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UPR SUBMISSION

Kazakhstan

Summary

Since Kazakhstan's last Universal Periodic Review, the government's overall human rights record has significantly worsened, and it has failed to implement many of the reform commitments to which it agreed.

In December 2011, violent clashes broke out in western Kazakhstan after an extended, unresolved, labor strike in the oil sector, with police killing 12 people. Since then, authorities have cracked down on free speech and dissent through misuse of overly broad laws such as "inciting social discord," imprisoning several government critics and labor rights activists on what appear to be politically motivated charges in trials that did not meet international fair trial standards, and through the closure and suspension of independent and opposition newspapers. Authorities also moved control of the penitentiary system from the Ministry of Justice to the Ministry of Internal Affairs in mid-2011, putting prisons back under police control, and ushered in a highly restrictive religion law in October 2011. Freedom of assembly continues to be subject to strict controls and impunity for torture remains the norm. The new Criminal Code, which passed its first reading in parliament in January 2014, if adopted without further amendments, will further restrict freedom of speech, assembly, religion, and association.

Freedom of Expression

During its previous UPR, Kazakhstan accepted recommendations "[t]o amend legislation containing libel and defamation clauses in order to ensure consistency with Kazakhstan's international human rights obligations" and "to ensure that freedom of expression [for media and civil society] is in keeping with international standards."

The situation for free speech and media freedoms is highly restrictive, however, and has suffered serious setbacks in the last four years. Independent journalists who criticize government policies and practices continue to face threats and harassment. Unidentified individuals have attacked journalists who write about controversial subjects.ⁱ In 2013 alone, media watchdog *Adil Soz* reported that there were 10 attacks on journalists. The new Criminal Code not only continues to criminalize libel but also increases penalties for the offense.ⁱⁱ

In December 2012, in rushed and perfunctory trials, courts banned the newspapers *Vzglyad*, *Golos Respubliki*, and their affiliated websites, and prohibited K+ and Stan.TV from broadcasting on grounds that they published information found "to incite social discord" and that called for the overthrow of the constitutional order.ⁱⁱⁱ In January 2013, the Zhezkazgan youth newspaper was ordered to close and other newspapers including *Pravda Kazakhstana*, were suspended for three months on technical grounds. As recently as February 2014, the newspaper *Pravdivaya Gazeta* was similarly closed down after technical violations.

Since 2011, authorities have repeatedly misused the overbroad and vague criminal offense under article 164 of the Criminal Code, "inciting social, national, clan, racial, or religious discord," in an attempt to silence critics. Instead of heeding calls to repeal or amend this

charge, which criminalizes behavior and speech protected under international human rights law, authorities have proposed to further broaden the scope of the criminal offense and increase penalties on those found guilty.^{iv}

In August 2011, Natalia Sokolova, a union lawyer and workers' rights advocate, was sentenced to six years in prison for "inciting social discord" after she spoke out about wage disparities. After serving approximately seven months in prison, her sentence was commuted to a 3-year suspended sentence.^v Opposition leader Vladimir Kozlov was imprisoned on this charge in October 2012. More recently, authorities brought charges of "inciting religious discord" against journalist Aleksandr Kharlamov in March 2013. In mid-April, Kharlamov was forced to undergo a month of forced psychiatric observation. He was later released and put under house arrest, but as of this writing prosecutors have not dropped the charges.

Freedom of Assembly

Public assemblies are tightly controlled. In the four years since Kazakhstan's UPR, the government has not liberalized legislation on freedom of assembly despite pledging "to speedily draft and implement the new law on the right to assembly with fewer demands regarding prior registration and fewer requirements for information concerning, for example, the participants in an assembly." Any public meeting of a political nature that is not organized directly or indirectly by the government, or that is not in support of government policies, remains likely to be denied a permit or broken up by police. In February 2014, police in Almaty broke up small-scale peaceful protests, including a one-person protest by blogger Dina Baidildaeva. Days earlier, on February 5, three bloggers were sentenced to 10 days' detention after a peaceful, but unsanctioned, protest. In another recent example, after rallies on February 15 and 16, 2014, dozens were arrested and fined for violating the highly restrictive law on public assemblies.

Article 10 of the law "On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan" provides a virtual carte blanche to unduly restrict freedom of assembly. Article 373 of the Administrative Code provides for up to 15 days' administrative arrest for violating the law on public assemblies, while under article 334 of the Criminal Code, an individual can be imprisoned for up to a year for organizing or participating in illegal gatherings or meetings.

During the extended labor strikes in western Kazakhstan in 2011, local authorities repeatedly fined and imprisoned oil workers for staging peaceful protests. Between January and April 2012, activists were prevented from attending peaceful rallies to commemorate those who were killed and wounded by police in Zhanaozen, or were arrested during or immediately after. Before the March 2012 rally, police detained two civil society activists before the rally began, preventing both from attending, and detained two others after the rally was over. That evening, an administrative court fined two of the four activists US\$550 each, and sentenced the other two to 15 days' administrative detention.^{vi}

Freedom of Religion

During its previous UPR, Kazakhstan accepted "[t]o extend the rights enjoyed by traditionally established religions to believers of non-traditional religions, and to enable them to carry out their peaceful activities free from Government interference."

Yet, the government adopted a restrictive new law "On Religious Activities and Religious Associations" in October 2011. The law imposes "a complex four-tier registration system, bans

unregistered religious activity, imposes compulsory religious censorship, and requires both central and local government approval to build or open new places of worship,” according to Forum 18, an independent international religious freedom group. Following the adoption of the law, all religious groups operating in Kazakhstan were required to undergo compulsory re-registration by October 25, 2012, resulting in the closure of hundreds of small religious communities who were unable to meet the 50-person membership requirement for re-registration. Over the last two years, religious groups across Kazakhstan have been subjected to raids, fines, and confiscation of literature. Between January and November 2013, authorities fined 123 individuals and sentenced two to short-term administrative detention for violating the religion law.^{vii}

On February 17, 2014, nine months after Bakhytzhan Kashkumbaev, a protestant pastor at Grace church in Astana, was arrested on the dubious charge of “intentional infliction of grievous bodily harm” to a congregation member, an Astana court sentenced him to a four-year suspended sentence and ordered him to pay 2 million tenge (\$10,800) in moral damages. Kashkumbaev denied any wrongdoing, and the woman whose health he allegedly “harmed” publicly stated that she had no complaint against him. In August, Kashkumbaev was subjected to a month of forced psychiatric observation, during which he was denied contact with his family and his lawyer (he was found to be in normal psychological health). Kashkumbaev’s lawyer told Human Rights Watch that the investigation and trial were marred by multiple procedural violations.^{viii}

Detention of Activists

Between 2009 and 2014, multiple civil society activists were arrested on what appear to be politically motivated charges and convicted in trials that did not meet international fair trial standards, highlighting the Kazakh government’s failure to fulfil recommendations accepted during its previous UPR to “continue to develop the rule of law” and “to ensure that all trials ... comply with international standards for fair trials.”

At the time of Kazakhstan’s previous UPR, the country’s most prominent human rights defender, Evgeniy Zhovtis, founding director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, was serving a four-year prison sentence following an unfair trial marred by serious procedural flaws that denied him the right to present a defense.^{ix} Zhovtis was released under amnesty in February 2012.

In July 2010, a court in Aktobe sentenced Aidos Sadykov, a long-time opposition political activist who had assisted oil workers in creating an independent union, to two years’ imprisonment for “hooliganism accompanied by resistance to the police,” in what appeared to be a politically motivated set-up. On May 27, 2010, Sadykov was arrested for attacking an unknown man, despite evidence that he was himself attacked and did not retaliate against the attacker. Sadykov was released under amnesty in April 2012.

In June 2012, a court in Aktau sentenced outspoken labor activists Rosa Tuletaeva and Maksat Dosmagambetov to 7 years and 6 years in prison, respectively, on charges of organizing mass riots in connection with the December 2011 Zhanaozen violence. Both Tuletaeva and Dosmagambetov had alleged they suffered torture in custody, but prosecutorial authorities declined to investigate their allegations. Tuletaeva’s sentence was reduced to 5 years on appeal, and in January 2014, she was transferred to a settlement colony. Both Tuletaeva and Dosmagambetov continue to serve their sentences as of this writing.

In October 2012, following a trial failing to meet international fair trial standards, authorities sentenced opposition leader Vladimir Kozlov, leader of *Alga!*, to seven-and-a-half years in prison on multiple charges, including “inciting social discord,” in connection with his alleged role in violent clashes in Zhanaozen. His sentence was upheld on appeal.

On December 7, 2012, civil society activist Vadim Kuramshin was sentenced to 12 years in prison on charges of extortion following a trial his lawyers say was marred by procedural violations and concerns his detention was in retribution for public criticism of the government.

Torture

While Kazakhstan adopted a torture prevention mechanism in 2013, thereby implementing one of the accepted UPR recommendations, it continues to have a poor record on torture and has not fulfilled the recommendations to “apply a zero-tolerance approach to torture” and to “adopt strict safeguards to ensure that no statement obtained through torture can be used in courts.”

This was especially apparent in the aftermath of the December 2011 Zhanaozen violence. People who witnessed or were subjected to physical abuse by police in custody between December 16 and 19 described how police variously kicked and beat with truncheons, stripped naked and walked on, and subjected to freezing temperatures detainees who had been brought into custody starting December 16, 2011. Human Rights Watch also documented the death of Bazarbai Kenzhebaev, 50, who was detained by police on December 16, held in custody until December 18, and who died on December 22 from injuries apparently sustained in custody. An Aktau court sentenced Zhenisbek Temirov, the former head of the Zhanaozen temporary detention facility, to five years in prison in relation to Kenzhebaev’s death, but no police officers were held accountable for the torture and beatings that brought about his death.

During the trial of oil workers and others charged with participating and organizing the Zhanaozen violence that concluded in June 2012, many of the defendants gave detailed accounts of alleged beatings and other ill-treatment and torture in custody by law enforcement officials, testifying that they were subjected to physical and psychological abuse by police and investigators, including beatings, suffocation, and threats of rape or harm to family members in order to coerce statements against themselves or others.^x Their allegations of ill-treatment and torture were not investigated in a manner capable of bringing the perpetrators to justice.

Labor Rights

The Kazakh government and three companies in the petroleum sector placed extensive restrictions on workers’ rights to organise and bargain collectively in advance of and during strikes in 2011 in western Kazakhstan.^x Kazakhstan’s constitution and labor code guarantee the right to strike, yet there is a broad prohibition on staging strikes in certain sectors of the economy, including in the railway, transport, and petroleum industries. In addition, workers are required to exhaust the cumbersome and lengthy mediation procedures for a strike to be considered legal. Human Rights Watch also documented mass dismissals of workers following the strikes, attempts by the authorities to break peaceful strikes, and the imprisonment of union leaders on politically motivated charges in trials that did not adhere to fair trial standards.

Under article 400 of the new Criminal Code (adopted in its first reading in parliament in January 2014) for “actions provoking continuation of an illegal strike,” authorities may

criminally sanction workers, including by imprisonment for up to two years, for encouraging others to continue to participate in a strike that has been declared illegal by a court. Imposing criminal sanctions on individuals whose actions are deemed by the authorities to “provoke continuation of an illegal strike” is not in line with Kazakhstan’s international human rights and labor rights obligations.^{xii}

Asylum Seekers and Refugees

Since the entry into force in January 2010 of the Law on Refugees, the Kazakh government renewed pressure on refugees and asylum seekers, especially those from Uzbekistan who are devout Muslims and fear religious persecution in Uzbekistan, thus failing to adhere to its pledge to “carry out all obligations arising from the principle of *non-refoulement*” made during its previous UPR in 2010.

On June 9, 2011, in blatant violation of the *non-refoulement* principle, Kazakh authorities extradited to Uzbekistan at least 28 men whom Uzbek authorities wanted on various anti-state and religion-related charges, despite interim measures from the United Nations Committee Against Torture (CAT) directing the suspension of extraditions and significant and credible evidence that the men risked being tortured if returned. The men had been detained a year earlier and were subsequently denied refugee status by Kazakh authorities. Serious due process violations marred judicial review of their refugee claims and extradition orders. Previously, in late 2010, Kazakh authorities had unlawfully extradited to Uzbekistan four other asylum seekers, and since then, have continued to extradite Uzbekistan nationals. For example, on March 13, 2013, authorities forcibly returned Khairullo Tursunov to Uzbekistan, ignoring a February 28 CAT communication to stall his extradition.

On May 30, 2011, Kazakh authorities extradited Ershidin Israil to China, despite the clear risk of torture he faced if returned. Israil, an Uighur refugee who had fled to Kazakhstan after the July 2009 Urumqi riots, was denied refugee status by Kazakh authorities.

Recommendations

Freedom of expression:

- Repeal or amend to be compatible with international human rights law article 164 of Kazakhstan’s Criminal Code – “inciting social, national, clan, racial, or religious discord or enmity” – as it fails to meet the principle of legality or necessity.
- Place a moratorium on criminal libel, take all necessary steps to abolish the relevant articles in the new Criminal Code relating to criminal libel, and establish a cap on civil defamation awards.

Freedom of assembly:

- Remove excessive restrictions on freedom of assembly and ensure the laws and regulations on demonstrations are in conformity with Kazakhstan’s international human rights obligations on freedom of assembly.
- Kazakhstan’s legislature should abolish article 10 of the Law on Freedom of Assembly.

Freedom of religion and belief:

- Issue an invitation to the UN Special Rapporteur on freedom of religion or belief.

- Review the 2011 religion law with a view to ensure that its provisions conform with the country's constitution and international human rights standards.

Detention of activists:

- Release Vladimir Kozlov on the basis that his conviction is unsound because it is based on vague charges and an unfair trial.
- Release from prison, pending full and impartial review of their cases, Vadim Kuramshin, Rosa Tuletaeva, and Maksat Dosmagambetov.

Impunity for torture:

- Promptly and impartially investigate all allegations of torture and ill-treatment in connection with the Zhanaozen violence and hold the perpetrators accountable.
- Review all June 2012 Zhanaozen-related convictions, given the widespread allegations by defendants at trial that they were subjected to ill-treatment and torture.

Labor rights:

- Respect and promote freedom of association and the rights of workers to form independent labour unions, conduct strikes, and collectively bargain with employers, in accordance with Kazakhstan's obligations under international human rights law, including by amending the Labor Code to bring it into conformity with International Labour Organization conventions 87 and 98.

Non-refoulement of refugees and asylum seekers:

- Ensure that all asylum seekers in Kazakhstan are given prompt access to careful, thorough, and individualized refugee status determination in which their due process rights are protected, and that no asylum seeker is returned to a place where she faces a real risk of *ill-treatment* or torture.

International Criminal Court:

- Ratify and implement the Rome Statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity, and war crimes before its national courts in accordance with international law.

ANNEXES – ENDNOTES

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- ⁱ On August 20, 2013, unidentified assailants seriously beat Igor Larra, a journalist with the independent newspaper *Svoboda Slova*, who has criticized local government officials and written on other sensitive issues. He was previously attacked for his reporting in 2010. In another case, on April 19, 2012, unidentified assailants attacked Lukpan Akhmedyarov, a journalist with the independent newspaper *Uralskaya Nedelya*, stabbing him eight times and shooting him with a traumatic (nonlethal) weapon. In a rare exception, a court in western Kazakhstan in July sentenced four men to up to 14 years in prison in April 2013 on charges of “attempted murder” in his case.
- ⁱⁱ HRW Letter to the Prosecutor General Regarding Proposed Amendments to the Criminal Code, September 16, 2013, <http://www.hrw.org/news/2013/09/16/kazakhstan-letter-prosecutor-general-regarding-proposed-amendments-criminal-code>.
- ⁱⁱⁱ “Growing Crackdown on Free Speech,” Human Rights Watch news release, December 12, 2013, <http://www.hrw.org/news/2012/12/13/kazakhstan-growing-crackdown-free-speech>.
- ^{iv} HRW Letter to the Prosecutor General Regarding Proposed Amendments to the Criminal Code, September 16, 2013, <http://www.hrw.org/news/2013/09/16/kazakhstan-letter-prosecutor-general-regarding-proposed-amendments-criminal-code>.
- ^v “Kazakhstan Lawyer Freed, Rights Restricted,” Human Rights Watch news release, March 14, 2012, <http://www.hrw.org/news/2012/03/14/kazakhstan-lawyer-freed-rights-restricted>.
- ^{vi} “Kazakhstan Allow Peaceful Protests,” Human Rights Watch news release, March 27, 2012, <http://www.hrw.org/news/2012/03/27/kazakhstan-allow-peaceful-protests>.
- ^{vii} Corley, Felix, “KAZAKHSTAN: At least 149 fines in 2013 – and counting,” *Forum 18*, November 11, 2013, http://forum18.org/archive.php?article_id=1895 (accessed February 19, 2014).
- ^{viii} In October, minutes after Kashkumbaev was released from custody under house arrest, authorities re-arrested him on additional religious extremism-related charges, including on charges of “inciting religious discord.” In an unexpected twist, however, after Kashkumbaev’s case went to court in January 2014, the prosecutor dropped all charges but “intentional infliction of grievous bodily harm.”
- ^{ix} A settlement colony is a penal establishment which allows for more freedoms than an ordinary prison.
- ^x “Kazakhstan: Suspend Trial, Investigate Torture Allegations,” Human Rights Watch news release, April 23, 2012, <http://www.hrw.org/news/2012/04/23/kazakhstan-suspend-trial-investigate-torture-allegations>.
- ^{xi} *Striking Oil, Striking Workers*, Human Rights Watch report, September 10, 2012, <http://www.hrw.org/reports/2012/09/10/striking-oil-striking-workers-0>.
- ^{xii} Given the broad prohibition on the right to strike and the burdensome collective bargaining requirements as outlined in Kazakhstan’s labor code, it is difficult to stage a legal strike in some sectors of the economy in Kazakhstan and impossible in others. For more information, see: HRW Letter to the Prosecutor General Regarding Proposed Amendments to the Criminal Code, September 16, 2013, <http://www.hrw.org/news/2013/09/16/kazakhstan-letter-prosecutor-general-regarding-proposed-amendments-criminal-code>.