



Human Rights Watch Concerns on Kazakhstan

Submitted to the UN Human Rights Committee on the Occasion of its Pre-sessional Review of Kazakhstan

July 2010

This memorandum provides an overview of Human Rights Watch's concerns with respect to the human rights situation in Kazakhstan, submitted to the United Nation Human Rights Committee ("the Committee") in advance of its pre-sessional review of Kazakhstan in July 2010. We hope it will inform the Committee's preparation for its upcoming review of the Kazakh government's compliance with its obligations under the International Covenant on Civil and Political Rights ("the Covenant").

While in the past several years the Kazakh government has taken a number of important and positive steps – including ratifying UN human rights instruments, cooperating with UN human rights bodies, and introducing some limited reforms to the criminal justice system, such as transferring the power to issue arrest warrants from the procuracy to judges – its human rights record has shown no signs of fundamental change in practice.

In the past six months, the government's human rights record has been marked by stagnation, and in some areas, outright setbacks. It maintains restrictive legislation on freedom of assembly, the media, and the internet, and at times blocks a number of websites and weblogs. It refuses to register the main opposition party *Alga!*. It has turned down appeals to reopen a case against the country's leading human rights defender, Evgenii Zhovtis, who is in prison following an unfair trial. And it has used national security interests to justify incommunicado detention and denial of access to legal counsel.

Human Rights Watch considers the upcoming Human Rights Committee review of Kazakhstan to be a crucial opportunity to highlight concerns and press for concrete human rights improvements in six key areas: freedom of expression, freedom of assembly, access to legal counsel in criminal proceedings, accountability for torture, the rights of migrant workers, and protection of refugees. A brief description of the main concerns in each of these areas is followed by a proposed set of steps the Kazakh government should be urged to take to effectively address them. Finally, this submission also highlights our profound concern about the continued imprisonment of Kazakhstan's leading human rights defender Evgeniy Zhovtis following an unfair trial, which we hope the Committee will use the occasion of its upcoming review to take up with the Kazakh authorities.

Freedom of Expression (Article 19)

In 2009 the government adopted some modest media reforms but then took a number of steps backward that undermined media freedoms. In February 2009, President Nursultan Nazarbaev signed into law a set of amendments that simplify the registration process for the electronic media by dropping the requirement that they register (which had duplicated some of the requirements for the licensing process) and eliminating the requirement that all media outlets reregister in the event of a change in editor-in-chief or legal address. The amendments also made it possible for media outlets to appeal to a court against refusal of requests for governmental information and allowed media workers to use audio recorders and cameras to collect information without permission of an interviewee.

The amendments are welcome, but do not address broader problems with media freedoms, such as the domination by government loyalists of broadcast media outlets, threats and harassment against independent journalists for criticizing the president or government's policies and practices, prohibitive penalties for civil defamation, and criminal penalties for libel.

On July 10, 2009 Nazarbaev signed another package of amendments to laws dealing with the media and the internet, under which all forms of internet content—including websites worldwide, blogs, and chatrooms—could potentially be considered “internet resources” and therefore subject to existing restrictive laws on expression. The law also expands the grounds for banning certain media content relating to elections, strikes, and public assemblies, using broad wording that could give rise to arbitrary interpretation.

On January 27, 2010 the Kazakh movement “For a Free Internet” stated that the authorities had blocked more than a dozen websites, including the popular Russian-language blogging platform Livejournal. The internet – and blogs in particular – play an important role in receiving and exchanging information freely in Kazakhstan because although there are some 2,500 media outlets in Kazakhstan, the government can in practice control most mainstream outlets through a variety of direct and indirect means. In May 2010 activists with the movement filed more than 120 complaints with the Ministry for Culture and Information regarding blocked websites, including LiveJournal.

Taken together, these developments maintain a chilling environment in which media outlets and journalists continue to work under the constant threat of lawsuits and crippling defamation penalties.

Among examples in which that threat was realized, Ramazan Yesergepov, editor of the newspaper Alma-Ata Info, was sentenced to three years in prison on August 8, 2009 for disclosing state secrets after the newspaper published an article making corruption allegations against local authorities based on classified documents. His trial was not open to the public, and he did not have access to a lawyer of his choice. Article 70 of Kazakhstan's Criminal Code provides for release on parole following the completion of one-third of a sentence, but Yesergepov's appeal was turned down on January 28, 2010. On May 25, 2010 the Supreme Court upheld his original sentence and he remains in prison to date.

On December 8, 2009, President Nazarbaev signed a law called, "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan Concerning Protection of the Rights of Citizens to Privacy." The law sets out a five-year prison term for publishing information about individuals' private lives, with no waiver for public-interest issues.

On February 1, 2010, the Almaty Medeu district court issued a ruling that banned media outlets from carrying any reports that could "damage the honor and dignity of Timur Kulibaev," the son-in-law of President Nazarbaev. The court ordered the seizure of all editions of Respublika, Golos Respubliki, Kursiv, Kursiv-News and Vzglyad that contained letters by an exiled former government minister and opposition leader, Mukhtar Ablyazov, accusing Kulibaev of corruption. After an international outcry, the court reversed its ruling on February 9, 2010 but the newspapers were not compensated for the seized editions.

Regarding freedom of expression, the Kazakh government should be urged to take the following steps:

- Place a moratorium on criminal libel, take all necessary steps to abolish the relevant articles in the Criminal Code relating to criminal libel, and establish a cap on defamation awards in civil suits;
- Stop any attempt to filter internet content or block access to websites, and refrain from adding further unwarranted restrictions to the law "On mass media;"
- Release Ramazan Yesergepov on parole and conduct an independent review of the charges against him.

Freedom of Assembly (Article 21)

Public assemblies are tightly controlled in Kazakhstan. 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, is likely to be relegated to city outskirts, denied a permit, or broken up by police.

Kazakhstan's law on public assemblies requires demonstrations as small as a one-person picket to be registered with the authorities at least 10 days in advance and requires detailed information about the demonstration, its goals, participants, and the like. It allows local authorities to "additionally regulate" public assemblies "with regard to local conditions," amounting to a virtual carte blanche to place undue limits on freedom of assembly.

According to monitoring conducted by the coalition of NGOs "Kazakhstan 2010," in 2009 80 per cent of all protests, gatherings and demonstrations were held without prior registration.

The National Human Rights Action Plan of the Republic of Kazakhstan 2009-2012 states that the legislation and law-enforcement practices regarding freedom of assembly "to some extent do not correspond to international standards". But so far, the government has made no effort to liberalize legislation on freedom of assembly; indeed it has yet to respond to a draft law submitted to the president's Commission on Human Rights by several Kazakh human rights groups in September 2007.

Several recent examples illustrate how the authorities are using this problematic law to prevent “undesirable” protests and public gatherings:

On March 26, 2010 the Administrative Court in Almaty sentenced Vladimir Kozlov, head of the organizational committee to register the party Alga!, to 10 days of administrative arrest. The judge found Kozlov guilty of holding an unsanctioned protest per article 373, paragraph 3 of the Code of Administrative Offences. Kozlov had distributed leaflets criticizing the trial and sentencing of Dzhakyshev – a high profile case of imprisonment which many believe is politically motivated– and calling for his release. Kozlov had distributed the leaflets along a pedestrian zone in Almaty called the “Arbat;” other individuals distributing commercial leaflets at the same time were not arrested.

On May 2, 2010 Yermek Narymbaev, leader of the *Arman* (Dream) social movement, was sentenced to 15 days’ administrative detention for holding an unsanctioned mass gathering with about 500 participants on May 1. During his detention he was additionally charged with resisting the police and offending the judge at his trial on May 2. On June 23, Almaty’s Bostandyk District Court sentenced him to four years’ imprisonment.

On June 22, 2010 the Administrative Court of Almaty fined Ekaterina Belyaeva, journalist of the Kazakh newspaper “Vzglyad,” to 50 MCI (about \$480). The judge found Belyaeva guilty of organizing and participating in an unsanctioned meeting, as well as willful disobedience of the authorities (articles 355, paragraph 2 and 373, paragraph 1 of the Code of Administrative Offences). Belyaeva came out to the Almaty city square called “Ploshad Nezavisimosti” holding a poster that read “President, give us our Constitution back!” protesting against the highly controversial, newly-passed law “On national leader.” The poster was immediately torn to shreds by police, but the “protestant” was captured and taken away by force to Bostandyk office of Internal Affairs of Almaty city. Earlier, two employees of the Kazakh Bureau for Human Rights and the Rule of Law, Sergei Duvanov, a journalist, and Andrey Sviridov, a website editor, received the same penalty for the same “unlawful act”.

Regarding freedom of assembly, the Kazakh government should be urged to take the following steps:

- Remove excessive restrictions on freedom of assembly, including by abolishing unnecessary limitations to locations where demonstrations can take place;
- Ensure the laws and regulations on demonstrations conform with Kazakhstan’s international human rights obligations on freedom of assembly.

Access to legal counsel during criminal proceedings (Article 9)

In several high profile cases Kazakhstan’s Committee for National Security (KNB) has deprived defendants of their right to legal counsel of their own choosing on grounds that lawyers must have a special clearance to have access to cases involving state secrets.

In summer 2009, the KNB made an attempt to disbar defense lawyer Daniyar Kanafin, after he had publicly stated that the KNB violated national as well as international legislation by preventing him from meeting his client—Mukhtar Dzhakyshev, president of KazAtomProm, a state-owned nuclear company— because Kanafin did not have special clearance. Dzhakyshev was arrested on May 21, 2009. On July 7, 2009 the KNB sent a request to the Almaty Bar Association and to the Almaty Department of Justice to disbar

Kanafin on the grounds that he publicly criticized Kazakhstan and created a negative perception of the authorities. On July 22, 2009 the Almaty Bar Association decided not to disbar Kanafin. However, Kanafin remains unable to access his client.

Dzhakishev and his bodyguard Talgat Kyztaubaev were sentenced in March 2010 to, respectively, 14 and 5 years in prison, following a closed trial without the presence of a lawyer of their own choice. Dzakishev was convicted on charges of receiving bribes and embezzlement, and Kyztaubaev of embezzlement. Both men have made allegations of torture and ill-treatment that the court did not examine.

Another seven men who are witnesses in the case, including Dmitry Parfenov, vice president of KazAtomProm, have been held by Kazakhstan's Committee for National Security (KNB) in safe houses – first in Astana and now in Almaty – allegedly within the framework of Kazakhstan's witness protection program. The restrictive measures applied to protect them in Astana were slightly lifted following their transfer to Almaty. Currently the men are allowed to move around in the presence of a bodyguard and permitted to see their families, but at night they need to stay in a flat rented by the KNB. They are not permitted to work. Close to a year since they were detained, the men continue to be held by the KNB without having been officially charged with a crime. Neither of the men has access to legal counsel of their own choosing. Instead the KNB has provided them with state defense lawyers who enjoy special security clearance.

Regarding access to the legal counsel, the Kazakh government should be urged to take the following steps:

- Ensure that the KNB cannot deny defendants the right of access to legal counsel of their choice and the ability to prepare a defense as provided under international law.

Torture and ill-treatment (Articles 2, 7 and 10)

Torture is widespread and its perpetrators in most cases enjoy impunity. After his visit to Kazakhstan in May 2009, Manfred Nowak, UN Special Rapporteur on Torture, concluded that the “use of torture and ill-treatment certainly goes beyond isolated instances.” He raised concern about the lack of effective protection mechanisms for those seeking redress for torture, referring to the fact that the majority of police, remand prison, and prison chiefs he had talked to had not received any complaint or heard about torture allegations. Contrary to international standards, there is no independent body mandated to undertake prompt investigations into torture allegations.

The November 19, 2009 decision of the European Court of Human Rights in *Kaboulov v. Ukraine* illustrates the seriousness of the failure of Kazakhstan's authorities to prevent torture. The court found that any criminal suspect in Kazakhstan is at risk of torture due to the lack of safeguards.

Regarding accountability for torture and ill-treatment, the Kazakh government should be urged to take the following steps:

- Implement in full, and as a matter of urgent priority, the July 2008 decision of the UN Human Rights Committee and recommendations made by other international monitoring bodies pertaining to torture;

- Create an independent body to investigate torture allegations and ensure that the perpetrators of torture are prosecuted and punished.

Abuses faced by migrant agricultural workers in Kazakhstan (Article 8)

In 2009, Human Rights Watch interviewed migrant workers employed in tobacco farming in the Enbekshikazakh province of Almaty province and migrant workers employed in cotton farming in southern Kazakhstan. In tobacco farming, we found a range of labor and other abuses against children and adult workers. In both tobacco and cotton farming we found numerous cases of child labor.

Migrant tobacco workers

Migrant tobacco workers from Kyrgyzstan told Human Rights Watch how the Kazakhstani farmers who employed them did not provide them with written employment contracts and did not pay regular wages during their eight to nine months of employment. Instead, the landowner paid one member of a migrant worker family, often the male head of household, a lump sum payment at the end of the tobacco harvest. Other family members who worked on the farm, including both children and other adults did not earn any direct payment for their work.

In numerous cases, migrant workers stated that employers confiscated their passports, which in many cases served as a means of coercing the workers to remain on the farm through the entire tobacco season. In the worst cases, Human Rights Watch believes that the evidence they collected indicates that passport confiscation, coupled with the single end-of-season payment structure, led to migrants being trapped into forced labor or situations analogous to forced labor. In these cases, employers required the migrant workers to perform other work, without pay, in addition to tobacco farming.

Child labor

Migrant agricultural workers often travel together and work as families. Human Rights Watch found the use of child labor in tobacco and cotton farming among migrant workers in Kazakhstan common, with children as young as 10 working. Owing to the difficulty of the work and the risks associated with exposure to pesticides, and, in the case of tobacco, hazards associated with the handling of tobacco leaves, experts agree that tobacco and cotton farming are two of the worst forms of child labor, or sectors in which children under 18 are categorically prohibited from working.

For these reasons, we would request that the following questions be put to the government as part of the upcoming review, in addition to those already enumerated by the Committee:

- What measures is the government taking to protect migrant workers from forced labor, or practices of debt bondage or trafficking?
- What measures is the government taking to ensure children and young persons, including children of migrant workers, are protected from economic and social exploitation amounting to forced labor or servitude?

Protection of Uzbek asylum seekers and refugees from arbitrary detention and refoulement (Articles 7 and 9)

Human Rights Watch has received troubling reports over the last month that migration officials in Kazakhstan have detained and threatened with forced return Uzbek nationals

who in recent months have registered as asylum seekers. More than 70 asylum seekers and refugees signed a letter to Human Rights Watch stating that when they apply for asylum, migration officials try to tell them that they have nothing to fear back home.

Between June 9 and 11, 2010 Kazakh authorities carried out massive round-ups of more than 40 Uzbek nationals, almost all of whom are registered asylum seekers with the Kazakh authorities. At this writing, some 30 of them remain in detention, reportedly pursuant to extradition requests from Uzbekistan. According to information received by Human Rights Watch, the individuals in question are devout followers of Islam and have fled Uzbekistan because they fear persecution based on their religious affiliation.

Kazakhstan is currently in the process of reconsidering the informal agreement it previously had with UNHCR. Under this prior agreement, citizens of Uzbekistan and several other countries could file asylum claims directly with UNHCR without applying first to Kazakh migration authorities, and Kazakh authorities accepted recognized UNHCR asylum seeker certificates as grounds for legal stay in Kazakhstan. Under the evolving new system, asylum seekers must obtain asylum seeker status directly from the Kazakh migration authorities. This has caused considerable anxiety among Uzbek asylum seekers in Kazakhstan.

Regarding the detention and threats of forced return of Uzbek asylum seekers and refugees, the Kazakh government should be urged to:

- Respect its absolute obligation under the Covenant and other international treaties not to return anyone to risk of torture or ill-treatment;
- Clarify the grounds for the detention of all those rounded up between June 9 and 11, grant them immediate access to legal counsel and if necessary to an asylum determination proceeding, and grant UNHCR access to these individuals;
- Ensure refugees and asylum seekers in Kazakhstan can enjoy their rights under international law.

The case of Evgeniy Zhovtis (Articles 9 and 14)

Of particular concern is the continued imprisonment of the country's leading human rights defender Evgeniy Zhovtis following an unfair trial. On September 3, 2009 Zhovtis, founding director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, was found guilty of manslaughter following a motor vehicle accident in which a young man was killed. The investigation and trial leading to his conviction were marred by serious procedural flaws that denied him the right to present a defense and gave rise to concern that this human tragedy may have been politically exploited.

Zhovtis was sentenced to four years in a colony-settlement, a penal establishment allowing more freedoms than an ordinary prison, for example the right to work and settle outside the colony, subject to the discretion of the establishment's director. The director of the facility in Ust-Kammenogorsk where Zhovtis is serving his sentence chose not to allow Zhovtis to live or work outside and instead offered him low-paying work in the colony that does not correspond to his qualifications as a lawyer. According to a complaint Zhovtis filed with the prosecutor general of Kazakhstan, the administration issued Zhovtis disciplinary warnings after he refused to sign contracts for this work. To avoid further harassment and official warnings by the prison authorities Zhovtis felt forced to sign a work arrangement in January.

On January 28, 2010 the defense team for Zhovtis submitted an appeal to the Supreme Court of Kazakhstan requesting a review of the case against him, arguing that it did not comply with national law and international standards. The Supreme Court rejected the appeal on April 26, 2010. In a May 8 statement Zhovtis announced he would take his case to the UN Human Rights Committee.

Regarding the case of Evgeniy Zhovtis, the Kazakh government should be urged to take the following steps:

- Open a new investigation in which Zhovtis is allowed to exercise his rights as a suspect fully;
- Release Zhovtis pending a new investigation;
- Immediately stop Zhovtis' harassment in detention and guarantee him the full rights to which inmates of a colony-settlement are entitled.

For further information, please find below the link to Human Rights Watch's country page on Kazakhstan: <http://www.hrw.org/en/europecentral-asia/kazakhstan>.