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Nuriza Begalieva

# From democracy to autocracy?

## Growing threats to civil society and media in Kyrgyzstan

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KYRGYZSTAN

## FOREWORD

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This publication includes the thesis *From Democracy to Autocracy? Growing Threats to Civil Society and Media in Kyrgyzstan* written by Nuriza Begalieva and supervised by Arusyak Aleksanyan, Yerevan State University.

#### BIOGRAPHY

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#### ABSTRACT

Despite the repeal of the 'foreign agent' law in 2016 which was initiated in Kyrgyzstan to limit activities of human rights defenders, government officials still continue to oppress them by using other legislative restrictions. This idea contradicts the principles of a democratic country which stands for plurality of opinions. Recent intimidation and unlawful surveillance of human rights defenders and media representatives demonstrate that state officials can have a suspicious attitude and try to restrict their freedom of movement. According to given theories, the presence of active civil society and independence of media is important for the full functioning of democracy. Kyrgyzstan, being in the transition period, similarly to its neighbouring countries, uses tools to monopolise the important institutions. By using content analysis of published speeches of government representatives, human rights activists and media representatives the thesis reveals that the government continues to degrade the status of civil society by using disinformation as well as by misusing existent laws for their own profit to preserve the current regime. By examining hypotheses through correlation analysis, the study finds out that there is a strong relationship between active participation of civil society and media with the development of democracy. As a result, the more a country strives for democratic changes, the more effective the activity of the executive branch is. However, human rights itself has weak negative correlation with democratic development. It can be explained by the fact that when civil society takes more action against the government, autocratic rulers allow more human rights violations. Thus, this work demonstrates that although the Kyrgyz government continues to preserve democratic values and meet universal human rights principles, the recent cases show that these statements can be regarded only as a facade, as it is in the interest of the government to limit political mobilisation to maintain the current regime.

TABLE OF ABBREVIATIONS

ADB	Asian Development Bank
GKNB (Russian)	Gosudarstvennyi Komitet Natsionalnoy Bezopasnosti (State Committee for National Security)
IFEX	International Freedom of Expression Exchange
IPHR	International Partnership for Human Rights
IREX	International Research & Exchanges Board
OBS	Observatory for the Protection of Human Rights
SCNS	State Committee for National Security

LIST OF TABLES AND FIGURES

<i>Table 1. Nation in Transit`s rating of regime in Kyrgyzstan since 2009</i>	2
<i>Table 2. ‘Polyarchy and democratic process’ by Robert Dahl</i>	14
<i>Table 3. ‘The Five Major Arenas of a Modern Consolidated Democracy: Inter-related Principles and Mediating Fields’ by Linz and Stepan</i>	15
<i>Table 4. The three stages of development of civil society in Kyrgyzstan by Asian Development Bank</i>	23

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<i>Figure 1. IDL Kyrgyzstan from 1995-2018</i>	42
<i>Figure 2. CCSI by years in Kyrgyzstan for 1995-2018</i>	43
<i>Figure 3. MSI by years in Kyrgyzstan for 2001-2018</i>	44
<i>Figure 4. Executive branch in Kyrgyzstan between 1995-2015</i>	45
<i>Figure 5. Human rights score in Kyrgyzstan between 1991-2017</i>	46
<i>Figure 6. Correlation between CCSI and IDL</i>	47
<i>Figure 7. MSI and IDL by Years in Kyrgyzstan for 2001-2018</i>	48
<i>Figure 8. Correlation between IDL and executive branch for 1995-2015</i>	49
<i>Figure 9. Correlation between human rights and IDL</i>	50

TABLE OF CONTENTS

Foreword	II
Biography	IV
Abstract	IV
Table of abbreviations	V
List of tables and figures	VI
1. INTRODUCTION	1
1.1 Importance of the topic	3
1.2 Research question	3
1.3 Hypotheses	4
1.4 Methodology	4
1.5 Limitations	4
1.6 Outline	4
2. LITERATURE REVIEW	6
2.1 Theoretical background	6
2.1.1 What defines democracy?	6
2.1.2 Consolidating democracy	10
2.1.3 Human rights and civil society as determinants of democracy	12
2.1.4 Transition phase: Authoritarianism and tools for regime survival	16
2.1.5 Where is legitimacy?	19
2.2 Socio-political background	21
2.3 History of civil society in Kyrgyzstan	22
2.4 Legislative restrictions on the democratisation of Kyrgyzstan	25
2.4.1 Law ‘on foreign agents’	25
2.4.2 Law ‘on guarantees of activities of the President of the Kyrgyz Republic’	26
2.4.3 Law ‘on combating extremist activities’	27
2.5 Freedom of speech before Atambayev	28



2.6 Cases of oppression of civil society and media	30
2.6.1 Azimjan Askarov’s case	30
2.6.2 Case of T Ismailova and A Abdirasulova, Zanoza and Senytabr	31
2.6.3 Alkanova and Kloop investigation case	32
2.6.4 Surveillance and searches of homes	34
2.7 Comparative analysis of international and national laws	35
3. METHODOLOGICAL DESIGN AND ANALYSIS	39
3.1 Description of tools and variables	39
3.2 Hypothesis 1	47
3.3 Hypothesis 2	48
3.4 Hypothesis 3	49
3.5 Hypothesis 4	50
4. CONCLUSIONS	51
5. RECOMMENDATIONS	54
BIBLIOGRAPHY	56

1.

INTRODUCTION

According to article 10 of the European Convention on Human Rights, ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...’.

However, Kyrgyzstan’s case seems to be different. Despite the fact that Kyrgyzstan is known as the democratic island of Central Asia, in fact it has changed significantly from 2017 to the present. Although the election of Sooronbay Jeenbekov, the current president of Kyrgyzstan, is considered as democratic, several changes in state policies towards civil society and media demonstrates that Kyrgyzstan’s democratic regime is under question. According to the international community, Kyrgyzstan was an example of one of the post-Soviet countries who chose a democratic path. However, according to Freedom House, today Kyrgyzstan is considered as a country with a consolidated authoritarian regime.<sup>1</sup>

<b>Years</b>	<b>Regime</b>
2018	Consolidated authoritarian regime
2017	Consolidated authoritarian regime
2016	Semi-consolidated authoritarian regime
2015	Semi-consolidated authoritarian regime

<sup>1</sup> Freedom House, ‘Nations in Transit 2018. Kyrgyzstan’ (Freedom House 2018) < [www.refworld.org/docid/5b3cc2844.html](http://www.refworld.org/docid/5b3cc2844.html) > accessed 15 August 2019.

Years	Regime
2014	Semi-consolidated authoritarian regime
2013	Semi-consolidated authoritarian regime
2012	Consolidated authoritarian regime
2011	Consolidated authoritarian regime
2010	Consolidated authoritarian regime
2009	Consolidated authoritarian regime

*Table 1. Nation in Transit's rating of regime in Kyrgyzstan since 2009<sup>2</sup>*

According to International Freedom of Expression Exchange (IFEX), the authoritarian features of the country can be seen in the example of the president's misuse of the law 'on guarantees for activity of the President of the Kyrgyz Republic'.<sup>3</sup> This law became a reason to oppress all media representatives who criticised the current government. Due to pressure of media by both current and former presidents, the General Prosecutor was obliged to sentence and fine various journalists and media organisations under the excuse of 'discreditation of the honour' of the president.<sup>4</sup> These harsh penalties against journalists and the media continues today. Fining Zanoza.kg for criticising the detention of oppositionist Omurbek Tekebaev, accusing journalist Elnura Alkanova of spreading 'confidential information' for her investigative report on corrupt government, banning channel 'Sentyabr' for defending the opposition and many other examples contradict the principles of a democratic country.<sup>5</sup>

Similarly, civil society groups also continue to face difficulties. Despite the repeal of the foreign agent law in 2016 which was initiated in Kyrgyzstan to limit activities of human rights defenders, government officials are not willing to end oppression towards them. According to this law all non-governmental organisations were obliged to give information about those who finance them and register themselves as

<sup>2</sup> Freedom House (n 1).

<sup>3</sup> IFEX, 'Stop Kyrgyzstan descent into media repression'(IFEX, 2018) <<https://ifex.org/stop-kyrgyzstans-descent-into-media-repression/>>accessed 5 August 2019.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

foreign agents. The current president continues to degrade the status of human rights defenders by using slander and disinformation in the society by portraying them as those who use resources of western powers to ingrain their values and pose threats to the country. Recent intimidation and unlawful surveillance of human rights defenders show that state representatives still have a suspicious attitude and try to restrict their freedom of speech. In 2017, in a speech, the former president Atambayev assaulted human rights defenders Aziza Abdurasulova and Tolekan Ismailova for presenting foreign interests. Today the new government continues to use the same excuse against civil society representatives and constantly summon them for questioning at the State Committee of National Security (GKNB).<sup>6</sup>

### *1.1 Importance of the topic*

Despite ongoing discourse about the problem, little research has been done on the theoretical perspective of how the provision of human rights can determine the regime type. The significance of this thesis is that it differs from other studies so far conducted on Kyrgyzstan by its attempt to reveal current challenges to human rights defenders and media representatives produced by the new president, whose policies are leading to an authoritarian path.

- Firstly, I will identify interconnections between human rights, civil society and democracy;
- Secondly, I will examine different tools of authoritarian leaders by which they intend to legitimise and maintain their power;
- Thirdly, I will provide cases of oppression of human rights defenders and media representatives in Kyrgyzstan;
- Lastly, I will examine given hypotheses and approve or reject them.

### *1.2 Research question*

To what extent can Kyrgyzstan's growing threats to civil society and media impact on the democratic development of the country?

<sup>6</sup> IFEX (n 3)

### *1.3 Hypotheses*

1. The development and activity of civil society increases the democracy level in Kyrgyzstan.
2. The presence of independent media helps to foster the democracy level in Kyrgyzstan.
3. The democratic development conduces effective activity of the executive branch in Kyrgyzstan.
4. Democratisation increases human rights protection in Kyrgyzstan.

### *1.4 Methodology*

The study is based on qualitative and quantitative methods. Qualitative methods are comprised of the content analysis of the scholars' relevant articles, legal documents and online as well as printed versions of annual reports of international human rights organisations such as Human Rights Watch, Freedom House, Radio Liberty and others. In addition, the thesis contains Pearson correlation analysis, which tests four given hypotheses.

### *1.5 Limitations*

I am aware that a potential shortcoming or limitation of this thesis may be its very focus on selected methods of measuring correlation between different variables. In addition, it can be criticised for its selection criterion of annual reports of international human rights organisations as its core empirical data.

### *1.6 Outline*

The thesis consists of five chapters. The first chapter starts with an introduction and explains the significance of the topic, its relevance and the methods of studying the subject. The second chapter contains theories of different scholars such as Juan J Linz and Alfred Stepan, Robert Dahl, Giuseppe Di Palma, Sheldon Wolin, Charles Tilly, Francisco Sagasti and others on the definition of democracy, its main criteria, procedures and its link with human rights. The definition of authoritarianism, its main types and rules are provided by Beatriz Magaloni and Ruth Kricheli, Axel Hadenius and Jan Teorell and others.

In addition, it covers information on the main challenges in the political and economic transformation of Kyrgyzstan after the break-up of the Soviet Union. This part comprises of an overview of scholars' articles, books, analytical papers and journals, and official speeches of representatives of the international community on the given topic. It examines legislative restrictions on the democratisation of Kyrgyzstan and provides several cases of oppression of human rights defenders and media representatives. The same chapter also includes comparative analysis of international and national laws where the main contradictions are presented.

The third chapter includes findings and analysis which gives description of tools and variables that were used to test four given hypotheses. It presents the results that have been derived from the research. The next chapter includes a summary of the main points and equates the initial theories and hypotheses with the results. Lastly, the thesis provides recommendations for both the international community as well as local government representatives to possibly adopt new policies that might deal with given challenges.

2.

LITERATURE REVIEW

2.1 THEORETICAL BACKGROUND

2.1.1 *What defines democracy?*

As it is known the word ‘democracy’ comes from the Greek words ‘demos’ – the people – and ‘cratons’ – the power – and thus can be considered as ‘power of the people’. There are no other options that can replace democracy and preserve the values of freedom and transparency to an equal extent as it does today. The states that protect such values explicitly oppose themselves to the state regimes that at this point of time fail to adopt common democratic standards or simply neglect them. Today these standards and values become more universal for each member of the international community. In order to be a relevant and an equal part of that community, states proclaim themselves as democracies seeing the protection of their citizens as their main priority. Of course a mere proclamation is not enough to be called a democracy. If considering democracy as a complex concept, then some common values of it may be emphasised: an impartial legislative body elected by the people, equal voting rights of citizens, free elections by a majority vote, preserving minority rights, presence of other political and civil rights and freedoms etc.

According to Schnittger and Karl, in addition to these mentioned values, today democracy should be directly linked with the active engagement of citizens in which ‘rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives’.<sup>7</sup> Thus, democracy should not

<sup>7</sup> Philippe Schmitter and Terry Lynn Karl, ‘What Democracy Is... and Is Not’ [1991] *Journal of Democracy* 75.

be considered today as the result of state behaviour but also by that of its citizens.

Huntington claims democracy has faced three waves in its history of existence. The very first one began in the 1820s and lasted until 1926 which resulted in producing 29 democracies. Nevertheless, he point out that these waves were periodically followed by ‘reverse waves’.<sup>8</sup> Thus, by 1942, because of new autocratic rulers, only 12 countries were determined as democratic states. The second wave with its 36 democracy-oriented countries lasted from the end of World War II until 1962 which later ended up with a reverse wave until 1975. The third wave between the 1970s and the 1980s was proclaimed as ‘a Catholic wave’ because of democratic transitions in Portugal, Spain, South American and three Central American countries as well as countries of Eastern Europe.<sup>9</sup>

Huntington also emphasises that it is necessary to consider five major factors which serve as a driven force for the democratisation process of countries: 1) failure of authoritarian rulers to sustain ‘legitimacy’ and ‘wide acceptance of democratic values’ by most of the countries of the world; 2) amelioration of economic conditions in the 1960s which resulted in improvement of ‘standards of living’; 3) rise of the Catholic church against authoritarianism; 4) role of the European Community, the United States and the Soviet Union; and 5) the ‘snowballing’ effect in which non-democratic countries transformed into democratic ones by following those where democracy was already ingrained.<sup>10</sup>

If considering democracy as a complex concept, then some categories may be emphasised. Charles Tilly discusses different approaches of understanding democratic conditions of a state.<sup>11</sup> According to him first we have to look to the constitution of a state and what laws it enacts. That approach mainly concentrates on how states identify themselves in principal. This is a substantive approach based on evaluation of the real situation within a state. It aims to identify whether the main priority is given to the protection of public welfare or individual freedom. Another approach referred to as procedural mainly advocates unconstrained electoral competition and participation among political actors and

<sup>8</sup> Samuel Huntington, ‘Democracy’s Third Wave’ [1991] *Journal of Democracy* 12.

<sup>9</sup> *ibid* 13.

<sup>10</sup> *ibid*.

<sup>11</sup> Charles Tilly, *Democracy* (CUP 2007).



voters. The last approach presented by Tilly is oriented to acceptance of democratic norms by population. To understand the importance of each citizen and recognise them as an inseparable element of the political process is crucial for democracy. All the mentioned approaches in common fashion mostly discuss different values and norms for a democratic state. If using that type of discourse, one can easily say that democracy is an ideological concept. It will be reasonable to say that this crucial feature of democracy can support the idea of the spread of democratic values around the globe and the normalisation of its main principles.

Political representation is a basic aspect of democracy that needs to be considered separately. Castiglione and Warren say that the 'democratic concept evolved its familiar form based on elections of political representatives'.<sup>12</sup> This statement leads to the notion that political representation discloses the very essence of democracy being the intrinsic democratic format of state-society relationship. Within that relationship, individuals freely express their political will and authorise the representative, while the representative in his/her turn exercises political power in terms of interests of the represented. On the other hand, representation may be understood as some sort of balance between public and power. Representation is the moderator of the rule of political elites interacting with political democratisation of a society that is willing to implement their function as the subject of politics as well.<sup>13</sup> The main goal is to make government accountable to the population, complimented by granting every individual equal rights for political participation.

There is a popular notion that democracy is so far the best form of government ever created. Today the prioritisation of individual freedom and involvement into the political process has become a standard for democratic countries. According to the contemporary point of view, it is evident that democracy transformed into some sort of individual thinking, initially being a form of political regime. So it is relevant to consider democracy from the ideological perspective. However, the aspect of representation still remains the central element of democracy, embodying the form of relationships within the socio-political structure

<sup>12</sup> Dario Castiglione and Mark E Warren, 'A New Ecology of Democratic Representation? Eight Theoretical Issues' [2006] *Rivista di Storia delle Idee* 155.

<sup>13</sup> *ibid.*

which actually defines democracy in its original understanding.

It would be intelligent to call democracy a form which would best be able to withstand failure of the state. However, there is a need to examine the other forms of government in order to reveal to what extent each of them is prone to failure. This thesis seeks to explain why certain regimes are more likely to fail while others have capacity to keep power for a long period of time.

Even though some scholars might consider that democracy is at least the worst form of government in comparison with others, there are arguments which claim that democracy itself is never about pure democracy. This uncertainty creates dubiety on the regime's longevity. Wolin claims that democracy is not stable because it is always about changes since the main principle of democracy – separation of powers – itself creates obstacles for stability.<sup>14</sup> The constant changes of the representatives make a regime fragile because the people who come to the positions of power will not always be capable of dealing with legacy. Thus for Wolin, democracy constitutes a moment rather than any regime of governance.

Moreover, Wolin claims that democracy is a power in which the elite is composed of economists and financiers who possess state bureaucracy.<sup>15</sup> For him democracy is always facing challenges since it is under control of corporatists who consider their own purposes. Thus democracy cannot be applied to all countries especially to third world countries. Even the United States, which is known as a model of democratic regime, has internal conflicts such as huge gaps in social stratification. Similar to Wolin, Schmitt argues that democracy sometimes is capable of destroying itself because of the threat to stability. He argues that democracy as it is presented in the example of Western countries is not always about state power, but about economic dominance over the state institutions like press and political parties.<sup>16</sup> Thus existing threats from corporate entities can make democratic regimes close to failure.

By looking at the example of most African states it would be normal to claim that authoritarian regimes cause different conflicts, both internal and external, which leads to failure of the state. However, there

<sup>14</sup> Sheldon Wolin, 'Fugitive democracy' [1994] *Constellations* 11.

<sup>15</sup> *ibid.*

<sup>16</sup> Carl Schmitt, *The Crisis of Parliamentary Democracy* (Ellen Kennedy ed, MIT Press 1988).

could be controversial counter arguments defending the fact that they are prone to last longer than other regime types. It can be seen that some types of regimes are more likely to fail than others. According to Axel Hadenius and Jan Teorell, military regime is the most fragile of the various authoritarian types while one-party states tend to last longer.<sup>17</sup> Military regimes are the weakest because it has less recognition in society, which means they are not always ready to confront public protests. In addition, in this type of regime, those in power cannot get rid of their own self-interests such as maintaining their positions and keeping the previous hierarchy. These issues make them helpless during times of external criticism. Thus it would lead to instability in the country and the longevity of the situation is ambiguous.

Another type called personalist regimes are likely to fail since they are dependent on the networks which usually relies on client-patron relationships. The system is constructed on the basis of loyalty of one to another. This system is insecure since in the case of the fall of a regime they will lose everything but personalist regimes have a greater chance of lasting longer than military regimes since they have strong intentions to maintain their position. However, the most effective form of government in terms of longevity is one-party states. This hypothesis has been drawn from that fact that they have better organisational structures that seek to monopolise institutions and ultimately have one ideology.<sup>18</sup> It allows them to easily determine the traitor and confront opposition groups. Thus it leads to complete control of the state by preventing it from failure.

### *2.1.2 Consolidating democracy*

According to Di Palma, it can be seen that the demand for the transition to democratic regimes started to appear in southern Europe (Greece, Portugal, Spain) and South America (Argentina, Brazil) from the middle of the 1970s which were full of drastic changes.<sup>19</sup> The aim of these transitions was to remove authoritarian regimes and set up democracy. However, not all of these countries were able to successfully

<sup>17</sup> Axel Hadenius and Jan Teorell, 'Authoritarian Regimes: Stability, change and pathways to democracy' [2006] Kellogg Institute 1.

<sup>18</sup> *ibid.*

<sup>19</sup> Giuseppe Di Palma, *To Craft Democracies* (US Press Ebook Collection 2016).

get rid of the legacy of the previous system. Each of them had different reasons for their struggle to achieve democracy. Di Palma gives an example of China, the country which despite its success in economic terms was not able to turn into a democratic regime but rather continued to keep its previous policies which might be determined as 'bureaucratic authoritarianism'.

First of all, it is necessary to act relying on the basis of the background of the country. The leader should know the regime and know what will be most suitable for the state. Di Palma claims that the concept of democracy proclaimed by the West cannot fit all states. The categories which are produced by the West consist of three points. According to this determination, firstly it is important that the government is considering economic prosperity and equality. Secondly, it must ensure that the dominant class of the society is the representatives of the middle class. Finally, the society which is composed of different nations should be able to deal with multiculturalism.<sup>20</sup> However, one must remark that each state has its own shortcomings on implementation of these three categories and thus there is a need for consideration of the different approaches.

Charles Tilly claims that it is necessary to elucidate the notion of political standing in the country.<sup>21</sup> This notion reveals the extent to which it is possible to change the previous system. The leader should know whether he or she is dealing with a system close to democracy or with something which is completely far from it. He or she should question how the state was acting in different cases: in wars, in investment loans and in general with foreign policies.

What can be considered as a second factor influencing the building of democracy is quality of life of the ordinary citizens of the state. A quality of life is the extent to which the society is equal, to which citizens are able to express freely their opinion and to which they are secured from unlawful intervention by the state. Tilly claims that main inequalities that should be eliminated in society in order to achieve democracy are the ones which are based on gender, race, ethnicity, religion and class. Moreover, giving the population the possibility to express their views increases their political participation which might positively influence

<sup>20</sup> Di Palma (n 19)

<sup>21</sup> Tilly (n 11).

decision-making on social benefits like education, medical care and their rights under law. In addition, Tilly states that the democratisation process depends on the non-intervention of state into the affairs of its citizens. Thus there should be no centralisation of powers which includes privatisation of enterprises and pressure on independent press so that the freedoms of the citizens will not be constrained.

Finally, in building democracy there should be conviction that every member of the society is aware of what democracy constitutes. Accurate explanation will prevent possible conflicts. In order to properly deliver the ideas of democracy there should be tight cohesion between government and public. Tilly argues that the benefits from the proper representation of democracy are huge and through following this way it will be unlikely that citizens will protest against policies implemented by government.<sup>22</sup> The presence of trustable communication between these two actors will give the possibility of achieving prosperity in the conditions of their life.

On this basis, it might be considered that there are three main features which the leaders of a young democratic regime should consider in setting up democracy. The first thing to consider is the peculiarity of the state's background to determine the appropriate way to democratic transfiguration. Following this, there is a need for ensuring the very basic rights of human beings which are composed of social equalities, civic rights as political participation and the ability to conduct private activities by not being restrained by the state. The third feature stands for the capacity of the government to have open communication with its citizens so that there will be grounds for explanation of specificity of the democratic regime. Thus these three principles might constitute genuine methods for those who are willing to establish democracy.

### *2.1.3 Human rights and civil society as determinants of democracy*

Human rights are considered as the rights which belong to human beings simply because of their existence. They do not limit people based on race, nationality, religion, gender, political opinion or any distinct views. Despite the fact that at the beginning human rights listed in the

<sup>22</sup> Tilly (n 11).

Universal Declaration of Human Rights (UDHR) of 1948<sup>23</sup> were accepted as soft law, today those rights are legally binding being ingrained in international as well as domestic legislation.<sup>24</sup> One cannot separate the concept of human rights from democracy.<sup>25</sup> They are indivisible in the fact that they both stand for ‘principles of accountability, individual liberty, integrity, fair and equal representation, inclusion and participation, and non-violent solutions to conflict’. Landman argues that today human rights have achieved the point where one can see that they are even more ‘legally codified’ than democracy. Nevertheless, he states that even though democracy does not have any legal power to make states ‘to respect, protect, and fulfill’ it, as it does human rights, democracy is the only type of regime in which human rights can be fully implemented and in which there will be no infringement of law by different actors such as ‘private companies, non-governmental organizations, paramilitary and insurgency groups, and “uncivil” or undemocratic movements’.

As Francisco Sagasti argues, globalisation processes have made human rights spread even wider than before.<sup>26</sup> Because of technology and the internet, people have become more aware of their rights and cases in which they could be violated. He claims that it has made a positive impact on ‘transparent political activity’ in former non-democratic regimes in Eastern Europe, the former Soviet Union and in the Middle East, as well as other developed countries. It can be seen that because of progress in both human rights and democracy, not all but many people have more possibilities to practice their political, social as well as cultural rights.

Even though many scholars discuss democracy and its correlations with human rights they do not cover actors who are involved in accelerating the process of democratisation as much. Robert Dahl explains that in addition to known features such as free and fair elections, the rights to vote and to be voted into power, in a democratic society there should be open platforms for civil society or any active groups to discuss and if

<sup>23</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

<sup>24</sup> Peter Kirchschlaeger, ‘The Relation between Democracy and Human Rights’ [2014] *Globalistics and Globalization Studies* 112.

<sup>25</sup> Todd Landman, ‘Democracy and Human Rights: Concepts, Measures, and Relationships. *Politics and Governance*’ (2018) 6 *Politics and Governance* 48.

<sup>26</sup> Francisco Sagasti, ‘A human rights approach to democratic governance and development’ 2004 FORO Nacional Internacional Agenda 125.

necessary oppose decisions of government ‘without the danger of severe punishment on political matters broadly defined’.<sup>27</sup> He emphasises that citizens, different associations and groups can freely manifest their ideas and these ideas should not be limited since democracy stands for the protection of the ‘right to seek out alternative sources of information’.

<b>The necessary institutions for polyarchy</b>
1) Universal suffrage and the right to run for public office
2) Free and fairly conducted elections for all adults
3) Availability and observance of the right to free speech and protection to exercise it
4) The existence of and free access to alternative information (not controlled by government)
5) The undisputed right to form and to join relatively autonomous organisations – in particular, political parties (and, crucially, parties in opposition)
6) Responsiveness of government (and parties) to voters
7) Accountability of government (and parties) to election outcomes and government

Table 2. ‘Polyarchy and democratic process’ by Robert Dahl<sup>28</sup>

Similarly, Linz and Stepan note that in addition to the democratic arenas such as state bureaucracy and institutionalised economic society, the prerequisite to the democratic regime is that society should have a ‘free and lively civil society’, in which they include any active groups who can manifest their interests.<sup>29</sup> Additionally, they claim democratic countries should be a ‘relatively autonomous and valued political society’ in which the government creates an environment for everyone to have the ‘legitimate right to exercise control over public power and the state apparatus’.<sup>30</sup>

<sup>27</sup> Robert Dahl, *Democracy and Its Critics* (Yale University 1989).

<sup>28</sup> *ibid* 140.

<sup>29</sup> Juan Linz and Alfred Stepan, ‘Problems of Democratic Transition and Consolidation’ [1996] Johns Hopkins University Press 3.

<sup>30</sup> *ibid* 8.

FROM DEMOCRACY TO AUTOCRACY?

<b>Arena</b>	<b>Primary organising principle</b>	<b>Necessary support from other arenas</b>	<b>Primary mediation upon arenas</b>
Civil society	Freedom of association and communication	Rule of law which establishes legal guarantees; state apparatus to enforce rights of civil society; economic society with sufficient pluralism to support the necessary degree of autonomy and liveliness of civil society	Interests and values of civil society are the major generators of political society; civil society generates ideas and helps monitor the state apparatus and economic society
Political society	Free and inclusive electoral contestation	Needs legitimacy in eyes of civil society; needs legal guarantees anchored in rule of law and maintained by impartial state apparatus	Crafts constitution and major laws; manages state apparatus; produces overall regulatory framework for economic society
Rule of law	Constitutionalism	A legal culture with strong roots in civil society and respected by political society and the state apparatus	Establishes a hierarchy of norms that make actions by, and upon, other arenas legitimate and predictable
State apparatus	Rational-legal bureaucratic norms	Normative support from civil society for rational-legal authority and its attendant monopoly of legitimate force; monetary support levied by political society and produced and rendered to the state by a functioning economic society, which has produced a sufficient taxable surplus	Imperative enforcement on civil, political and economic societies of democratically sanctioned laws and procedures established by political society
Economic society	Institutionalised market	Legal and regulatory framework produced by political society, respected by civil society, and enforced by the state apparatus	Produces the indispensable surplus to allow the state to carry out its collective good functions and provides a material base for the pluralism and autonomy of civil and political societies

*Table 3. 'The Five Major Arenas of a Modern Consolidated Democracy: Inter-related Principles and Mediating Fields' by Linz and Stepan<sup>31</sup>*

<sup>31</sup> Linz and Stepan (n 29).



According to Kuchukeeva and O'Loughlin, the existence of free civil society is a significant part of any democratic country. They claim that civil society can greatly contribute to the development of democracy by having 'flourishing associational life'. In this understanding, the more people join civic associations, the more they become aware of 'civic virtues'.<sup>32</sup> Similarly, Barber stated that 'Civil society is ... the free space in which democratic attitudes are cultivated and democratic behavior is conditioned'.<sup>33</sup> In addition to well-known possibilities of civil society groups such as empowering citizens to be active in political development of the state, Kuchukeeva and O'Loughlin claim that there is a distinguished mission of civil society groups which is 'structuring multiple channels, beyond the political party, for articulating, aggregating, and representing interests'.<sup>34</sup> As they explain, civil society activists help to engage different groups which are not often visible including ethnic minorities and women, and 'advocate agendas' in political processes thus creating bigger platform for representing diverse ideas.

#### *2.1.4 Transition phase: Authoritarianism and tools for regime survival*

The breakup of the Soviet Union was accepted by Western countries as the end of non-democratic regimes. Luong argues that because of the 'euphoria' of the 'third wave' most of them expected favourable changes in the political and economic policies of post-Soviet countries.<sup>35</sup> However, despite being independent, the democracy of these countries could be seen only in papers. Luong notes that after ten years of transition, little has changed. Central Asia today is known for having weak formal institutions and breaching international standards on human rights protection.

Moreover, Luong states that some post-Soviet countries such as Kazakhstan, Kyrgyzstan and Uzbekistan at the very beginning of their independence were able to demonstrate democratic dynamic by having 'Western-style, multiparty electoral systems' and thus made the West believe in possible transformation.<sup>36</sup> However, in fact most of these countries continued to rule their institutions by maintaining the Soviet legacy.

<sup>32</sup> Altinay Kuchukeeva and John O'Loughlin, 'Civic Engagement and Democratic Consolidation in Kyrgyzstan' [2003] *Eurasian Geography and Economics* 557.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> Pauline Luong, *Institutional Change and Political Continuity in Post-Soviet Central Asia* (CUP 2002).

<sup>36</sup> *ibid.* 2.

As mentioned earlier, despite the proclaimed three waves of democratisation some authoritarian regimes still exist, creating opposition to fundamental democratic values. What makes some of them strongly resist global socio-political trends and why others have been alleviated by the effect of those trends? There are main factors that usually substantiate the longevity of dictatorship.

According to Markarov and Careja, authoritarianism is when regimes have 'low levels of meaningful competition in the political space; the political pluralism is limited and controlled by the authoritarian rulers, and the institutions which are expected to exert control over the executive power (i.e. legislative bodies) are rendered ineffective'.<sup>37</sup> They state that the lack of open opposition by different groups against the regime lets authoritarians easily misuse their power.

The first factor which influences the durability of the authoritarian regime is the state's ability to control its institutions. George Ayittey claims that all dictators share the same features; they take control of the main state institutions which include the security forces, the media, the civil service, the judiciary, the electoral commission and the central bank and limit their activities.<sup>38</sup> A similar idea is given by Valerie Bunce and Sharon Wolchik, where they state that the more democratic a country is, the less probability there will be of centralising of power.<sup>39</sup> In order to maintain the stability of the authoritarian regime the government should occupy all the civil society organisations, the media and opposition groups. Thus these policies will allow less ground for political competition.

The second factor which impacts considerably on the longevity of an authoritarian regime lies in the spread of propaganda by the authority. After the collapse of the Soviet Union, Russia has suffered from the 'symbolic framework' of the country. There was nothing that could properly define the common identity. Putin's policies have changed the minds of the Russian population and have created a new belief for the future. Starting from the 2000s, images went viral where he is

<sup>37</sup> Alexander Markarov and Romana Careja, 'Political Opposition within Hybrid Regimes: Concept and Actors' in *Stumbling but Struggling. Political Opposition in Four Post-Soviet Countries*. Ed. by Romana Careja. Moscow: Strategy, [2004] 39.

<sup>38</sup> Thor Halvorssen, 'How to defeat a dictator?' (*Huffington Post*, 2011) <[www.huffpost.com/entry/george-ayittey-how-to-def\\_b\\_883549](http://www.huffpost.com/entry/george-ayittey-how-to-def_b_883549)> accessed 2 July 2019.

<sup>39</sup> Valerie Bunce and Sharon Wolchik, 'Defeating Dictators. Electoral Change and Stability in Competitive Authoritarian Regimes' [2010] *World Politics* 43.

demonstrated as the strongest, both physically and morally, as someone who can overcome all difficulties. As a new national leader he created a belief for Russia that it can reach its previous dominance which had not happened since the time of Stalin.<sup>40</sup> In addition, Anna Matveeva argues the autocrats' use of propaganda is similar to that of Putin. For instance, the president of Kazakhstan Nursultan Nazarbaev, Tajikistan's Rahmon and Uzbekistan's Karimov wrote several historical works which are compulsory to read in schools and serve as propaganda.<sup>41</sup> What is interesting is that each of these dictators creates a presumption that their country is 'at least better' than the others in Central Asia. They promote an idea that the situation of their country is more favourable than that the experience of their neighbours. Therefore, propaganda serves not only as a tool to spread the personal power but also to create a hope for stability.

The last and most important factor to prolong the authoritarian regime can be explained through the extent to which autocrats minimise the opposition forces. Beatriz Magaloni and Ruth Kricheli offer two methods of 'bargaining with elites and mobilizing public support' which could help to devastate any signs of opposition.<sup>42</sup> Bargaining with elites is considered as distribution of the economic resources of the autocrats with their potential political enemies prevent the anticipated confrontation from their part. Thus the autocrats get rid of the suspended threats from the elites. In many cases of authoritarian regimes, Magaloni and Kricheli state, government has dominance over the welfares such as land, housing, scholarships and food, which are mostly given only to those who are loyal to the current ruling. A similar argument is stated by Hadenius and Teorell, who say that personalised regimes are more resistant to changes to democratic regimes and are more likely to survive.<sup>43</sup> The representatives of this regime usually have huge clientelist networks. The purpose of the rulers is to make sure that the dominated group stays trustful. Hadenius and Teorell claim that those who reach high positions through connections will do their best to

<sup>40</sup> Julie Cassiday and Emily D Johnson, 'Putin, Putiniana and the Question of a Post-Soviet Cult of Personality' [2010] *The Slavonic and East European Review* 681.

<sup>41</sup> Anna Matveeva, 'Legitimizing Central Asian Authoritarianism: Political Manipulation and Symbolic Power' [2009] *Europe-Asia Studies* 1095.

<sup>42</sup> Beatriz Magaloni and Ruth Kricheli, 'Political Order and One-Party Rule' [2010] *The Annual Review of Political Science* 123.

<sup>43</sup> Hadenius and Teorell (n 17).

keep their position since they might risk losing everything if the regime falls. Therefore, it demonstrates that the different ways of controlling the uprising of opposition help to maintain the regime to be stable.

On this basis, it can be concluded that throughout history autocrats have used different methods to ensure the durability of their position. It can be observed that firstly, they seize all the spheres of political and social activities of the citizens and secondly they make propaganda of their values to increase legitimacy. Thus there exists no choice for citizens to change the regulation of the authoritarian regime. Lastly they deal with possible enemies and try to cooperate with different groups by providing different advantages so that their regime can last longer.

### 2.1.5 *Where is legitimacy?*

State power is not objective in terms of its origins, despite the tradition to treat it as an absolute instance. Nevertheless, there are different ways of acquiring power and gaining support of the population. Democracy and authoritarianism are two contradictory types of state regime yet both are based on common principles. One of those principles is the institution of legitimacy.

Firstly, it is important to take a look at origins of state legitimacy from the general perspective. Max Webber presents three ways of how legitimacy can be justified or simply how it is originated. The first is *legally* from a process which we can refer to as fairly organised elections. The second is *charisma*, the option where the ruler enjoys public support by being a popular figure being eloquent enough to convince the public in his or her abilities to rule. The third way, referred as *traditional*, means being the legitimate leader by the right of birth as heir to the throne which is less relevant to modern times.<sup>44</sup> The first two options can easily be related to the current discussion. For example, the legal method can be associated with democratic regimes, while charisma usually is inherent to the rule of authoritarian leaders.

In democratic regimes elections are the core of political formation. Therefore, legitimacy is gained according to the procedural norms secured by the constitution and the legal basis regarding the election process. By the expression of their will the public decides who is best

<sup>44</sup> Max Webber, *Politics As A Vocation* (1921).

to be authorised to represent the interests of the population. Yet there is an opposite side of the coin. According to Joseph Schumpeter, in a democracy citizens are not actually in charge of decision making.<sup>45</sup> He claims that democracy is a competition among political actors producing strategies to attract as many voters as possible in order to end up being in power through elections. The definition of democracy provided by Schumpeter states that ‘the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote’.<sup>46</sup> Such a critical approach to the notion of democracy helps us to understand it through a realist perspective. So the idea that Weberian legal origin of legitimacy refers to democratic regimes becomes questionable because in order to gain votes the candidate simply tries to enhance their popularity among the electorate.

Legitimacy of authoritarian countries is a quite contradictory issue. Usually public approval of the state governance is acquired by a charismatic leader that in the worst case scenario establishes a personal cult. At the meantime, since democratic norms started to be implemented widely in the past century, elections have become an important part of authoritarian states as well. However, being an integral part of a state’s legitimacy, elections may serve as a factor causing instability posing a direct threat to self-preservation of the regime. The opposition may use a dictator’s inefficiency to advance in gaining public support.<sup>47</sup> Hence the regime seeks to manage the electoral process. With such purpose states create the impression of a free election campaign. Usually mass media plays the main role, promoting the candidacy of a ruling party or a ruling leader, while the government narrows the access to the information flows for other contestants during the electoral campaign.<sup>48</sup> In that case, such quasi-democratic elections are the instrument used by the regime to legitimise itself and demonstrate its political strengths.

Taking all the aforementioned ideas into account we may conclude that, despite popular narrative, legitimacy in democracy and authoritarian regimes is not as apparent as it is usually presented. Today’s political

<sup>45</sup> Joseph Schumpeter, *Capitalism, Socialism and Democracy* (George Allen & Unwin 1976).

<sup>46</sup> *ibid* 269.

<sup>47</sup> Bunce and Wolchik (n 39).

<sup>48</sup> Ellen Lust, ‘The Multiple Meanings of Elections in Non-Democratic Regimes: Breakdown, Response and Outcome in the Arab Uprisings’ [2009] Yale University 1.

developments generate different instruments of acquiring legitimacy. The reality is that legitimacy is a constant as an institution that ensures the existence of the particular regime but the means to gain it are various. And what is more important is that it is not necessarily elections being exclusively the democratic source of legitimacy and charismatic leaders being associated only with autocracies.

## 2.2 SOCIO-POLITICAL BACKGROUND

Upon coming to power in 1991, the first president Akaev declared that the development of private interest, private life, and private property based upon a strong civil society, guarantees of civil and political rights, ethnic harmony, and social protection' will help the democratic development of the country.<sup>49</sup> Thus, it made it possible to engage in the international community by accepting values of democracy and opening up borders for an international market. Some authors explain that since then it has brought drastic changes in 'political and economic liberalization, and civic pluralism'.<sup>50</sup> This, in its turn, had a positive domino effect on the freedoms of the media, political parties and civil society groups.

According to the Observatory for the Protection of Human Rights, Kyrgyzstan has had a different path than that of its neighbours after the breakup of Soviet Union since all of them were mostly under control of 'life-long authoritarian rulers with virtually unlimited power' while Kyrgyzstan has witnessed two revolutions and the change of four presidents.<sup>51</sup> However, as Ismailbekova explains, despite the 'Tulip' Revolution in 2005 and the 'Rose' Revolution in 2010 which made citizens anticipate positive political transformations, the problems which were present during the years of those two presidents, namely 'blatant corruption, nepotism among political elites and the resulting poverty of the majority of the population', were not eliminated under the ruling of new president Atambayev.<sup>52</sup> Despite peaceful transitions of

<sup>49</sup> Kuchukeeva and O'Loughlin (n 32).

<sup>50</sup> *ibid.*

<sup>51</sup> Tatiana Glushkova and Alexandra Poméon O'Neill, 'Kyrgyzstan at a crossroads: Shrink or widen the scene for human rights defender' (The Observatory for the Protection of Human Rights 2016) <[www.fidh.org/en/issues/human-rights-defenders/kyrgyzstan-at-a-crossroads-shrink-or-widen-the-scene-for-human-rights](http://www.fidh.org/en/issues/human-rights-defenders/kyrgyzstan-at-a-crossroads-shrink-or-widen-the-scene-for-human-rights)> accessed 25 July 2019.

<sup>52</sup> *ibid* 5.

power of the last president, Ismailbekova claims that political elites still use the methods of survival as during previous regimes – they ‘silently block the reforms out of fear of being removed from their traditionally privileged positions’.<sup>53</sup> Thus, efforts of those who went against the government were unsuccessful due to the already established system of ‘informal distribution of political offices’ by elite groups.

Moreover, Observatory for the Protection of Human Rights(OBS) claims that despite the fact that Kyrgyzstan remains an ‘island of democracy’ in Central Asia, it is possible to see that there were no positive changes in socio-economic live of citizens including ‘corruption, low standard of living, and ethnic tension’.<sup>54</sup> In addition, they emphasise the role of Russia, which in recent years has become even more significant by ‘deepening of authoritarian tendencies and an increase in anti-Western sentiments’.

### 2.3 HISTORY OF CIVIL SOCIETY IN KYRGYZSTAN

According to Kuchukeeva and O’Loughlin, civil society in post-Communist countries are largely ‘weak and fragmented, with low levels of civic engagement and deficits of social capital’.<sup>55</sup> They refer to findings of the research made by the New Europe Barometer Surveys, in which it says that people of post-Communist countries have ‘the lowest trust levels in various political and civil institutions’. Since the government was all-controlling during Soviet times, there was no possibility to discuss public issues other than those promulgated by the authorities. Kuchukeeva and O’Loughlin argue that the government made people believe that collective goals were more important than individual ones and thus ‘individual idiosyncrasies and initiatives had to be sacrificed in the name of the collective’. They explain that these government policies end up with people’s ‘political antipathy’ and fear of having their own position towards any public issue. However, during the last years of Mikhail Gorbachev’s promotion of perestroika, glasnost and democratisation it was possible to see rapid activation of civil society groups.<sup>56</sup>

<sup>53</sup> Aksana Ismailbekova, ‘Informal Governance and Corruption – Transcending the Principal Agent and Collective Action Paradigms Kyrgyzstan Country Report Part 1 Macro Level’ [2018] Basel Institute of Governance 1.

<sup>54</sup> *ibid* 8.

<sup>55</sup> Kuchukeeva and O’Loughlin (n 32).

<sup>56</sup> Glushkova and Poméon O’Neill (n 51).

Pierobon states that because of its far location from proclaimed democratic countries and its lack of functioning politico-economic policies, in its early stage of development Kyrgyzstan was in a fragile condition for democratic transformation.<sup>57</sup> However, it has been changed thanks to international organisations which contributed significant amount of financial aid towards the development of civil society. Pierobon explains that those practices of external actors could be seen in Mandel's explanation of a model called 'civil society orthodoxy' in which NGOs are considered as civil society, which is on its turn accepted as a democracy ('NGOs = civil society = democracy'). Thus, in this understanding, international organisations created a space for NGOs which played a role for civil society and helped to promote democracy.

The Asian Development Bank explains that the development of civil society in Kyrgyzstan can be divided into three stages:

Stages	Development
1) 1991-1994	The first stage started with the establishment of NGOs which were largely dependent on foreign grants and worked on a temporary basis. <sup>58</sup>
2) 1995-2010	The second stage was the period when all NGOs united in order to develop primary goals in dealing with public issues including human rights, right of women, environmental issues and others. <sup>59</sup> The Asian Development Bank states that the most influential civil society organisations which were established at that time were the Coalition of NGOs for Democracy and Civil Society, the Association of Civil Society Support Centers, the Network of Human Rights Organizations, the Association of Crisis Centers and the Association of Independent Scientists–Lawyers of the Kyrgyz Republic.
3) 2005-present	The last one is considered to be the most powerful since unlike the previous stages of development, civil society group projects today influence to a large extent on public issues and 'know how to lobby for social and political interests at the state level'.

*Table 4. The three stages of development of civil society in Kyrgyzstan by Asian Development Bank*

<sup>57</sup> Chiara Pierobon, 'The Development of Civil Society in Post-Soviet Kyrgyzstan. An Analysis of the National and International Context' (2018) 54 *Annali di Ca' Foscari. Serie orientale* 107.

<sup>58</sup> Asian Development Bank, 'Civil society briefs. The Kyrgyz Republic' (Asian Development Bank, 2016) <[www.adb.org/sites/default/files/publication/29443/csb-kgz.pdf](http://www.adb.org/sites/default/files/publication/29443/csb-kgz.pdf)> accessed 20 June 2019.

<sup>59</sup> *ibid.*



In addition, the Asian Development Bank clarifies that NGOs can be also divided into two groups based on functions. The first one is groups that largely concentrate on political issues including democratisation processes, free and fair elections, rule of law and others. These organisations often provide most of the reports which give information on whether the state is protecting the rights of its citizens relying on international documents. The second one is more based on actual implementation of international community policies at the local level. These policies are narrowed in its structure and focus only on socio-economic issues of the region or rural area.

According to Pierobon, the most difficult moment for civil society groups in Kyrgyzstan were the times when they had to go through two difficult political upheavals during the revolutions in 2005 and 2010 when two presidents were overthrown. Nations in Transit claimed that the role of civil society impacted to a large extent both 2005 and its aftermath by helping to ‘oust’ the president and later by creating a new environment for better implementation of a new constitution.<sup>60</sup>

Similarly, Matveeva claims that different civil society representatives from organisations such as the Foundation for Tolerance International and Civic Rapid Response Group in Jalalabad city played a major role in not only the revolution itself but in mitigating the raising aggression of youths engaged in ethnic conflict.<sup>61</sup> In addition, she claims that civil society groups in Osh city – such as OO Golden Goal and Citizens Against Corruption – defended the rights of minorities and urged the Kyrgyz government to have a more inclusive approach in the new constitution including rights for Uzbek representatives to be engaged in the Constitutional Council, to change the wording ‘Kyrgyz people’ to ‘people of Kyrgyzstan’ and provide more political representation.<sup>62</sup>

<sup>60</sup> Bruce Pannier, ‘Nations in Transit, Kyrgyzstan’ [2007] Freedom House 373.

<sup>61</sup> Anna Matveeva, ‘Kyrgyzstan in crisis: Permanent revolution and the curse of nationalism’ (2010) Crisis States Research Centre 1/2006 2 <[www.semanticscholar.org/paper/Working-Paper-No.-79.-Kyrgyzstan-in-Crisis%3A-and-the-Matveeva/9d7f84e655bf5ac83661b32a04b0a61996e365aa](http://www.semanticscholar.org/paper/Working-Paper-No.-79.-Kyrgyzstan-in-Crisis%3A-and-the-Matveeva/9d7f84e655bf5ac83661b32a04b0a61996e365aa)> accessed 20 July 2019.

<sup>62</sup> *ibid* 18.

## 2.4 LEGISLATIVE RESTRICTIONS ON THE DEMOCRATISATION OF KYRGYZSTAN

## 2.4.1 Law 'on foreign agents'

In 2012, Russia adopted the law 'on foreign agents',<sup>63</sup> which aimed to restrict most of the activities of human rights organisations and used it as the means to humiliate different civil society groups with opposite ideas. They created a special registry which registers and monitors their projects. According to this law, NGO representatives involved in prohibited organisations are obliged to pay fines or be imprisoned up to six years.

According to Kloop, a similar law in Kyrgyzstan<sup>64</sup> was firstly initiated by the deputy of parliament Tursunbai Bakir uulu in June 2014 which in fact entirely copied the one which Russia had adopted.<sup>65</sup> This law dictated that any NGO involved in political issues of the country who gets funds from the international community should be labelled as a 'foreign agent'. However, he did not provide precise details of what he meant by being involved in 'political issues'. This initiative was cancelled following criticism by the international community claiming it oppressed civil society groups and that this label is degrading. According to Kloop, around 28 foreign human rights organisations from the international community urged the Kyrgyz government to cancel this initiative as it serves as a threat to the life of civil society groups. Susan Corke, the director of Eurasia programs at Freedom House, stated:

If this measure became law, it would mark a major set-back for Kyrgyzstan's vibrant civil society, as well as an infringement on all Kyrgyzstani's fundamental right to freedom of association. A confident, responsive government should see civil society as a partner in creating a stronger society where the rights of citizens are protected.<sup>66</sup>

<sup>63</sup> Закон РФ от 20.07.2012 № 121-ФЗ 'О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента'. The Law of the Russian Federation as of 20.07.2012 No. 121-ФЗ 'On Amending Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of Non-Profit Organizations Performing the Functions of a Foreign Agent'.

<sup>64</sup> Закон КР от 26.06.2014 'О внесении дополнений и изменений в некоторые законодательные акты Кыргызской Республики'. The Law of the Kyrgyz Republic as of 06.06.2014 'On Amendments and Amendments to Some Legislative Acts of the Kyrgyz Republic'.

<sup>65</sup> 'Парламент избавился от формулировки «иностранный агент» в законопроекте об НКО' ('Parliament gets rid of the wording "foreign agent" in the bill on NPOs') (Kloop, 2016) <<https://kloop.kg/blog/2016/04/12/parlamentskij-komitet-rekomendoval-prinyat-zakon-ob-inostrannyh-agentah-vo-vtorom-chtenii/>> accessed 20 July 2019.

<sup>66</sup> Freedom House, 'Kyrgyzstan Should Reject Anti-Civil Society Bill' (Freedom House, 9 March 2015) <<https://freedomhouse.org/article/kyrgyzstan-should-reject-anti-civil-society-bill>> accessed 30 August 2019.

However, according to Bir Duino, since March of 2019 the issue of the ‘foreign agent’ law has become again the target of discussion. Orozbek Opumbaev, the Deputy Head of the State Committee for National Security (SCNS), declared that the parliament should reconsider the previously cancelled law. He made his statements during the general meeting where they initially concentrated on the women’s march dedicated to International Women’s Day (8 March) held in Bishkek in which lesbian/gay/bisexual/transgender (LGBT) groups were also involved.<sup>67</sup> He emphasised that the state should be more controlling with regards to the activities of NGOs:

The law on non-governmental organizations, which was adopted in Russia and in other countries, is the most necessary for today. The biggest problem is that funding goes unchecked, especially for LGBT people. How much money is provided to them and what is it spent on, which public events? If we pass this law, we will know which international organization is lobbying for a particular event, which foreigners arrive in the country, and how we can resist it.<sup>68</sup>

#### 2.4.2 Law ‘on guarantees of activities of the President of the Kyrgyz Republic’<sup>69</sup>

In 2017 several representatives of civil society and media were charged with lawsuits based on the fact that their publications were considered ‘defamatory’ towards the President of Kyrgyzstan, Almazbek Atambayev. This law derives from article 4 of Kyrgyzstan’s civil legislation ‘on guarantees of the activities of the President of the Kyrgyz Republic’ which makes it possible for the prosecutor general to prosecute those who provide any false or insulting information towards the president. ARTICLE 19 explains that despite not being in accordance with what is written in the 2010 constitution, on 30 June 2017 this law was re-declared as constitutional which further allowed the government to misuse it.<sup>70</sup>

<sup>67</sup> Bir Duino, ‘Kyrgyzstan. Situation of human rights defenders and legal prosecution’ (*Bir Duino*, 17 June 2019) <[www.birduino.kg/en/press/930-kyrgyzstan-situation-of-human-rights-defenders-and-legal-prosecution](http://www.birduino.kg/en/press/930-kyrgyzstan-situation-of-human-rights-defenders-and-legal-prosecution)> accessed 20 June 2019.

<sup>68</sup> *ibid.*

<sup>69</sup> Закон КР от 15 мая 2019 года № 61 ‘О гарантиях деятельности Президента Кыргызской Республики’. The Law of the Kyrgyz Republic as of 15 May 2019 No. 61 ‘On guarantees of the activities of the President of the Kyrgyz Republic’.

<sup>70</sup> ARTICLE 19, ‘Kyrgyzstan: Stop legislative harassment of [Zanoza.kg](http://Zanoza.kg) and its journalists’ (ARTICLE 19, 21 August 2017) <[www.article19.org/resources/kyrgyzstan-stop-legislative-harassment-of-zanoza-kg-and-its-journalists/](http://www.article19.org/resources/kyrgyzstan-stop-legislative-harassment-of-zanoza-kg-and-its-journalists/)> accessed 30 August 2019.

Katie Morris, Head of Europe and Central Asia at ARTICLE 19 said:

Under no circumstances should special legal protection be granted for heads of state or other public officials, whatever their rank or status ... Moreover, under international law the state has no right to bring a civil lawsuit of any kind on behalf of someone else, it is therefore deeply problematic that the General Prosecutor has initiated these lawsuits on Atambayev's behalf.<sup>71</sup>

Moreover, ARTICLE 19 argues that this law does not meet requirements prescribed in international documents which protect human rights:

We recall that under international standards, public officials by their nature should tolerate a greater degree of criticism. The unfettered discretion given to the Prosecutor General to protect the President's reputation is in direct opposition of this principle ... We encourage the Kyrgyz government to create an environment that is conducive to free expression, and especially to free and open debate on matters of public interest. We also express our ongoing support to civil society in Kyrgyzstan to advocate for the elimination of the Law.<sup>72</sup>

#### 2.4.3 Law 'on combating extremist activities'<sup>73</sup>

According to OBS, the Kyrgyz government is misusing the law 'on combating extremist activities to persecute human rights defenders and members of different civil society groups'. OBS explains that initially article 299-2 of the Criminal Code stated that 'acquiring, storing, transporting, and forwarding extremist materials in order to distribute them or prepare them for distribution' is prohibited. However, year later in 2006 they changed it into 'acquiring, preparing, storing, distributing, transporting, and forwarding extremist materials'. This made it possible to charge human rights defenders and anyone who opposes the government 'simply for having one copy of an extremist material that he or she acquired with no intention of distribution,

<sup>71</sup> *ibid.*

<sup>72</sup> ARTICLE 19, 'Kyrgyzstan: Law protecting President's "honour and dignity" should be abolished' (ARTICLE 19, 26 August 2017) <[www.article19.org/resources/kyrgyzstan-law-protecting-presidents-honour-and-dignity-should-be-abolished/](http://www.article19.org/resources/kyrgyzstan-law-protecting-presidents-honour-and-dignity-should-be-abolished/)> accessed 30 August 2019.

<sup>73</sup> Закон КР от 17 августа 2005 года № 150 'О противодействии экстремистской деятельности', Law of the Kyrgyz Republic of 17 August 2005 No. 150 'On countering extremist activity'.

including for research or other similar purposes'.<sup>74</sup> Moreover, OBS explains that according to article 1 of the law on combating extremist activities, extremist materials are 'documents intended for publication or information on other media', thus this is not compatible with what is written in article 299-2. This led the state to misuse the word 'extremist' for their own interests. Similarly, Bir Duino argues no legal committee has been created to provide analysis of whether the material has extremist content and the government should not rely only on the decisions made by SCNS:

All examinations conducted by the State Committee on Religious Affairs do not comply with requirements of the KR Law on Judicial Expert Activities, since the Committee does not specify the methods of examination used and scientific researchers conducted, it also does not indicate the sources for checking accuracy of its statements.<sup>75</sup>

## 2.5 FREEDOM OF SPEECH BEFORE ATAMBAYEV

Despite the well-known idea that Kyrgyzstan has a more liberal environment than any of the Central Asian countries, Sheerin states that being free in comparison with these countries 'is no great boast'.<sup>76</sup> He claims that Kyrgyzstan has developed its civil society and media sector to a great extent. However, he asserts that the protection level of freedom of expression for journalists and human rights defenders cannot be compatible with what is written in international documents. According to refworld, despite the fact that civil society groups were largely free in implementing their activities, in 2007 the situation changed due to the government's policies towards them. refworld gives an example of NGO representative Ravshan Garipov who was sentenced on charges of 'unconstitutional calls against Kyrgyzstan's secular system'.<sup>77</sup>

According to Hays, despite not being a well-known case, some

<sup>74</sup> Glushkova and Poméon O'Neill (n 51).

<sup>75</sup> Bir Duino (n 67).

<sup>76</sup> Cathal Sheerin, 'Pen's free expressions concern in Kyrgyzstan' (*PEN*, 4 September 2014) <[www.pen-deutschland.de/wp-content/uploads/2014/09/PENs-Free-Expression-Concerns-in-Kyrgyzstan-Brief-ENG.pdf](http://www.pen-deutschland.de/wp-content/uploads/2014/09/PENs-Free-Expression-Concerns-in-Kyrgyzstan-Brief-ENG.pdf)> accessed 30 August 2019.

<sup>77</sup> refworld, 'Freedom in the World 2009 - Kyrgyzstan' (*refworld*, 18 July 2009) <[www.refworld.org/docid/4a6452a7c.html](http://www.refworld.org/docid/4a6452a7c.html)> accessed 20 August 2019.

journalists who criticised the Akayev regime in the 1990s were also often under threats to their life. During that time the president limited access of some parties to parliamentary elections in 2000.<sup>78</sup> Hays claims that independent media were under strict control and were either not allowed to participate or were on the waiting list. He asserts that even though there were changes to the constitution in 2003 little has been changed towards improvement of human rights protections.

As for Bakiev's regime, journalists became targets of harassment starting from 2008, when journalist Alisher Saipov, who was an author of Uzbek-language newspaper, was killed, after which no proper investigation followed. Later the editor of the newspaper *De Facto*, Cholpon Orozobekova, had to escape to Europe because she was convicted for making statements in which she convicted unlawful actions of president's nephew. Refworld also adds that the same year ex-president Bakiyev made changes in law which says he can choose the head of state television and radio.

Galdini claims that Kyrgyzstan's freedom of speech was overall satisfying before 2009. When Bakiev started the second round of ruling, many journalists were obliged to close their programmes or eliminate materials and those that opposed the government's regime 'were subjected to harassment, intimidation, violent attacks — or worse'. At the end of 2009, the opposition journalist Gennady Pavliuk died in Almaty, Kazakhstan falling from a high floor. Galdini claims that it could be linked with the fact that he was working on materials which targeted Bakiev's regime.<sup>79</sup>

<sup>78</sup> Jeffrey Hays, 'Human Rights in Kyrgyzstan' (*Revolyvy*, 2018) <[www.revolvy.com/page/1993-Constitution-of-Kyrgyzstan](http://www.revolvy.com/page/1993-Constitution-of-Kyrgyzstan)> accessed 5 June 2019.

<sup>79</sup> Franco Galdini, 'Journalism in Kyrgyzstan: Shoot the Messenger?' *The Diplomat* (London, 16 March 2018) <<https://thediplomat.com/2018/03/journalism-in-kyrgyzstan-shoot-the-messenger/>> accessed 15 August 2019.

## 2.6 CASES OF OPPRESSION OF CIVIL SOCIETY AND MEDIA

2.6.1 *Azimjan Askarov's case*

The most well-known situation of oppression of human rights defenders in Kyrgyzstan is Azimjan Askarov's case. He is a human rights activist and journalist, an ethnic Uzbek who has been detained since 15 June 2010 based on the convictions that he was engaged in public disorder, invoked racial clashes and murdered a police officer during the ethnic conflict of 2010 in southern Kyrgyzstan, while in fact he was gathering data including photos and videos about injured people. Upon the decision of the Supreme Court, he was sentenced to life in prison with confiscation of property.<sup>80</sup> Askarov's lawyer declared several times about torture and physical attacks during the trials towards Askarov as well as himself. However, despite pressure from international communities to consider these infringements, the Kyrgyz government stays ignorant towards the issue. According to OBS, his lawyer and the Open Society Justice Initiative applied to the UN Human Rights Committee based on the fact that the Kyrgyz government violated Askarov's 'right to integrity, the right to a fair trial, the right to freedom of expression, the prohibition of torture, and the prohibition of discrimination'.

According to CIVICUS, in March 2019, the Kyrgyz government decided to seize Askarov's house due to the fact that his wife could not provide moral damages compensation to the wife of the policeman who was killed during the ethnic conflicts in 2010. Her wife in her turn claims:

My husband is in prison for something he has not done. First, they give him a life sentence, and now they confiscate the house. I have to pay KGS 175 000 (2,233 EUR). I am a pensioner, and I only receive KGS 4000 (or 51 EUR) every month. Back then, the police took everything from me – rice, oil, jam, even bird seeds. And if they take my only home, I will be left on the street. The husband has been imprisoned, the house has been taken away ... Is there any justice left in this world?<sup>81</sup>

<sup>80</sup> Glushkova and Poméon O'Neill (n 51).

<sup>81</sup> CIVICUS, 'Lawsuits, attacks and harassment used against journalists, activists and human rights defenders' (CIVICUS, 19 July 2019) <<https://monitor.civicus.org/updates/2019/07/19/lawsuits-attacks-and-harassment-used-against-journalists-activists-and-human-rights-defenders/>> accessed 30 August 2019.

CIVICUS stated that in July 2019, the International Partnership for Human Rights (IPHR) asked an EU High Representative on Foreign Affairs, Federica Mogherini, to examine Askarov's case and sought to raise the issue when she visited Bishkek.

### 2.6.2 Case of T Ismailova and A Abdirasulova, Zanoza and Senytabr

According to the Global Freedom of Expression, on 14 May 2016, during a public speech, ex-president Almazbek Atambaev mentioned some human rights defenders, particularly 'female NGO workers[,] who faithfully work for their foreign grants'.<sup>82</sup> Moreover, he emphasised that other international organisations that are in constant contact with them aim to worsen the political situation in Kyrgyzstan. Bir Duino explains that those to whom these words were addressed, human rights defenders Tolekan Ismailova and Aziza Abdirasulova, had 'strong reputational damages ... since the President's speech was delivered at the ceremony of awarding women with many children on the occasion of Mother's Day'.<sup>83</sup> The human rights activists applied to the local court asking for compensation based on moral damages. However, at the final stage the Supreme Court did not find any infringement in the speech of the president.<sup>84</sup>

According to the IPHR, in 2017 the Kyrgyz service of Radio Free Europe/Radio Liberty (Radio Azattyk), the independent Zanoza news site, its founders, journalists Narynbek Idinov and Dina Maslova and human rights defender Cholpon Djakypova were convicted by the General Prosecutor's Office based on the grounds that their materials were slandering the president. As a result, despite the final decision by the court, they were obliged to stay in the country and pay the fine.<sup>85</sup> Freedom House states that according to ARTICLE 19 these convictions arose from the fact that they criticised the president for the unlawful arrest of opposition leader Omurbek Tekebaev and compared Atambayev to "well-known authoritarian rulers" without mentioning the Kyrgyz president by name.<sup>86</sup>

<sup>82</sup> Global Freedom of Expression, Columbia University, 'Tolekan Ismailova and Aziza Abdirasulova v. Almazbek Atambaev' (*Global Freedom of Expression*, 2017) <<https://globalfreedomofexpression.columbia.edu/cases/tolekan-ismailova-aziza-abdirasulova-v-almazbek-atambaev/>> accessed 5 August 2019.

<sup>83</sup> Bir Duino (n 67).

<sup>84</sup> *ibid.*

<sup>85</sup> IPHR, 'Kyrgyzstan: President slams criticism' (*IPHR*, 4 July 2017) <[www.iphronline.org/kyrgyzstan-president-slams-criticism.html](http://www.iphronline.org/kyrgyzstan-president-slams-criticism.html)> accessed 25 July 2019.

<sup>86</sup> *ibid.*



According to Reporters Without Borders for Freedom of Information, following the court decision, the Kyrgyz government ordered the closure of Sentyabr, a TV channel that was broadcasting in favour of the opposition party of the time, Ata-Meken. Reporters Without Borders for Freedom of Information states that the court made accusations based on the fact that the materials contained ‘extremist’ content.<sup>87</sup> Djanibekova in turn claims, from the point of view of Sentyabr’s representative, Kaiyrgul Omurkanova, that the grounds were not based on extremist materials, but on a broadcast which was made in 2015 about the corruption activities of Sooronbai Jeenbekov, who became president after Atambayev.<sup>88</sup> Djanibekova explains that the author of this programme, Abdylly Kaparov, was sentenced to four years in prison after the government accused him of ‘inciting the overthrow of the government’. She also believes that the closure of the channel can be considered as a continuing method humiliating opposition groups.

### 2.6.3 *Alkanova and Kloop investigation case*

Galdini states that Elnura Alkanova’s case demonstrates that journalists’ freedom of expression is limited to a large extent. The investigative material she prepared in 2015 was subjected to criticism by the Kyrgyz government. She made a report on the corruption case of Nurmahammatt Bayakhunov, a member of the president’s Social Democratic Party (SDPK). Galdini claims that despite the fact that her investigation was considered, a biased judiciary system found Bayakhunov not guilty of charges.<sup>89</sup> Freedom House explains that her second biggest investigation about expensive houses that had links to the prime minister at the time, Sapar Isakov, puts her life under threat. In her investigation she reveals that these houses belonged to the relatives of ex-president Kurmanbek Bakiyev, who ran away from the country after the revolution in 2010. However, as Freedom House argues, state authorities found her guilty based on the fact that she was ‘illegally obtaining commercial secrets and making them public’.<sup>90</sup>

<sup>87</sup> RSF, ‘Hour of truth for media freedom in Kyrgyzstan’ (RSF, 26 February 2016) <<https://rsf.org/en/news/hour-truth-media-freedom-kyrgyzstan>> accessed 20 June 2019.

<sup>88</sup> Nurjamal Djanibekova, ‘Kyrgyzstan: Court Orders Closure of Opposition TV Channel’ (Eurasianet, 22 August 2017) <<https://eurasianet.org/kyrgyzstan-court-orders-closure-of-opposition-tv-channel>> accessed 2 July 2019.

<sup>89</sup> Galdini (n 79).

<sup>90</sup> *ibid.*

Alkanova claims that it is not the first time when journalists are oppressed:

You see, during Bakiyev's time, journalists were killed, like Gennady Pavliuk ... Now the authorities silence you by putting you out of work, but the result is the same. They either bankrupt you, or they try to destroy your sources, the bond of trust between you and them — because without our sources, we journalists are nothing. It's difficult for me, but I am a public figure and people, activists and even international watchdogs, have come out in my support. Sources instead work in the shadow, so they can be put under tremendous pressure.<sup>91</sup>

Similarly, the IPHR claims that Kloop media can also be an example of the Kyrgyz government's restrictions on freedom of speech.<sup>92</sup> Kloop revealed that current president Sooronbay Jeenbekov used fraudulent methods during his election campaign. According to Kloop's investigation, state website Samara.kg collected information on citizens' passports, tax registration numbers and biometrics to use them in elections. The IPHR argues that despite the fact that Kloop requested that special agencies consider this issue, as in Alkanova's case, the Kyrgyz government decided to accuse them in return by stating that these reports are 'speculations' and 'illusions'. In response to the government, particularly the State Registration Service's representatives who claimed before the court that the accusations were false, Kloop stated that they have all the supporting materials for the reports they made. The situation worsened when ex-president Atambayev declared that investigations by Kloop on Samara.kg are a 'provocation' and he confirmed that the State Committee on National Security (SCNS) would consider this issue.

According to IREX, lawsuits and threats are the usual methods of government to deal with journalists who create any inconvenience for them. IREX explains that the main actors who are involved in these processes are the prosecutor general's office and SCNS. Firstly, journalists who are seen as 'troublesome' are often called to the SCNS for interrogations. Secondly, they prohibit them from leaving the country or pay fines following by court decisions.<sup>93</sup>

<sup>91</sup> Galdini (n 79).

<sup>92</sup> IPHR, 'Kyrgyzstan: Will the new president break with his predecessor's troubling human rights legacy?' (*IPHR*, 22 December 2017) <[www.iphronline.org/kyrgyzstan-will-new-president-break-predecessor-s-troubling-human-rights-legacy.html](http://www.iphronline.org/kyrgyzstan-will-new-president-break-predecessor-s-troubling-human-rights-legacy.html)> accessed 5 August 2019.

<sup>93</sup> IREX, 'Media Sustainability Index 2018: Kyrgyzstan' (*IREX*, 2018) <[www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-kyrgyzstan.pdf](http://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-kyrgyzstan.pdf)> accessed 20 July 2019.

### 2.6.4 Surveillance and searches of homes

According to the IPHR, in addition to public humiliation by government representatives, human rights defenders often become targets of unlawful surveillance.<sup>94</sup> In 2018, three human rights defenders, Gulnara Dzhurabaeva, Dinara Oshurakhunova and Burul Makenbaeva, stated their conversations have been wiretapped. They asked special agencies to properly investigate the case. However, the human rights activists argued that SCNS or GKNB, which was responsible for examining the case, 'itself was responsible for placing the recording device' and thus there could be no transparent analysis. The IPHR also notes that it is not the first case when civil society representatives are under threat since the same story happened two months earlier in 2018, where 'unknown people posing as journalists' were videotaping their discussion about 'GKNB control mechanisms'. However, Oshurakhunova decided not to ask GKNB to consider the case: 'I understood that no one wants to find these guys [who were filming]. Maybe GKNB even sent them to our meetings. Therefore, I withdrew the appeal'.

According to Human Rights Watch, on 27 March 2015 Bir Duino and its lawyers claimed that their office and homes were searched by GKNB.<sup>95</sup> Human Rights Watch explains that the grounds of searching were related to the criminal case of Umar Farooq, a journalist who came from the United States and who was detained because of having extremist materials. He claimed that 'police officers had planted the three DVDs'. GKNB stated two lawyers from Bir Duino provided those extremist materials to Farooq and consequently they had a right to search their houses and seize all their materials. As Bir Duino argues there were no legal grounds to search their homes since this act infringes their human rights. Firstly, as it is written in article 13 of the law of the Kyrgyz Republic 'on countering extremist activities', the materials cannot be determined as extremist without a decision by prosecutor's office. Secondly, they claim that as it is prescribed in part 5 of article 29

<sup>94</sup> IPHR, 'Kyrgyzstan, Ongoing surveillance of NGO workers despite presidential assurances on human rights' (IPHR, 22 January 2019) <[www.iphronline.org/kyrgyzstan-ongoing-surveillance-of-ngo-workers.html](http://www.iphronline.org/kyrgyzstan-ongoing-surveillance-of-ngo-workers.html)> accessed 25 July 2019.

<sup>95</sup> Human Rights Watch, 'Kyrgyzstan: Rights Lawyers' Office, Home Searched' (*Human Rights Watch*, 31 March 2015) <[www.hrw.org/news/2015/03/31/kyrgyzstan-rights-lawyers-office-home-searched](http://www.hrw.org/news/2015/03/31/kyrgyzstan-rights-lawyers-office-home-searched)> accessed 5 August 2019.

of the Bar and Advocacy Act of the Kyrgyz Republic, those documents can be taken away only in cases where ‘an attorney is involved as an accused’. Therefore, Bir Duino emphasises that the government’s actions cannot be compatible with ‘principles of independence of advocacy and the immunity of lawyers’. Similarly, Susan Corke from Freedom House highly criticised the illegal actions of the Kyrgyz government and claimed that it is not the first case where the government has oppressed human rights defenders:

These searches violate Kyrgyzstan’s laws regulating investigations of lawyers and appear to target specific lawyers in retaliation for taking on controversial clients ... Having the same investigators who brought charges against defendants now searching the homes of the defendants’ lawyers makes a mockery of the judicial system. This abuse of power mirrors the assault on Human Rights Advocacy Center, another prominent Kyrgyzstani human rights organization that was searched and harassed in 2014 by the same investigator at the State Committee for National Security. The Kyrgyzstani authorities should immediately end their harassment of human rights defenders.<sup>96</sup>

## 2.7 COMPARATIVE ANALYSIS OF INTERNATIONAL AND NATIONAL LAWS

In this part I examine different international as well as national documents and provide analysis of violated rights of civil society and media representatives in Kyrgyzstan. Even though the UDHR is not considered as a binding document, it serves as guidance for many democracy-oriented countries. Given the above discourse it is possible to claim that the Kyrgyz government’s actions towards mentioned groups are not compatible what is written in article 3, ‘Everyone has the right to life, liberty and security of person’, and article 9, ‘No one shall be subjected to arbitrary arrest, detention or exile’. Moreover, constant searches of homes and offices of mentioned human defenders are not tolerated by article 12 which states that:

<sup>96</sup> Freedom House, ‘Kyrgyzstan: Cease Harassment of Human Rights Defenders’ (*Freedom House*, 2015) <<https://freedomhouse.org/article/kyrgyzstan-cease-harassment-human-rights-defenders>>accessed 30 August 2019.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.<sup>97</sup>

It is important to note that those violated rights are the result of the initial violation of article 19 which claims that ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.

As for the International Covenant on Civil and Political Rights (ICCPR),<sup>98</sup> it was firstly ratified by Kyrgyzstan on 7 October 1994 and came into force on 7 January 1995. The legal character of the document obliges its member states to fully implement the protection of rights that is written in the document. Thus, considering the issues discussed, it is possible to state that Kyrgyzstan ignores international standards and allows infringement of several rights. Similar to the UDHR, the ICCPR prohibits any violation of article 9(1):

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

and 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, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>99</sup>

Unlike the UDHR, the ICCPR contains limitations in article 19(3) that one should consider. The article allows for circumstances where restriction of freedom of speech is tolerated if it is prescribed by national law:

<sup>97</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

<sup>98</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>99</sup> *ibid.*

- a) for respect of the rights or reputations of others;
- b) for the protection of national security or of public order; or
- c) for public health or morals.

However, the given examples do not demonstrate that the Kyrgyz government relies on the mentioned grounds to limit freedom of speech but rather initiates new laws to prohibit activities of civil society groups.

Similar to the UDHR, the ICCPR does not excuse arbitrary searches of private properties of a person: in article 17(1) it says that ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’.

As for the Kyrgyz constitution, one can see a wide range of contradictions in the fact that from the one side it contains all the internationally recognised list of rights concerning the implementation of freedom of speech, but from the other side the government initiates laws to limit activities of civil society groups and media representatives. Similarly to the international instruments, the constitution prohibits restriction on freedom of speech and thought. For example, article 31 says:

Everyone shall have the right to freedom of thought and opinion. Everyone shall have the right to free expression of opinion, freedom of speech and press. No one may be forced to express his/her opinion or deny it.<sup>100</sup>

The same for article 33(1):

Everyone shall have the right to freely seek, receive, keep and use information and disseminate it orally, in writing or otherwise. No one may be subject to criminal prosecution for the dissemination of information which abuses or humiliates honor and dignity of a person.

It is interesting to note that the constitution strictly prohibits any legal initiatives that may cause a threat to civilians. For example in article 20(1) it is claimed that ‘the laws that deny or derogate human and civil rights and freedoms shall not be adopted in the Kyrgyz Republic’.<sup>101</sup>

<sup>100</sup> Конституции Кыргызской Республики от 27 января 2017 года. Constitution of the Kyrgyz Republic as of 27 January 2017 <<http://cbd.minjust.gov.kg/act/view/ru-ru/202913>>.

<sup>101</sup> *ibid.*

It explains that it can be re-considered only if it seeks certain purposes such as:

- protecting national security;
- public order;
- health and morale of the population; or
- rights and freedoms of other persons.<sup>102</sup>

Nevertheless, usually there is no explanation based on the given purposes, rather it is copying initiatives from neighbouring countries in order to protect their own interests.

The Kyrgyz constitution provides the same principles that are written in the UDHR and ICCPR concerning privacy. In article 29(1) it says that:

Everyone shall have the right to inviolability of one's private life and the and protection of honor and dignity.

Everyone shall have the right to secrecy of correspondence, telephone and other conversations, postal, telegraphic, electronic and other communications.<sup>103</sup>

Unlike the ICCPR and UDHR, the constitution notes that this right can be infringed only 'on the basis of a court order'. However, the cases of illegal home searches of human rights defenders and lawyers show that the Kyrgyz government is not willing to follow what is dictated in national law itself. It further states:

Collection, storage, use and dissemination of confidential information as well as information on private life of a person without his/her consent shall not be allowed except for cases envisaged in the law.

Everyone shall be guaranteed protection, including judicial defense, from illegal collection, storage and dissemination of confidential information and information on private life of a person; the right for the compensation of material and moral damage caused by illegal action shall be guaranteed.<sup>104</sup>

<sup>102</sup> Kyrgyz Republic (n 100).

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

## 3.

## METHODOLOGICAL DESIGN AND ANALYSIS

## 3.1 DESCRIPTION OF TOOLS AND VARIABLES

In this part of the thesis I use Pearson correlation analysis as a quantitative method to reveal the correlation between different variables in order to prove or reject the four given hypothesis. Correlation analysis is usually applied in research field to measure the relationship level between two variables. If variables have a strong relationship, it is called a 'high' correlation and vice versa in relation to weak relationship.<sup>105</sup> The Pearson correlation is considered as a well-known tool in studying correlation analysis. The correlation coefficient or 'r' scales from  $-1$  to  $+1$ . The perfect correlation is determined as  $\pm 1$ , no correlation as  $0$ , while other results ranging from  $+0$  can be considered as partial or significant correlation. Thus,  $-1$  is total negative correlation.<sup>106</sup> A positive correlation, which is indicated as  $+0$  means that both two variables rise if one of them goes up and vice versa in negative correlation, where two variables decrease if one of the variables decreases.<sup>107</sup>

To test my hypotheses, I used quantitative variables. In particular, I operationalised democracy into the Index of Democracy Level (IDL), the variable of civil society is operationalised into the Core Civil Society Index (CCSI), independent media into the IREX Media Sustainability Index, human rights into the Human Rights Score and efficient executive branch (or efficiency of institutions) into Polity IV (Political Regime).

<sup>105</sup> Monica Franzese and Antonella Iuliano, *Encyclopedia of Bioinformatics and Computational Biology: ABC of Bioinformatics* (Elsevier 2019).

<sup>106</sup> David Nettleton, 'Commercial Data Mining. Processing, Analysis and Modeling for Predictive Analytics Projects' (Morgan Kaufmann 2014) <[www.sciencedirect.com/book/9780124166028/commercial-data-mining#book-info](http://www.sciencedirect.com/book/9780124166028/commercial-data-mining#book-info)> accessed 2 July 2019.

<sup>107</sup> *ibid.*



Thus, to measure the level of democracy in Kyrgyzstan and to reveal the interrelations between the above-mentioned variables the IDL was applied. IDL was developed by Arusyak Aleksanyan and in comparison with other methods of measurement it has more factors which might help in studying democratic development. It includes five main factors:

1. Political Factors Index (PFI);
2. Economic Factors Index (EFI);
3. Social Factors Index (SFI);
4. Educational Factors Index (EdFI); and
5. Health Factors Index-HFI.<sup>108</sup>

Each of these factors have its own indicators. Indicators of political dimensions are:

1. Rule of Law (RL);
2. Political Stability/Absence of Violence (St.);
3. Indices of Political Rights and Civil Liberties (PR&CL);
4. Press Freedom (PF);
5. Corruption Perceptions Index (CPI);
6. Political System (PS);
7. Gender Equality (GE);
8. Social Unrest and Political Pressure (PP);
9. Majority in the Parliament (MP);
10. Religion (R); and
11. Conflict Presence (Conf.).

Indicators of economic dimensions are:

1. Gross national income per capita, ppp (GNI);
2. External trade rate (Tr.);
3. Index of Economic Freedom (IEF);
4. Domestic credit (DC);
5. Foreign direct investments (FDI);
6. Inflation rate (Inf.); and
7. Budget deficit (Def.).

<sup>108</sup> Arusyak Aleksanyan, Trends of the Index of Democracy Level in the dimensions of human rights and democratization (Yerevan State University 2017).

Indicators of social dimensions are:

1. Real wage (W);
2. Unemployment (U); and
3. Gini index (GINI).

Indicators of educational dimensions are:

1. HDI (Human Development Index) Education Index ([HDI.ed.](#));
2. Government expenditure on education (EE).

Indicators of health dimensions are:

1. Life expectancy at birth (LE); and
2. Health expenditure (HE).

According to Aleksanyan, each factor 'was based on counting simple and weighted average of standardized values affecting the factors of democracy:

- $PFI = (2*(PR\&CL + PF + CPI + RL + St. + PS + PP + MP + GE) + Conf. + R^*)/20$
- $EFI = (GNI + FDI + IEF + Inf. + Def. + Tr. + DC)/7$
- $SFI = (GINI + W + U)/3$
- $EdFI = (EE + [HDI.ed.](#))/2$
- $HFI = (HE + LE)/2$ .<sup>109</sup>

Thus, the final formula is 'a weighted average of 5 computed indices':

$$IDL = (41.5* PFI + 32.5* (SFI + EFI + HFI)/3 + 26*EdFI)/100$$

<sup>109</sup> Aleksanyan (n 108)

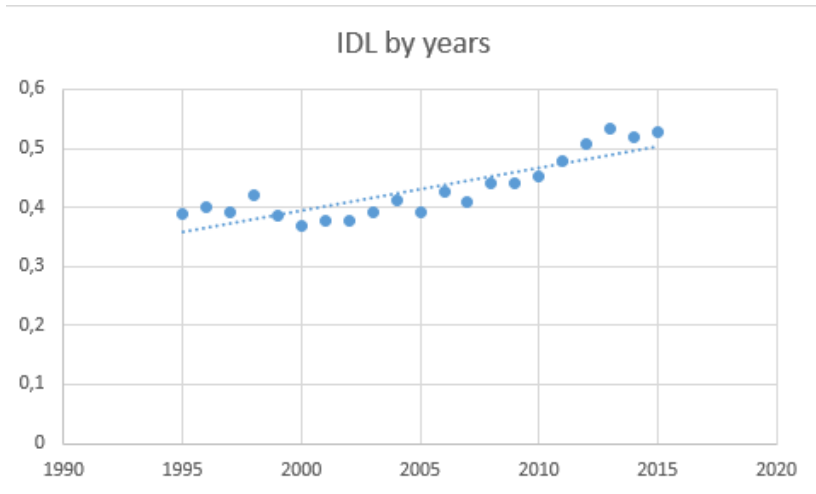


Figure 1. IDL Kyrgyzstan from 1995-2018

As already mentioned, to find the correlation between the variables for civil society and democratic development I used the CCSI which demonstrates :

1. to what extent civil society is free from government; and
2. to what extent citizens are free and active in political processes.

Its scale ranges from low (starting from 0) to high (1). The index itself is based on the Bayesian factor analysis model which considers:

1. CSO entry and exit;
2. CSO repression; and
3. CSO participatory environment. <sup>110</sup>

<sup>110</sup> V-Dem Institute, 'Varieties of democracy' (*V-Dem Institute*, 2019) <<https://pol.gu.se/english/varieties-of-democracy--v-dem->> accessed 30 August 2019.

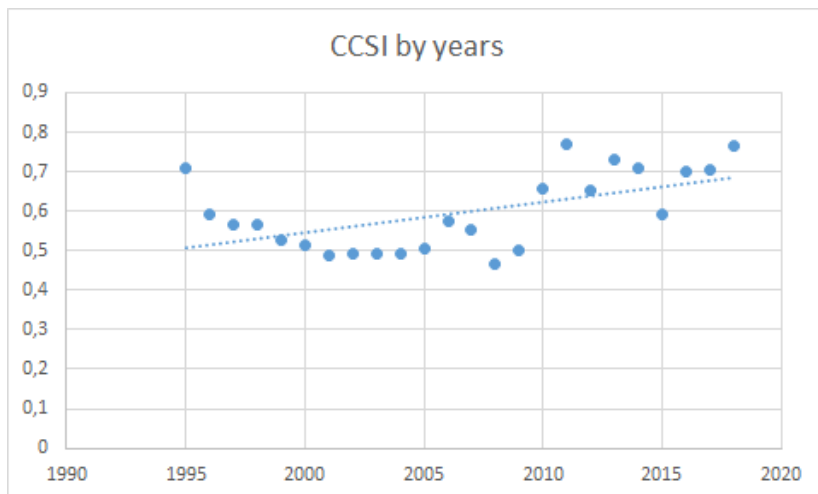


Figure 2. CCSI by years in Kyrgyzstan for 1995-2018<sup>111</sup>

As for independent media, which was operationalised into the IREX Media Sustainability Index, it considers five main factors while examining the independence of media:

1. Freedom of Speech;
2. Professional Journalism;
3. Plurality of News;
4. Business Management; and
5. Supporting Institutions.<sup>112</sup>

The overall scores are the sum of the scores given to each this factor. It is divided into four categories:

1. Unsustainable, Anti-Free Press (0–1);
2. Unsustainable Mixed System (1–2);
3. Near Sustainability (2–3); and
4. Sustainable (3–4).<sup>113</sup>

<sup>111</sup> V-Dem Institute (n 110).

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*

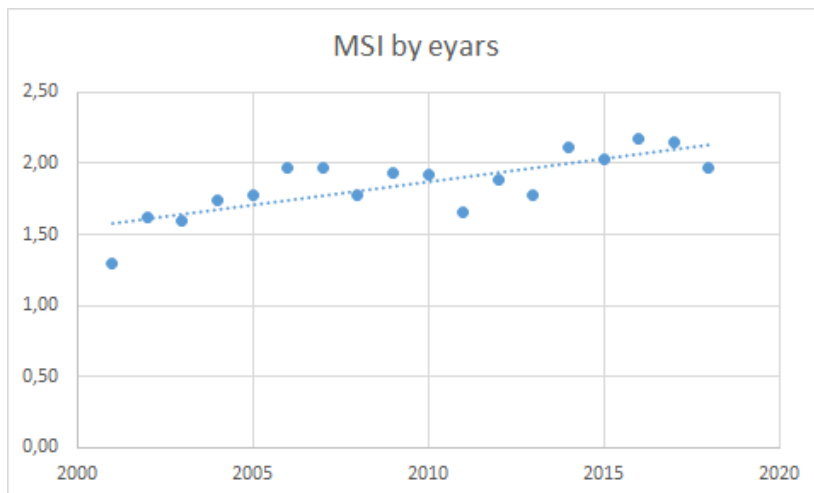


Figure 3. MSI by years in Kyrgyzstan for 2001-2018<sup>114</sup>

Our World in Data uses Polity IV which helps to identify the extent to which different political regimes change ‘across time and space’ and analyses its causes and effects.<sup>115</sup> Polity IV proposes two scales: democracy and autocracy in which democracy score consists of:

- The competitiveness of political participation (1-3);
- The competitiveness of executive recruitment (1-2);
- The openness of executive recruitment (1); and
- The constraints on the chief executive (1-4);

and autocracy is considered as ‘negative versions of the same indices’. It goes from –10 to +10 where the former means the ‘most autocratic’ and latter for the ‘most democratic’.<sup>116</sup> This variable measures the ‘institutional democracy’ and in particular the efficient activity of the executive branch.

<sup>114</sup> IREX, ‘Kyrgyzstan’ (Media Sustainability Index (MSI) Explorer 2019) <[www.irex.org/resource/media-sustainability-index-msi](http://www.irex.org/resource/media-sustainability-index-msi)> accessed 20 August 2019.

<sup>115</sup> Monty G Marshall and Keith Jaggers, *Polity IV Project: Political Regime Characteristics and Transitions, Dataset Users’ Manual* (Center for Systemic Peace 2006).

<sup>116</sup> *ibid.*

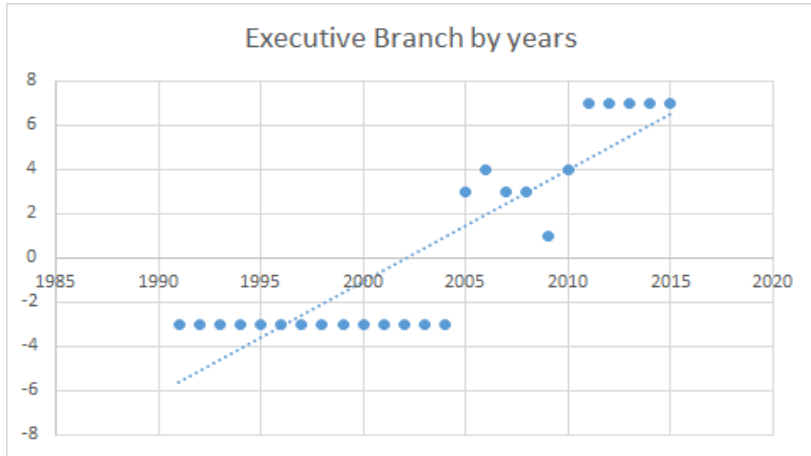


Figure 4. Executive branch in Kyrgyzstan between 1995-2015<sup>117</sup>

To measure the level of human rights protection Our World in Data uses political scientist Christopher J Fariss' methods which provides information on the extent to which world governments policies are compatible in maintaining 'physical integrity, by taking into account torture, government killing, political imprisonment, extrajudicial executions, mass killings and disappearances'.<sup>118</sup> In his measurement, the higher the score the better protection of human rights. The scores for the period 1949-2014 are between  $-3.8$  to around  $5.4$ .<sup>119</sup>

<sup>117</sup> Max Roser, 'Democracy' (*Our World in Data*, 2019) <<https://ourworldindata.org/democracy>>accessed 30 August 2019.

<sup>118</sup> Max Roser, 'Human Rights' (*Our World in Data*, 2016) <<https://ourworldindata.org/human-rights>>accessed 30 August 2019.

<sup>119</sup> *ibid.*

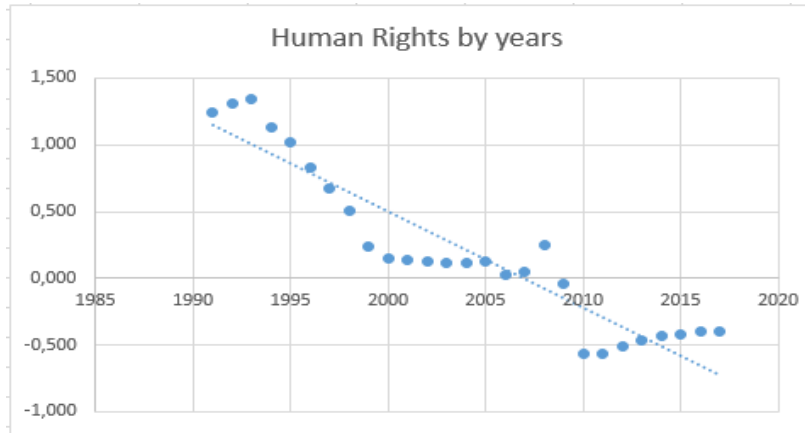


Figure 5. Human rights score in Kyrgyzstan between 1991-2017<sup>120</sup>

<sup>120</sup> Roser (n 118).

### 3.2 HYPOTHESIS 1

Alternative Hypothesis: H1:  $p \geq 0.5$

*'The development and activity of civil society increase the democracy level in Kyrgyzstan.'*

Null Hypothesis: H0 :  $p \leq 0.49$

*'There is no meaningful positive correlation between civil society and democracy in Kyrgyzstan.'*

According to the correlation analysis a strong positive relationship was found between CCSI and IDL:  $R_{CCSI/IDL} = 0.71^{121}$  This means that the development and activities of civil society significantly impact on the level of democracy in Kyrgyzstan.

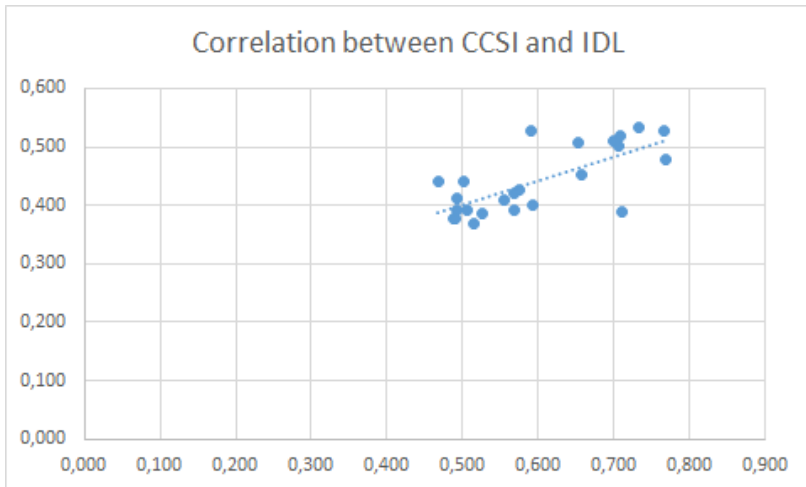


Figure 6. Correlation between CCSI and IDL

<sup>121</sup> Correlation is significant at the 0.01 level.



### 3.3 HYPOTHESIS 2

Alternative Hypothesis:  $H_2 : p \geq 0.5$

*'The presence of independent media helps to foster the democracy level in Kyrgyzstan.'*

Null Hypothesis:  $H_0 : p \leq 0.49$

*'There is no meaningful positive correlation between media and democracy in Kyrgyzstan.'*

According to the correlation analysis a moderate but positive relationship was found between MSI and IDL:  $R_{MSI/IDL} = 0.6$ .<sup>122</sup> This means that the development and activities of independent media leads to the increase of the level of democracy in Kyrgyzstan.

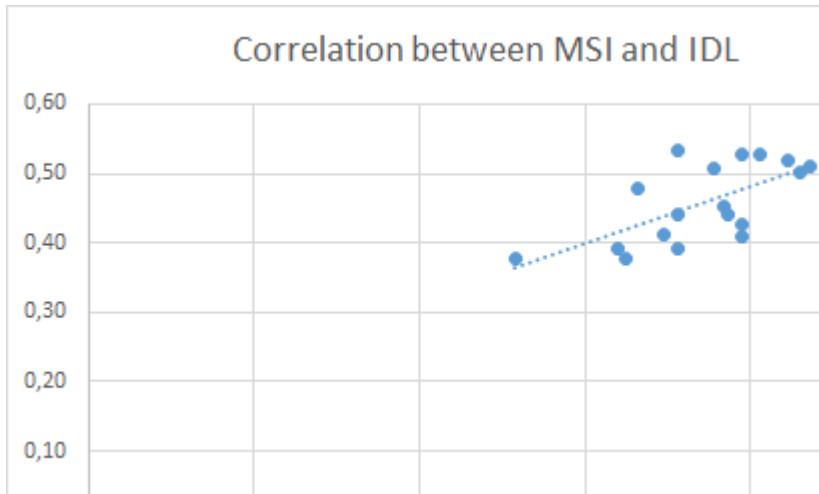


Figure 7. MSI and IDL by Years in Kyrgyzstan for 2001-2018<sup>123</sup>

<sup>122</sup> Correlation is significant at the 0.01 level..

<sup>123</sup> IREX (n 111).

3.4 HYPOTHESIS 3

Alternative Hypothesis:  $H_2 : p \geq 0.5$

*'The democratic development conduces to effective activity of the executive branch in Kyrgyzstan.'*

Null Hypothesis:  $H_0 : p \leq 0.49$

*'There is no strong positive correlation between institutional and democratic development in Kyrgyzstan.'*

According to the correlation analysis a strong positive relationship was found between Political Regime and IDL:  $R \text{ Political Regime/IDL} = 0.8$ .<sup>124</sup> This means that the better the democratic development a country has, the more efficient the activity of the executive branch is.

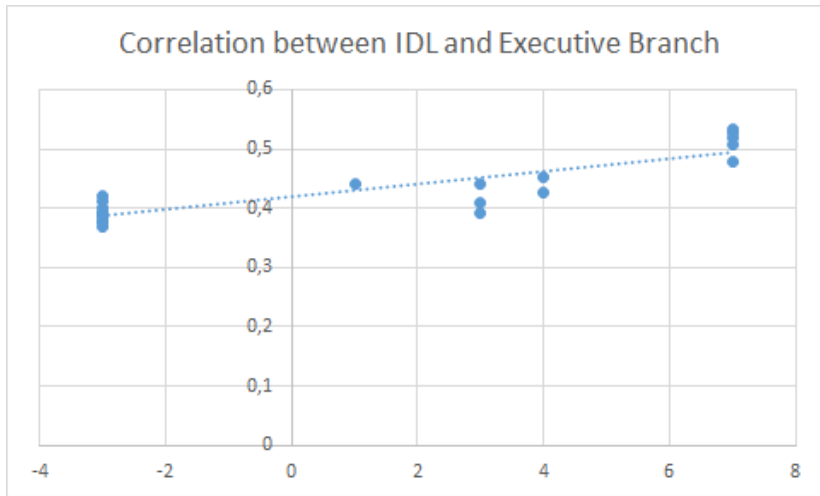


Figure 8. Correlation between IDL and executive branch for 1995-2015

<sup>124</sup> Correlation is significant at the 0.01 level.

3.5 HYPOTHESIS 4

Alternative Hypothesis:  $H_2 : p \geq 0.5$

*'Democratisation increases human rights protection in Kyrgyzstan.'*

Null Hypothesis:  $H_0 : p \leq 0.49$

*'There is no meaningful positive correlation between democratization and human rights in Kyrgyzstan.'*

According to the correlation analysis a strong negative relationship was found between Human Rights and IDL:  $R_{\text{Human Rights/IDL}} = -0.7$ .<sup>125</sup> This could be explained by the fact that with the increase of democracy levels, people and especially civil society began to actively take various actions against the government, which, in turn, increases the resistance of the latter and leads to more violations in the sphere of human rights.

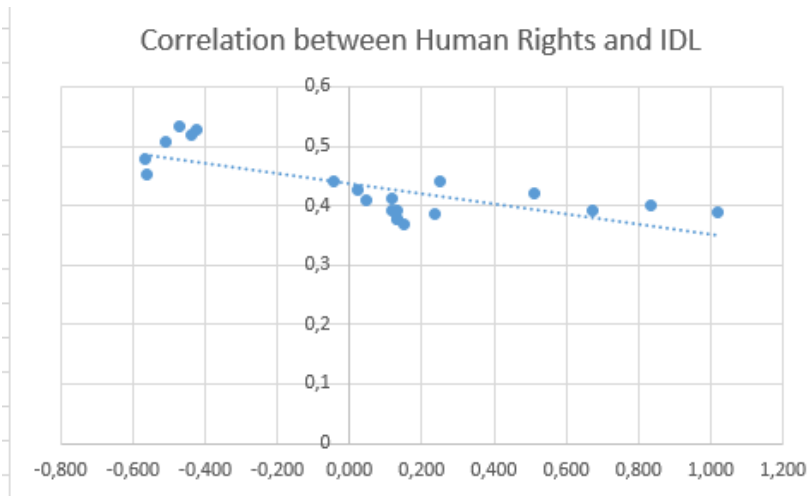


Figure 9. Correlation between human rights and IDL

<sup>125</sup> Correlation is significant at the 0.01 level.

4.

CONCLUSIONS

Even though Kyrgyzstan is considered to be an island of democracy in Central Asia and its government tries to maintain this image of a modernised and democratically developed country, the political situation remains controversial. According to reports from international organisations such as Human Rights Watch, Freedom House, International Commission of Jurists and others, the government continues to abuse the rights to freedom of speech, information and arbitrarily detains anyone who goes against the regime. The government in its justification claims that they undertake transparent and proper investigations of every case which are always open to public examination. This research aimed to explain how the government manages to avoid criticism of the international community regarding the practice of unlawful detention by creating an image of the country, which fulfils all the internationally recognised values. By using content as well correlation analysis of international reports and speeches of the Kyrgyz president and legal representatives, as well as civil and human rights activists, the thesis explored how the government continues to constrain opposition groups and arbitrarily detain them.

This thesis endeavoured to provide an analytical summary of an array of academic articles and other reports on the theoretical understanding of democracy and its relationship with human rights, particularly freedom of civil society and media. It found out that modern democracy is not limited to just the frequently discussed free and fair elections, but also requires active participation of civil society and media in political transformations of the country. Most scholars argue that the existence of these two groups serves as bridge between government and citizens that favours alternative opinions and interests which results in democratic prosperity. The more people engage in civic life, the more they become

aware of 'civic virtues'. According to post-Soviet studying scholars, democratic changes were not able to be ingrained fully because of the authoritarian features of the rulers that came to power after the collapse of Soviet Union.

Despite some significant positive transformations, democracy still exists more in its formal image than in practice. As for formal institutions, they are either weak or always under control of the government. This work provided several cases of oppression of human rights defenders and journalists as well as civil society representatives which demonstrate that year by year the political situation in Kyrgyzstan is worsening. The role of civil society and media was always significant, especially as it could be seen in two revolutions. These two revolutions made the international community believe that there is a total toleration of freedom of civil society and press. However, the Kyrgyz government has created a new environment in which they misuse their power by creating legislative restrictions on the democratisation of Kyrgyzstan such as the cancelled law 'on foreign agents', the law 'on guarantees of activities of the President of the Kyrgyz Republic', the law 'on combating extremist activities' and others. The thesis claimed that there were several cases of oppression of these two groups before the regime of Atambayev, but it has been only augmented during 2017-2019. Human rights defender Azimjan Askarov, T Ismailova and A Abdirasulova's case and the Zanoza and Senytabr media case demonstrates that there is no place for expression of alternative opinion. The cases of Alkanova's and Kloop's investigations are also an example of how government creates threats to lives.

The comparative analysis of international and national laws examined to what extent the Kyrgyz government infringed existent international standards. It can be seen that there are violations of rights that are prescribed in both the UDHR and the ICCPR including the rights to liberty and security of person; not to be subjected to arbitrary arrest and detention; for privacy, freedom of opinion and expression; and to seek, receive and impart information. Paradoxically, the Kyrgyz government's policies also contradict what is written in the constitution, specifically that the government should not create laws that deny or derogate human and civil rights and freedoms.

As a result of Pearson correlation analysis, three out of four hypotheses were approved. The first hypothesis argued that '*The development and activity of civil society increase the democracy level in Kyrgyzstan*'.

Correlation analysis found that there was a strong positive relationship between two given variables. The second hypothesis claimed that '*The existence of independent media helps to foster the democracy level in Kyrgyzstan*'. It can be argued that because of a moderate relationship, not a strong one, there is a place to debate. The third hypothesis which was based on the idea that '*The democratic development conduces effective activity of the executive branch in Kyrgyzstan.*' revealed that there was the strongest positive correlation between the executive branch and democratic development in Kyrgyzstan. However, the last hypothesis which says that '*Democratisation increases human rights protection in Kyrgyzstan*' found out that there is no correlation between these two variables. Relying on my findings, it can be posited that the active participation of civil society and existence of independent media do impact on democratic development, and the current government's restrictions can lead to unwilling consequences as in other authoritarian countries.

5.

RECOMMENDATIONS

This paper provides policy goals for both Kyrgyz authorities and international human rights organisations to ensure that the practice of human right violations is eradicated in the systematic level. In future investigations, it is important to consider following recommendations:

For the government of Kyrgyzstan:

- 1) To release human rights defenders detained on falsified grounds;
- 2) To make sure that civil activists and journalists can freely express their opinions which may be contrary to government views;
- 3) To create open platforms for discussion of public concerns on both an online and offline basis;
- 4) To ensure that law and practice are in line with the regulations proposed by international human rights organisations;
- 5) To not interfere in application processes of human rights defenders to international organisations;
- 6) To not infringe privacy rights;
- 7) To provide and take immediate response in investigating violations of rights of human rights defenders and journalists;
- 8) To make sure that human rights defenders and media representatives are not detained without a legally binding basis;

- 9) To ensure that civil society and media groups do not have threats to their life;
- 10) To refrain from disseminating slander and disinformation of human rights defenders and media in official meetings or in public speeches.

For international human rights organisations:

- 1) To demand annual reports from NGOs on the cases of violations of the rights of civil society and media representatives;
- 2) To persuade the Kyrgyz government on reconsideration of laws that put restrictions on freedom of expression;
- 3) To require reports on clear explanation of listed acts added to 'extremist materials' in law;
- 4) To organise trainings which can give provide exchange of practices on implementation of international human rights principles;
- 5) To raise civil and human rights activists' issues in regional meetings with the government authorities;
- 6) To ensure that Kyrgyzstan implements human rights in accordance with international human rights standards;
- 7) To support local NGOs coverage of projects that raise public awareness of the work of human rights defenders.



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- Law 'on judicial expert activities'
- Law 'on amendments and amendments to some legislative acts of the Kyrgyz Republic'

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