



KAZAKHSTAN: FUNDAMENTAL FREEDOMS UNDER PRESSURE

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Kazakhstan in November 2019. In it, Amnesty International evaluates the implementation of recommendations made to Kazakhstan in its previous UPR, including in relation to freedom of expression, torture and other ill-treatment, and discrimination.

It also assesses the national human rights framework with regard to detention facilities, discrimination based on sexual orientation or gender identity, and national human rights institutions.

With regard to the human rights situation on the ground, Amnesty International raises concern about the treatment of human rights defenders, discrimination, torture and other ill-treatment, and the rights to freedom of expression, assembly and association.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second UPR in March 2015, Kazakhstan accepted 143 and rejected 51 of the 194 recommendations made to it by other states.¹

FREEDOM OF EXPRESSION

Kazakhstan accepted recommendations to define criminal offences under Article 164 of the Criminal Code on incitement of social, clan, national, racial or religious discord (now Article 174 of the new Criminal Code, adopted in 2014) in line with international standards and in accordance with the right to freedom of expression.² However, Article 174 has not been changed in line with the recommendations, and the term “discord” is still not defined in a precise manner, resulting in a broad and vaguely worded law, making it possible to use it to silence views that are critical of the authorities.

In November 2016, Maks Bokayev and Talgat Ayan were sentenced to five -year prison terms, including under Article 174 of the new Criminal Code, for their involvement in the organization of peaceful demonstrations and their posts on social media against proposing changes to the Land Code. Talgat Ayan’s sentence was commuted on 12 April 2018 and he was released under conditions, however, Maks Bokayev, a prisoner of conscience, remains in prison despite his worsening health condition.

¹ Report of the Working Group of the Universal Periodic Review, A/HRC/14/10, paragraphs 95 -97, and Addendum, A/HRC/14/10/Add.1.

² A/HRC/14/10, recommendations 124.4 (Brazil), 124.5 (Chile).

TORTURE AND OTHER ILL-TREATMENT

Kazakhstan accepted and claimed to have implemented five recommendations concerning an effective and independent mechanism to investigate all allegations of torture promptly, independently and thoroughly.³ Yet, to date there is no independent mechanism to investigate torture in Kazakhstan. Torture allegations are usually investigated by the police or, when police officers are implicated, by the state Anti-Corruption Bureau (former financial police). Neither of these agencies are fully independent. The Anti-Corruption Bureau often relies on the police to carry out the criminal investigations. The Special Prosecutor's division of the Prosecutor General's Office, another investigative mechanism, is not authorized to investigate torture under the Criminal Procedure Code and only does so in accordance with a decree issued by the Prosecutor General on a discretionary basis, and then usually only overseeing investigations carried out by other bodies.

Kazakhstan also accepted two recommendations about strengthening visits to detention and police centres by the National Preventative Mechanism (NPM) under Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁴ However, the list of places of detention in Kazakhstan that can be monitored by the NPM is still not in compliance with Article 4 of the OPCAT. It excludes a number of places of detention, such as those under the Ministry of Labour and Social Protection, which includes homes for the elderly and institutions for children and adults with mental and physical disabilities, as well as places that might be used for illegal detention by police, such as police premises and police cars.

The NPMs are not sufficiently independent of state control because their members are elected by a Coordinating Council under the Office of the Commissioner for Human Rights (the Ombudsperson), who chairs the Coordinating Council, and which itself fails to satisfy the Paris Principles (see below). All requests for urgent visits by local NPMs regarding allegations of torture are coordinated with the Ombudsperson who approves only those that are, in the Ombudsperson's opinion, based on "solid" evidence of torture.

DISCRIMINATION

Kazakhstan accepted recommendations to prohibit discrimination against women and to ensure that individuals can safely report cases of discrimination and access avenues of redress.⁵ However, the authorities continue to refuse to acknowledge that Anna Belousova had been a victim of sexual harassment despite a 2015 CEDAW Committee⁶ ruling which recommended the state provide her with adequate compensation. Anna Belousova had been employed at a primary school in Pertsevka since 1999. In January 2011, the school's new director threatened to dismiss her unless she engaged in sexual relations with him. She refused, and her employment was terminated in March 2011. In March 2017, the Supreme Court upheld a ruling by a court in Kostanai that she was not entitled to compensation. In July 2017, the Saryarkinsk District Court refused a claim for compensation against the Regional Educational Authority.

³ A/HRC/14/10, recommendations 125.72 (Italy) and 125.73 (Liechtenstein).

⁴ A/HRC/14/10, recommendations 125.23 (Morocco) and 125.24 (Spain).

⁵ A/HRC/14/10, recommendation 124.6 (Canada).

⁶ Committee on the Elimination of Discrimination against Women, Communication No. 45/2012, Views adopted by the Committee at its sixty-first session (6-24 July 2015), <https://digitallibrary.un.org/record/812796>

THE NATIONAL HUMAN RIGHTS FRAMEWORK

TORTURE AND OTHER ILL-TREATMENT

In Kazakhstan, the police, including its detention facilities, and the entire penitentiary system, including prison medical staff, are all under the jurisdiction of the Ministry of Internal Affairs. In its Concluding Observations on the examination of the state report of Kazakhstan in 2014, the Committee Against Torture had recommended that the “State party should transfer authority for all detention and investigation facilities, including prisons, temporary holding facilities (IVSs) and remand centres (SIZOs) away from the Ministry of Internal Affairs”.⁷

DISCRIMINATION

There is no specific legislation in place in Kazakhstan to protect LGBTI people from hate crimes or incitement to discrimination, hostility, or violence on the basis of sexual orientation or gender identity. Article 145 of the Criminal Code (Violations of the Equality of People and Citizens) does not list sexual orientation and gender identity under protected characteristics, which can only be covered under “any other grounds”.

NATIONAL HUMAN RIGHTS INSTITUTION

The Commissioner for Human Rights (the Ombudsperson) does not comply with the Principles Relating to the Status of National Institutions (the Paris Principles) regarding autonomy and independence from the government. The Ombudsperson is a government official nominated by the president of Kazakhstan and confirmed to the office by the Senate.

HUMAN RIGHTS SITUATION ON THE GROUND

HUMAN RIGHTS DEFENDERS

Members of NPMs may be subjected to criminal prosecution and libel actions for their legitimate human rights work. In 2015, the director of the local Centre for the Adaptation of Juveniles in Aktobe filed a criminal complaint for defamation against a member of the NPM from Aktobe, Alima Abdirova, for the critical language she had used in the NPM report following a visit to the Centre. In May 2016, the Regional Court found Alima Abdirova guilty and ordered her to publicly apologize and to change the wording in the monitoring report. Alima Abdirova made changes to the monitoring report, but did not make a public apology.

⁷ Committee against Torture Concluding Observations on the 3rd Periodic Report of Kazakhstan (CAT/C/KAZ/CO/3).

The Aktobe Regional Prosecutor initiated a criminal case against her for “failure to comply with a court order”,⁸ because she had not apologized. In September 2017, a court found her guilty and imposed limitations on her freedom of movement for two years. During that period, she was not permitted to change her place of residence, to leave the country, or to visit places of entertainment. On 28 November 2017, the Aktobe Regional Court turned down Alima Abdirova’s appeal.

VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION

In May 2014, a new piece of legislation was introduced into the Criminal Code which has been used by the authorities to stifle dissent. Article 274 of the Criminal Code now makes “dissemination of information known to be false” a criminal offence. This includes material disseminated over the internet. Indeed, the use of communication networks is an aggravating factor, leading to higher sentencing. A person convicted under Article 274 can face up to ten years’ imprisonment.

On 13 March 2018, the authorities declared the opposition movement, Democratic Choice of Kazakhstan, an extremist organization for “inciting national discord” and there was an increase in the number of people called into police stations and warned or prosecuted under anti-extremism legislation for their posts on social media. Ardak Ashym, a 52-year-old blogger and civil activist from Shymkent, south Kazakhstan, spent almost three months in psychiatric detention starting in March 2018. She was initially charged under two articles of the Criminal Code for “inciting social, national, racial, class or religious discord” (Article 274), and with “insult of a state official, with the use of mass media” (Article 378) for her posts on social media criticizing the government. She was finally released in May 2018 and the charges were dropped.

DISCRIMINATION

Kazakhstan ratified the Convention on the Rights of People with Disabilities in February 2015; however, it has yet to take steps to comply with Article 12 (Equality before the law) which requires it to abolish the guardianship regime for adults with psychosocial and intellectual disabilities and introduce measures to facilitate assisted decision-making for them. Currently, persons with psychosocial or intellectual disabilities are deprived of legal capacity by a court, and a guardian is appointed. Once declared “incapable” by a court, individuals are deprived of the right to make any decisions about their lives, to control their finances, to marry, to study, or to work. There are no systems for review and it is very rare for the status to be reversed. They also do not have the right to appeal to a court of law which means that they have no legal recourse against violations of their rights or possible exploitation.

Anti-discrimination legislation does not protect LGBTI people. According to statistics by the Prosecutor General in the past four years there has not been a single case prosecuted under Article 145 (Violations of the Equality of People and Citizens). In 2015 and 2016, eight and six cases, respectively, were reported dismissed as ungrounded. In 2017 and 2018, there were no cases reported under this Article. The police are reluctant to investigate complaints about discrimination on the grounds of sexual orientation or gender identity.

TORTURE AND OTHER ILL-TREATMENT

Impunity for torture and other ill-treatment remains prevalent. Investigations into torture allegations fail to live up to the principles of independence, effectiveness and promptness, and as a result, most of the cases are dismissed by the investigative authorities as lacking evidence or ungrounded. Torture victims often choose not to lodge complaints because they risk criminal

⁸ Article 430 of the Criminal Code of Kazakhstan.

prosecution for false reporting and have no faith that their complaints will be investigated.⁹ According to the website¹ of the General Prosecutor of Kazakhstan during 2014-2018, on average 90 crimes of torture were taken up for investigation annually with more than 550 submissions dismissed per annum. Of those registered, only around a dozen reach court each year.

Iskander Yerimbetov was arrested on 13 November 2017 on charges of money laundering. He was interrogated repeatedly between 14 November and 5 December 2017 by police at a pre-trial detention centre in Almaty, without a lawyer present. He alleges that he was beaten and threatened to force him to confess. In January 2018, the Ombudsperson's Office stated that he had a broken nose, an open wound on his head and bruises on his face. The investigation into his torture allegations was carried out by officials involved in the criminal investigation against him and therefore lacked independence.¹⁰ His mother lodged a complaint with the Office of the Special Prosecutor shortly afterwards. The complaint was initially investigated by the financial police, who had carried out the investigation into the charges against Iskander Yerimbetov. Later, the investigation of his allegations of torture was transferred to a Special Prosecutor who had been a member of the prosecuting team on Yerimbetov's case during the early stages. The case was eventually dismissed by the Special Prosecutor as unsubstantiated.

VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSEMBLY

Freedom of peaceful assembly is heavily restricted in Kazakhstan. Permission from local authorities is required in order to hold any kind of street protest (including by a single protester) and this is often refused, or permission is given to hold the event in a non-central location. The Criminal Code and the Administrative Code provide sanctions of deprivation of liberty for breaching the law on holding assemblies (up to 15 days' detention under the Administrative Code and up to 75 days under the Criminal Code), including for organizing or participating in an illegal demonstration (Article 488 of the Administrative Offences Code and Articles 155 and 400 of the Criminal Code). Article 400 of the Criminal Code forbids providing "assistance" to "illegal" assemblies, including by "means of communication". Indeed, in the case of Maks Bokaev and Talgat Ayan, the use of social media to "organize" protests was treated as an aggravating factor under Article 400. Those found to be in violation of Article 400 of the Criminal Code can face a fine or detention of up to 50 days.

Throughout late April and early May 2016, peaceful demonstrations took place in towns and cities across Kazakhstan against proposed changes to the Land Code. Between 16 and 20 May, at least 34 people were arrested under Article 488 of the Administrative Offences Code and sentenced to 10-15 days' administrative detention. This included human rights defenders Maks Bokaev, Talgat Ayan, and Bakhytzhana Toregozhina. In many cases, people have been detained at night and held in detention following hurried administrative hearings and without adequate legal representation. In most cases, all those arrested had done was use social media to state their intention to participate in the protests planned for 21 May, to provide information about the protests, or voice their support for them. In Bakhytzhana Toregozhina's case, the Facebook post that prompted her detention was a photo of her in a new baseball cap with the caption: "No to the sale of land!". Her post made no reference to the planned protest on 21 May.

⁹ According to the website of the General Prosecutor of Kazakhstan (<http://www.ombudsman.kz/news/detail.php?ID=3752>) during 2014-2018, on average 90 crimes of torture were taken up for investigation annually with more than 550 submissions dismissed per annum. Of those registered, only around a dozen reach court every year.

¹⁰ The complaint was initially investigated by the financial police, who were carrying out the investigation into the charges against Iskander Yerimbetov. Later, the investigation of his torture allegations was transferred to a Special Prosecutor for investigation who, had been a member of the prosecuting team on Yerimbetov's case during the early stages. The case was eventually dismissed by the Special Prosecutor as unsubstantiated.

Hundreds of peaceful protesters were arrested throughout the country on 27 February 2019 while the ruling party, Nur-Otan, held its 18th annual conference. Most people were detained in Almaty and Astana. Video footage of the events showed the police using force against peaceful protesters as they were bundled into police vans. In some cases, the police detained people who just happened to be passing by. In Uralsk an 80-year-old pensioner was detained as she made her way to a bank machine to withdraw money. According to some estimates around 100 people were detained in Almaty alone. Those detained were questioned in police stations and then released, usually, some four hours later.

VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION

NGOs face undue restrictions, stringent reporting requirements under legislation introduced at the end of 2015, and frequent tax inspections. Failure to regularly supply information for the central database of NGOs can lead to fines or a temporary ban on activities.

In 2016, two NGOs, International Legal Initiative (ILI) and Liberty Foundation, faced fines for allegedly failing to pay tax. On 6 April, the Special Inter-District Economic Court of Almaty upheld a decision by the tax authorities that ILI should pay corporate income tax on grants received from foreign donors despite the fact that not-for-profit organizations are exempt from paying tax. On 31 May, the same court rejected Liberty Foundation's appeal against the Tax Directorate's decision. The organizations paid fines of 1,300,000 Tenge (EUR 4,000) and 3,000,000 Tenge (EUR 8,300), respectively.

In June 2017, the ILO Committee on the Application of Standards expressed concern about serious obstacles to establishing trade unions and failure to respect the right to freedom of association for trade unions. On 4 January 2016, a court had ordered the dissolution of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK), and two affiliates, the National Healthcare Workers' Union and National Domestic Workers' Union, arguing that they had failed to meet a registration deadline. Following a protest against this decision, three union leaders were arrested. Nurbek Kushakbaev was sentenced to two and a half years' imprisonment on 7 April charged with inciting an illegal strike, and Amin Yeleusinov was charged with misappropriation or embezzlement of property and sentenced to two years' imprisonment on 16 May. Both were released on parole in June 2018. Larisa Kharkova was sentenced to four years' restricted freedom by a court in Shymkent on embezzlement charges on 25 July 2016.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF KAZAKHSTAN TO:

HUMAN RIGHTS DEFENDERS

- Uphold the principles of the UN Declaration on Human Rights Defenders by promoting and protecting the work of human rights defenders and recognizing the right of all to raise concerns about the policies and actions of individual officials and governmental bodies which violate human rights.

HUMAN RIGHTS INSTITUTIONS

- Promote full compliance by the National Human Rights Institution (Commissioner for Human Rights) with the Paris Principles;
- Extend the mandate of the National Preventative Mechanism to cover all places of detention in line with Article 4 of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ensure its financial and operational independence from the government agencies.

TORTURE AND OTHER ILL-TREATMENT

- Establish an adequately resourced independent mechanism to investigate all allegations of torture and other ill-treatment by members of law enforcement agencies, or by persons acting on orders of, or with the acquiescence of such agencies;
- Ensure in practice that no statements obtained as a result of torture or other ill-treatment are used as evidence in trial proceedings, except as evidence against a person accused of torture or other ill-treatment;
- Ensure that all past allegations of torture and other ill-treatment, as well as all instances of abusive use of force by law enforcement officials are promptly, effectively and independently investigated, and hold accountable any official found to have sanctioned or conducted such acts.

FREEDOM OF EXPRESSION

- Respect and protect the right to freedom of expression of all individuals in Kazakhstan, including on social media sites;
- Immediately and unconditionally release prisoner of conscience and human rights defender Max Bokaev, who has been sentenced for the exercise of his right to freedom of expression;
- Substantially amend Article 164 of the Criminal Code to ensure that any provision aimed at combatting advocacy of hatred or discrimination is in strict compliance with Article 19(3) of the International Covenant on Civil and Political Rights, and that it does not unlawfully restrict freedom of expression;
- Repeal Article 274 of the Criminal Code, which makes it a criminal offence to “[disseminate] information known to be false”.

FREEDOM OF PEACEFUL ASSEMBLY

- Adopt a new law on public assemblies that is in compliance with international human rights law and eliminate the requirement for prior approval of assemblies, as recommended by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- Repeal Article 400 of the Criminal Code, which makes it a criminal offence to provide assistance to “illegal” assemblies, including via “means of communication”, as recommended by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.

FREEDOM OF ASSOCIATION

- Amend the Trade Union Law of 2014 to bring it in line with ILO Convention on the Right to Organize and Collective Bargaining, including by lifting limitations on the right of workers to form and join trade unions of their own choosing, as requested by the ILO Committee on the Application of Standards;
- Ensure that the Law on Public Association allows for the free operation of unregistered associations.

DISCRIMINATION

- Devise a timeline for the abolition of guardianship for adults with psychosocial and intellectual disabilities and for the establishment of an alternative system in accordance with the Convention on the Rights of Persons with Disabilities;
- Establish a system of assisted decision-making to replace guardianship or substituted decision-making by closely consulting with and actively involving persons with disabilities, in particular persons with psychosocial and intellectual disabilities, including children with disabilities, through their representative organizations, and experts and practitioners both within Kazakhstan and from other countries;
- Amend legislation to ensure that individuals who have been declared “incapable” have the right to apply to courts to defend their rights, to reverse “capability” decisions and to change guardians;
- Adopt comprehensive anti-discrimination legislation that expressly protects against discrimination on the grounds of sexual orientation or gender identity;
- Provide Anna Belousova with compensation for the sexual harassment she suffered, in line with the 2015 CEDAW Committee ruling.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹¹

Kazakhstan fails to register the LBQ Initiative "Feminita", Public Statement, 6 June 2019, EUR 57/0484/2019, <https://www.amnesty.org/en/documents/eur57/0484/2019/en/>

Kazakhstan: human rights defender under house arrest: Serikzhan Bilash, 9 April 2019, EUR 57/0186/2019, <https://www.amnesty.org/en/documents/eur57/0186/2019/en/>

Kazakhstan: Submission to the UN Committee on Economic, Social and Cultural rights, 23 January 2019, EUR 57/9706/2019, <https://www.amnesty.org/en/documents/eur57/9706/2019/en/>

Kazakhstan: "We are like dead souls", life without legal capacity in Kazakhstan, 12 October 2018, EUR 57/9164/2018, <https://www.amnesty.org/en/documents/eur57/9164/2018/en/>

Kazakhstan: Submission to the UN Human Rights Committee: Follow-up to the Concluding Observations of Kazakhstan's second periodic report, 15 June 2017, EUR 57/6447/2017, <https://www.amnesty.org/en/documents/eur57/6447/2017/en/>

¹¹ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/>

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