



## Human Rights Watch Concerns and Recommendations on Kazakhstan

Submitted to the UN Human Rights Committee on the occasion of its Second Periodic Review of Kazakhstan

May 2016

Human Rights Watch welcomes the upcoming review of Kazakhstan by the Human Rights Committee (“the Committee”). This briefing provides an overview of Human Rights Watch’s concerns with respect to Kazakhstan’s compliance with the International Covenant on Civil and Political Rights (“the Covenant”). We hope it will inform the Committee’s review of Kazakhstan and that the concerns raised will be reflected in the resulting concluding observations, along with recommendations for specific steps the Kazakh authorities should take to remedy the problems identified.

Since Kazakhstan’s last periodic review in July 2011, the country has experienced a marked deterioration in the human rights situation in the country, in particular after December 2011, when violent clashes broke out in Zhanaozen, an oil town in western Kazakhstan, and police responded using lethal force, killing 12 people. In the aftermath of the violence, the government began a concerted crackdown on independent media outlets and government critics, and jailed an opposition leader for seven-and-a-half years. Kazakh authorities have continued to date to limit and restrict peaceful dissent, including by trying to silence government critics on vague and overbroad criminal charges.

### **Justice and Accountability for the December 2011 Zhanaozen Violence (Covenant arts. 2, 6, 7, 9, 14, 17)**

On December 16, 2011, police and people who had gathered on the central square that day, including striking oil workers, clashed in Zhanaozen, an oil town in western Kazakhstan and the site of extended and unresolved [labor strikes in the oil sector](#). In response to the violence, local police and government forces that were brought into Zhanaozen opened live fire on civilians,

killing 12 and wounding dozens of others, according to official figures. Three other individuals died in the violence, two as a result of bodily injuries and one in a related fire, according to the government reports. On December 17, police shot dead a protester in a neighboring town, Shetpe.

The security forces' use of force and firearms did not appear to be justified or proportionate.

The authorities carried out an investigation into the violence. In May 2012, five officers were convicted of "abuse of power." A total of 45 oil workers and demonstrators were [convicted](#) of participating or organizing mass riots in Zhanaozen and Shetpe following trials that did not adhere to international human rights standards, and that were marred by serious and credible allegations of ill-treatment and torture. Of the 45 convicted, 17 were imprisoned.

The Kazakh authorities' investigation into the Zhanaozen violence and the subsequent trial of five police officers fell far short of Kazakhstan's obligations under international law to ensure effective accountability for each of the grave violations to the right to life by state agents that occurred.

To date, Kazakh prosecutorial authorities have not initiated effective investigations into each of the individual killings that took place on December 16, 2011, in a manner that could establish how each person was killed and whether the state agents' use of force resulting in the death of unarmed civilians was lawful under international law, and that could assign any individual criminal culpability for each killing.

#### **Recommendations to the government of Kazakhstan:**

- *Take immediate steps to ensure accountability for the individual killings that were perpetrated during the December 2011 violence in Zhanaozen.*

#### **Torture and Ill-treatment (Covenant arts. 2, 7, 10, 14)**

Since Kazakhstan was last reviewed by the Committee, the government has taken several steps to address the problem of ill-treatment and torture, including, for example, adopting in July 2013 a National Preventative Mechanism under the Optional Protocol to the Convention on Torture. In mid-2014, the Coordination Council under the Office of the Ombudsman began to fulfill its mandate. Yet ill-treatment and torture remain common in places of detention in Kazakhstan, and impunity remains the norm. Kazakhstan's anti-torture coalition reports on dozens of complaints of torture each year.

Human Rights Watch [documented](#) serious and credible allegations of torture in the aftermath of the December 2011 violence in Zhanaozen. Between December 16 and 19, 2011, police detained hundreds of people in Zhanaozen, several of whom told Human Rights Watch that police kicked

and beat detainees with truncheons, stripped them naked, walked on them, and subjected them to freezing temperatures.

Human Rights Watch also documented the death on December 22, 2011 of [Bazarbai Kenzhebaev](#), 50, from wounds he sustained in police custody. Kenzhebaev had described to his family how police severely beat him, forced him to undress, lie face down on the floor and walked on him, stepping on his head. The former director of the Zhanaozen temporary detention facility was sentenced to five years in prison in May 2012, but those directly responsible for the beatings that led to Kenzhebaev's death have not been held accountable.

On June 4, 2012, an Aktau court convicted 34 oil workers and others on charges relating to violent clashes with police in December 2011, despite the use of testimony obtained by torture and ill-treatment. Defendants [testified](#) that guards and investigators subjected them to physical and psychological abuse, including beatings, suffocation, and threats of rape or harm to family members. The prosecutor's office declined to open a criminal investigation into their allegations, and to date, the authorities have not taken any meaningful steps to credibly investigate allegations of torture made by persons detained in connection with the 2011 Zhanaozen violence.

After 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. 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.

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 issued by the Committee on December 2010 directing the Kazakh government to refrain from extraditing the men to Uzbekistan based on the credible risk of torture they could face there 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. On March 13, 2013, authorities forcibly returned Khairullo Tursunov to Uzbekistan, ignoring a February 28 Committee communication to stall his extradition.

#### **Recommendations to the government of Kazakhstan:**

- *Affirm there are mechanisms in place to ensure that when defendants allege ill-treatment or torture, authorities immediately conduct effective investigations, that no evidence obtained through prohibited ill-treatment is allowed to be used in court except against*

*those who used torture, and that defendants who have been subjected to ill-treatment have an effective remedy.*

- *Impartially review the allegations of ill-treatment and torture that followed the December 2011 violence in Zhanaozen, and hold the perpetrators to account.*
- *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 he or she faces a real risk of ill-treatment or torture.*

## **Repression of Civil Society (Covenant arts. 7, 9, 10, 14, 17, 19, 21, 22)**

In recent years, authorities in Kazakhstan have engaged in a concerted crackdown on government critics. In particular, authorities have used the vague and overbroad criminal offense of “inciting social, national, clan, racial, or religious discord,” against critics, a charge that criminalizes behavior and speech protected under international human rights law. Kazakhstan has ignored calls to repeal or amend this charge to bring it in compliance with international standards, instead increasing maximum sanctions from 12 to 20 years in the new criminal code adopted in 2014.

In early 2012, authorities misused criminal [charges](#) to arrest labor and political opposition activists in the aftermath of the Zhanaozen violence, including Vladimir Kozlov, the leader of the unregistered opposition party *Alga!*, civil society activist Serik Sapargali, and oil worker Akzhanat Aminov. Outspoken oil workers, including labor rights activists Rosa Tuletaeva and Maksat Dosmagambetov, were convicted in June 2012 for participating or organizing mass riots and sentenced to seven and six years, respectively. In October 2012, in a politically motivated trial marred by due process violations and vague and overbroad criminal charges, including the charge of “inciting social discord,” a court sentenced [Kozlov](#) to seven-and-a-half years in prison. Sapargali and Aminov were sentenced to suspended sentences. While serving his sentence, Kozlov has been put into isolation for alleged prison regime violations.

In January 2015, an Almaty court convicted [activists](#) Ermek Narymbaev and Serikzhan Mambetalin of “inciting national discord” after they wrote Facebook posts about writings attributed to Murat Telibekov, another civil society activist. Narymbaev and Mambetalin were [sentenced](#) to three and two years in prison, respectively, but their sentences were converted on appeal and they were released in March with restrictions on their freedom. Also in January 2015, [activist](#) Bolatbek Blyalov was convicted of “inciting social discord,” for comments made on social media networks. In April 2014, a court convicted Saken Baikenov of the Antigepitil group, known for protesting Baikonur rocket launches, for “inciting ethnic discord” in Facebook posts. The court imposed restrictions on his liberty for two years. Previously, in August 2011, an Aktau court [convicted](#) a labor lawyer, Natalia Sokolova to six years in prison on charges of “inciting social discord” after

addressing oil workers on wage disparity. On appeal, her sentenced was reduced and she was released from prison.

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 amidst concerns his detention was in retribution for public criticism of the government, in particular at the OSCE Human Dimension meeting in Warsaw in September 2011.

Zinaida Mukhortova, a lawyer who in 2009 had alleged a member of parliament from the ruling party interfered in a civil case in which she was involved, was repeatedly subject to [forced psychiatric detention](#) in the years following. In August 2013 she was detained and [forcibly admitted](#) to a psychiatric hospital, violating her rights to liberty and security. She was initially denied access to her lawyer. Mukhortova was released from psychiatric detention on November 1.

Kazakhstan in December 2015 adopted amendments to the [law](#) on nongovernmental organizations (NGOs), which establishes a government “operator” through which all government and nongovernmental funding is distributed, and which has discretion over the dispersal of the funds. Under the law, NGOs are subject to burdensome reporting obligations, including an annual report to the “operator” on the organization’s financing and activities, or risk closure.

The authorities in 2012 amnestied a number of imprisoned activists, including Kazakhstan’s most prominent human rights defender Yevgeniy Zhovtis, union lawyer Natalia Sokolova, and political activist Aidos Sadykov.

#### **Recommendations to the government of Kazakhstan:**

- *Amend the overbroad and vague criminal charge of “inciting social, national, clan, racial, or religious discord” so that it meets international human rights standards; cease targeting outspoken government critics; and release opposition leader Vladimir Kozlov and carry out and impartial review of his case.*
- *Amend the law on nongovernmental organizations so that it meets international standards on freedom of association.*

#### **Restrictions on the Right to Peaceful Assembly (Covenant arts. 2, 9, 21)**

Freedom of peaceful assembly in Kazakhstan is highly controlled and restricted. 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 488 of the Administrative Code provides for up to 15 days’ detention for violating the law on public assemblies.

Individuals cannot stage peaceful protests without advance permission from the local mayor's office. They must apply at least 10 days in advance and specify “the goal, form, and location of the assembly or its route of movement, the time of its beginning and end, the estimated number of participants, the names of authorized persons [organizers] and persons responsible for public order, place of their residence and work [study], and the application date.” Any public meeting of a politically-sensitive nature that does not support government policies is likely to be denied a permit by the authorities. If permission is granted, public assemblies may only take place in designated areas far from the city center.

In practice, [protests](#) are broken up by police and [individuals](#) who are suspected of attending a protest can be rounded up in advance, and fined or sentenced to short-term detention.

A stark and recent example of the [heavy restrictions on peaceful assembly](#) took place on May 21, 2016, when law enforcement officers in cities across Kazakhstan aggressively broke up efforts to hold planned peaceful protests marking the people’s discontent over proposed amendments to the land code. Police detained hundreds of people, in some cases using force. Police also rounded up journalists and human rights activists who attempted to monitor and report on the unfolding events. In the week leading up to the planned protests, authorities [arbitrarily jailed](#) over two dozen activists for up to 15 days for allegedly violating the restrictive public assemblies law.

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai concluded after his visit to Kazakhstan in January 2015 that “the government’s approach to regulating assemblies renders that right meaningless.” Kazakhstan has ignored calls by multiple international and local human rights bodies to amend its law on peaceful assembly so that it is in compliance with international standards.

#### **Recommendations to the government of Kazakhstan:**

- *Amend the highly restrictive law on public assemblies so that it meets international standards to the right to peaceful assembly, and to cease detaining peaceful protesters for trying to exercise their fundamental right to express their peaceful views.*

#### **Restrictions on Freedom of Religion (Covenant art. 18)**

In October 2011, the government adopted a restrictive new law “On Religious Activities and Religious Associations” which 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 watchdog.

In the year following the adoption of the law, hundreds of small religious groups were forced to close as they were unable to meet the 50 person membership requirements for re-registration, compulsory under the new law. Since then, hundreds of individuals have been subject to fines and short-term detention in connection with violations of the restrictive religion law. Some people have faced criminal charges, including under the vague and overbroad charge of “inciting religious discord.”

On March 25, 2016, law enforcement officers simultaneously executed search warrants at five New Life church buildings in Almaty, as well as the homes of several of its leaders as part of a criminal investigation on charges of large-scale fraud, charges which church leaders deny. New Life church leaders told Human Rights Watch that the church has withstood various forms of harassment by the authorities over the last 10 years, including prior unsubstantiated accusations of criminal activity.

Kazakhstan in February 2013 banned the minority Islamic group Tablighi Jamaat as “extremist” and since then, authorities have imprisoned dozens of alleged members for belonging to a banned religious group. In January 2015, four were sentenced to 20 months in prison, and another to 18 months. In July 2015, Saken Tulbaev was imprisoned for four years and eight months for the vague offense of “inciting religious discord,” and for “membership in a banned religious organization.” He was banned from “activity directed at meeting the religious needs of believers” for three years after his release.

On May 17, 2013 Kazakh authorities arrested Bakhytzhan Kashkumbaev, a pastor at Grace Church in Astana, on dubious charges of “deliberately causing harm to health.” Authorities alleged that “under the guise of charitable and religious activity,” he caused psychological harm to one of the church members. In February 2014, Kashkumbaev was convicted of “intentionally inflicting grievous bodily harm” and handed a four year suspended sentence. In July 2013, he was subjected to a month of forced psychiatric observation. In November 2015, an Astana court sentenced Ykylas Kabduakasov, a Seventh-day Adventist, to seven years’ restricted freedom for “inciting religious discord.”

The government of Kazakhstan has ignored calls by local and international religious bodies, including the UN special rapporteur on freedom of religion who in April 2014, after his mission to Kazakhstan, recommended “far-reaching reforms” to the 2011 religion law, finding, for example, that “non-registered religious communities...suffer from serious infringements of their freedom of religion.”

**Recommendations to the government of Kazakhstan:**

- *Amend the 2011 restrictive religion law in line with international standards on the right to freedom of thought, conscience, and religion, and to allow peaceful religious communities to gather and worship without fear of harassment or sanctions by the authorities.*

## Repression of Media and Speech Freedoms (Covenant art. 19)

Kazakhstan has long restricted media freedoms and independent and opposition journalists face harassment and interference in their work.

Starting in late 2012, there has been a marked escalation in the government's [crackdown on independent and opposition media](#), with authorities shutting down independent outlets one after the other. In December 2012, courts, in rushed and perfunctory trials, banned the newspapers *Vzglyad*, *Golos Respubliki*, and their affiliated sites, and prohibited K+ and Stan.TV from broadcasting.

In 2013, several newspapers including *Pravda Kazakhstana* and *Tribuna*, were suspended for three months on technical grounds. In January 2013, the *Zhezkazgan* youth newspaper was ordered to close. In 2014, courts closed the newspaper *Pravdivaya Gazeta* in February and the [Assandi Times](#) in April. In December 2014, an Almaty court closed down [ADAM bol](#), an independent journal. In October, ADAM bol's successor publication, [ADAM](#), was shuttered for a language violation. These media closures have garnered significant international criticism, including by the OSCE Representative on Freedom of the Media, Dunja Mijatović.

In some cases, authorities have also targeted critical journalists with criminal charges. In May 2016, an Almaty court jailed [Guzyal Baidalinova](#), editor of *Nakanune.kz*, an independent online news site, for one-and-a-half years for allegedly "spreading false information." Authorities brought criminal libel charges against Amangeldy Batyrbekov, a civil society activist, who was jailed in October 2015 for 18 months. Also in October 2015, journalist Yaroslav Golyshkin was imprisoned for eight years on charges of "blackmail". The criminal case against Aleksandr Kharlamov, a journalist, opened in March 2013 on charges of "inciting religious discord" appears to remain open, although he was released from pretrial detention in September 2013. In mid-April 2013, Kharlamov was forced to undergo a month of [forced psychiatric observation](#).

Libel remains a criminal offense and journalists are forced to pay prohibitive fines in defamation lawsuits. Despite widespread calls to decriminalize libel and to amend the overbroad criminal offense of "inciting social, national, clan, racial, or religious discord", authorities increased sanctions for these offenses in the new [criminal code](#) in 2014. The government adopted implementing legislation in January 2014 that excessively restricts freedom of expression during [states of emergency](#). In April 2014, the government introduced criminal charges for "spreading



false information”. Media right watchdog *AdilSoz* reported an increase in civil and criminal defamation cases in the first half of 2014, including cases against Internet project *Insiderman* editor-in-chief Valeriy Surganov, and former *Assandi Times* journalist Natalya Sadykova.

Kazakh authorities block access to some websites in Kazakhstan. In December 2011, Kazakh authorities declared a [state of emergency](#) in Zhanaozen, and [temporarily blocked](#) several key websites, including Twitter, across Kazakhstan. During protests on May 21, 2016, and in the days after, the website of Radio Azattyk, the Kazakh branch of Radio Free Europe/Radio Liberty, was blocked in Kazakhstan. In November 2015, after many years, authorities unblocked access to LiveJournal, a blogging platform.

Journalists regularly face interference in their work, and authorities have tried to prevent journalists from covering peaceful protests. In April 2014, police tried to block journalists from covering a protest outside the Prosecutor General’s office in Astana, and in July, a journalist from Radio Azattyk was detained while covering a peaceful protest in Astana.

More than a dozen journalists reporting on May 21, 2016 protests in Kazakhstan were rounded up by police along with protesters in many cities, including Almaty, Astana, Karaganda, Uralsk, Shymkent, and Atyrau. Those detained included reporters for Radio Azattyk, and the Reuters and Interfax Kazakhstan news agencies. In most cases journalists were released soon after they presented their credentials to officers at police stations, but some were held for much longer. In Uralsk, for example, Radio Azattyk journalist Sanat Urnaliev was held for eight hours. Tamara Eslyamova, editor-in-chief of *Uralsk Weekly*, was also detained for about eight hours in Uralsk. At the end of the day, she was taken to court and fined approximately US\$316 for violating the public assembly law.

Journalists also face physical attacks and violence. For example, Igor Larra, a journalist in Aktobe who had criticized local government officials and written on other sensitive issues, was seriously [beaten](#) in August 2013 by unidentified assailants. Media rights watchdog *AdilSoz* reported that there were 9 attacks on journalists and media outlets in 2015; in 2014 – 16 attacks; in 2013 – 10 attacks; and in 2012 – 19 attacks. Authorities often fail to investigate such violence, and the attackers go free. In a rare exception, following the March 2012 [attack](#) by unknown assailants in Uralsk on independent journalist Lukpan Akhmedyarov, a court in July 2013 sentenced four men to up to 14 years in prison on charges of “attempted murder.”

In a [ruling](#) that served to chill freedom of expression and condone homophobia, an Almaty court in late October awarded 34 million tenge (US\$187,000) in damages against Havas Worldwide Kazakhstan, an advertising agency, for a poster featuring Kazakh composer Sagyrbauily

Kurmangazy kissing Russian poet Aleksander Pushkin. In September, the agency had been separately [fined](#) 314,000 tenge (\$1,730) after a court found the same poster “unethical”.

#### **Recommendations to the government of Kazakhstan:**

- *Decriminalize libel and the offence of “spreading false information”; cease its crackdown on independent and opposition voices; allow independent and opposition media outlets to operate in Kazakhstan; cease blocking online media platforms; improve measures taken to protect journalists and investigate attacks against them.*
- *Release Guzyal Baidalinova, who was sentenced to one and a half years in prison in May 2016 for “spreading false information”.*

#### **Restrictions on Freedom of Association for Trade Unions (Covenant art. 22)**

Workers’ right to freedom of association and collective bargaining in Kazakhstan are undermined and restricted, in particular by provisions in a trade union law and labor code adopted in 2014 and 2015, respectively.

In June 2014, Kazakhstan adopted a new law on trade unions that imposes restrictions on workers’ right to freedom of association and their right to organize, despite repeated calls by independent unions to amend the draft to bring it in line with international human and labor rights standards.

The trade union law imposes burdensome government regulation over the registration of trade unions. Under the law, trade unions are required to fulfill a two-step registration process. They must first register with the Ministry of Justice, after which, the union must confirm its status by proving its membership base and/or affiliation to a higher-tier union. By requiring trade unions to confirm their membership in higher-tier unions, the trade union law mandates trade union affiliation and limits freedom of choice with regard to trade union membership - violating the underlying principle of freedom of association.

Human Rights Watch has found that trade unions at the local, industrial, and national levels faced difficulties and delays trying to reregister in 2014 and 2015 in accordance with the law. Some trade unions, including the Confederation of Free Trade Unions of Kazakhstan (KSPK), were denied reregistration in 2015.

Workers in a range of industries in Kazakhstan face interference in organizing and effectively defending their interests in the workplace. Worker activists and trade union leaders in Aktau, Kokshetau, Shymkent, and Zhezkazgan said that they and their colleagues faced pressure for joining, or trying to join, independent trade unions, and had no sanction. They described instances when managers at their workplaces, with impunity, pressured employees not to join

new trade unions or to leave independent trade unions because of union-related activity, sometimes under threat of dismissal. Trade union leaders in western and southern Kazakhstan, regions with strategic industries, such as the petroleum industry, told Human Rights Watch that they have been subject to surveillance by the authorities. A few workers in Aktau and Shymkent told Human Rights Watch they have faced or have been threatened with criminal sanctions in response to their labor activism.

**Recommendations to the government of Kazakhstan:**

- *Amend the 2014 Trade Union Law so that it is consistent with international standards on freedom of association, and take meaningful steps to ensure and protect the space for independent trade union activism in Kazakhstan.*

**Discrimination and Violence on the Basis of Sexual Orientation and Gender Identity (Covenant arts. 2, 7, 9, 17, 26)**

Lesbian, gay, bisexual, and transgender (LGBT) people in Kazakhstan live in a [climate of fear](#) fueled by harassment, discrimination, and violence. They are faced with hostility in their homes and in public places, such as in parks and outside nightclubs. In many cases, the abuses suffered by LGBT people are immediately shrouded in shame due to homophobic attitudes.

State institutions fail to provide consistent care and protection and on the rare occasions when LGBT people report abuse to authorities, they often face indifference and hostility. LGBT people in Kazakhstan told Human Rights Watch they did not trust either of the national human rights institutions or other bodies, such as the courts, to fully safeguard their identity if they were to bring forth a complaint, and were thus reluctant to make use of them. Legal recognition of transgender people has become more difficult in recent years, with coerced sterilization now a prerequisite.

In March 2015, Kazakhstan’s parliament passed bills that sought to introduce a broad ban on “propaganda of non-traditional sexual orientation,” however, in May that year the “propaganda” legislation was found [unconstitutional](#) for being too vague. The Constitutional Council did not address the bills’ discriminatory elements.

**Recommendations to the government of Kazakhstan:**

- *Provide information on concrete measures it has taken to address discrimination on the basis of sexual orientation and gender identity, and to detail remedies available to lesbian, gay, bisexual and transgender people who face violence and discrimination by their families and/or law enforcement.*

- *Revise Kazakhstan's legal gender recognition procedure to eliminate abusive barriers to legal recognition such as coerced sterilization.*

For additional information, please see Human Rights Watch's Kazakhstan page:

<http://www.hrw.org/europecentral-asia/kazakhstan>.