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REPORT

THE RIGHT TO PUBLIC PROTEST
A freedom of assembly and
association issue in Kazakhstan



NORWEGIAN HELSINKI COMMITTEE

Contents

A freedom of assembly and association issue in Kazakhstan^x.....	2
Fear of public dissent trumps rights	3
16 December symbolism	4
The legal framework.....	5
<i>De facto</i> ban.....	6
Harsh sanctions	7
The game-changing Zhanaozen events	8
Handling of protests in 2013	10
Handling of protests in 2014.....	12
Conclusions	15
Recommendations.....	15
Acknowledgments.....	15
Endnotes.....	16

The right to public protest

A freedom of assembly and association issue in Kazakhstan^x

An important aspect of freedom of assembly and association is the right of citizens to gather publicly to peacefully protest government policies. Modern Kazakhstan celebrates its independence from the Soviet Union on 16 December, but the date is also linked to events directly related to the right to public protests. The day serves as a memory of Zheltoksan, one of the first large-scale demonstrations in the Soviet Union, on 16 December 1986. It will also be remembered for the tragic events on 16 December 2011, when police shot at and killed at least 12 striking oil workers in Zhanaozen. Today, the situation for peaceful protesters is characterized by restrictive legislation and practice in breach of the Constitution and international human rights standards.

The right to freedom of peaceful assembly and association is a particularly broad topic in the sphere of human rights. It covers issues ranging from the rights of workers and trade unions to the rights of non-governmental organizations, religious and political opposition groups and much more. It also includes the right of ordinary citizens to peacefully express their opinion in public.

As interpreted by the UN Special Rapporteur on Freedom of Peaceful Assembly and Association, “The right to freedom of peaceful assembly is the right to gather publicly or privately and collectively express, promote, pursue and defend common interests. This right includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose. (...) Simply put, these rights protect peoples’ ability to come together and work for the common good.”²

In January 2015, the UN Special Rapporteur on Freedom of Assembly and Association, Mr. Maina Kiai, made his fifth official country visit to Kazakhstan. Previously, he visited Georgia (2012), the United Kingdom (2013), Rwanda (2014) and Oman (2014). Following his country visits, the Special Rapporteur issues a report to relevant UN bodies. The Special Rapporteur reports regularly to the UN Human Rights Council, the UN Committee on Human Rights and the UN General Assembly. Mr. Kiai’s report on this visit will be released in mid-2015, and will be presented to the Human Rights Council during its 29th session in June 2015.³

This report, intended as input from the Norwegian Helsinki Committee to the Special Rapporteur on the situation of freedom of assembly and association and the overall debate about human rights in Kazakhstan. It does not aim to give a full account of all aspects of freedom of assembly and association in the country, but provides an overview of the

current situation with regard to the right of citizens to hold peaceful demonstrations, and points out some main concerns and recommendations.

Fear of public dissent trumps rights

Over the past decade, popular uprisings in Georgia, Ukraine and Kyrgyzstan as well as in countries across North Africa and the Middle East have been a cause of increasing concern for heads of state in parts of the former Soviet Union. Nowhere does that concern seem to run deeper than in the republics of Central Asia, where life-term presidents heading authoritarian regimes frequently emphasize the dangers of political instability. The reflex response to events abroad has been to quell even the smallest of protests by imposing tighter restrictions on freedom of assembly. In practice, four out of five Central Asian states hardly permit public criticism of government policy in any shape or form.

While Tajikistan, Uzbekistan and Turkmenistan have never laid claim to being at the forefront of democratic development in the region, Kazakhstan does seek to portray itself as a modern state, respectful of international standards on human rights and democracy. Large, prestigious events such as the 2010 Chairmanship of the OSCE and Kazakhstan's 2012 election to the UN Human Rights Council have been presented as landmark achievements at home.

Still, both local and international human rights organizations point to a deteriorating human rights situation in Kazakhstan. Freedom of assembly is no exception. In the three years that have passed since the tragedy in Zhanaozen, an oil town in western Kazakhstan, in December 2011, when government forces shot and killed at least 12 striking oil workers (official number), Kazakhstan has moved towards stricter controls, bringing the country into serious conflict with its international human rights obligations.

While relatively successful on the economic level, restrictions on political opposition and media have all but eliminated healthy public discourse in the country. In terms of upholding democratic principles in the true sense of these words, "The Kazakh Way" today seems paved mostly with good intentions.

The introduction of new Administrative and Criminal Codes in January 2015 coincided with the first official visit of the UN Special Rapporteur for Freedom of Assembly and Peaceful Association to Kazakhstan. While legal revisions partially lower the penalties for unsanctioned protest, they tighten the grip and increase penalties elsewhere. For once, the devil is not in the details – rather, it is the authorities' overall attitude towards freedom of assembly and association that conflicts with Kazakhstan's international human rights obligations.

16 December symbolism

In some ways, the history of modern Kazakhstan begins with a great demonstration. The country's largest city Almaty (then Alma-Ata) was the scene of one of the most well-known anti-government protests to take place in the Soviet Union in the years prior to its collapse, a fact that many Kazakhstanis take pride in to this day.

Although the date formally commemorates Kazakhstan's independence from the Soviet Union in 1991, the date is also associated with the demonstrations that took place in Alma-Ata on 16 December 1986, known locally as Zheltoksan – the Kazakh word for December. In an early indication of a general sense of discontent across the Soviet Union, hundreds took to the streets to protest Mikhail Gorbachev's appointment of Gennady Kolbin to the post of First Secretary of the Communist Party of Kazakhstan. The removal of local Kazakh politician Dinmukhamed Konayev and the subsequent imposition of a non-Kazakh outsider from Moscow did not sit well with Alma-Ata's students and intellectuals at the time, who gathered on the central Brezhnev Square – now Republic Square – in protest.

As the crowd of protesters grew to the thousands, armed forces were brought in to suppress the protests. The estimates of civilian casualties vary wildly, due in large part to the general absence of independent news agencies and monitoring groups in this part of the world in the late 1980s.

The memory of these events, which preceded Gorbachev's call for perestroika in June 1987, is preserved in place names across modern-day Kazakhstan. There are streets named Zheltoksan in downtown Almaty and in the country's capital, Astana, as well as in Shymkent, Taraz, Kyzylorda, for example. The first and incumbent President of independent Kazakhstan, Nursultan Nazarbayev, has put the symbolism of those dramatic days in December 1986 to use in the construction of the country's national identity.

While unveiling a monument in 2006 in memory of the 20th anniversary of the Zheltoksan events, the now 74 year-old President noted that "our young people gathered here to express their resolute protest against the abuse and hypocritical policy of the totalitarian system".⁴

Under Nazarbayev's rule, young people have repeatedly gathered "to express their resolute protest" on that square and elsewhere. They have, however, not been met with respect for the memory of Zheltoksan, but rather with incapacitating bureaucracy, riot police, fines and arrests.

Today, 16 December is a date that holds several conflicting associations in the public mind in Kazakhstan. Importantly, it marks independence from the Soviet Union on 16 December 1991. At the same time, it also celebrates the protests of Zheltoksan on

16 December 1986. And, for many, the date marks the violent and lethal end to an extended oil strike, at the hands of law enforcement in Zhanaozen on 16 December 2011.

For those who would question the course authorities has set out for modern-day Kazakhstan, the date has grown to mark a tightening of control of independent media, opposition and to “unsanctioned” public protests.

The legal framework

Article 32 of Kazakhstan’s Constitution guarantees the right of all citizens to enjoy freedom of assembly. Specifically, it sets down that “citizens of the Republic of Kazakhstan have the right to convene, hold assemblies, meetings and demonstrations, marches and pickets peacefully and without weapons.”⁵

Indeed, as the government of Kazakhstan put it in a response to a communication from the UN Special Rapporteur on Freedom of Assembly and Peaceful Association following criticism of the handling of strikes in Zhanaozen, “Kazakhstan has established all the conditions for freedom of assembly or demonstration and free expression by citizens of their wishes and opinions by any lawful means, including protest action.”⁶

As several governments in the former Soviet Union have often pointed out, freedom of assembly is not absolute even in democratic states. The Constitution of Kazakhstan underlines that exercise of this right “may be restricted by law in the interest of state security, public order, and the protection of health, rights and freedoms of other persons”. However, the flaw in this line of argument is that democratic states do not routinely invoke this discretionary right, while restriction has become the rule rather than the exception in Kazakhstan, overriding the constitutional right of Kazakhstanis to express themselves freely.

To further strengthen the legal basis for the government to silence opposition, Kazakhstani law includes a number of provisions seemingly intended to ensure the safety of citizens, but which may also be used to curb the right to assembly guaranteed for by the Constitution.

Violations of Kazakhstan’s human rights obligations arise already at the level of the law regulating peaceful assembly, the so-called “Act on the procedure for organizing and holding peaceful assemblies, meetings, rallies, demonstrations, marches or pickets in the Republic of Kazakhstan”.⁷

This law stipulates that would-be protesters must apply for a permit from local authorities no less than 10 days in advance. The application may only be submitted by groups, not by individuals, and the organizer carries responsibility for security during the event. The

10-day deadline also ensures that no “urgent” protests regarding immediately occurring events may take place.

Importantly, there are numerous restrictions on where a meeting may be held. Such activity is not permitted where it may disturb transport, pedestrians or general infrastructure. Furthermore, it is forbidden to hold meetings outside the offices of public services such as those providing water, gas or electricity, or outside the offices of health or educational administrations, and close to buildings important to state defense or security. Also, meetings may not take place near railroads, ports or airports.

Naturally, any spot in any populated area will be in proximity to at least one of the above mentioned. This provides the authorities with an excuse to deny permission to hold protests, except in locations far removed from the public eye.

***De facto* ban**

Although, theoretically, a group of would-be protesters could get a permit to hold a picket against government policy, public expression of dissent is not permitted in practice. First of all, an individual may not organize a protest on his own – he or she must be part of a group, meaning that an application from a single individual to stage a protest would be automatically declined. However, being part of a group in no way guarantees that such an application would receive a positive response.

A group of friends are unhappy that the government is planning to pass a new law, and wish to express this publicly. In theory, and according to the Constitution, they have the right to gather in a peaceful walk down to a local government office and express their disagreement there.

The first thing the group would have to do, is to send an application to the local administration (Akimat), asking permission to hold their protest. Already at this point, they will meet with their first obstacle, as only registered groups are allowed to apply. As this group merely consists of some friends who wish to express disagreement with a draft law, they would not be eligible to hold a meeting.

However, assuming that this group manages to find a local organization willing to stand as the formal organizer of the protest. That organization would then sign and submit the application on their behalf. The law requires the group to submit their request at least 10 days before the planned protest.

At this point, as the protest certainly will be deemed political in nature, there is an overwhelming chance that the application will be rejected outright. According to a study carried out by the KIBHR from October 2012 to March 2013, 76% of all applications were rejected in this manner, effectively putting a stop to these kinds of protests.

As mentioned, the law regulating protests includes a number of restrictions on where a protest may take place. In a city like Almaty, one is bound to be in the proximity of at least one of the objects listed as off-bounds – transport, infrastructure, government buildings of various kinds. Even if the application is accepted, the local administration will therefore tell the group to hold the protest in a spot specifically designated for protests.

In Almaty, this spot is the park behind Sary-Arka cinema, far removed from the city center, and certainly from the public eye. The groups' objection to the draft law will not be seen or heard by passers-by or journalists here, and certainly not by government officials. In towns further afield in Kazakhstan, local authorities have designated spots that are so far removed from the public eye as to cross into the absurd. In Akmola Province, for instance, authorities announced in 2011 that protests may only take place in shops, cafes and on farmed land.

Harsh sanctions

Many citizens feel that it is pointless to go through all the trouble of applying to hold a sanctioned protest because the process is too cumbersome and because a negative outcome is expected. This regularly results in “unsanctioned” protests being held in Almaty and elsewhere, where the police, now with a clear legal basis, may arrest participants. The prosecutor's office may impose fines and jail terms on protesters through the court system, which in turn is subject to strong political control.

Well-known individuals have also been arrested for participation in unsanctioned demonstrations even before they arrived at the actual demonstration. In Almaty, there have been numerous instances recorded of would-be participants being detained outside their home, when leaving for a planned demonstration. Journalists covering demonstrations have frequently been detained as participants as well, if they represent publications known to sympathize with the opposition.

The law regulating demonstrations violates international standards on freedom of assembly, while the administrative and criminal codes of Kazakhstan provide the authorities with grounds to impose disproportionate punishment on those who decide to protest outside state regulations.

The new Administrative Code and Criminal Code of Kazakhstan signed into law by President Nazarbayev in July 2014 came into effect on 1 January 2015. The punishments provided by the new codes are far stricter than in the previous versions.

In the previous version of the Administrative Code, a first time offender could at most be given a warning or a fine, whereas repeat offences carried up to 15 days in jail or 50 Monthly Calculation Index (MCI, currently set at 10,2 USD).

In the new code, even a first-time violation carries a penalty of up to 10 days in jail or 20 MCI, whereas repeat offenders can be jailed for up to 15 days or given a fine of 50 MCI, as previously. In other words, the new Administrative Code involves a further worsening of the situation, as it introduces jail time even for small offences.

For what is considered to be more serious offences, sanctions under the Criminal Code may be imposed.

Article 151 of the former Criminal Code states that Public officials who take part in illegal protests may be fined 500-700 MCI, be given correctional labor for up to two years or serve up to three years in prison. However, this has long been considered a “sleeping article” – it is not known to have been applied. According to Article 155 of the new Criminal Code, however, ordinary citizens may be fined up to 200 MCI for participation in illegal protests, given 118 hours of correctional labor or serve 16 days in jail. Public officials may now be fined up to 3000 MCI or have their freedom of movement “limited” for up to three years.

Article 334 of the current Criminal Code states that the organizers of an event may be fined 100-800 MCI, be sentenced to serve 120-180 hours of community labor or have their freedom of movement limited for up to one year. Active participants of a protest may be fined 200-1000 MCI, be sentenced to serve 180-240 hours of community labor or serve up to one year in prison.

While the actual sanctions are slightly lower in the new Criminal Code, the overall situation with regards to freedom of assembly is considerably worsened, as it introduces criminal liability for any participant, not only for organizers or those deemed to have been particularly active. Those who provide space, equipment, communications or transport for illegal protests may now also be held criminally liable.

A vague new term has been introduced, regarding “illegal public events”. It remains to be seen how this term will be interpreted. Jail time has been changed to be up to 75 days, fines up to 300 MCI. Maximum hours of correctional labor have been increased to 240 hours.⁸

The game-changing Zhanaozen events

While beyond the scope of this paper, the tragic events in the small town of Zhanaozen on 16 December 2011 marks a significant deterioration in the way in which Kazakhstani authorities have chosen to relate to peaceful public protest in recent years. Independent Kazakhstan has always shown authoritarian inclinations in terms of freedom of association and assembly, but these have become more expressed in the period since Zhanaozen.

A drawn-out strike among oil workers in the west of the country, during which local and foreign companies in the hydrocarbon sector in the Mangistau province of Kazakhstan colluded with authorities in the use of threats and other repressive measures against participants and leaders, came to a horrific end when security services and police shot and killed at least 12 of the strikers and others present (official number, other sources have cited somewhat higher numbers which it has not been possible to independently confirm or dismiss, as Kazakh authorities have not permitted a thorough international investigation of the events). The lead-up to the tragedy, including a closer look at the companies involved, was detailed in a September 2012 report by Human Rights Watch.⁹

Amateur video recordings of security services shooting unarmed, fleeing strikers in the back and of police beating wounded persons on the ground made its way to YouTube¹⁰ and subsequently to all major international news agencies.¹¹ Kazakh authorities consulted former British Prime Minister Tony Blair for advice on how to address what was a significant public relations disaster for a country that had spent large resources on positive profiling abroad.

A trial in Aktau began in May 2012. In spite of claims from an overwhelming number of those on trial that they had been tortured during investigation, the authorities chose not to halt court proceedings or to investigate. An initial inquiry by the authorities did not lead to the opening of a criminal investigation. The Norwegian Helsinki Committee were among the observers present, issuing a statement with the observer group from the Civic Solidarity Platform detailing concerns from the international human rights community.¹²

In the end, ultimate responsibility for what happened in Zhanaozen was placed on the opposition and on independent media outlets deemed “extremist” by courts during trials later in the year. By the end of 2012, opposition leader Vladimir Kozlov of the now banned Alga! (“Forward!”) political party had been brought to Aktau and sentenced to seven and a half years prison (Kozlov is himself from Almaty, on the other side of the country). Two monitoring reports by Freedom House detailed violations of the Criminal-Procedural Code of Kazakhstan during the trial.¹³ In separate trials, independent newspapers such as *Golos Respubliki* and *Vzglyad* were banned and subsequently disappeared from newspaper kiosks. Popular web-based TV stations such as *K Plus* and *Stan TV* had been forbidden to produce materials within Kazakhstan. The Norwegian Helsinki Committee also attended the Kozlov trial, and was struck by what seemed like a pre-determined outcome, in part because of a lack of convincing evidence produced against Kozlov and the use of expert witnesses in court perceived to be supportive of government position.

While weary of provoking new unrest by breaking up memorial gatherings for the victims of Zhanaozen, authorities have gradually moved towards a harsher line towards public protests directed at the authorities themselves. Opposition has become marginalized, and critical publications appearing under new names are shut down as a matter of routine.

The Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR)¹⁴ has established a systematic archive of their monitoring of public protests of all kinds across Kazakhstan for a number of years, including the past two years, 2013 and 2014. Their 2014 archive alone includes on-site reports from some 120 protests. The KIBHR has kindly shared this archive with the Norwegian Helsinki Committee, on which the following analysis is based. The analysis is similarly informed by the Norwegian Helsinki Committee's observations of demonstrations in Almaty since December 2011.

When studying the hundreds of monitoring reports contained in the KIBHR archives, certain patterns emerge. It is evident that authorities differentiate between protests that address social or economic issues and those that are "political", i.e. of a more controversial nature. While protests directed at the government as such are quickly broken up, police may stand to the side and merely observe and film protests where participants have other grievances. Most unsanctioned protests in Kazakhstan are very short, and last no more than approximately 10-20 minutes before being stopped by the authorities upon their arrival to the scene.

Handling of protests in 2013

Politically sensitive issues were treated differently depending on the position of the protesters involved. On 2 September 2013, a group of 20 persons held an unsanctioned demonstration outside the Embassy of France in Astana, demanding that Kazakh opposition politician Mukhtar Ablyazov not be deported from France to Kazakhstan. Four of the participants were detained and brought to the police station. By contrast, a demonstration outside the Consulate of France on 1 October in which the participants demanded that Ablyazov not be released from jail in France pending the Kazakh extradition request (a pro-government stance) went ahead without any visible police presence. Demonstrators at this event had also not applied for a permit, but said by the organizer that it had been agreed with the Akim of the city.

Numerous demonstrations were held in 2013 relating to housing issues, particularly forced evictions and problems relating to house bank loans. Most of the protests took place in Astana, where police reacted variably. Mass-detentions of about 170 people took place on 1 October, after demonstrators had delivered a petition demanding a change in bank policies to the Presidential Administration. Two of the organizers, Esenbek Ukteshbaev and Kyzdygoi Azharkulova, were given 15 and three days of jail respectively, and three other participants were fined.

On 18 December, all 22-23 participants of a demonstration against forced evictions outside the Prosecutor General's office in Astana were detained and taken away in police vans by riot police. Protests against forced evictions in Astana organized by one single individual also resulted in arrest on at least four occasions, on 5, 6 and 29 November. Three other such protests in October and November were broken up by police, ending

without arrests. However, police did not break up a protest of about 45 persons in Almaty on 8 October, demanding that the construction of their home be finished. Riot police were present, but decided not to get involved – the protest lasted about half an hour.

Certain opposition groups that nonetheless enjoy the quiet approval of the authorities, found that permits to hold protests were usually granted. One such group is the People's Communist Party of Kazakhstan, which in 2013 organized demonstrations against high utility prices and in support of social justice in Karaganda, Shymkent, Ridder and Almaty. Although these protests were relatively large (between 50 and 100 participants) they were not interrupted by police, and received formal permissions in advance.

Often, police would observe but not actively interfere in smaller protests by pensioners and other vulnerable groups raising social issues such as high gas and food prices or low pensions. Such protests were held in Almaty, Uralsk and Shymkent throughout the year, and were usually concluded without incidents, with some exceptions. One person was arrested and fined on 4 October, after a protest of a small group of pensioners outside the Presidential residence in Almaty. Another was arrested and jailed for three days in Atyrau, following a protest that he had not received his salary for the past two months.

Protests related to the Zhanaozen tragedy in December 2011 took place in Almaty, Uralsk and Astana on 16 December. Perhaps because of the potential for unrest, the authorities did not move in to arrest participants, but instead turned on loud music so the appeals from protesters in Almaty could not be heard, and filled the square in Uralsk with tractors to hinder demonstrators' movement.

Among more dramatic events was the mass arrest of about 80 relatives of persons jailed for "religious extremism" in the city of Aktobe on 9 November. About 100 persons had arrived to the Aktobe prison on the previous day, demanding to see their imprisoned relatives to make sure that they were not being beaten and ill-treated. Police convinced them to leave in exchange for a promise of a meeting with the prisoners the following day.

However, their arrival to the prison the next day resulted in mass arrests. 23 persons were sentenced to 15 days in jail; a few others were given fines. According to the arrested relatives, some were beaten by police and forced to sign police protocols.

Among a few other protests worth noting in 2013 is a 19 November protest in Astana organized by the Antigepitil movement against Russian rockets being launched from Baikonur, with the participation of some 25-30 persons. As noted above, even one-man protests by Antigepitil the following year were unsanctioned and were immediately stopped by police. However, this particular protest had been cleared with the authorities in advance, and proceeded without incidents, something that could indicate that the authorities' attitude towards these particular protesters changed between 2013 and 2014.

Small protests in support of due process in local courts in Almaty and Aktau on 20 November resulted in arrests of seven and one person respectively.

As in 2014, the authorities' attitude towards peaceful gatherings sometimes resulted in rather absurd situations. On 31 October, a 17 year-old girl in Pavlodar organized a Halloween costume party through social media, gathering some 15 friends in the center of the city. They were met by police, who broke up the event. The students were later called in to the director of their school, who threatened consequences should they attempt another Halloween celebration.

On 7 October, a group of about 20 persons, members of a Facebook group called "Kazakhs for Sport" organized a race at a local stadium in Almaty under the slogan "For a sporty way of life". Twenty minutes later, 11 of them had been arrested and taken to the police station, where they were fingerprinted and then released.

A one-man demonstration in Uralsk on 12 December against dictatorship, under the banner "Presidents and diapers must be changed regularly" resulted in the man being brought to a local police station for a check.

Handling of protests in 2014

Similar patterns as in 2013 were evident in the following year.

Throughout 2014, a group of citizens locally known as "ipotekhiki" – persons who took up bank loans under unfavorable interest conditions to purchase housing, whose apartments are under threat of confiscation due to their inability to pay the loans – were the most frequent organizers of protests in Almaty and Astana. While some of these protests were large by Kazakhstani standards, ranging from 25 to 50 participants, and unauthorized, authorities seemed often to tolerate and permit the gatherings.

Demonstrations of this kind took place without any arrests outside the offices of Narodny Bank, Kaspi Bank, Tsentr Kredit and the National Bank in Almaty throughout the year. On some occasions, the organizers were arrested or police broke up the protests. Here are some examples:

- On 19 March one person was arrested after a protest in Astana;
- On 9 September one person was arrested and fined after a protest of about 40 persons outside Narodny Bank in Almaty;
- On 9 June the organizer Kanagat Takeyeva was arrested after a protest of about 100 people outside Tsentr Kredit in Almaty;

- On 11 August six persons were arrested after a protest outside the Akimat of Almaty;
- Two persons were given 10 and 15 days jail respectively after a demonstration in Astana on 8 November;
- A demonstration outside ATF Bank in Almaty on 15 July resulted in the protest being broken up by police.

However, during most protests, police stood by and observed, without interfering directly.

By contrast, protests organized by “Antigeptil” were almost always met with immediate arrest. Of the 15 Antigeptil-protests observed in 2014, 13 ended with arrests within ten minutes of the start of the protest. Ten one-man protests outside the offices of Kazkosmos in Astana between 13 and 31 January resulted in immediate arrest. Arrests were similarly made during Antigeptil protests in April and September.

On 5 February, the Akim (Mayor) of Almaty, Akhmetzhan Yesimov, held a dinner with pro-government bloggers at an Almaty restaurant. Three independent bloggers protested the event outside the restaurant and were arrested and sentenced to 10 days of jail. Three days later, blogger Dina Baydildayeva was arrested and issued a warning after protesting the arrest of her three blogger friends. On 28 February, blogger Nurali Aytelenov from Astana protested the previous four arrests, and was himself arrested.

Protesters of a political nature were quickly stopped. A few protests against Kazakhstan’s membership in the Russia-led Eurasian Economic Union took place in 2014. On 29 May, Muratbek Esengazy was jailed for two days after he staged a one-man protest against the union. Ten persons were given two-three days of jail after a similar protest in Astana on 27 May. All three participants of a protest outside the Russian Embassy in Astana were arrested on 17 September.

Small protests against the comments of Russian politician Vladimir Zhirinovskiy regarding Russian claims to Kazakh territory resulted in arrests on 28 February and 14 April. While the Russian annexation of Crimea was hotly debated in Kazakhstan, protests against Russian policies resulted in arrests and fines on 3 and 7 March and 9 May, whereas protests in Almaty against the “fascist policies” of the new Ukrainian government proceeded uninterrupted.

On 15 February 2014, angered by the sudden devaluation of the Kazakh Tenge, which involved losses of up to 30% of savings for many citizens, some 350-400 persons gathered in Almaty, chanting politically charged slogans. During a similar, smaller protest three days prior, police had stood to the side, but on the aforementioned occasion police forces stormed the protest and forcefully removed people from the square. About 50 protesters

were arrested and taken away in police cars. Almaty City Court later fined 35 of the protesters, while one participant, Ermek Adilov, was jailed for 10 days.

It is worth noting that smaller demonstrations are sometimes permitted if the topic seems peripheral to politics in Kazakhstan. For example, about 40 people gathered near the Taras Shevchenko monument in Almaty on 24 August 2014 to mark Ukraine's Independence Day. While indirectly supportive of the new Ukrainian government, the police did not get involved or disrupt this particular gathering.

Disturbing scenes were posted on YouTube and were shared widely on social media sites after authorities in Astana chose to react aggressively against demonstrations against forced evictions involving a large number of small children. On 5 March, a protest of about 35 persons was broken up and protesters including children were taken away in police minivans. On 11 April, about 30 protesters, including children, were arrested within five minutes during a protest outside the Prosecutor's Office in Astana.

On 15 April, 20 demonstrators with children were met with police violence – one protester had her arm broken and was taken away in an ambulance. A cameraman from the critical web-based TV-channel 16/12 sustained a wound to the head, while police stopped other journalists from filming or taking pictures. All 20 demonstrators, including children, were detained. On 11 November, six adults and three children were arrested and taken away in police vans after a protest on the same topic outside the Akimat (Mayor's Office) of Astana.

The selective approach of the authorities to unsanctioned protests was underlined when demonstrations against homosexuality went ahead uninterrupted in Almaty on 16 May and 6 August. These protests included highly offensive slogans. There was no visible police presence.

Protests on social issues that are perceived of being of a non-political or uncontroversial nature were sometimes tolerated. These included protests against budget spending on repairs of roads (12 February), bans on import of cars with Kyrgyz number plates (12 March), against stripping of the license of exchange booths (8 April), against high communal tariffs (24 April), in memory of the victims of the Chernobyl disaster (28 April), by youth against corruption (20 May), for the release of confiscated cars (24 July), against pollution from a local factory (14 August) and against organized scam groups (22 September).

Occasionally, demonstrations took place that seem intended to underline the absurdity of the law on demonstrations itself. On 16 February, several women were arrested for wearing panties on their heads in downtown Almaty. They were protesting a new law in the three member countries of the Customs Union, banning panties containing less than 6% cotton. Seven of the participants were detained and fined.

Conclusions

While the penalties for participating in unsanctioned protests in themselves are unproportionally harsh, they are not at the core of the problem. Already at the level of the law regulating procedures to hold public events, Kazakhstan is at odds with its international human rights obligations, and indeed with its own Constitution.

Major problems include lengthy approval procedures, and de facto ban on protests in city centers and outside government building. There is an evident bias against demonstrations critical of the government, part of a wider form of pressure that also includes independent media outlets and opposition groups.

Kazakhstan would be best served by lifting this de facto ban on public criticism of government policy. Allowing for dynamic public debate would be beneficial to Kazakhstan as a society and would ultimately help Kazakhstan succeed on the global arena as well. Steering the country towards real democratic development could help Kazakhstan become a leader in the region also in the democratic sphere, a position that it unfortunately cannot lay claim to as of today.

Recommendations

The government and parliament of Kazakhstan should respect and protect freedom of assembly as part of its constitutional and international human rights obligations. In developing a democratic culture, respect for the right to assembly, including the right to peaceful protest, plays an important role.

In bringing legislation in line with its international human rights obligations, authorities should enter into dialogue with civil society. A September 2007 draft law produced by civil society and submitted to the President's Commission on Human Rights would be a useful starting point, as it is based on Kazakhstan's international human rights obligations.

In reforming legislation and practice, Kazakhstan's authorities should also make efforts to benefit fully from the forthcoming report and recommendations of the UN Special Rapporteur on Freedom of Assembly and Association. His recommendations should be the basis of a thorough process to bring legislation and practice in line with international human rights law.

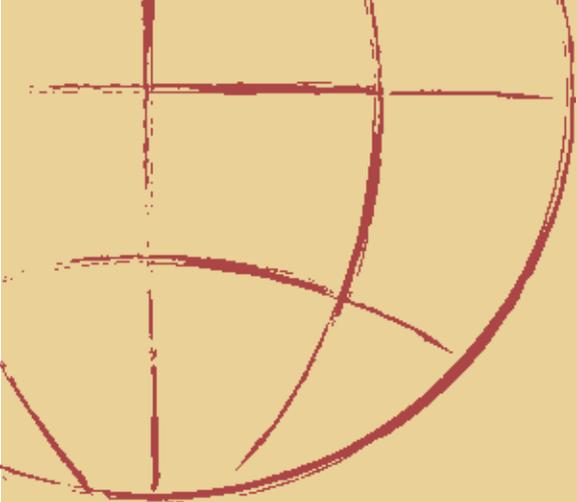
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Endnotes

- 1 ^x Drafted by Ivar Dale, Senior Adviser. Edited by Gunnar M. Ekeløve-Slydal, Deputy Secretary General, and Aage Borchgrevink, Senior Adviser.
- 2 <http://freeassembly.net/about/freedoms/>
- 3 <http://freeassembly.net/rapporteurreports/kazakhstan/>
- 4 <http://www.eurasianet.org/node/64721>
- 5 <http://www.constcouncil.kz/eng/norpb/constrk/#section2>, Article 32.
- 6 [https://spdb.ohchr.org/hrdb/19th/Kazakhstan_17.09.11_\(2.2011\)_translation.pdf](https://spdb.ohchr.org/hrdb/19th/Kazakhstan_17.09.11_(2.2011)_translation.pdf)
- 7 http://online.zakon.kz/Document/?doc_id=1003508
- 8 For a detailed comparison of the current and revised Administrative and Criminal Codes, see E. Zhovtis: "Sravnenie statei novogo zakonodatelstva v chasti mirnykh sobranii".
- 9 <http://www.hrw.org/reports/2012/09/10/striking-oil-striking-workers-0>
- 10 <https://www.youtube.com/watch?v=ttl8NfwX05s>
- 11 <http://www.bbc.com/news/world-asia-16221566>
- 12 <http://www.civicsolidarity.org/article/573/international-monitoring-mission-finds-trial-kazakhstan-workers-unfair>
- 13 <https://freedomhouse.org/article/second-monitoring-report-documents-further-violations-fair-trial-kozlov-case>
- 14 www.bureau.kz



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