

## Submission for the Universal Periodic Review of Kazakhstan

March 2019

Kazakhstan's poor human rights record has regrettably deteriorated since its Universal Periodic Review (UPR) in October 2014. Authorities cracked down on peaceful protests critical of government policies, and in mid-2016 jailed activists Maks Bokaev and Talgat Ayan each for five years for peacefully expressing their views. Following the adoption of a restrictive trade union law in 2014, authorities shut down the largest independent trade union and jailed two trade union leaders. Despite government promises to amend the trade union law, it remains unchanged. Authorities have released some imprisoned activists on parole, but politically-motivated prosecutions continued, including on the vague and overbroad charge of "inciting discord." A court banned an opposition movement as "extremist" and authorities have targeted its supporters, including with criminal sanctions. Impunity for torture and ill-treatment in detention persist. Lesbian, gay, bisexual, and transgender (LGBT) people continue to face discrimination. Free speech was suppressed, and independent journalists harassed or prosecuted for their work. Kazakhstan ratified the Convention on the Rights of Persons with Disabilities, but children with disabilities do not enjoy quality, inclusive education. Kazakh authorities strictly control freedom of religion under a 2011 religion law.

### Civil Society

Following its second UPR in 2014, Kazakhstan accepted several recommendations to clearly define in law the criminal offense of "incitement to national, ethnic or racial enmity or discord." Yet, Kazakh authorities have taken no steps to narrow the vague and overbroad criminal charge of "inciting discord," and instead continue to misuse overbroad criminal legislation in an attempt to silence government critics. According to the Prosecutor General's office, 57 people were charged with "inciting discord" in the first half of 2018.

In March 2019, authorities placed activist Serikjan Bilash under house arrest on suspicion of "inciting national discord." Bilash is an ethnic Kazakh activist and head of the Atajurt human rights group, which documents abuse and arbitrary detention of Turkic Muslims, including ethnic Kazakhs, in Xinjiang, China. If convicted, Bilash faces up to 10 years in prison. In March 2018, authorities charged Shymkent-based activist Ardak Ashim with "inciting discord" for her critical social media posts, and forced her into court-sanctioned psychiatric detention for treatment. After two months, in May 2018, a court ruled to excuse her from criminal liability and freed her from detention.

Authorities imprisoned Maks Bokaev and Talgat Ayan, activists who peacefully protested against proposed land code amendments in May 2016, for five years on multiple spurious criminal charges, including "inciting social discord." In April 2018, authorities released Ayan on parole. In September 2018, authorities transferred Bokaev to a prison in Aktobe, a thousand kilometers closer to his home, making it easier for family visitations. However Bokaev remains unjustly imprisoned.

Authorities have also used Criminal Code Article 274, which broadly prohibits "disseminating knowingly false information," to try and silence critics. For example, in July 2018, authorities in Pavlodar opened a criminal investigation on charges of "disseminating knowingly false information" against the human rights activist Elena Semenova, and placed her under house arrest. Semenova had earlier in July given testimony to European Parliament members (MEPs) in Strasbourg about prison conditions. In December 2018, authorities withdrew the charges and closed the case.

During its previous UPR, Kazakhstan accepted several recommendations to guarantee a flourishing civil society and to respect freedom of association. However, the Law on Public Association continues to require all public associations to register with the Ministry of Justice. In December 2015, amendments to nongovernmental organization-related legislation were passed into law, imposing burdensome reporting obligations and state regulation of funding through a

government-appointed body. People engaging in activities in unregistered organisations may face administrative and criminal sanctions.

In March 2018, a court banned the unregistered opposition movement Democratic Choice of Kazakhstan (DVK), finding the group's activities "extremist." Since then, authorities increased harassment of perceived or actual DVK supporters. Several individuals were prosecuted or faced charges for allegedly supporting or financing the banned opposition group, including Murat Tungishbaev, an activist wrongfully extradited from Kyrgyzstan in August 2018, having been charged in April 2018 with financing DVK. The investigation is ongoing.

#### Recommendations

- Release civil society activist Max Bokayev convicted after protesting land reform proposals, and quash his conviction. Also quash the conviction of Talgat Ayan;
- Amend Criminal Code article 174 on "inciting social, national, clan, racial, class, or religious discord" by narrowing it to prevent arbitrary prosecutions that violate human rights norms;
- Repeal Criminal Code Article 274, which broadly prohibits 'disseminating knowingly false information;'
- Immediately release Murat Tungishbaev and Serikjan Bilash in the absence of being able to promptly bring any legitimate charges on the basis of credible evidence of wrongdoing;
- Implement the recommendations of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, review the Law on Public Association to ensure compliance with international human rights standards;
- Put an end to all forms of arbitrary detention, reprisals and harassment against human rights activists, civil society organisations, and political opposition movements, including against actual or perceived supporters of DVK.

#### **Media Restrictions**

During its previous UPR, Kazakhstan accepted many recommendations to take "measures to ensure freedom of expression and independence of the media," and to stop the practice of blocking opposition print publication and online resources. Delegations also recommended that Kazakhstan decriminalize defamation and libel.

To date, independent and opposition journalists in Kazakhstan face harassment, arbitrary detention, and spurious criminal prosecutions. Authorities block websites, including social media. Each year, *AdilSoz*, a local media watchdog, records dozens of detentions, arrests, convictions, or limits on freedoms of journalists. In March 2018, the Almaty city prosecutor's office opened a criminal investigation on "disseminating knowingly false information," into *Forbes Kazakhstan* and *Ratel.kz*, an analytical news portal, and interrogated journalists. In March 2018, an Almaty court preliminarily approved blocking *Ratel.kz* and its affiliated websites. Both cases are ongoing. That same month, a court denied parole to Aset Mataev, an imprisoned journalist, despite his eligibility after serving one-third of his six-year prison sentence. In April 2018, a problematic media and information law amendments entered into force. The new law undermines investigative reporting and limits access to state-held information.

#### Recommendations

- End the harassment and reprisals against independent and critical journalists and end arbitrary blocking of websites, including social media;
- Review amendments to the media and information law which entered into force in 2018 with a view to making the law compatible with international standards on freedom of the media and speech;
- 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 civil defamation awards.

#### **Freedom of assembly**

During its previous UPR, Kazakhstan accepted recommendations to "ensure that the right to peaceful assembly is not hindered." Delegations also recommended that Kazakhstan remove restrictions on freedom of assembly.

Kazakh authorities have taken no steps to lift significant restrictions in law and practice on the right to peaceful assembly. Following a visit to Kazakhstan the then-United Nations special rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, concluded that "In practice, the [Kazakh] Government's approach to

regulating assemblies renders that right meaningless.” Authorities routinely deny permits for peaceful protests against government policies. Police break up even single-person unauthorized protests, and arbitrarily detain organizers and participants.

On May 10, 2018, for example, police detained dozens of people in cities across the country peacefully protesting against torture and politically motivated imprisonment. In June 2018, a court in Taldikorgan sentenced a man to three days’ arrest for his unsanctioned protest against police abuse. On February 27, 2019, police detained hundreds of people in multiple cities in Kazakhstan who had tried to protest outside venues where the ruling political party, Nur Otan, was holding its annual conference.

#### Recommendations

- Amend laws regulating peaceful assembly so that they are consistent with international standards on peaceful assembly;
- Put an end to all forms of arbitrary detention of people attempting to exercise their freedom of peaceful assembly in Kazakhstan.

#### **Torture**

During its last UPR, Kazakhstan accepted multiple recommendations to take a zero-tolerance approach to torture and to investigate complaints related to torture and other ill-treatment. Yet impunity for torture and ill treatment of prisoners and suspects remain the norm. Seven years after violent clashes brought an end to an extended oil sector labor strike in Zhanaozen in 2011, Kazakh authorities have failed to credibly investigate the torture allegations made by those subsequently detained and prosecuted.

In early 2018, Iskander Yerimbetov, a businessmen tied to Mukhtar Ablyazov, an exiled former banker and government critic, credibly alleged ill-treatment and torture in detention. Yerimbetov was sentenced to seven years in prison on charges of large-scale fraud. After public outcry, including petitions by human rights groups to Kazakhstan’s Prosecutor General, authorities opened a preliminary investigation into his allegations. In May, however, the Almaty prosecutor’s office claimed they found no evidence of a crime and closed the case.

#### Recommendations

- Comply with its pledges to take a zero-tolerance approach to torture and ensure that any allegations of ill-treatment or torture, including those made in regarding the Zhanaozen events, are fully investigated and the perpetrators held accountable;
- Review the case of Iskander Yerimbetov in light of the conclusions of the UN Working Group on Arbitrary Detention, which found in December 2018 that Yerimbetov’s detention was “arbitrary.”

#### **Freedom of Religion**

Rather than address recommendations made during its last UPR to “undertake a thorough review of the 2011 Law on Religious Associations” and allow groups to exercise their right to freedom of religious belief without interference, Kazakhstan took no steps to amend the religion law, and instead, throughout 2018 considered amendments to the law that would have imposed further restrictions and sanctions on religious teaching, proselytizing, and publications. Rights and religious groups expressed concern. In January 2019, the government withdrew the proposed amendments from consideration, but provided no explanation.

The religious freedom watchdog Forum 18 has said that in 2018, authorities brought 165 administrative cases against individuals or religious communities, leading to fines or short-term bans on worship, in violation of their right to freedom of religion or belief. Twelve other individuals were criminally convicted, including on charges of “organizing activities of a banned religious organization.” Of the twelve, five were imprisoned, while the others were handed suspended sentences.

#### Recommendations

- Review the 2011 religion law with a view to ensure that it fully conforms with the country’s constitution and international human rights standards and abandon any amendments to the religion law that would further restrict freedom of religion and belief in Kazakhstan;

- Conduct a thorough review of any convictions handed down in violation of the right to freedom of religion or belief.

## **Labor Rights**

During the previous UPR cycle, delegations recommended that the Kazakh government “repeal parts of the trade union law that unduly restrict freedom of association” and “abolish the requirement of mandatory registrations and memberships in umbrella associations and trade unions.” Despite a government pledge (as articulated in a roadmap agreed upon following a high-level tripartite mission to Kazakhstan by the International Labor Organization in May 2018), the authorities have taken no meaningful steps to restore freedom of association rights for independent trades unions in 2018 or introduce amendments to the trade union law.

Instead, the Confederation of Independent Trade Unions of Kazakhstan (KNPRK), shuttered by court order in 2017, remains closed. In May 2018, Nurbek Kushakbaev and Amin Eleusinov, trade union activists imprisoned in 2017 on politically motivated charges, were released on parole, but they remain banned from trade union activities. Larisa Kharkova, the former KNPRK president, similarly remains banned from leading trade unions. In September 2018, authorities in Shymkent opened a spurious criminal case against Erlan Baltabay, another outspoken trade union activist who spoke publicly about harassment at the International Labor Conference in June 2018. In August and September 2018, the Ministry of Justice refused to register a new confederation, the Congress of Independent Trade Unions of Kazakhstan. Worker strikes continue to take place outside legal norms exposing workers to harassment and possible prosecution.

### Recommendations

- End the crackdown on independent trade unions and lift restrictions on their activities, cease politically motivated criminal prosecutions of trade union leaders, including of Erlan Baltabay, quash the convictions of Larissa Kharkova, Nurbek Kushakbaev, and Amin Eleusinov, and allow them to resume their trade union activities without interference or harassment;
- Revise the 2014 Trade Union Law and 2015 Labor Code to bring them into compliance with International Labour Organization (ILO) standards.

## **Sexual Orientation and Gender Identity**

During its previous UPR, Kazakhstan accepted a recommendation to “enact specific legislation that prohibits discrimination on the basis of sexual orientation.” However, harassment, discrimination, and the threat of violence affect the everyday lives of Lesbian Gay Bisexual and Transgender (LGBT) people in Kazakhstan. LGBT people are faced with hostility behind the closed doors of private homes, and in public places, such as in parks and outside nightclubs. State institutions fail to provide consistent care and protection. In the rare cases when victims report abuses or seek social services, official responses are inadequate. In many cases, the abuses suffered by LGBT people are shrouded in shame due to widespread antipathy toward sexual and gender diversity.

### Recommendations

- Adopt and enact legislation that prohibits discrimination on the basis of sexual orientation;
- Ensure that reports of abuse, threat, or harassment against people on the basis of their gender identity or sexual orientation are thoroughly investigated and those responsible held to account;
- Amend Kazakhstan’s gender recognition procedures to allow transgender people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion.

## **Children with Disabilities**

During its last UPR, Kazakhstan accepted eight recommendations regarding the ratification of the Convention on the Rights of Persons with Disabilities and one recommendation to “take necessary steps to provide children with disabilities access to quality education.”

Notably, in April 2015, Kazakhstan ratified the Convention on the Rights of Persons with Disabilities and the Kazakh government committed to expanding inclusive education, whereby children with and without disabilities study together. However progress is slow and the majority of children with disabilities still cannot access inclusive, quality education on an equal basis with others. A key barrier to inclusive education is a medical commission, known as the Psychological-

Medical-Pedagogical Consultation (PMPK), which assesses children to determine what kind of education children with disabilities get. The PMPK usually recommends that children with disabilities receive their education at home, with a teacher visiting several times a week, or that they attend special schools or separate classrooms in mainstream schools, segregated from their communities. Children with disabilities in neurological psychiatric institutions receive little or no education at all.

#### Recommendations

- Guarantee that persons with disabilities can access quality inclusive education in the communities where they live, on an equal basis with others, including through the provision of reasonable accommodations;
- Transform PMPKs and ensure that children with disabilities are not required to have a PMPK conclusion to attend mainstream schools in their communities.

#### **Asylum Seekers and Refugees**

In July 2018, a court stopped the deportation to China of an ethnic Kazakh Chinese citizen, Sayragul Sauytbai, a primary school teacher who spoke publicly about China's abusive "political reeducation" camps in Xinjiang. Sauytbai had fled China in early 2018. In October, Kazakhstan denied her asylum.

#### Recommendation

- Strictly observe the principle of *non-refoulement* which prohibits the forced return of people at risk of being tortured or ill-treated to their countries of origin, or to another destination where they would face similar risk.