



UPR Submission

Kazakhstan

September 2009

Summary

This submission highlights a number of key areas of concern regarding Kazakhstan's compliance with its international human rights obligations. In the past several years the government has made a number of important and welcome steps, but these have not amounted to meaningful reform to address the country's human rights problems. The government ratified the International Covenant on Civil and Political Rights (ICCPR) in 2006 and the Optional Protocol to the Convention against Torture in 2008, issued a declaration recognizing the competence of the United Nations Committee Against Torture to consider individual complaints and invited the Special Rapporteur on torture in May 2009, signed (though did not yet ratify) the Optional Protocol to the ICCPR, and introduced some limited reforms to the criminal justice system.¹ But it has shown no signs of fundamental change in practice.

Instead, the government has further tightened control over independent media and the internet, interfered with the political opposition (among other things, by refusing to register a major opposition party), launched politically motivated lawsuits against its critics, and adopted a number of laws that restrict civil and political rights. The government's failure to implement meaningful reforms guaranteeing rights in key areas such as freedom of expression, freedom of assembly, freedom of religion, and access to legal counsel is outlined below.

Freedom of Expression

On February 6, 2009, Kazakhstan's President Nursultan Nazarbaev signed into a law a set of amendments affecting the media. They simplify the registration process for the electronic media by dropping the requirement that they be registered by the Ministry of Culture and Information (which had been duplicative of some of the requirements of the licensing process) and dropping the requirement that media firms be reregistered in the

¹ In March 2008 the parliament adopted a law transferring the power to issue arrest warrants from the procuracy to judges. Local human rights organizations criticized the law because of three provisions: first, the judge who issues the warrant could subsequently be the same judge who considers the case. Second, the hearing regarding the arrest warrant is a closed procedure not open to public monitors. And third, the judge will review only the formal grounds for the arrest and not examine the underlying evidence supporting the arrest. In July 2008 the Supreme Court published a normative conclusion that a court issuing an arrest warrant must provide grounds for the arrest and the legality of detaining a criminal suspect. Human Rights Watch electronic correspondence with Evgeniy Zhovtis, director, Kazakhstan International Bureau for Human Rights and the Rule of Law, to Human Rights Watch, November 19, 2008..

event of a change in editor-in-chief or legal address. The measure reduces bureaucracy for electronic media, but does nothing to reduce bureaucracy or otherwise liberalize the legislation for other forms of media. The amendments also made it possible for the media to appeal to court against denials of governmental information, and allowed media workers to use audio recorders and cameras to collect information without asking permission of an interviewee.

The amendments are a welcome. However, they 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 policies and practices, and the existence of criminal penalties for libel. Together, these factors create a chilling environment in which journalists are faced with the constant threat of lawsuits and, not infrequently, direct threats to their person.

A recent case of particular concern is the conviction of Ramazan Yesergepov, editor of the newspaper *Alma-Ata Info*. The newspaper had published an article that contained corruption allegations against the authorities in Taraz province, based on classified documents of the National Security Committee of Kazakhstan dated November 2008. Yesergepov was arrested on January 6, 2009 and charged with disclosing state secrets. On August 8, 2009 he was handed a three-year prison sentence in a closed trial. He did not have access to legal counsel of his own choosing.² Miklos Haraszi, the Organization for Security and Co-operation in Europe's (OSCE) Representative on Freedom of the Media, has urged the Kazakh authorities to "overturn Ramazan Yesergepov's sentence," arguing that "Criminal sanctions for 'breach of secrecy' should only apply to the officials whose job descriptions stipulate the duty to protect sensitive information, but not to citizens who transmitted or published that information."³

Moreover, on July 10, 2009 President Nazarbaev signed yet another new law, a package of amendments to laws dealing with the media and the internet. The overall effect of these amendments is to nullify the very modest improvements brought about by the amendments signed in February 2009.

The new law extends the potential scope of criminal libel to all forms of internet content - including websites worldwide, blogs, chat rooms, and the like - as they could be considered "internet resources." The law also prohibits the media from certain types of engagement in political matters, including "the use of the media in order to interfere with election campaigns; to obtain certain election results; and to campaign when it is not allowed; to force someone to participate, or desist from participating in a strike; and to violate the law on conducting peaceful assemblies." It also bars foreigners, foreign entities, and international organizations from using the media "to complicate or support the nomination or election of candidates, political parties, party lists." The wording of these bans appears to target many forms of political discussion, and is so broad that it could easily give rise to arbitrary interpretations.

Freedom of Assembly

Public assemblies are tightly controlled in Kazakhstan, and the government has made no effort to liberalize legislation on freedom of assembly. Any public meeting of political nature that is not organized directly or indirectly by the government, or that is not in

² For more details on the issue of access to legal counsel, see below in this document.

³ OSCE Representative on Freedom of the Media, Imprisonment of journalist violates Kazakhstan's commitments, August 11, 2009, www.osce.org/fom/item_1_39224.html (accessed August 28, 2009).

support of government policies, is likely to be 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 relevant municipality mayor's office at least 10 days in advance, and requires detailed information about the demonstration, its goals, participants, and the like.⁴

Article 10 of the Law "On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan" allows local authorities broad latitude to "additionally regulate the procedure for conducting gatherings, meetings, marches, pickets and demonstrations with regard to local conditions." It provides the authorities a virtual carte blanche to limit freedom of assembly. Going back to the 1995 presidential ordinance on which the law is based, the authorities have used this power to designate remote spaces as the only permissible sites for "opposition" gatherings;⁵ to manipulate or refuse access to those sites; to falsely accuse citizens of assembling when they are merely together on a street; and to harass those who monitor protests in an effort to document any abuses.

The authorities are using this problematic law to prevent "undesirable" protests and public gatherings. For example, on February 13, 2009 several citizens' groups and political parties made coordinated applications to the mayor's offices in 12 cities all over Kazakhstan to hold protests on February 25, but not a single group received permission.⁶ The regional offices of the opposition party Azat had planned meetings for February 21 all over Kazakhstan but received permission for Almaty only;⁷ the authorities of the other regions denied the protest for various reasons, mostly because other events were scheduled for exactly the same day and time. Azat repeated the "experiment" a week later with the same results: allegedly sports and cultural events were planned for the same time and day in those places.⁸

In another example, on April 21, 2009, 12 activists with the youth human rights organization Ar.Rukh.Khak were detained by police for three hours when they tried to meet with journalists at the main square in Almaty. They had organized the gathering in order to brief the journalists about their concerns regarding draft amendments to a law that would require pupils and students to undergo mandatory drug testing. Bakhytzhan Toregozhina, head of Ar.Rukh.Khak, told Human Rights Watch that the prosecutor's office had learned about the planned gathering through an announcement in an email list: "It was not the first time this happened to us and will not be the last time. We could even do an experiment now and announce something via email and then they [the authorities] will come here shortly before the event."⁹ Only four days after the above-described incident,

⁴ Law "On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan," art. 3, unofficial translation by Human Rights Watch.

⁵ For example, in May 2002 the municipal council of Astana designated two areas outside the city center and hard to reach by public transport for assemblies. In July 2005 the Almaty municipal council designated an area for "nongovernmental activities of a social and political nature," which took at least 40 minutes to reach from the city center by public transport. In Karaganda, the designated area for gatherings is also at the outskirts of the city. The local council of Taldy-Korgan, in eastern Kazakhstan, issued a recommendation to the local government to require all public demonstrations to take place outside the city limits.

⁶ Human Rights Watch interview with Vladimir Kozlov, Alga!, Almaty, March 3, 2009.

⁷ Azat, "The Oblast branch of Azat was again rejected for holding a meeting" («Областным филиалам партии „АЗАТ“ вновь отказано в проведении митингов»), February 25, 2009, www.azat-party.info/activity/pressrelease/2009/02/25/pressrelease_2641.html (accessed April 14, 2009).

⁸ Ibid.

⁹ Human Rights Watch telephone interview with Bakhytzhan Toregozhina, Ar.Rukh.Khak, April 27, 2009.

Ar.Rukh.Khak activists were detained when they planned to participate in a “flash mob” against the draft internet law in April 2009.

Freedom of Religion

On February 11, 2009, Kazakhstan’s Constitutional Council ruled that a proposed law “On introducing changes and additions to certain legislative acts on issues of freedom of religion and religious associations” (hereinafter, proposed religion law) would violate the constitution.¹⁰ One of the key elements of the ruling was its finding that certain provisions in the proposed law “do not ensure equality between religious communities”—specifically “religions previously not known in the Republic of Kazakhstan”—and that many provisions are vague and thus might create problems for implementation. The ruling did not elaborate which provisions were vague.¹¹

If adopted, the amendments would have seriously and unjustifiably restricted the right to freedom of thought, conscience, and belief. They proposed controls on religious freedom, including provisions to tighten registration requirements for religious communities, restrict missionary work and the distribution of religious literature, and penalize “unapproved” religious activities.¹²

The Constitutional Council’s ruling stopped a legislative process that had started in January 2007, came to a halt in June 2007, and resurfaced in spring 2008.¹³ Local human rights groups and smaller religious communities welcomed the Constitutional Council’s decision. However, in meetings with a Human Rights Watch representative in March 2009 they expressed concern that the government might again attempt to restrict religious freedom as soon as international attention on the issue has subsided.¹⁴ Their fear is not baseless: on at least one occasion the government has enacted a law containing provisions to which the Constitutional Council had previously raised objections.¹⁵

¹⁰ For details on the ruling see Constitutional Council of the Republic of Kazakhstan, On the review of the Law of the Republic of Kazakhstan “On introducing changes and additions to certain legislative acts on issues of freedom of religion and religious associations,” Normative Decree of the Constitutional Council of the Republic of Kazakhstan, no. 1, February 11, 2009 (Ruling of the Constitutional Council) (О проверке Закона Республики Казахстан «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам свободы вероисповедания и религиозных объединений» на соответствие Конституции Республики Казахстан), www.constcouncil.kz/rus/resheniya/?cid=10&rid=476 (accessed April 14, 2009).

¹¹ *Ibid.*, points 2 and 4.

¹² For more details, see Human Rights Watch, *An Atmosphere of Quiet Repression: Freedom of Religion, Assembly and Expression in Kazakhstan*, 1-56432-417-6, December 2008, www.hrw.org/en/reports/2008/12/01/atmosphere-quiet-repression-0, pp. 13-16.

¹³ On November 26, 2008, parliament had adopted the new draft law, one day “after an ODIHR expert team agreed with the Justice Ministry’s Committee on Religious Affairs in Astana to prepare a review of the amended draft of the law.” “OSCE/ODIHR disappointed about hasty adoption of Kazakh law on freedom of religion,” ODIHR press release, Warsaw, November 26, 2008, http://www.osce.org/odihr/item_1_35097.html (accessed May 4, 2009).

¹⁴ Human Rights Watch interviews with Evgeniy Zhovtis, Bureau for Human Rights and Rule of Law, and Ninel Fokina, Almaty Helsinki Committee, Almaty, March 2, 2009.

¹⁵ In 2002 the government proposed amendments to the 1992 religion law that would have, among other things, banned the activity of unregistered religious communities and required registration for missionary activities. In April 2002 the Constitutional Council found these provisions unconstitutional. But similar provisions appeared in two subsequent laws: the law signed by President Nursultan Nazarbaev in February 2005 “On combating extremism” and “Introducing changes and amendments to several legislative documents in the Republic of Kazakhstan on issues relating to combating extremist activities,” and a law signed by President Nazarbaev in July 2005 on enhancing national security. For more details of all amendments see Forum 18, “Kazakhstan: Religious Freedom Survey,” December 2005, www.forum18.org/Archive.php?article_id=701 (accessed November 22, 2008).

Access to legal counsel

In several high profile cases in 2009 Kazakhstan's Committee for National Security (KNB) has deprived defendants of their right to legal counsel of their own choosing on the grounds that in cases involving state secret lawyers must have a special clearance. Yet, the Kazakh legislation does not provide for such a clearance. Article 16 (3) of the Constitution states that "Every person detained, arrested and accused of committing a crime shall have the right to the assistance of a defense lawyer (defender) from the moment of detention, arrest or accusation." And Article 14 of the ICCPR, to which Kazakhstan is a party states that everyone charged with a criminal offence shall have the right "to communicate with counsel of his own choosing".

Moreover, the KNB recently made an attempt to disbar defense lawyer Daniyar Kanafin, after he had publicly stated that the KNB violated the national as well as international legislation by preventing him from meeting his client Mukhtar Dzhakishev, president of KazAtomProm, a state-owned nuclear company, 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 creates a negative perception of the authorities. On July 22, the Almaty Bar Association decided not to disbar Kanafin.¹⁶ However, Kanafin remains unable to access his client.

On June 3, 2009 Natalya Yemelyanova, wife of Dmitry Parfenov and Maria Geguchadze, wife of Malkhaz Tsotsoria approached Human Rights Watch with concerns about the wellbeing of their husbands. Both men are vice presidents of KazAtomProm and are currently held by the KNB in "safe houses" in Astana – allegedly in the framework of a witness protection program – based on article 100 of the Criminal Procedure Code. They are not officially arrested or charged with any 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. Both the KNB and the state defense lawyers put pressure on the wives not to approach the international community "if they do not want to worsen the situation of their husbands". The wives are concerned that their husbands may be subjected to ill-treatment and torture.¹⁷

Recommendations

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

- 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.
- 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."

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

¹⁶ Radio Azattyk, "Коллегия адвокатов отказалась лишать Канафина лицензии", July 23, 2009, <http://rus.azattyq.org/content/news/1783435.html> (accessed August 28, 2009).

¹⁷ Human Rights Watch interview with Natalya Yemelyanova and Maria Geguchadze, Almaty, June 3, 2009; electronic corespondence on June 16, 2009 and August 29, 2009 as well as a telephone interview on August 28, 2009 with Natalya Yemelyanova.

- 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.

Regarding freedom of religion and belief, the Kazakh government should be urged to:

- Issue an invitation to the United Nations Special Rapporteur on freedom of religion or belief.
- Ensure that any future amendments to the religion law are in conformity with the country's constitution and international human rights standards. Kazakhstan's parliament should send any future draft amendments of the religion law to the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Venice Commission for review and comments, and commit to including those comments in the review of any forthcoming legislation affecting freedom of religion.

Regarding the right to access to counsel, the Kazakh government should be urged to:

- Ensure that the Committee for National Security (KNB) cannot deny defendants the right to access to legal counsel of their own choice and ability to prepare a defense as provided under international law.