government and its allied party during the contest. This annulment was followed by a period of uncertainty, as new parliamentary elections were announced and then repeatedly postponed, eventually taking place in November 2021 after the election of a new president and the promulgation of the 2021 constitution. As a result of the looming election, sitting MPs had little appetite to engage with the project. Furthermore, any progress made would be lost if they were replaced in the election.

In addition, the project's outreach was negatively affected by the COVID-19 pandemic, which prevented international travel during 2020 and 2021, and further limited the extent to which the project could work directly

Engagement with the Working Group

The creation of the working group under the IEG created a clear and powerful opportunity for the project to influence the access to information law at a point where it has been specifically identified for redraft by the law inventory process. Even more fortuitously, one of the specialists appointed to the working

with MPs. Finally, the project team recognised that engaging substantively with parliamentarians would be challenging without some form of draft of the amendments needed to the law, ideally backed by local experts who could champion it during its progress through parliament.

Despite being unable to move forward with the expected work plan, the team and experts maintained momentum around access to information law reform, with the international expert, Toby Mendel, developing a model draft law to be used for advocating reform and soliciting feedback from Kyrgyz legal experts. Other activities during this time included presentation of the analysis to a group of experts, and an informal consultation meeting with experts and practitioners in August 2021. These expert meetings included contributions from the Media Policy Institute (MPI), another Media Dialogue consortium member promoting media freedom in Kyrgyzstan.

By October 2021, a draft of the law had been developed by the experts and was ready to be used for advocacy purposes. By building its network and engaging the legal community around this issue, the project laid the groundwork which allowed it to rapidly shift to supporting the Working Group, when the opportunity arose.

group was Nargiza Abdraimova, who contributed to the legal analysis paper. Knowing that the working group already had access to the analysis and draft law that WFD had developed, the team adapted a planned consultation meeting with legal experts to invite

the entire working group, who responded positively to the invitation.

During the first consultation meeting, WFD held an online presentation with Toby Mendel, Nargiza Abdraimova and the working members to present the draft version of the law created by Mendel for consideration as the group developed its own access to information law. In return, the working group gave WFD access to their own draft of the law, which formed the basis for engagement going forward. By providing suggestions and comments towards the working group's draft, the project was able to have a direct positive impact on the legislation, with many of these comments and suggestions integrated into the final product. This resulted in a draft law, in line with international standards on access to information, with stronger provisions for effective implementation once passed.

Through Abdraimova's presence on the working group, recommendations from WFD's analysis could also be integrated into other legal acts under consideration by the working group. This has ensured the project could contribute to the improvement of access to information provisions across the legislative framework, further strengthening the potential of the new access to information law itself to see effective implementation.

Throughout this process, WFD has had consistent and open communication with the

Additional Work

As further evidence of the value stakeholders have placed on WFD's expertise and advice on access to information, towards the end of the drafting process the working group proposed that WFD deliver workshops to a broader

working group and other key stakeholders, such as the Ministry of Justice, enabling clear, open communication as the draft law has undergone revisions. The level of expertise brought by Mendel specifically, as a leading global expert on access to information and the components needed to enshrine it within legal systems, has been a clear factor in the level of engagement that has been sought by the working group. Because of this close working relationship, WFD has been able to track the progress of the draft and see how the expert's recommendations have been taken up and integrated in the law that has been submitted to the Ministry of Justice for review. The project team has also been able to gather evidence on stakeholders' appreciation for the contribution made, gathering positive informal testimonials from the working group and from the Ministry of Justice about WFD's support.

Other Legal Acts where WFD provided comment on access to information provisions:

- On the Ombudsman (*Akyitachy*) of the Kyrgyz Republic
- On the Protection of State Secrets
- On Commercial Secrets
- On Personal Information
- On Electronic Governance

range of stakeholders, supporting capacity building and advocacy to groups that would be involved in passing and (later) implementing the law. The first such workshop was delivered to representatives from ministries and

departments, the presidential apparatus, the parliamentary committee of constitutional legislation and state structure, and the Supreme Court. The second was delivered to legal experts, practitioners, media lawyers and civil society representatives. Finally, after one-to-one meetings with two MPs, WFD took up the suggestion by one of them to deliver a third workshop directly to MPs. The workshops were delivered by international expert Mendel, who travelled to Bishkek for this purpose (the first time that the COVID-19 situation had allowed in person activity), as well as Abdraimova and two additional experts from the working group: Chynara Musabekova and Fatima Iakupbaeva. The workshops were also supported by inputs from the Ministry of Justice.

All three workshops aimed to familiarise participants with international practices on access to information, to highlight the importance of protecting this right, and to introduce the new draft law within that context, looking at practical problems around protecting the right to access to information and giving stakeholders a platform to consider the draft legislation and the principles underpinning it. In particular, the third workshop engaging Members of Parliament provided an opportunity to engage legislators around the shortcomings around the current Access to Information legislation, both on paper and in practice, and ensure that they understood the rationale behind the drafted law that would soon be coming to parliament for approval.

Significance

Although the draft access to information law is still in the process of being submitted to parliament, this case is significant in the amount of progress that has been made towards legal reform over a relatively short timeframe: identifying weaknesses in the legal framework in Kyrgyzstan, creating a comprehensive analysis and recommendations to address those weaknesses, and then adapting to take the opportunity to work directly with changemakers who had the mandate and the will to reform the law in question and recognised the value of WFD's participation. The creation of the working group under the IEG in September 2021, which included legal experts who the project had already worked with either directly in the drafting process or through prior consultations, offered an overwhelming case for adapting the project's target stakeholders to prioritise working with them. The opportunity created by the new constitution and law reform process, which has enabled detailed inputs into the new access to information law as it has been developed, as well as support to other legislation affecting its implementation, means the project has contributed to creating the conditions for wide-ranging change in the legislative environment.

It is important to note, that this opportunity was at least in part the product of the project's continued engagement and advocacy even when it wasn't possible to continue with expected activities with MPs in late 2020. By finding ways to refine and progress its analytical work by engaging experts and champions, and starting an independent drafting progress, WFD made it possible to "hit the ground running" with the working group. This was achieved because of relationships that had already been developed with key stakeholders, which then opened the door to quickly build a relationship with the Ministry of Justice and the working group. The project also benefitted from the fact that the analysis

and draft law was already known to the experts in the working group, which made it easy to build a working relationship and advocate for a law that would be fully in line with international standards.

Although at the time of writing the law has not yet been passed, there is significant evidence to show that the project has contributed to creating all the conditions for improvement of Kyrgyzstan's access to information laws and how they are implemented:

- The working group, Ministry of Justice and other key stakeholder groups have full understanding of what is needed to create laws that recognise and uphold the right to access to information, and why this legislation is so important to upholding democracy
- Awareness has been raised among stakeholders within the legislative process, including the presidential administration and MPs, around the shortcomings in the current access to information law and how the new legislation will address these issues
- Awareness has also been raised among stakeholders engaged in upholding the current laws, such as ministries and the judiciary, around access to information and its importance, building their capability and motivation to ensure the new law is effectively implemented
- Through creating comprehensive, accessible analysis and engaging in advocacy and outreach with key stakeholders (including CSOs and the broader community of legal experts), the project has created the conditions for advocacy around access to information laws and processes to continue in Kyrgyzstan regardless of the strength of the eventual law that is passed, ensuring that stakeholders understand their rights and can push for further reform even if the revised legislative framework falls short of the standards required.

In summary, by engaging in adaptive programming around access to information in Kyrgyzstan, WFD has ensured legal experts have the tools they need for evidence-based policymaking that recognises the right to information enshrined in international law and in the constitution of Kyrgyzstan, and the principle of transparency and public engagement as key principles of democratic governance. Alongside the other strands of the Media Dialogue project, this work has significant potential to support accountable media organisations which themselves have the capacity to hold government and public institutions to account, supporting broader public engagement in the democratic process.

Evidence

- The Analysis of the Kyrgyz Legal Framework for the Right to Information, as published on the [Media Dialogue Website](#)
- The draft law, as sent for public review, is [available online](#)
- Public information is available on the [law inventory process](#), including the [presidential decree](#) setting up the exercise
- WFD activity reports capture stakeholder engagement in trainings and consultations
- WFD collected informal feedback and testimonials from key stakeholders including the working group, Ministry of Justice and others. This information is captured and logged in WFD's digital monitoring tool.

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