



THE SITUATION OF HUMAN RIGHTS DEFENDERS

KAZAKHSTAN

Human Rights Committee Briefing Paper - August 2015

Kazakhstan has demonstrated some interest in improving its human rights policies, consulting with civil society on reform, fulfilling Human Rights Committee (Committee) recommendations,¹ and engaging with the Dialogue Platform on Human Dimension together with the Organization for Security and Co-operation in Europe (OSCE).

Nevertheless, since the Committee's Concluding Observations in 2011, the rights of human rights defenders (HRDs), civil society, journalists and the media in Kazakhstan guaranteed under the *International Covenant on Civil and Political Rights* (ICCPR) continue to be eroded. HRDs consistently face physical and verbal threats, intimidation, judicial harassment, and arbitrary detention.² Legislation enshrined over the past year has entrenched pre-existing, and extended, limits on freedom of expression, association, peaceful assembly and religion, including disproportionate sanctions contrary to the ICCPR.³ The Committee, the European Union (EU), OSCE, various UN Special Rapporteurs, and civil society groups have all expressed concern about these regressions.

RISKS TO HUMAN RIGHTS DEFENDERS

- Kazakhstan is characterised by the use of State legislation and apparatus to severely restrict freedom of expression and assembly as well as human rights monitoring and promotion.
- In addition to fear and censorship provoked by Kazakhstan's repressive laws, the 2014 Human Rights Watch World Report documented that HRDs in Kazakhstan face physical and verbal threats, acts of intimidation, judicial harassment, and arbitrary detention.⁴
- In December 2011, security forces used provocation, unidentified attackers, social pressure, staged accidents, and detention to suppress an oil workers' strike in Zhanaozen (Zhanaozen Strike). According to Open Dialogue, this brutality resulted in at least 17 fatalities, 86 casualties and 37 convictions.⁵
- Kazakhstan ranked 79 (out of 109) in the 2013 CIVICUS Enabling Environment Index, which measures a State's openness and safety for civil society activism. It also ranked 4th worst globally for the 'social-cultural dimension', reflecting low tolerance of ethnic and religious groups and low public trust in not-for-profit groups.⁶

OFFICIAL RESTRICTIONS

on the space for human rights defenders

Freedom of Opinion and Expression

- The Special Rapporteur on freedom of religion or belief reported in December 2014 that 'unclear penal law provisions' are having 'chilling effects' on freedom of expression in Kazakhstan.⁷
- In addition in its Concluding Observations in 2011, the Committee urged the Government to ensure that journalists and HRDs can freely exercise their right to freedom of expression under the ICCPR, desist from harassing or intimidating HRDs, and review its laws on defamation and insults such that any limitations on freedom of expression strictly comply with the requirements of Article 19(3).⁸
- A concerning example of restrictions on the rights to freedom of opinion and expression is the ongoing imprisonment and ill-treatment of human rights defender and lawyer, Vadim Kuramshin, sentenced to 12 years prison on 7 December 2012 on charges of alleged extortion.⁹
- Another example is that of opposition leader Vladimir Kozlov, who is currently still serving a seven year sentence for his alleged involvement in the Zhanaozen Strike (discussed above and

below).¹⁰ The verdict was deemed, in the Trial Observation Report of the Solicitors International Human Rights Group, 'unfair'¹¹, and Freedom House reported that the trial 'did not meet international and national standards of the rights to a fair trial.'

- Both the Kozlov and Kuramshin cases were denounced by the European Parliament as products of 'vague criminal charges' and 'trials which fall short of international standards.'¹²

Restrictive Laws - Silencing the Media

- The Committee's view is that media licencing conditions must be 'reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant.'¹³ Kazakhstan's legal framework regulating the media does not meet these standards, is contrary to recommendations of the OSCE Representative on Freedom of the Media,¹⁴ and according to the OSCE 'induces self-censorship and limits the freedom of speech.'¹⁵
- Increasingly, news outlets are fined or suspended.¹⁶ More than 30 media outlets have been shut down since late 2013 on grounds such as 'war propaganda and agitation', 'inciting social discord'¹⁷ or 'minor infractions of publishing regulations'¹⁸.
- On 26 Feb 2015 the Almaty Court of Appeal upheld an order to close of ADAMBOL, an independent media outlet known for its critical articles, and confiscate all copies of the magazine.¹⁹
- The Government recently passed a law requiring online media outlets to register with officials in the same way as print media.²⁰ This law is used to harass and censor the media, and to unduly limit freedom of expression otherwise secured by the ICCPR.
- Amendments to Article 41-1 of the Online Communications Law allows authorities to block domestic and foreign websites, entire communication networks, restrict personal blogs and chat rooms, social networking sites and mobile phone services, if they are found to promote 'extremist or terrorist activities, riots, or participation in public activities' in violation of established order'. The OSCE urged the veto of the bill last year, arguing it could limit freedom of expression, and result in self-censorship or undue control over the media by authorities.²¹
- In respect of the 2015 presidential elections, the OSCE/Office for Democratic Institutions and Human Rights reported that 'a restricted media environment stifled public debate and freedom of expression...with several prominent critics of the government either imprisoned or living in exile'.²²
- In December 2014 in its reply in to the Committee's Concluding Observations of 2011, the government justified its laws that limit freedom of expression with respect to media and the internet for reasons

of information security,²³ but failed to explain how such measures are 'necessary' under article 19(3) of the ICCPR, nor which proactive measures have been taken to protect this freedom under article 19 with respect to internet and media laws.

Restrictive Laws - Defamation

- Despite prior recommendations by the OSCE/ODIHR, defamation (defined as a 'publicly dangerous' form of crime²⁴), remains a criminal offence in Kazakhstan and is punishable by up to three years imprisonment, a fine, or correctional labour.²⁵ State authorities may also initiate complaints, making this right susceptible to abuse by State officials seeking to silence dissent.²⁶
- CCPR General Comment 34 provides that defamation laws must 'comply with paragraph 3 [of Article 19], ensuring they 'do not serve, in practice, to stifle freedom of expression,'²⁷ and should provide clear defences such as 'defence of truth' and 'public interest,' which this law does not appear to provide. The Committee adds that 'imprisonment is never an appropriate penalty' for defamation.²⁸
- Further, international law standards recognise that public figures should tolerate, and are required to accept, a greater degree of criticism than private citizens.²⁹
- In December 2014, in its reply to the Committee's Concluding Observations of 2011, the Government rejected the Committee's recommendation to decriminalise libel, defamation and insult³⁰ in favour of the 'freedoms and interests of individuals'. Further, in highlighting its repeal of one law on defamation that carried a punishment of six months' detention,³¹ the Government deflected and distracted from pre-existing and new laws which maintain criminalisation of demotion and insult carrying a range of prison sentences, some even greater.

Restrictive laws – Sexual Orientation and Gender Identity

- The Government recently passed a law banning 'propaganda' about non-traditional sexual orientations'.³² Notwithstanding that the Constitutional Council consequently found the law to be unconstitutional because of vague wording,³³ this law clearly violates Kazakhstan's obligation to guarantee to prevent discrimination on the basis of sex, including sexual orientation or gender identity.³⁴ It is also representative of a stifling environment for HRDs advocating for equal rights for LGBTI people.

Restrictive Laws – Criminal Code

- The EU raised concerns at the EU-Kazakhstan Human Rights Dialogue in November 2014 that the Criminal Code, in force since 1 January 2015,

‘could have a negative impact on freedom of expression, freedom of association and freedom of assembly,’³⁵ as well as negative implications for freedom of religion.

• Numerous articles of the Criminal Code violate Article 19 of the ICCPR, including:

- » Article 274 which prohibits ‘dissemination of knowingly false information’. Various concerns have been raised including that the definition of ‘knowingly false information’ is vague, and fails to differentiate between facts and value judgements, opening the article to abuse to suppress legitimate forms of expression;³⁶ and that the article is not ‘sufficiently precis[e]’ to enable individuals to regulate their conduct, and therefore is not a valid restriction on freedom of expression under article 19(3).³⁷
- » Article 378 which criminalises public insult of a State official by mass media or information communication networks.³⁸ Despite the Committee’s view that ‘the penalisation of a media outlet, publishers or journalist solely for being critical of the government or that the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.’³⁹
- » Articles 373 and 375 which impose up to five years’ imprisonment for ‘public insult or other encroachment on the honour and dignity’ of the President of Kazakhstan.⁴⁰ The Committee has expressed that ‘the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties,’ and laws must not provide more severe penalties ‘solely on the basis of the identity of the person that may have been impugned.’⁴¹
- » Article 131 which prohibits insult, being ‘denigration of the honour and dignity of another person in an indecent manner.’⁴² If committed by mass media, it carries a fine or correctional labour. This law likely also violates Article 19, particularly with respect to public officials as discussed above.
- » Articles 174, 183 and 404 which impose restrictions on the right to freedom of expression in relation to religion. Article 174 criminalises, with a maximum penalty of imprisonment from 12 to 20 years, the incitement of ‘social, national, ethnic, racial, class or religious hatred,’ including actions that ‘demean [the] national honour and dignity or religious feelings of citizens.’⁴³ Article 183 effectively circumscribes the same offence as Article 174 when committed through mass media. Article 404 criminalises, inter alia, the establishment, participation or leading of a ‘religious party or civic organization that propagates or practises religious intolerance or

superiority.’ The Special Rapporteur on freedom of religion or belief in his mission report noted that these laws are ‘vaguely circumscribed rather than being clearly defined,’⁴⁴ and together with the Committee on the Elimination of Racial Discrimination in its Concluding Observations to Kazakhstan (March 2015), recommended a legislative revision to Article 174 so that it does not unnecessarily or disproportionately interfere with freedom of expression.⁴⁵

Freedom of Peaceful Assembly

- The right to freedom of peaceful assembly is protected under the Constitution and is guaranteed under Article 21 of the ICCPR, with restrictions allowed only in a narrow set of circumstances. Despite this, the Special Rapporteur on freedom of peaceful assembly and of association noted following his recent visit that ‘in Kazakhstan today the freedom of assembly is treated as a privilege, or a favour, rather than a right’ and that the Government’s approach to regulating assemblies ‘deprives the right of its meaning.’⁴⁶
- An emblematic case of reprisals against those exercising their right to peaceful assembly occurred in response to a peaceful public art-mob event on 11 March 2012, held to draw attention to the issue of moral leadership. The event allegedly lasted about 10 minutes, with 15 observers (mostly journalists and police).⁴⁷ Five days later, the organiser was arrested and subsequently convicted and fined for holding an event not authorised by the Peaceful Assembly Law.⁴⁸ The Committee found that the conviction and fine violated articles 19(2) and 21 of the ICCPR.⁴⁹
- The ongoing imprisonment and alleged ill-treatment of poet and dissident, Aron Atabek, sentenced to 18 years in 2007 for helping to organise protests that resulted in the death of a police officer, is also extremely alarming.⁵⁰
- In December 2014, in its reply to the Committee’s Concluding Observations of 2011, the Government justified current legal limitations on freedom of assembly as being ‘in the interests of the State and to protect the rights and freedoms of others.’⁵¹ These vague reasons are open to abuse on a wide range of subjective grounds, and no explanation is given as to how the legal restrictions are ‘necessary’ to achieve those ends, as Article 21 requires. For example, it is unclear how laws outlawing gatherings which might harm ‘trees, plants and small monuments’⁵² are legitimate restrictions to protect others or the State.
- In its reply the Government noted widespread unauthorised gatherings attended by thousands of people between 2010 and 2013,⁵³ but failed to explain measures taken to ensure criminalisation of such gatherings was only in necessary circumstances and in accordance with Article 21.

- In response to similar concerns expressed by the Special Rapporteur on freedom of peaceful assembly and association, Government officials deemed restrictions necessary ‘for fear of revolution.’ The Special Rapporteur rejected this reason because freedom of peaceful assembly is in fact a ‘safety valve that protects against more serious turmoil in society’.⁵⁴

Restrictive Laws

- The Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations (Peaceful Assembly Law) creates broad restrictions and sanctions on the right to freedom of peaceful assembly beyond that which is permitted under Article 21 of the ICCPR.
- The Committee has expressed grave concern in its recent Concluding Observations about undue restrictions in the law.⁵⁵ Restrictions included that the law:
 - » Requires prior authorisation to hold public events, which has been deemed by the OSCE as ‘not in line with international standards and good practice’;⁵⁶
 - » Grants unlimited powers to local executive bodies to decide on the time and place of assemblies;
 - » Provides the right to terminate an event not in compliance with the requirements set out above;⁵⁷ and
 - » Restricts the holding of ‘authorised assemblies’ to designated sites, thereby ‘preventing organisers and participants from choosing venues they consider appropriate’.⁵⁸
- Article 400 of the Criminal Code introduces a new concept of ‘an illegal public event,’ in addition to the concept of an ‘an illegal assembly, rally, march, picket, demonstration.’ These various prohibited activities are punishable by a fine, correctional labour, public work or imprisonment of up to 75 days.⁵⁹
- These suffocated rights have brought near silence to Kazakhstani streets, with the OSCE explaining that almost no requests were made to conduct open-air events in 2015.⁶⁰ This shows a near cessation of political expression and legitimate dissent through peaceful gathering.

Freedom of Association

- Article 22(1) of the ICCPR guarantees the right to freedom of association with others, with limitations permitted only where necessary in a narrow set of circumstances under Article 22(2).
- Proposed unnecessary or disproportionate limitations on non-governmental organisations

(NGOs) registration and funding also violates articles 21 and 22 of the ICCPR, by effectively limiting the capacity of civil society to peacefully organise itself.

Restrictive Laws – Proposed NGO Legislation

- As of 9 June 2015, proposed legislation setting out requirements for NGOs in Kazakhstan:
 - » Perpetuates the bidding system by NGOs for government funding;
 - » Grants the Government oversight powers for state funding to NGOs;
 - » Circumscribes specific thematic areas of activities eligible for funding; and
 - » Provides that the use of grants will be closely monitored;⁶¹
 - » Provides that leaders of NGOs and public associations that fail to comply with NGO registration or funding laws face up to six years in jail.⁶²
- Such provisions could, alone or in combination, impede the funding and work of NGOs and, according to the head of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) Informational-Educational Centre, Sergei Duvanov, those laws that are vaguely worded are open to dual interpretation that could ‘threaten the existence of a segment of the non-governmental sector.’⁶³

Restrictive Laws – Criminal Code, Code on Administrative Offences & Law on Countering Extremism

- Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), Nota Bene, Turkmen Initiative for Human Rights and International Partnership for Human Rights recently stated that the Criminal Code and Code on Administrative Offences could ‘criminalise and penalise the legitimate activities of associations and their members... and [provide] broad grounds for denying registration to associations or closing them down.’⁶⁴
- Article 404 of the Criminal Code, and the 2005 Law on Countering Extremism, authorise relevant agencies to monitor and take preventative measures against associations accused of inciting ‘religious extremism.’ The Special Rapporteur on freedom of religion or belief noted in his recent mission report that the former law provides no clear legal definition, and the latter is ‘overly broad and vague.’ These deficiencies allow for the arbitrary application of the law, and ‘open the floodgates for punitive measures’ against those deemed to be suspicious by some government institutions.⁶⁵ There is no clear justification for

them under articles 22(1) or 22(2) of the ICCPR.

- In December 2014 in its reply to the Committee's Concluding Observations of 2011, the Government reported that, from a 2013 Supreme Court review of judicial practice in considering criminal cases involving extremism and terrorism, such practices complied with international law standards. The integrity of this claim is to be questioned given Kazakhstan was ranked 88th in the Global Competitiveness Index 2013-2014 for judicial independence.⁶⁶

DEFENDERS FACING PARTICULAR RISKS

- **Oil workers** across Kazakhstan suffer violations to the rights to freedom of association and expression, collective bargaining, and the right to strike, carried out by Kazakhstani officials and often permitted by oil companies.⁶⁷ The Zhanaozen Strike on 16 and 17 December 2011 is a particularly clear example of this. HRDs were allegedly arrested, tortured and ill-treated in the aftermath.⁶⁸ In addition 8 newspapers, 23 internet resources, 2 TV channels and 1 newspaper were closed in 2012, on charges of extremism and incitement to social hatred under Article 164 of the old criminal code (equivalent to Article 174 of the new Criminal Code).⁶⁹
- Journalists and HRDs who called for investigations were defamed, intimidated and faced physical attacks.⁷⁰ Roza Tuletaeva, who worked to bring attention to the events, was sentenced to five years' imprisonment on charges of organisation of mass unrest. She reported being tortured while imprisoned, but three requests by her lawyer to investigate the allegations were rejected.⁷¹

INTIMIDATION AND REPRISALS against human rights defenders accessing international human rights mechanisms

- In its 2013 Annual Report, Front Line Defenders raised concerns over State reprisals against Kazakh HRDs for cooperating with UN human rights bodies.⁷² Similar fears about reprisals were recorded in the Human Rights Watch 2014 World Report.⁷³
- The State restricted numerous rights surrounding a visit by the Special Rapporteur on freedom of peaceful assembly and of association including refusing requests to hold peaceful assemblies between 24 and 27 January 2015, photographing and intimidating HRDs, arbitrarily detaining journalists who sought to protest the closure of media outlet ADAMBOL during the visit.⁷⁴ The Special Rapporteur has demanded that the Government ensure the safety of all HRDs from threats, harassment, punishment or judicial proceedings as required by Human Rights Council resolutions 24/24 and 12/2 and the Terms of Reference of country visits by special rapporteurs.⁷⁵

- In response to the Special Rapporteur's concern about reprisals during his recent official visit, the Government assured him that no reprisals would occur and that deliberate acts of intimidation would be investigated.⁷⁶

RESPONSES OF THE STATE on the protection of human rights defenders

- Contrary to CCPR General Comment 25, which provides that freedom of expression is an 'essential condition for the effective exercise of the right to vote and must be fully protected',⁷⁷ in the 2015 presidential election campaign fear of reprisals stifled public debate⁷⁸. This occurred, notwithstanding amendments to the Administrative Offences Code which strengthened the integrity and democracy of the 2015 presidential elections,⁷⁹ the Central Electoral Commission sessions being open to observers⁸⁰ and half the political rallies being held in favour of opposition candidates.⁸¹ Credible reports of pressure applied to voters to 'attend rallies and vote in high numbers for the incumbent' also raised concerns about voters' ability to cast a vote free of fear and retribution.⁸² Opposition was also stifled with the detention of a group of people, including a political nominee and journalist, who sought a meeting with the President.⁸³
- Government representatives and civil society prepared the Kazakh National Human Rights Action Plan 2009-2012, which aimed to increase protection of Kazakhstan nationals' civil and political rights and freedoms. However, during the four years of implementation, Kazakhstan only fulfilled 23 percent of its goals, and in response the EU has offered to work with Kazakhstan to develop and implement a new action plan.⁸⁴
- The Government's assurance at its Universal Periodic Review (UPR) in October 2014 to improve its legislation governing freedom of assembly is counteracted by its accompanying belief that the existing limitations on freedom of assembly 'adher[ed] to international human rights standards.'⁸⁵ The Government's undermining of the UPR is also highlighted by KIBHR, the Turkmen Initiative for Human Rights, Nota Bene, and International Partnership for Human Rights, who jointly argue that, since the 2014 UPR, 'no measures [had] been taken' to revise Kazakhstan's assembly laws as at 15 April 2015.⁸⁶
- In 2012, the UN High Commissioner for Human Rights Navi Pillay visited the country and called for an independent international investigation into the use of force and fatalities associated with the Zhanaozen.⁸⁷ The Government has provided no substantive reply nor taken substantive action to remedy alleged violations where they occurred.

QUESTIONS TO THE STATE OF KAZAKHSTAN

- What steps will the Kazakh State take to enshrine the UN Declaration on HRDs in national law and policies, in order to guarantee their recognition and protection, and a safe and enabling environment for their work?
- What steps will the Kazakh State take to guarantee due process to HRDs and journalists and end the criminalisation of their work?
- How will the Kazakh State end the intimidation and harassment of individuals participating in peaceful protests and thus guarantee the right to freedom of assembly.
- How and when will the Kazakh State repeal its criminal defamation laws, ensuring that they cannot be applied arbitrarily against HRDs?
- When and how does the Kazakh State intend to modify proposed legislation regarding the registration and operation of NGOs in order to relax undue governmental oversight and de facto restrictions, and rather, guarantee their freedoms of association and expression?

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