

Retreating Rights: Examining the pressure on human rights in Kazakhstan



Executive Summary

As we approach the 30th anniversary of Kazakhstan's independence this publication finds the country in a period of change. The gradual passing of the torch from First President Nazarbayev to President Tokayev, growing social protests as living standards have been squeezed for many, and an uncertain future that lies ahead given the global move away from fossil fuels, make it an important time to take stock of the current state of human rights and governance in Kazakhstan.

Over the last 30 years Kazakhstan's ruling elite has delivered substantial economic growth - albeit particularly benefiting itself - and has mostly maintained stability between the country's different ethnic groups. This has come at the cost of almost all political freedoms and many civil liberties. The Government and its supporters still argue that gradual steps will enable Kazakhstan to transition to democracy and help 'evolve' the political culture in Kazakhstan. Their critics point to the lack of change at the heart of the country's political system over the last 30 years, where reforms have helped deliver improvements in the standards of living and the delivery of public services but have not lead to a meaningful transfer in political power from the elite to the citizen. The only political choice in Kazakhstan, such Tokayev assuming the Presidency, is exercised by those already in power.

President Tokayev has promised a 'listening state' and committed to delivering reforms that would improve freedoms and make the Government more responsive but change so far has been limited. His approach seems to be continuing the path of 'modernisation without democratisation' or 'reform within the system' that improves state efficiency and outcomes while mostly retaining existing authoritarian power structures. The widespread use of 'freedom restrictions' that prevent activists from continuing their work is indicative of the objective to curb criticism and silence dissent.

There are opportunities for local activists and the international community to apply pressure to address human right abuses and to help deliver reform, particularly in areas of governance that do not address the wider balance of power. Achieving more systemic change is a greater challenge and one that will likely involve further action at an international level to expose corruption.

Key recommendations

Based on the findings of the research in this publication the Government of Kazakhstan should:

- Stop targeting NGOs with punitive tax inspections and burdensome reporting requirements;
- Make it easier for parties to register and protect political activists from state harassment;
- End the use of anti-extremism legislation powers under Criminal Code Article 405 and Article 174 to target protestors or those liking or sharing opposition posts on social media;
- Further reform the law on public assembly to end restrictions on unregistered groups;
- Stop using kettling as a policing tactic for peaceful demonstrations;
- End the use of 'freedom restrictions' in sentencing that prevent activists and bloggers from continuing their work holding the Government to account;
- Stop the continued harassment of independent trade unions and striking workers;
- Remove laws on insulting the honour and dignity of public officials used to silence criticism;
- Improve data protection and privacy regulation and enforcement; and
- Deliver on commitments to produce new laws on domestic violence and sexual harassment, while retaining protections on the right to gender equality.

The international community should:

- Raise systemic problems and individual cases of abuse both in private and in public; and
- Examine the use of international mechanisms for tackling corruption and kleptocracy, including improved transparency requirements, reform of 'golden visas', Magnitsky sanctions and anti-corruption tools such as Unexplained Wealth Orders where appropriate.

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1. Introduction: Examining the pressure on human rights in Kazakhstan

By Adam Hug¹

Kazakhstan is a country that has worked hard to position itself to its people and to the world as Central Asia's success story. On a number of key measures that reputation would seem justified, not least the rapid economic growth that has taken place since independence and its relative stability when compared to its regional neighbours, but that has come at the non-negotiable price of the on-going repression of threats, both real and perceived, to the power of the ruling elite. This publication assesses the situation in Kazakhstan today and the emerging pressures on that political settlement. It comes after a time of significant upheaval following not only the COVID-19 pandemic but after the formal (though incomplete) transition of power in 2019 from the country's founding President Nursultan Nazarbayev to his successor President Kassym-Jomart Tokayev.

A very brief history of Kazakhstan

The vast expanse of territory that makes up modern Kazakhstan (at 2,724,900 square kilometres it is the 9th largest country on earth) was home to a number of different tribes throughout its early history. Political consolidation in the region is seen to have begun with the arrival of the Mongol Empire and its successor state the Golden Horde in the mid-13th Century. Upon the fragmentation of the Golden Horde the Kazakh Khanate was founded as its successor in 1465, marking the gradual emergence of Kazakh identity within the land that would ultimately become Kazakhstan. Within the

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Khanate three constituent tribes or hordes (Juz/Zhuz) would emerge: the Senior or Great Horde (Uly juz), the Middle Horde (Orta Juz) and the Junior Horde (Kishi juz). The history of the Kazakh Khanate has been used as a building block of Kazakhstan's post-Independence national identity, with the state celebrating the 550th anniversary of the Khanate's founding in 2015 with conspicuous pageantry.²

Russian expansion into what is now Kazakhstan began in 1584 with the creation of a Cossack military settlement in Oral (Uralsk) in West Kazakhstan (the part of Kazakhstan on the western side of the Ural river which places it geographically within Europe) that would expand into the Russian settlement of Yaitskiy Gorodok in 1613. Amid pressure from rival Dzungar Khanate (the Aktaban Shubryndy known as the barefooted flight or great disaster) the leadership of the Kazakh hordes one by one pledged their fealty to the Russians who were gradually expanding into the territory. By the 1820s Russia expanded to hold direct control over the Kishi and Orta Juz, and while the combined Khanate would briefly rise again from 1841-47 as part of resistance to Russian rule, the death of the Khan in battle in 1847 marked the end of the Kazakh Khanate as a political entity. The Russians completed their capture of the territory of what is now Kazakhstan by 1864, fully absorbing them into the Empire.

Russian rule continued, mostly, uninterrupted until 1916 when efforts to conscript ethnic Kazakhs and Kyrgyz into the Russian army to fight on the Eastern front led to the Central Asian (Semirechye) revolt of 1916, which would leave between 150,000-250,000 dead after its repression by Tsarist forces. Following the collapse of central control in the wake of the Russian Revolution local Kazakh leaders declared the creation of the Alash Autonomy, on land roughly coterminous with modern Kazakhstan in December 1917. This flowering of independence would last until 1920 when the Bolsheviks completed their conquest of the region. In August 1920 the Soviet Union established in its place the Kyrgyz Autonomous Soviet Socialist Republic later renamed the Kazak Autonomous Soviet Socialist Republic in 1925, subsequently becoming a full Soviet Socialist Republic (SSR) in 1936.

The early Soviet period was one of great upheaval for ethnic Kazakhs of the region. Stalin's forced collectivisation in the early 1930s of the previously nomadic peoples of the region led to the Kazakh famine of 1931-1933, which is believed to have led to the deaths of 1.5 million people (of which 1.3 million were ethnic Kazakhs, 38 per cent of the total Kazakh population) amid the context of the wider Soviet famines of 1932-33. The 1950s would see the mass transfer of ethnic Russians to the Kazakh SSR as part of the 'Virgin Lands' campaign to boost Soviet agricultural production, leading them to outnumber ethnic Kazakhs in their titular republic until the 1980s. The period from 1949-1963 would also see the Kazakhstan SSR used as the testing ground for the Soviet Union's nuclear weapons programme with over 110 above ground weapons tests whose fallout impacted 1.5 million people and left lasting environmental damage in the area around Semipalatinsk (now Semey).³

From 1960-62 and 1964- 1986 Kazakhstan was ruled by Dinmukhamed Kunaev, First Secretary of the Communist Party of Kazakhstan (and from 1971 a full member of the Politburo) and a close ally of Leonid Brezhnev. Kunaev's undoing would in part stem from his appointment in 1984 of an ambitious, young (by Soviet standards) reformer Nursultan Nazarbayev as the Chairman of the Council of Ministers (equivalent to Prime Minister of the SSR). The power struggle between the two men began in January 1986 when Nazarbayev publically criticised the First Secretary's brother Askar Kunaev over his management of the Kazakhstan Academy of Sciences, leading to an escalating political crisis which ultimately led to the removal of both Kunaevs from their posts. Nazarbayev however was not the immediate beneficiary of this change, with Gennady Kolbin, a Russian politician

² Francisco Olmos, State-building myths in Central Asia, Foreign Policy Centre, October 2019, <https://fpc.org.uk/state-building-myths-in-central-asia/>

³ Wudan Yan, The nuclear sins of the Soviet Union live on in Kazakhstan, Nature, April 2019, <https://www.nature.com/articles/d41586-019-01034-8>

who had never previously lived in Kazakhstan, being parachuted in to take over. This decision would lead to an upsurge in unrest amongst ethnic Kazakhs that peaked in the Jeltoksan (December) protests in Alma-Ata (now Almaty) that were ruthlessly suppressed with the deaths of up to 200 protestors.

However, by June 1989 Nazarbayev would get the promotion he had been angling for and became First Secretary of the Communist Party of Kazakhstan. He subsequently became Chairman of the Supreme Soviet for a brief period in spring 1990 before taking over the new post of President in April 1990. As the Soviet Union collapsed Kazakhstan would be the last republic to formally declare its independence on December 16th 1991, formally joining the Commonwealth of Independence States on December 21st that had been created by the Alma-Ata Protocol.

Independent Kazakhstan

Upon independence Kazakhstan wrestled with many of the same challenges as other newly independent republics: stabilising a cratering economy on its transition out of the Soviet planned system into something approximating the free market; trying to build a sense of national identity and unity in the newly formed country; while trying to keep a lid on potential ethnic tensions that were sparking across the region. Balancing these latter two challenges was a particular concern in Kazakhstan where ethnic Kazakhs had only recently (as of the 1989 Soviet census) and narrowly become a plurality of the republic's population again as there were almost the same number of ethnic Russian citizens (6,534,616 and 6,227,549 respectively). The ethnic Russia population significantly outnumbered ethnic Kazakhs in many parts of Kazakhstan's northern regions.⁴ In 1992 and again in 1999-2000 there were efforts, of various degrees of seriousness, amongst Russian communities in parts of the north to reunite with Russia, all of which fizzled out with the Government of Kazakhstan working to mollify potential concerns.⁵ However, over the years since independence through a combination of the gradual migration of ethnic Russians to Russia, the return of ethnic Kazakhs from East Asia and higher birth rates amongst the Kazakh population have seen the population balance shift to the ethnic Kazakh population, with it being estimated to be more than 68 per cent by the present day.⁶ This shift does not prevent the 'Russian question' periodically raising its head, with Russian nationalist politicians periodically raising the question of reincorporating the Northern Kazakhstan region that still home to more ethnic Russians than Kazakhs.⁷

One of the drivers of the migration of the Russian population in the 1990s was the initially challenging state of Kazakhstan's economy, with the economy contracting over nine per cent per year on average between 1991 and 1995.⁸ However, after weathering the initial storm, Kazakhstan's immense natural resource wealth enabled it to stabilise in the late 1990s (despite the impact of the 1998 Russian financial crisis on the region) and then drive dramatic GDP growth over the years that followed, with a six fold increase in its GDP per capita since 2002. Kazakhstan has the 12th largest proven oil reserves in the world and would become by 2018 the ninth largest global exporter of coal and crude oil as well as the 12th largest exporter of natural gas.⁹

⁴ Institute of Demography named after A.G. Vishnevsk National Research University Higher School of Economics, 1989 All-Union Population Census National composition of the population in the republics of the USSR: Kazakh SSR, http://www.demoscope.ru/weekly/ssp/sng_nac_89.php?reg=5

⁵ Alimana Zhanmukanova, Is Northern Kazakhstan at Risk to Russia?, The Diplomat, April 2021, <https://thediplomat.com/2021/04/is-northern-kazakhstan-at-risk-to-russia/>; RFE/RL, A Tale Of Russian Separatism In Kazakhstan, August 2014, <https://www.rferl.org/a/qishloq-ovozi-kazakhstan-russian-separatism/25479571.html>

⁶ CIA World Factbook, Kazakhstan, <https://www.cia.gov/the-world-factbook/countries/kazakhstan/#people-and-society>

⁷ Alimana Zhanmukanova, Is Northern Kazakhstan at Risk to Russia?, The Diplomat, April 2021, <https://thediplomat.com/2021/04/is-northern-kazakhstan-at-risk-to-russia/>

⁸ The World Bank, GDP growth (annual per cent) – Kazakhstan, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=KZ>

⁹ IEA, Kazakhstan energy profile, April 2020, <https://www.iea.org/reports/kazakhstan-energy-profile>

This resource wealth has enabled Kazakhstan to significantly improve its overall standard of living beyond that of its Central Asian neighbours. This included substantial investment in the physical transformation of the country which acted both as a literal and metaphorical nation-building exercise. At the heart of this project was the plan, announced in 1994, to move the nation's capital from the bustling but earthquake prone Almaty (renamed from Alma Ata the year before) to the smaller city in the north of the country Akmola that physically transformed into Astana (meaning capital city in Kazakh) to reflect Nazarbayev's vision of a modern Kazakhstan, but whose design reflected the tropes of Kazakh folk history and identity he was seeking to promote.

For 30 years Nazarbayev's political control was near total. In every Presidential election he ran either literally unopposed, as in his initial election in December 1991, or with supportive or no hope candidates to create the façade of completion while ensuring the President received vote shares between 91 per cent – 99 per cent. The only exception was the 1999 contest, held after a referendum in 1995 had extended Nazarbayev's initial term and removed term limits, when Communist party candidate Serikbolsyn Abdildin was able to stand (under heavy restrictions and reports of widespread abuse of process) where the President only received 81 per cent. As set out in more detail below, genuine efforts to create opposition movements either rooted in civil society or by former members of the ruling elite have been blocked through a mix of bureaucratic obstacles and often brutal repression. This political dominance by Nazarbayev, his family and close associates has been inextricably intertwined with the hoarding of economic opportunities by the same elite, further entrenching their power and amplifying the sense of threat from any challenge to the current system.

While avoiding the regular bouts of political upheaval seen in neighbouring Kyrgyzstan, the social picture in Kazakhstan has become somewhat more unsettled since the 2008 financial crash, 2014 oil price crash (that has led to lower prices ever since) and the 2014-15 Russian financial crisis, which all accumulated to take the rocket boosters off Kazakhstan's economy. Labour unrest has periodically flared, most notably and tragically in the 2011 Zhanaozen strike and subsequent massacre that killed at least 14 protestors and saw independent trade union activity cracked down upon, but this has not prevented subsequent protests over wages, attempts to fire and rehire workers on worse contracts and working conditions as the Government has sought to transfer state run assets in the oil sector into private hands.¹⁰

In 2016 economic challenges mingled with concerns over Chinese encroachment into Kazakhstan (tapping into the same deep fears about the country's sparsely populated rural areas falling into foreign hands that had previously centred on Russia), led to land protests that broke out in response to reforms to the Land Code that would have enabled foreigners to rent agricultural land for up to 25 years. The protests spread across the country in April 2016 ahead of the law's implementation in the July, sparking a change in public willingness to engage in protest despite the restrictive legal situation.¹¹ As April turned to May the Government's response grew harsher. On May 17th 2016 protesters and environmental activists Max Bokayev and Talgat Ayanov were arrested for their role in participating in and helping to organise protests. Arrests that ultimately escalated into a five year prison sentence and a subsequent three year 'freedom restriction' ban on political activism on the grounds of 'inciting social discord', 'disseminating information known to be false', and 'violating the procedure for holding assemblies'.¹² At protests in several cities on May 21st the police made

¹⁰ Maurizio Totaro, Collecting beetles in Zhanaozen: Kazakhstan's hidden tragedy, openDemocracy, May 2021, <https://www.opendemocracy.net/en/odr/yrysbek-dabei-zhanaozen-kazakhstans-hidden-tragedy/>

¹¹ Abduljalil Abdurasulov, Kazakhstan's land reform protests explained, April 2016, <https://www.bbc.co.uk/news/world-asia-36163103>

¹² UN Human Rights, "Kazakhstan should release rights defenders Bokayev and Ayan" – UN experts, December 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20990&LangID=E>; Sarah McCloskey, Why Kazakh political prisoner Max Bokayev should be released, openDemocracy, April 2019, <https://www.opendemocracy.net/en/odr/why-kazakh-political-prisoner-max-bokayev-should-be-released/>

hundreds of arrests and charges on the grounds of ‘hooliganism’.¹³ To quell the growing unrest President Nazarbayev ordered a five year moratorium on land sales, a pause that would be turned into a permanent ban in May 2021 before its expiry.¹⁴ The issue of China has been a dimension to a number of other protests in recent years from labour disputes, water use at Lake Baikal, through to protests against the human right abuses towards ethnic Kazakhs in Xinjiang touched on below.¹⁵

In February 2019, the tragic deaths of five young girls (aged between three months and 13 years) in a house fire in Astana while both parents were working overnight shifts, sparked a wave of protests across Kazakhstan arguing for increased social welfare payments for mothers with more than one child, improved housing and better healthcare.¹⁶ These ‘mothers’ protests’, as explained in more detail in the essay by Colleen Wood, touched a public nerve over the extent of inequality in the country and acted as a spark to an unprecedented level of political change throughout the year.

After major protests on February 15th, President Nazarbayev moved to dismiss the Government of Prime Minister Bakyrtan Sagintayev, arguing that they had failed to follow his instructions to address social issues and he ordered that new funding to be directed to increasing support payments and other measures to respond to the protestors concerns. Only a month later however, on March 19th, Nazarbayev made the much more surprising announcement that he would be immediately resigning from the Presidency to be replaced by Chair of the Senate Kassym-Jomart Tokayev (who had previously also served as Prime Minister and Foreign Minister), initially in an acting capacity before elections that would take place in July 2019. That Nazarbayev might seek to transition away from the Presidency at some point was not entirely a surprise, particularly given the unique powers he had been bestowed with as ‘First President’ and ‘Elbasy’ (leader of the nation) that would endure after he left the Presidency. These life-long powers included remaining as Chair of the National Security Council (a role with wide-ranging powers in international affairs, law enforcement and security matters and as well as powers over political appointments), continuing as leader of the ruling Nur-Otan party and other positions including membership of the Constitutional Council.¹⁷ This special status has allowed Nazarbayev not only to protect himself and his family’s political and economic interests but to play an important role in shaping the country’s development whilst in-effect devolving day-to-day functions to President Tokayev. This has created uncertainty, both within the system and outside, around where power truly lies, acting as a break on Tokayev’s ability to set out his own independent agenda, to the extent that a number of observers still see ultimate power within the political system residing with the ‘First President’ rather than his successor who lacks a clear independent political base of his own.

Handing over the duties of President has not significantly hindered the continued promotion of Nazarbayev and his legacy as a central building block in the national narrative. For example, three days after his departure from office Tokayev signed a decree renaming Astana (which had only been renamed from Akimola in 1997) as Nur-Sultan in honour of the Elbasy. While at time of publication we have seen the unveiling of two more large statues of Nazarbayev and launch of an eight hour

¹³ Catherine Putz, Kazakhstan Cracks Down on Weekend Protests, The Diplomat, May 2016

<https://thediplomat.com/2016/05/kazakhstan-cracks-down-on-weekend-protests/>; Eurasianet, Kazakhstan Takes Autocratic Turn With Mass Detentions, May 2016, <https://eurasianet.org/kazakhstan-takes-autocratic-turn-mass-detentions>

¹⁴ Catherine Putz, Kazakhstan Bans Sale of Agricultural Lands to Foreigners, The Diplomat, May 2021, <https://thediplomat.com/2021/05/kazakhstan-bans-sale-of-agricultural-lands-to-foreigners/>

¹⁵ David Trilling, China’s water use threatens Kazakhstan’s other big lake, Eurasianet, March 2021, <https://www.intellinews.com/china-s-water-use-threatens-kazakhstan-s-other-big-lake-207026/>

¹⁶ RFE/RL Kazakh Service, Dozens Of Mothers Protest In Kazakhstan Demanding Government Support, February 2019,

<https://www.rferl.org/a/dozens-of-mothers-protest-in-kazakhstan-demanding-government-support/29759290.html>; RFE/RL Kazakh

Service, Angry Kazakh Mothers Demand Reforms After Five Girls Die In House Fire, February 2019, <https://www.rferl.org/a/angry-kazakh-mothers-demand-reforms-after-five-girls-die-in-house-fire/29771963.html>

¹⁷ The move also came 30 years after his elevation to become First Secretary of the Communist party.

Oliver Stone directed documentary entitled *Qazaq: History of the Golden Man* aimed at burnishing Nazarbayev's legacy for both a national and international audience.¹⁸

The transition period and early elections were marked by a rising number of political protests, which though firmly repressed, hint at further cracks in the facade of what had been seen as a relatively stable authoritarian system. In his first months in office President Tokayev tried to set out his own stall as someone offering simultaneously both continuity with Nazarbayev's legacy and systemic reform to respond to the growing calls for change. He described his approach as a 'listening state' but in the context of Nazarbayev's enduring power and influence, both formally and informally behind the scenes, his room for independent manoeuvre was limited and his influence over the state bureaucracy comparatively weak even before the crisis that descended upon Kazakhstan and the world a year after his arrival in the Presidency.¹⁹

COVID-19

The COVID-19 crisis has graphically exposed the strengths and weaknesses of political systems around the world and Kazakhstan has been no exception to this rule. The first reported case of the virus was identified in Kazakhstan on March 13th 2020 and by March 15th President Tokayev had announced a state of emergency until May, cancelling planned celebrations for Nowruz (unlike his counterpart in Tajikistan) and Victory Day. A quarantine covering Astana and Almaty was introduced from March 19th, preventing residents from traveling outside their local areas. This was expanded into a lockdown by March 26th that prevented people from leaving their homes except to buy food or go to work, with meetings of more than three people banned and restrictions on public transport that were soon followed by restrictions on non-essential work.²⁰ Such measures were seen to have an impact on the initial spread of the virus but the planned reopening in May, as elsewhere in Central Asia, led to a significant spike in the number of cases that far exceeded the initial wave, leading to the reintroduction of a number of restrictions over the summer.

2021 has seen the number of cases in Kazakhstan expand dramatically with peaks in April and at time of writing that exceed the previous peaks from 2020, with the arrival of the more contagious Delta variant adding to the latest peak since mid-June. At time of writing prior to publication (as of July 14th) Kazakhstan had recorded 520,336 confirmed cases of COVID-19 with 8,173 deaths, though those numbers are expected to continue to surge due to this latest wave.²¹ The current wave of COVID cases is seeing state media more openly talking about hospitals being at capacity in a bid to urge the public to change behaviour.²² As of mid-July Kazakhstan had administered almost seven million individual vaccine doses (for a population of 18.5 million) using a mix of the Russian Sputnik, Chinese Sinopharm and Kazakhstan's locally produced vaccine QazVac.

As in most countries the political and economic impact have been severe. The impact of the pandemic and initial lockdowns pushed the economy in 2020 into recession (-2.6 per cent) for the first time since the 1998 Russian economic crisis, despite cash injections from the Government and the National Fund of Kazakhstan (the country's oil fund). While the economy had been expected to return to growth in 2021 the impact of the most recent COVID waves are likely to slow progress. A

¹⁸ Paolo Sorbello, Kazakhstan celebrates its leader with two more statues, Global Voices, July 2021, <https://globalvoices.org/2021/07/06/kazakhstan-celebrates-its-leader-with-two-more-statues/>; Andrew Roth, Oliver Stone decided for film about 'modest' former Kazakh president, The Guardian, July 2021, <https://www.theguardian.com/world/2021/jul/11/oliver-stone-film-ex-kazakhstan-president-nursultan-nazarbayev>; Joanna Lillis, Kazakhstan's golden man gets the Oliver Stone treatment, Eurasianet, July 2021, <https://eurasianet.org/kazakhstans-golden-man-gets-the-oliver-stone-treatment>

¹⁹ Catherine Putz, Kazakhstan Remains Nazarbayev's State, The Diplomat, October 2019, <https://thediplomat.com/2019/10/kazakhstan-remains-nazarbayevs-state/>

²⁰ Global Monitoring, COVID-19 pandemic – Kazakhstan, <https://global-monitoring.com/gm/page/events/epidemic-0001994.sOJcVU487awH.html?lang=en>

²¹ World Health Organisation, COVID-19 Kazakhstan, <https://covid19.who.int/region/euro/country/kz>

²² Qazaqstan TV News, Doctors of the capital showed the situation inside the hospital, July 2021, <https://qazaqstan.tv/news/143209/>

recent report by openDemocracy and local journalists at Vlast.kz and Mediazona have shown how the pandemic has exacerbated the already heavy reliance many Kazakhstani citizens have on credit to cover the vulnerability of their family finances after years of wage stagnation, with the amount of personal loans jumping by \$1.7bn in 2020.²³

The political challenges that have flowed from the crisis have come in a number of different forms. The initial response from the Ministry of Health was heavily criticised for over burdening the resources of the hospital system and other initial missteps in treatment, including drug and testing shortages. The Health Minister Yelzhan Birtanov resigned from his post in June after contracting the virus and would subsequently be arrested on corruption charges relating to longstanding allegations surrounding a major health digitalisation project called Damumed.²⁴

As elsewhere in Central Asia measures to restrict the spread of disinformation ended up being deployed against online critics of the Government's response to the crisis and its wider performance.²⁵ For example, civic activist Alnur Ilyashev was sentenced to three years of parole-like personal restraint, 100 hours of compulsory community service, and a five year 'freedom restriction' ban on social and political activism following a conviction for the 'distribution of misleading information' that was 'threatening to public security' over two Facebook posts critical of the ruling Nur-Otan party, Nursultan Nazarbayev and President Kassym Zhomart-Tokayev, coming after his past efforts to create a new independent political party had previously been cracked down on.²⁶ COVID also provided cover for the state to intensify pressure against its existing political opponents as outlined in the sections below.²⁷

Other examples of misuse of the pandemic for political purposes include allegations ahead of the 2021 Mazhilis (Parliamentary) elections that officials were breaching the COVID-19 testing protocols to disrupt the work of independent election observers.²⁸ More overtly ahead of a proposed anti-Government rally on February 28th 2021 the city authorities in Nur-Sultan raised the pandemic threat level from amber to red, which imposed strict limits on freedom of movement, for one day only seemingly to head off the potential protest before lowering it again.²⁹

The situation today: Politics and protest

Kazakhstan's ruling elite remains in the process of transition, with Nazarbayev slowly transferring formal powers to President Tokayev and being less visible in public, while retaining strong influence over appointments to positions within Tokayev's administration and other arms of the Government, both nationally and locally. President Tokayev's initial reforms have included formal abolition of the death penalty (though a moratorium had been in place since 2003) and the election of local Akims

²³ William Tompson Twitter post, Twitter, April 2021, https://twitter.com/william_tompson/status/1385102759117180931?s=20; Dmitriy Mazorenko, Dariya Zheniskhan and Almas Kaiser, Kazakhstan is caught in a vicious cycle of debt. The pandemic has only made it worse, openDemocracy, June 2021, <https://www.opendemocracy.net/en/odr/kazakhstan-caught-vicious-cycle-debt-pandemic-has-only-made-it-worse/>

²⁴ Bagdat Asylbek, Diagnosis: "devastation". Kazakhstani health care and pandemic, Radio Azattyq, August 2020, <https://rus.azattyq.org/a/kazakhstan-coronavirus-national-health-system/30768857.html>; Almaz Kumenov, Kazakhstan: Former health minister arrested, Eurasianet, November 2020, <https://eurasianet.org/kazakhstan-former-health-minister-arrested>

²⁵ Bakhytzhan Toregozhina, Pandemic and Human Rights: Only Repressive System is Functioning in Kazakhstan, Cabar Central Asia, July 2020, <https://cabar.asia/en/pandemic-and-human-rights-only-repressive-system-is-functioning-in-kazakhstan?pdf=36177>. Though Kazakhstan already had laws in place against 'disinformation' that were able to be used.

²⁶ Madina Aimbetova, Freedom of expression in Kazakhstan still a distant prospect, says prosecuted activist, Global Voices, July 2020, <https://globalvoices.org/2020/07/15/freedom-of-expression-in-kazakhstan-still-a-distant-prospect-says-jailed-activist/>

²⁷ IPHR, Kazakhstan: Massive restrictions on expression during Covid-19; sudden banning of peaceful opposition, August 2020, <https://www.iphronline.org/kazakhstan-massive-restrictions-on-expression-during-covid-19-sudden-banning-of-peaceful-opposition.html>; Asim Kashgarian, Rights Groups: Kazakh Authorities Use Coronavirus to Smother Political Dissent, VOA News, November 2020, <https://www.voanews.com/extremism-watch/rights-groups-kazakh-authorities-use-coronavirus-smother-political-dissent>

²⁸ Jeff Bell, Twitter post, Twitter, January 2021, <https://twitter.com/ImJeffBell/status/1347934173433106435?s=20>

²⁹ Almaz Kumenov, Kazakhstan: Authorities use pandemic to quash protests, Eurasianet, March 2021, <https://eurasianet.org/kazakhstan-authorities-use-pandemic-to-quash-protests>

(mayors) in rural areas.³⁰ On this latter initiative the direct local elections for rural Akims, replacing indirect election by the maslikhats (local councils), are taking place for the first time in July 2021, with independent candidates able to stand. There is understandable hope that this will help make local Akims more accountable and responsive to their local communities, ahead of the planned rollout of the direct election model to other tiers of local Government in the coming years. However, there are prequalification requirements for candidates that include either having worked in the civil service or held a leadership role in the private sector, vague criteria that have the potential to be used to weed out potential critics.³¹

Some parts of the state seem willing to engage with NGOs and other experts to consult them over proposed legislative changes, while others parts continue punitive tax investigations against them at the same time, dashing any hopes that Tokayev's calls for reform would lead to a much wider liberalisation of the system. His framing of the 'listening state' aims to continue his predecessor's approach of trying to manage complaints by ordinary citizens (while continuing to crush dissent that challenges the system) albeit now with a tone of cautious managerialism and institutionalism (at a ministry level) rather than personalisation through the office of the Presidency as under Nazarbayev. This has given greater latitude for ministries to lean into their own preferences towards reform or reaction, with the Ministry of Internal Affairs and National Security Committee being at the heart of the latter tendency.

The Government's overall approach remains broadly transactional in that the state will seek to provide stability and economic growth while the citizenry will not seek to (and not be allowed to) destabilise control by the ruling elite. For most of the post-Soviet period much of the public has remained broadly risk averse, with a middle class focused on protecting their position and wary of the risk of uncertain political change. Part of the reason for that is, as Aina Shormanbayeva and Amangeldy Shormanbayev argue in their essay, the penetration of the state and elite power structure into all aspects of life creates a huge obstacle for those wishing to challenge or hold the powerful to account. However, growing inequality and the slowed growth rates of recent years have seen a greater tendency towards protest, if not yet a wider political mobilisation.

Despite putative reforms to Kazakhstan's party system in 2010 and a formal transfer of powers to Parliament in the 2017 Constitutional reform process, genuine pluralism in Kazakhstan's politics is conspicuously absent. No new parties have been registered since 2013 despite nine attempts to do so since the previous Parliamentary elections in 2016.³² Although the party registration requirements have been formally reformed, such as reducing the required number of members from 40,000 to 20,000, practical challenges persist. For example, the OSCE note the retention of requirements that parties should hold a congress of more than 1,000 people, with the same number required for a party's initiating committee, all of which require significant identity verification and the risk of pressure on those who do participate in the above. At present there is no confidence that even if new parties were to overcome these bureaucratic hurdles that they would be allowed to successfully register, with endless opportunities for bureaucratic quibbling to prevent a new party being formed. At present, partially as a function of operating a party list system, independent candidates are barred from standing for the Mazhilis.

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) which run the gold standard election observation missions in the wider region have been blunt in their assessment of the political process. In their most recent report they state that *'the 10 January parliamentary*

³⁰ DW, Kazakhstan abolishes death penalty, January 2021, <https://www.dw.com/en/kazakhstan-abolishes-death-penalty/a-56117176>

³¹ Radio Azattyk, Direct elections of rural akims: the campaign has not started yet, but obstacles are already being raised, May 2021, <https://rus.azattyq.org/a/31240547.html>

³² OSCE Office for Democratic Institutions and Human Rights, Parliamentary Elections, January 2021, <https://www.osce.org/odihr/elections/kazakhstan/470850>

*elections in Kazakhstan lacked genuine competition and highlighted the need of the announced political reforms. They were technically prepared efficiently amid the challenges posed by the outbreak of the COVID-19 pandemic. While five parties participated in the electoral process, and their candidates were able to campaign freely, limits imposed on the exercise of constitutionally guaranteed fundamental freedoms restrict the political space.*³³ The five parties were allowed to stand were all 'constructive opposition' that broadly support the President and the current political system.

As explained further below it was of little surprise that the recent spate of tax investigations into well-known NGOs took place in the run-up to the Parliamentary polls.³⁴ The authorities also took steps to prevent NGOs that were not explicitly founded for the purpose of conducting election observation from scrutinising the electoral process and trying to restrict those who were allowed to observe from taking photos, departing from previous practice.³⁵

The result saw a small drop in the vote for the ruling Nur-Otan party and a slight rise for the Ak Zhol party and the People's Party of Kazakhstan, with a turnout (63.3 per cent) the lowest since 1999 amid the continuing pandemic and voter apathy. That the levels of pressure on those seeking to scrutinise the elections, despite Tokayev's initial promises of political competition and the low stakes of an election where every party standing supported the Government, suggests a growing nervousness about the recent economic and social protest movement potentially bleeding through into support to more overt political opposition.³⁶

There are a number of extra-Parliamentary opposition groups that are at least in theory looking to fill that potential vacuum. The Nationwide Social Democratic Party (OSDP) has been the only registered party that has publically declared its opposition to Nazarbayev and now Tokayev since the mid-2000s, albeit in what Eurasianet described as a 'highly muted and accommodationist' manner.³⁷ The party ultimately decided to withdraw from the 2021 elections following a combination of internal disagreements, the continued unfair electoral terrain but also after the intervention of Muktar Ablyazov (about whom more is explained below) who called on his supporters to vote for the Social Democrats as a vehicle to register dissent with Nur-Otan (despite deriding them as a fake opposition group) and as a move that opened up the party to pressure from both sides.³⁸ After the OSDP's withdrawal Ablyazov would turn his attention to calling for a tactical vote for Ak Zhol as a method of showing opposition to the Government (despite Ak Zhol's support for Tokayev), echoing Alexi Navalny's 'smart vote scheme' in Russia. In any case most of the noise and activity amongst the political opposition lies elsewhere.

For the best part of the last two decades the loudest and most controversial opposition figure in the political life of Kazakhstan has been Muktar Ablyazov.³⁹ Ablyazov first came to prominence in the 1990s as the head of the Kazakhstan Electricity Grid Operating Company before serving an 18 month stint as Minister of Energy, Industry and Trade until October 1999. In 2001, Ablyazov and a broad

³³ OSCE Office for Democratic Institutions and Human Rights, Parliamentary Elections, January 2021, <https://www.osce.org/odihr/elections/kazakhstan/470850>

³⁴ Joanna Lillis, Kazakhstan: Civil society complains of pre-election pressure, Eurasianet, December 2020, <https://eurasianet.org/kazakhstan-civil-society-complains-of-pre-election-pressure>

³⁵ Almaz Kumenov, Kazakhstan: Nervous authorities keep election observers at arm's length, Eurasianet, January 2021, <https://eurasianet.org/kazakhstan-nervous-authorities-keep-election-observers-at-arms-length>

³⁶ The Economist, All the parties in Kazakhstan's election support the government, January 2021, <https://www.economist.com/asia/2021/01/09/all-the-parties-in-kazakhstans-election-support-the-government>

³⁷ Almaz Kumenov, Kazakhstan: Nervous authorities keep election observers at arm's length, Eurasianet, January 2021, <https://eurasianet.org/kazakhstan-nervous-authorities-keep-election-observers-at-arms-length>

³⁸ RFE/RL, Kazakh Opposition Figure Calls On Supporters To Vote To Expose 'Opposition' Party, November 2020, <https://www.rferl.org/a/kazakh-opposition-figure-calls-on-supporters-to-vote-to-expose-opposition-party/30956477.html>

³⁹ For a good summation of the history of this case see the chapter in Joanna Lillis, Dark Shadows: Inside the Secret World of Kazakhstan, IB Taurus, October 2018.

array of figures from inside the ruling elite, including the Deputy Prime Minister Oraz Zhandosov, Minister of Labour Alikhan Baymenov and the Akim of Pavlodar Region Galymzhan Zhakiyanov, formed a nascent political party called Democratic Choice of Kazakhstan (known as the QDT in Kazakh or DVK in Russian) on a platform calling for further economic and political liberalisation including more powers for Parliament and the election of regional Akims (Governors).⁴⁰

Then Prime Minister Tokayev summarily fired all of the serving officials, calling them 'plotters', and the Government turned up the political pressure on the group's members to the extent that the less committed would quietly return to the fold, while other less strident members of the grouping would go on to form Ak Zhol (which is now the pro-Government political party mentioned above), some of whom would subsequently leave Ak Zhol to form a splinter party that would eventually merge with the National Social Democrats. Abylyazov however pressed on with his own party and soon found himself, in March 2002, arrested as part of a corruption investigation that had been opened but not pursued three years earlier. Initially jailed for six years Abylyazov would soon be freed after issuing a florid apology to Nazarbayev and swearing off any future political involvement. The first incarnation of Democratic Choice of Kazakhstan would be wound up in 2005.

Upon his release Abylyazov ostensibly returned to his business activities, acting as Chairman of BTA Bank, which grew rapidly in the years preceding the financial crash to become Kazakhstan's largest commercial bank. However things began to fall apart by early 2009 when the Bank was taken over by the state in the wake of a \$10 billion debt being found and Abylyazov fled to London. The years that followed would see an international hunt for the missing money and disclosures in the UK and US courts about the complex web of offshore holdings through which the now state run BTA argued Abylyazov had committed an extensive fraud, but which he argued were a defence against his money being taken as persecution for his political activities. After years of wrangling, primarily in the UK Courts, lawyers on behalf of BTA secured judgements against Abylyazov demanding the return of \$4.8 billion, with efforts to enforce those judgements against assets believed to be owned by Abylyazov, including luxury properties in Surrey and on the Bishop's Avenue in London (known colloquially as Billionaires Row) and business holdings around the world that are continuing to this day.⁴¹ In 2012 Abylyazov was found guilty of contempt of court at the High Court in London for failing to disclose details of his assets and had to flee to France where he would ultimately gain asylum.⁴² However his wife and children would be briefly taken from Italy to Kazakhstan in a scandal that would subsequently see Italian police officers jailed for taking part in a *de facto* kidnapping and the family returned to Italy after mounting political pressure.⁴³

What became clear in the years that followed Abylyazov's departure from Kazakhstan in 2009 was that, despite initial denials, he had continued to be a major financial supporter of opposition parties and media outlets in the years that followed his initial arrest. This was believed to include the unregistered Alga party, formed by former Democratic Choice members in 2005, that served as the largest opposition grouping until it was banned on grounds of extremism in 2012 in the wake of the jailing of its leader Vladimir Kozlov.⁴⁴ Koslov would be imprisoned as part of the crackdown that

⁴⁰ *Ibid.*

⁴¹ Hogan Lovells, Hogan Lovells Secures Major High Court Victory for BTA Bank in US \$6bn Fraud Case, August 2018,

<https://www.hoganlovells.com/en/news/hogan-lovells-secures-major-high-court-victory-for-bta-bank-in-us-6bn-fraud-case>

⁴² Rupert Neate, Arrest warrant for Kazakh billionaire accused of one of world's biggest frauds, The Guardian, February 2012,

<https://www.theguardian.com/business/2012/feb/16/arrest-warrant-kazakh-billionaire-mukhtar-ablyazov>

⁴³ RFE/RL Kazakh Servicem Italian Officials Imprisoned Over 'Unlawful' Deportation Of Former Kazakh Banker's Wife, Daughter, October 2020, <https://www.rferl.org/a/30895138.html>

⁴⁴ Dmitry Solovyov and Robin Paxton, Kazakhstan in move to ban opposition parties and media, Reuters, November 2012,

<https://www.reuters.com/article/uk-kazakhstan-opposition-idUKBRE8AK0SE20121121>; Human Rights House, Kazakhstan opposition leader sentenced in politically motivated trial, October 2012, <https://humanrightshouse.org/articles/kazakhstan-opposition-leader-sentenced-in-politically-motivated-trial/>

followed the Zhanaozen protests, though he was released in 2016 after years of international pressure over his sentencing.⁴⁵

By 2017 Ablyazov began to openly reassert himself directly into the political fray in Kazakhstan with the reestablishment of the Democratic Choice of Kazakhstan as a political movement. The revived QDT/DVK movement was formally banned as an extremist movement by March 2018, with the whole of Kazakhstan's social media facing blockages and speed restrictions whenever Ablyazov would broadcast on Facebook Live.⁴⁶ Following the banning of Ablyazov's party a new 'Street Party' or Koshe started to become active, but was itself banned on extremism grounds in June 2020 on suspicion of links to the QDT.⁴⁷

Public protests by QDT and Koshe supporters have become a notable part of the political landscape, since their involvement in and partial piggy backing on the public protests on the role of China, the 2019 Presidential election (which saw hundreds of protestors arrested) and the social issues that have been roiling in recent years.⁴⁸ They have been notable in particular because of the level of ferocity with which the Government has responded, with the movement's designation as extremist enabling the use of laws designed for combatting terrorism and 'extremism' to be deployed against protestors believed to be part of the movement. Article 174 of the Criminal Code on 'Institution of social, national, generic, racial, class or religious discord' was used as a regular tool to arrest people, but more often in recent times Article 405 about membership of banned extremist organisations has been the tool of choice with Human Rights Watch documenting over 130 such cases.⁴⁹ The use of these laws have not just been applied to physical protestors but to anyone sharing information about the protests or about the QDT and Koshe more generally, with arrests and 'freedom restriction' bans on activists being deployed.

While the level of anger generated by Ablyazov at the highest levels of Kazakhstan's Government cannot be understated, most international human rights observers and Western Governments have challenged the banning orders against the QDT and Koshe on the basis that the Government of Kazakhstan is seeking to prohibit peaceful protest movements. While these groups are clearly aiming to achieve a change of government in Kazakhstan, there is not currently evidence available that the QDT and Koshe are seeking to achieve this goal through violence rather than public pressure, with the Government of Kazakhstan unwilling to share the evidence of extremism relied on in court for independent verification.⁵⁰ Given Ablyazov's straight forward political tactic of seeking to insert himself into issues of popular protest it is difficult to gauge the proportion of the public who actively

⁴⁵ Vladimir Kozlov, [https://www.wikiwand.com/en/Vladimir_Kozlov_\(politician\)#](https://www.wikiwand.com/en/Vladimir_Kozlov_(politician)#)

⁴⁶ Almaz Kumenov, Kazakhstan is throttling the internet when the president's rival is online, Eurasianet, July 2018, <https://eurasianet.org/kazakhstan-is-throttling-the-internet-when-the-presidents-rival-is-online>

⁴⁷ Manshuk Asautay, Activists demanded the removal of the "Street Party" from the list of banned organisations, Radio Azattyq, <https://www.azattyq.org/a/31318167.htm>; RFE/RL Kazakh Service, Kazakh Activists Start Hunger Strike To Protest Opposition Party Ban, June 2021, <https://www.rferl.org/a/kazakh-hunger-strike-koshe-party/31318852.html>

⁴⁸ RFE/RL Kazakh Service, Hundreds Rally In Kazakhstan To Protest Growing Chinese Influence, March 2021, <https://www.rferl.org/a/kazakhstan-almaty-anti-china-rally-arrests/31172559.html>; Joanna Lillis, Nazarbayev ally wins big in Kazakhstan election after hundreds arrested, The Guardian, June 2019, <https://www.theguardian.com/world/2019/jun/09/hundreds-arrested-as-kazakhs-protest-against-rigged-election>; See footage here via Maxim Eristavi's Twitter feed: <https://twitter.com/MaximEristavi/status/1348182003351511042?s=20>

⁴⁹ Andrey Grishin, When Kazakhstan Will Stop Making "Extremists" of Ordinary People? CABAR Central Asia, March 2020, <https://cabar.asia/en/when-kazakhstan-will-stop-making-extremists-of-ordinary-people/>; Legislationline, Criminal codes – Kazakhstan, <https://www.legislationline.org/documents/section/criminal-codes/country/21/Kazakhstan/show>; Article 405 of the Criminal Code states - 'Organisation and participation in activity of public or religious association or other organisation after court decision on prohibition of their activity or liquidation in connection with carrying out by them the extremism or terrorism'; Human Rights Watch, Kazakhstan: Crackdown on Government Critics, July 2021, <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics>; From Our Member Dignity – Kadyr-kassiyet (KK) from Kazakhstan and Bir Duino from Kyrgyzstan – Anti-Extremist Policies in Russia, Kazakhstan, the Kyrgyz Republic and Tajikistan. Comparative Review, Forum-Asia, April 2020 <https://www.forum-asia.org/?p=31521>

⁵⁰ Human Rights Watch, Kazakhstan: Crackdown on Government Critics, July 2021, <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics>; European Parliament, RC-B9-0144/2021, https://www.europarl.europa.eu/doceo/document/RC-9-2021-0144_EN.html

support him, rather than simply share some of his critiques of the Government, though the numbers actively involved in QDT and Koshe protests would seem to be relatively low, albeit given the level of pressure from the state on anyone who does so. Even for those who are openly supportive of the party it would seem clear that ordinary activists are people showing their frustration with the existing order rather than trying to enact a violent overthrow of the Government.

Trying, but not always succeeding (literally given they regularly try to protest on similar issues of public discontent on the same days), to keep their distance from the QDT is the Democratic Party of Kazakhstan (QDP or DPT).⁵¹ The QDP was founded in October 2019 with a mixture of older opposition figures (such as Tulegen Zhukeyev) and younger activists, led by 33 year old Janbolat Mamai, formerly a campaigning journalist with the Tribuna Newspaper before being banned from journalism for three years as a ‘freedom restriction’ in 2017 over money laundering claims that the Government said was linked to Ablyazov.⁵² The party has tried to capitalise on the mood of change that flowed from the social protests and the sense that the change of the guard that took place when President Tokayev took over should actually presage more significant political change. So far it has been blocked from registering as an official party, though it did succeed in getting official permission for a protest rally in November 2020, an extremely rare occurrence.⁵³

While explicitly not a political party, the youth-focused social movement Oyan Kazakstan (Wake Up Kazakhstan) has been a regular presence on the streets since its founding in June 2019, leading to its members being swept up in government crackdowns on such protests.⁵⁴ Young protestors in their teens and early 20s have been protesting in support of a platform of ideas, including an end to political repression, reforming the distribution of power between the branches of government, free elections in line with international standards, and a system of self-governance at the local level.⁵⁵

Unregistered opposition groups and pro-reform social movements are not the only ones trying to make their voice heard at present. As set out above, anti-Chinese nationalist sentiments have been a major feature of political protests and concerns in recent years but Kazakhstan is also to some extent catching up with the rest of Central Asia when it comes to socially conservative activism that links to anti-Western nationalism. Efforts to pass anti-LGBTQ+ ‘propaganda’ bills in 2015 and 2018-19 were pushed back after international pressure but there are rumblings from Parliamentarians for another attempt to pass similar legislation. In her essay in this collection, Aigerim Kamidola documents the rise of ‘anti-Gender’ narratives, feeding off regional and national debates. However, it has been the recent debate about attempts to pass a bill to stop domestic violence that have stirred a nationalist and conspiracist backlash from groups online such as Unity of Conscious KZ and MOD People's Unity (that often link to regional and global networks, such as Citizen Go, promoting anti-vaccine narratives and socially conservative values on family issues).⁵⁶

⁵¹ For example both groups chose to protest on Capital day this year, despite meeting at different times both were swept up in the same rounds of ‘preventative’ arrests. See Joanna Lillis, Twitter post, Twitter, July 2021, <https://twitter.com/joannalillis/status/1412272738547421187?s=20>

⁵² RFE/RL’s Kazakh Service, Kazakh Journalist Convicted Of Money Laundering, Walks Free In ‘Huge Victory’, September 2017, <https://www.rferl.org/a/kazakh-journalist-mamai-convicted-money-laundering-ablyazov/28721897.html>

⁵³ RFE/RL’s Kazakh Service, Kazakh Activist Demands Registration Of Party Before Parliamentary Vote, November 2020, <https://www.rferl.org/a/kazakh-activist-demands-registration-of-party-before-parliamentary-vote/30942877.html>; RFE/RL’s Kazakh Service, Kazakh Opposition Group Allowed To Hold Rally Challenging Upcoming Polls, November 2020, <https://www.rferl.org/a/kazakh-opposition-group-allowed-to-hold-rally-challenging-upcoming-polls/30933581.html>; Radio Free Europe/Radio Liberty, Twitter post, Twitter, November 2020, <https://twitter.com/RFERL/status/1327704146221412352>

⁵⁴ Bruce Pannier, Hectic Times in Kazakhstan Recently, And For The Foreseeable Future, RFE/RL, June 2019, <https://www.rferl.org/a/hectic-times-in-kazakhstan-recently-and-for-the-foreseeable-future/30000862.html>

⁵⁵ Colleen Wood, New Civic Movement Urges Kazakhstan to ‘Wake Up’, The Diplomat, June 2019, <https://thediplomat.com/2019/06/new-civic-movement-urges-kazakhstan-to-wake-up/>

⁵⁶ Medet Yesimkhanov, Pavel Bannikov and Asem Zhapisheva, Dossier: Who is behind lobbying for the abolitions of laws and the spread of conspiracy theories in Kazakhstan, Factcheck.kz, February 2021, <https://factcheck.kz/socium/dose-kto-stoit-za-lobbirovaniem-otmeny-zakonov-i-rasprostraneniem-konspirologii-v-kazaxstane/>; Medet Yesimkhanov, Dossier: CitizenGO – an ultra-conservative lobby disguised as a petition site, Factcheck.kz, November 2020, <https://factcheck.kz/v-mire/dose-citizengo-ultrakonservativnoe-lobbi-pod-vidom-ploshhadki-dlya-peticij/>

Despite pledges to the contrary in 2019, as the arrest record shows, President Tokayev has not so far significantly delivered on his pledge to make it easier for people to publically protest in practice. As Colleen Wood points out in her essay, the reforms to the law on peaceful assembly passed in May 2020, that had been announced with much governmental fanfare were seen as more cosmetic than meaningful by local activists. Whilst the request process has transitioned from one of asking permission to giving advance notice in practice the authorities still have wide-ranging powers to set the location of and rearrange or cancel proposed gatherings, which have been used to keep it very difficult for protestors to hold legally sanctioned rallies.⁵⁷ It is worth noting, however, that even leaving aside some of the banned groups listed above, if an organisation is not formally registered with the Government it is not legally allowed to organise protest.⁵⁸ The continuing difficulties have left activists regularly holding single person pickets with protest signs to attempt to draw attention to their causes.⁵⁹ Restrictions in the Criminal Code against ‘providing assistance to’ illegal protests have been used to target social media users who have commented or shared information about such events, a worrying trend identified by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.⁶⁰ While the case for deeper reform remains urgent even within the framework of the current law there is more that could be done to create a clear guidance with list of duties that local authorities should fulfil to proactively enable peaceful protest rather than simply providing a list of demands for protestors, while both the Government of Kazakhstan and the international community should record the number of protests that have ended up being legally sanctioned.

It is not only the arrests of activists that have drawn concerns from the international community but how they have been treated by police during the protests. Tatiana Chernobyl’s essay in this collection addresses the growing use of the controversial policing tactic known as kettling, adapted from earlier forms of cordoning police protest by the Metropolitan Police in the UK during protests against the WTO in 1999.⁶¹ Although the tactic has been ruled legal in principle, by for example the European Court of Human Rights, how it is deployed and the protection of protesters contained within the ‘kettle’ remains a sensitive topic, particularly if deployed for non-violent protest in breach of OSCE guidance as Chernobyl points out.⁶² At the heart of the issue is how the state perceives any unsanctioned protest as a potential threat to its control, thereby legitimating in its eyes the use of tactics more commonly deployed in higher risk situations.

The wider human rights and civil society situation

Beyond the heavy crackdown on opposition activists and street movements the wider situation for civil society is somewhat more mixed. Freedom House’s Freedom in the World rankings place Kazakhstan marginally above Russia and three of its Central Asian neighbours (for now Kyrgyzstan remains above it), this stems from a civil liberties score that is somewhat better than its rating for political freedom.⁶³

⁵⁷ Mihra Rittmann, Kazakhstan’s ‘Reformed’ Protest Law Hardly an Improvement, Human Rights Watch, May 2020, <https://www.hrw.org/news/2020/05/28/kazakhstans-reformed-protest-law-hardly-improvement>

⁵⁸ Legislation Online, On the procedure for organising and holding peaceful assemblies in the Republic of Kazakhstan, May 2020, <https://www.legislationline.org/download/id/8924/file/Kazakhstan%20-%20Peaceful%20assemblies%20EN.pdf>

⁵⁹ Mihra Rittmann, Kazakhstan’s ‘Reformed’ Protest Law Hardly an Improvement, Human Rights Watch, May 2020, <https://www.hrw.org/news/2020/05/28/kazakhstans-reformed-protest-law-hardly-improvement>

⁶⁰ Human Rights Council, Rights to freedom of peaceful assembly and of association, United Nations General Assembly, May 2019, <https://undocs.org/en/A/HRC/41/41>

⁶¹ Indymedia UK, A brief history of “kettling”, November 2010, <https://www.indymedia.org.uk/en/2010/11/468945.html> As described by the OSCE, kettling (or corraling) is a ‘strategy of crowd control that relies on containment [...], where law enforcement officials encircle and enclose a section of assembly participants.’

⁶² Paul Lewis, Human rights court backs police ‘kettling’, The Guardian, March 2012, <https://www.theguardian.com/uk/2012/mar/15/human-rights-court-police-kettling>

⁶³ Freedom House, Countries and Territories, <https://freedomhouse.org/countries/freedom-world/scores?sort=desc&order=Total%20Score%20and%20Status>

A leading Kazakhstani NGO activist described the three competing forces that shape the Kazakhstani state as: Personality (above all Nazarbayev but also leaders of Ministries and other parts of the ruling elite both in Government, Parliament and in state connected businesses with a great degree of variability of outcome depending on who is exerting influence in a particular area); Protectionism (the desire to protect the wealth and power of ruling elites and eliminate threats to the existing order); and Modernisation (actions by technocratic, often Western-educated sections of the ruling elite that seek to modernise and cautiously reform how the state and society operate within the guardrails of the political status quo).

The last few months have neatly illustrated the tension between the last two trends. Firstly not only has the last year seen increased pressure on the political opposition but a campaign of targeted pressure against some of Kazakhstan's leading NGOs, both before and immediately after the January 2021 elections, in a clear attempt to apply a chilling effect to their public activities around the vote. This included 13 leading human rights NGOs (including Kadyr-Kasiyet and the International Legal Initiative Public Foundation who have provided contributions to this collection) who were placed under investigation by the tax authorities over the reporting of their activities funded by international grants, threatening them with fines and a requirement to temporarily suspend their activities.⁶⁴ Under sustained international pressure and as time passed since the January elections most of the tax cases were dropped between February and April 2021.⁶⁵

Many of these and other NGOs have faced harassment for years through the use of tough reporting requirements that can be deployed punitively to apply pressure to NGOs.⁶⁶ The legal framework was made more exacting for NGO's through changes to the laws governing them in 2015 and 2016 that culminated in requirements to provide large amounts of detailed information about their operations and how much they both receive and spend that comes from foreign sources (with debates about the impact of fluctuating exchange rates fuelling some of the recent cases noted above).⁶⁷ However, despite the pressure they faced from the tax authorities many of these organisations were still being invited to participate in official working groups and provide advice to the Government on policy development on areas of their expertise, with further engagement with these stakeholders now taking place in the wake of President Tokayev's latest initiative on human rights.

In a Decree entitled 'On further human rights measures in Kazakhstan' signed on June 9th 2021 President Tokayev commits the Government to creating a human rights action plan to address the topics of:⁶⁸

- *'Improving the mechanisms of interaction with the UN treaty bodies and special procedures of the UN Human Rights Council;*
- *Ensuring the rights of victims of human trafficking;*
- *Human rights of citizens with disabilities;*
- *The elimination of discrimination against women;*

⁶⁴ Front Line Defenders, Authorities pressurize human rights groups – Kazakhstan, December 2020, https://www.frontlinedefenders.org/ru/statement-report/human-rights-groups-under-pressure-kazakhstan?fbclid=IwAR2g_4jdv1OeFfSHHc92ImuVz11RnJxNYdFb12FqEggOm8gpRlnH7A-_vJg; ACCA, Kazakhstan may suspend the activities of the International Journalism Center, January 2021, <https://acca.media/en/kazakhstan-may-suspend-the-activities-of-the-international-journalism-center/>; Almaz Kumenov, Kazakhstan: Government's war on NGOs claims more victims, Eurasianet, January 2021, <https://eurasianet.org/kazakhstan-governments-war-on-ngos-claims-more-victims>

⁶⁵ RFE/RL's Kazakh Service, Kazakh Authorities Drop Charges Against NGOs After Outcry, February 2021, <https://www.rferl.org/a/kazakh-authorities-drop-charges-ngos-outcry/31087863.html>; Bagdat Asylbek, Human Rights Bureau and NGO Echo won lawsuits against tax service, Radio Azattyq, April 2021, <https://rus.azattyq.org/a/31190073.html>

⁶⁶ OMCT, Harassment on the part of the Kazakh tax authorities against human rights NGOs international legal initiative, June 2021, <https://www.omct.org/en/resources/urgent-interventions/harassment-on-the-part-of-the-kazakh-tax-authorities-against-human-rights-ngo-international-legal-initiative>; Human Rights Watch, Kazakhstan: Rights Groups Harassed, February 2017, <https://www.hrw.org/news/2017/02/22/kazakhstan-rights-groups-harassed>

⁶⁷ ICNL, Kazakhstan, May 2021, <https://www.icnl.org/resources/civic-freedom-monitor/kazakhstan>

⁶⁸ Government of Kazakhstan, President Tokayev Signs a Decree on Further Measures of the Republic of Kazakhstan in the Field of Human Rights, June 2021, <https://www.gov.kz/memleket/entities/mfa-delhi/press/news/details/215657?lang=kk>

- *The right to freedom of association;*
- *The right to freedom of expression;*
- *The human right to life and public order;*
- *Increasing the efficiency of interaction with non-governmental organisations; and*
- *Human rights in criminal justice and enforcement, and prevention of torture and ill-treatment.'*

Given the Government's recent track record on a number of topics on this list most observers will treat pledges on politically contentious issues such as freedom of association and expression with a substantial degree of skepticism until proven otherwise. However, the extent of Government-civil society dialogue underway suggests there is at least hope that modest improvements may be made in other areas that do not meaningfully seek to alter the fundamental power structure. Sadly as set out here and in a number of essay contributions not all of these less political topics are necessarily uncontroversial, particularly measures that seek to address domestic violence given the nationalist backlash it is currently generating.

So for those who avoid stepping over the state imposed line from civic activism into opposition politics (particularly opposition politics linked to the elite's *bête noire*) there can be more room to criticise the Government on its performance and make the case for reforms within the constraints of the system. It is a strategy designed to give activists a stake, a space to exert some degree of influence (to help shape 'institutional change over the next ten years' as one put it) provided they do not let measured criticism cross over into explicit demands for a change of political leadership despite the rigged nature of the system.

From the perspective of the state a partnership approach with civil society, designed to make the system work better in delivering outcomes for citizens rather than trying to change it makes a lot of sense, at least to the more modernising-wing of the ruling elite. 'Modernising' is probably the right word (rather than liberalising or democratising) to use because it is approach that seeks to maintain the status quo power structures, keeping any 'reformism' within clear political bounds. It is an approach illustrated by the increased funding being made available to NGOs to deliver services, a set of themes Colleen Wood's essay in this collection reflects more on.

For those unwilling to engage with the Government the situation is even tougher, whether linked to the political opposition or not, and many NGO's find it difficult to assist political activists due to pressure, though a number of them are able to raise awareness about their cases and call for compliance with international standards at arms-length. Despite Government officials arguing that there are no political prisoners in Kazakhstan local human rights defenders put the figure at around 20 (many of whom have been prosecuted under Article 405 for participation in banned organisations), though Amnesty International Prisoner of Conscience Max Bokayev was finally released in February 2021.⁶⁹

In a high profile case, Aset Abishev, a QDT (DVK) activist jailed for four years in 2018, was granted early release on July 14th, shortly prior to this report's publication. Abishev had become a cause for international concern after he slit his wrists in April 2021 in protest at his treatment by prison guards.⁷⁰ Sadly the similarly high profile situation of his fellow QDT activist Dulat Agadil did not have

⁶⁹ ACCA, Expert: there are no political prisoners in Kazakhstan, but they are, July 2021, <https://acca.media/en/expert-there-are-no-political-prisoners-in-kazakhstan-but-they-are/>

⁷⁰ RFE/RL's Kazakh Service, Jailed Kazakh Political Prisoner In Solitary After Slitting Wrists, Rights Group Says, RFE/RL, April 2021, <https://www.rferl.org/a/jailed-kazakh-political-prisoner-in-solitary-after-slitting-wrists-rights-group-says/31193040.html>; EU in Kazakhstan, Twitter post, Twitter, April 2021, <https://twitter.com/EUinKazakhstan/status/1380141287760859141>; RFE/RL Kazakh Service, Jailed Opposition Activist Unexpectedly Granted Early Release, July 2021, <https://www.rferl.org/a/kazakh-activist-abishev-release/31359606.html>

the same ending. Agadil was arrested at his home in February 2020, for failing to respond to a request to appear in court for his activism. The longstanding activist died in police custody in what his family believe were suspicious circumstances, an event that led to protests and widespread public anger.⁷¹

Not all of Kazakhstan's contentious prisoner cases are new. Poet and Protestor Aron Atabek was jailed in 2007 for 18 years and remains in prison over organising a protest that led to the death of a police officer. International human rights organisations and local cultural figures have long called for Atabek's release and argued he has faced ill-treatment (including extended periods of solitary confinement and a broken leg from the guards) particularly following the release of criticism of Nazarbayev made whilst in jail.⁷²

In February 2021, the European Parliament passed a hard hitting resolution criticising the deteriorating human rights situation in Kazakhstan, focused on the detention of political prisoners and the crackdown on opposition groups.⁷³ This does not seem to have had an impact on how the Government is continuing to approach the political opposition with the Democratic Party leaders currently facing a wave of arrests under administrative code violations at time of writing.⁷⁴

Many activists face prohibitions on their political or journalistic activity in addition to or in lieu of their custodial sentences as part of parole type provisions known as 'freedom restriction'.⁷⁵ For example, in June 2020 civic activist Asya Tulesova was threatened with up to three years in prison for knocking the cap off a police officer in protest at how a rally was being policed. After international outcry and two months in pre-trial detention the eventual sentence was a one and a half year probation order that included 'freedom restrictions' on her activities.⁷⁶ Activists with links to banned groups have been given longer-terms, such as regional QDT activist Marat Duisembiev who received a three and a half year restriction.⁷⁷ Irrespective of the reason for the 'freedom restriction' it significantly increases the risks of a significant custodial sentence for any form of political activity, however loosely defined they may engage in during the restricted period. Its purpose is very clearly designed to chill civic and political activism without generating the backlash, particularly from the international community, that custodial sentences for these activists would generate.

⁷¹ U.S. Department of State, 2020 Country Reports on Human Rights Practices: Kazakhstan, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kazakhstan/>; Chris Rickleton, Kazakhstan: Activist dies in detention, piling pressure on the authorities, Eurasianet, February 2020, <https://eurasianet.org/kazakhstan-activist-dies-in-detention-piling-pressure-on-the-authorities>

⁷² RFE/RL's Kazakh Service, Kazakh Writers Urge President To Release Dissident Poet Atabek, RFE/RL, February 2021, <https://www.rferl.org/a/kazakh-writers-urge-president-to-release-dissident-poet-atabek/31121177.html>; English PEN, Kazakhstan: take action for imprisoned poet Aron Atabek, <https://www.englishpen.org/posts/campaigns/kazakhstan-take-action-for-imprisoned-poet-aron-atabek/>

⁷³ European Parliament, RC-B9-0144/2021, https://www.europarl.europa.eu/doceo/document/RC-9-2021-0144_EN.html

⁷⁴ Kazakhstan International Bureau for Human Rights and Rule of Law, Dostiyarov was reportedly beaten, July 2021, <https://bureau.kz/kk/ysty%d2%9b/belsendi-dostiyarovtyng-soqqygha-zhyghylghany-habarlandy/>

⁷⁵ ACCA, Expert: people are deprived of civil and political rights in Kazakhstan, May 2021, <https://acca.media/en/expert-people-are-deprived-of-civil-and-political-rights-in-kazakhstan/>

⁷⁶ IPHR, Kazakhstan: Massive restrictions on expressions during COVID-19; sudden banning of peaceful opposition, August 2020, <https://www.iphronline.org/kazakhstan-massive-restrictions-on-expression-during-covid-19-sudden-banning-of-peaceful-opposition.html>; IPHR, Kazakhstan: Free civil rights defender Asya Tulesova, June 2020, <https://www.iphronline.org/kazakhstan-free-civil-rights-defender-asya-tulesova.html>; RFE/RL's Kazakh Service, Kazakh Court Convicts Activist Charged With Assaulting Police, August 2020, <https://www.rferl.org/a/kazakh-court-convicts-activist-charged-with-assaulting-police/30779401.html>

IPHR, Kazakhstan: Free civil rights defender Asya Tulesova, June 2020, <https://www.iphronline.org/kazakhstan-free-civil-rights-defender-asya-tulesova.html>

⁷⁷ RFE/RL, Kazakh Activist Receives Sentence For Links With Banned Political Group, December 2020, <https://www.rferl.org/a/another-kazakh-activist-receives-parole-like-sentence-for-links-with-banned-political-group/31015204.html>

Monitoring the security situation of human rights defenders

By Public Association Kadyr-Kasiyet

The Public Association Kadyr-Kasiyet conducts monthly monitoring of the pressure against human rights defenders in Kazakhstan. Monitoring is conducted in relation to eight broad categories of human rights defenders: human rights defenders, civil activists, lawyers, journalists, activists of trade unions, religious associations, political parties, and public figures.

Each of the eight categories of activists supports, strives to protect, promote, or demonstrates how one or more fundamental human rights and freedoms can be enjoyed. This, in turn, creates an idea of what rights and freedoms are under threat. Over the course of 2020, as well as first five months of 2021, the rights under threat have been the same: freedom of peaceful assembly, association, and freedom of expression.

In 2020 alone, there were 1,414 threats recorded against 684 people. Of these, the largest number of threats were received against civil society activists (482), journalists (64), political activists (48), human rights defenders (45), lawyers (24), activists of religious associations (ten), public figures (six), trade union activists (five). For five months of 2021, more than 400 threats were made against 475 people.

Analysis of the period showed the following trends:

- The number of threats decreased due to the introduction of the state of emergency, and restrictions were used against journalists, medical workers, and activists. At the same time, the prosecution of lawyers and journalists covering events related to COVID-19 began.
- The state of emergency has been lifted, but quarantine measures have been maintained.
- Banned 'parties' the 'Democratic Choice of Kazakhstan' and 'Koshe partiyasy', which led to criminal cases and summonses for questioning of their members.
- Despite the coronavirus outbreak and the entry into force of amendments to the law on peaceful assemblies unapproved rallies were held in Nur-Sultan, Almaty and other cities of the country and arrests were made.
- In different cities of Kazakhstan, citizens were arrested and sentenced for a period of five days to two months and a fine of up to 70 MCI (195,000 tenge) for participating in a memorial service in the family home of the late activist Dulat Agadil.
- Rallies for a credit amnesty, the release of political prisoners, and against the transfer of land to foreigners took place.
- A number of non-profit organisations were 'attacked' by the tax authorities before the parliamentary elections.

The security situation of human rights defenders and activists is linked and depends on events in the country. For example, in 2020, the largest number of threats was recorded in February and October. In February, Dulat Agadil died in pre-trial detention center in Nur-Sultan. Peaceful rallies in his memory of led to detentions and administrative charges in the form of fines and/or restrictions on freedom of participants. In October, the security situation was affected by a rally authorised by the authorities for political reforms and against repression. In 2021, the largest number was in January, associated with the parliamentary elections. Detentions and restrictions on the rights of election observers were observed throughout the country.

Main and secondary threats: Police; Court; Temporary detention facility; Akimat; Unknown persons; Citizens; National Security Committee; Local authorities; and Tax authorities.

To access the monthly monitoring reports please visit <https://kkassiyet.wordpress.com/projects/projectsrt/msdef/>.

In human rights challenges that apply both within and beyond the political sphere the need to improve oversight of the police and prison system remain areas of concern. Driving culture change in policing will need reform of the Ministry of Internal Affairs and measures to provide improved oversight through a new independent police complaints body. Another potential option could be devolving certain management functions to local government as part of Tokayev's gradual election of local Akims, though country-wide oversight mechanisms would need to remain to limit abuses taking place away from the national spotlight.

Torture and ill-treatment are still major problems with the case of Azamat Orazaly, killed in police custody after stealing livestock, highlighting the ongoing problems of ill-treatment by the police.⁷⁸ The increases in alleged torture cases reported through the Government's National Preventive Mechanism against Torture (NPM) is an ongoing concern though it may also be a reflection of improved reporting through the mechanism, though punishment of abusers remains rare and often then lenient.⁷⁹ The impact of the pandemic has exacerbated long-standing concerns about harsh and unsanitary prison conditions and aggressive treatment by prison officers.⁸⁰ As in many countries of the region the Government's Office of the Human Rights Ombudsman, whose duties include running the NPM, would benefit from greater capacity, increased powers to hold other arms of the state accountable and greater independence from the political system.

Kazakhstan has shares a number of challenges with its many of its neighbours in that the rule of law is impinged by both overly powerful and unaccountable prosecutors office (as Aina Shormanbayeva and Amangeldy Shormanbayev note in their essay) and a judiciary that lacks independence from the state and politically connected interests, despite years of internationally backed reform programmes designed to improve their performance. USAID describes the situation as *'while well-trained and qualified judges can be found in Kazakhstan, the judicial system overall continues to suffer from (i) lack of independence of the courts, (ii) insufficient training of judges, leading to questionable decisions, (iii) a perception of bias against foreigners in disputes with the state, and (iv) corruption.'*⁸¹ As with other parts of the state the personal dimension matters greatly, with protestors able to get reviews of their family member's cases (for non-political offenses) through the use of single person pickets and other attention raising efforts.⁸² In a recognition of some of the challenges the legal system faces, businesses in Nur-Sultan's financial centre can circumvent the domestic legal system entirely by using an English language Common Law based system headed by 88 year old former UK Chief Justice Lord Woolf and other UK legal luminaries.⁸³

Some hopes for gradual improvements in the situation, particularly in non-political cases, have been vested in the implementation in July 2021 of the new Administrative Procedures Code that consolidates the country's administrative law (including civil procedure) in one place for the first time, produced under guidance from the German Government through its Development agency GIZ and the German Foundation for International Legal Cooperation (IRZ).⁸⁴ There have also been

⁷⁸ Asemgul Mukhitovna, A resident of Makanchi died at the police station. A case was initiated under the article "Torture", Radio Azattyq, October 2020, <https://www.azattyq.org/a/30900922.html>

⁷⁹ U.S. Department of State, 2020 Country Reports on Human Rights Practices: Kazakhstan, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kazakhstan/>; Human Rights Commissioner in the Republic of Kazakhstan, <https://www.gov.kz/memleket/entities/ombudsman/activities/1030?lang=en>

⁸⁰ See State Department *Ibid* and ACCA, Kazakhstan: tired of bullying, convict threatens to hang himself, March 2021, <https://acca.media/en/kazakhstan-tired-of-bullying-convict-threatens-to-hang-himself/>

⁸¹ Duke University, Kazakhstan Rule of Law project, January 2020, <https://researchfunding.duke.edu/kazakhstan-rule-law-project>

⁸² Saniyash Toyken, A group of people who demanded a meeting with Asanov spent the night in the building of the Supreme Court, Radio Azattyq, June 2021, <https://www.azattyq.org/a/31310280.html>

⁸³ Court, An Introduction, <https://court.aifc.kz/an-introduction/>

⁸⁴ Christian Schaich and Christian Reitemeier, The Republic of Kazakhstan's New Administrative Procedures Code, ZOIS, June 2021, <https://en.zois-berlin.de/publications/the-republic-of-kazakhstan-s-new-administrative-procedures-code>; Code of the Republic of Kazakhstan, Administrative Procedural and Procedural Code of the Republic of Kazakhstan, (with changes as of 01.07.2021), https://online.zakon.kz/Document/?doc_id=35132264#pos=1;-13

rumours that the new head of the Supreme Court is keen to see judges act more independently but there is a long way to go before such claims are proved in practice.

When it comes to emerging human rights challenges Anna Gussarova's essay in this collection highlights concerns about both the capacity of the state and its intentions when it comes to protecting the vast quantities of new personal data that have been created by the shift to digital. In response Gussarova argues the case for new laws, improved training for officials and law enforcement and greater transparency to avoid the COVID period ushering in a more intrusive surveillance state on the Chinese model.

Issues relating to China's role in Kazakhstan's economy and its perceived strategic threat have been a significant political and social mobilising force that triggered a harsh reaction from the Government of Kazakhstan, as noted above. However, these domestically focused China issues are not the only area where the subject of China has led to a local crackdown. The persecution of the 1.5 million ethnic Kazakhs in the Xinjiang region (as well as the Uyghurs) has been a running source of political tension, with local families having relatives in the China. Protest movements swelled in 2018 on this issue and the organisation Atajurt Eriktileri (Homeland Volunteers) became a key NGO involved in the global documentation efforts following the situation in Xinjiang.⁸⁵ The Government of Kazakhstan was caught between appeasing local sentiment and heavy pressure from Beijing whose economic and political influence had been growing (and growing angered by the anti-Chinese sentiment on several fronts). In 2018 2,500 ethnic Kazakhs were allowed to leave China for Kazakhstan as a small gesture aimed at mollifying the situation.

In March 2019 however Kazakhstani officials raided the offices of Atajurt and arrested its founder Serikzhan Bilash, an ethnic Kazakh born in China, on the grounds that his criticism of the Chinese Government amounted to inciting ethnic tensions.⁸⁶ Bilash was forced to accept a 'freedom freedom' order agreeing to cease his activism to avoid a seven year jail term, despite the UN Working Group on Arbitrary Detention declaring that his prosecution breached international human rights law and criticised the Article 174 of the Criminal Code (on incitement to social, national, generic, racial, class or religious discord) as being overly broad and lacking legal certainty.⁸⁷ Faced with being unable to continue his work in Kazakhstan amid pressure both from the state, through new criminal cases, and people trying to take over his YouTube channel he fled to Turkey in the summer of 2020 and then on to the United States.⁸⁸ Activism on the ground in Kazakhstan on this issue is now more muted, though small groups of women continue to protest outside the Chinese consulate in Almaty, as the police are pre-emptively targeting other activists such as Baibolat Kunbolat (who leads an unregistered successor group to Bilash's Atajurt) who continue to attempt protests to free their loved ones in China.⁸⁹

Questions of ethnic tension do not only relate to China or Russia but a bloody outburst of violence, spiralling from a traffic incident, in February 2020 highlighted tensions between local ethnic Kazakhs and members of the small Dungan minority group. The violence left nine Dungan's and one Kazakh

⁸⁵ Mehmet Volkan Kasicki, Documenting the Tragedy in Xinjiang: An Insider's View of Atajurt, *The Diplomat*, January 2020, <https://thediplomat.com/2020/01/documenting-the-tragedy-in-xinjiang-an-insiders-view-of-atajurt/>

⁸⁶ Reid Standish, Astana Tried to Silence China Critics, *Foreign Policy*, March 2019, <https://foreignpolicy.com/2019/03/11/uighur-china-kazakhstan-astana/>

⁸⁷ Agence France-Presse, Xinjiang activist freed in Kazakh court after agreeing to stop campaigning, *The Guardian*, August 2019, <https://www.theguardian.com/world/2019/aug/17/xinjiang-activist-freed-in-kazakh-court-after-agreeing-to-stop-campaigning>; Freedom Now, Kazakhstan: UN Declares Detention of Human Rights Activist Serikzhan Bilash a Violation of International Law, November 2020, <https://www.freedom-now.org/kazakhstan-un-declares-detention-of-human-rights-activist-serikzhan-bilash-a-violation-of-international-law/>

⁸⁸ Bruce Pannier, Activist Defending Ethnic Kazakhs In China Explains Why He Had To Flee Kazakhstan, RFE/RL, January 2021, <https://www.rferl.org/a/31051495.html>

⁸⁹ Reid Standish and Aigerim Toleukhanova, Kazakh Activism Against China's Internment Camps Is Broken, But Not Dead, April 2020, <https://www.rferl.org/a/kazakhstan-protests-china-xinjiang-rights-abuses/31186209.html>

dead, many more people injured and many homes and businesses in the Dungan village of Masanchi burned or damaged.⁹⁰ The incident highlighted fears that growing nationalism amongst ethnic Kazakhs has the potential to destabilise the interethnic stability that Nazarbayev put at the centre of his political project.

Labour rights

As set out above and in the essay contribution by Mihra Rittmann the labour situation, after a decade of pressure on household incomes and structural change in the economy, remains challenging. After years of struggle and Government crackdowns in the years since Zhanaozen it has become harder than ever for oil workers to organise at scale to defend their rights. Mihra Rittmann's essay documents the depressing history of the legal cases and convictions against union leaders Larisa Kharkova, Amin Eleusinov and Nurbek Kushakbaev that included 'freedom restriction' bans on being involved in trade union activity.

The independent confederations previously led by Larisa Kharkova, firstly the Confederation of Free Trade Unions of Kazakhstan (KSPK) and then Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK), were ultimately liquidated due to bureaucratic harassment despite international pressure and local protests including hunger strikes by 400 union members in 2017.⁹¹ The largest, state recognised and state sympathetic, trade union confederation the Federation of Trade Unions of Kazakhstan (FPRK) remains suspended by the International Trade Union Confederation (ITUC) for failing to meet its standards on independence.⁹²

Erlan Baltabay, leader of the Industrial Trade Union of Fuel and Energy Workers (part of Kharkova's KNPRK), has been in and out of jail since 2017 on a series of dubious charges, including a sentence in 2019 that combined an initial seven year jail term with a similar length ban on union activity, though after international pressure this was followed by a Presidential Pardon for the initial jail term and given a new five month conviction.⁹³ Though he was finally released in March 2020 his 'freedom restriction' on his activism remains until 2026.⁹⁴

Labour activist Erzhan Elshibayev remains in prison on a five year prison sentence after his conviction in 2019 on highly dubious charges that came in the wake of him leading protests against unemployment in Zhanaozen, which included criticisms of Nazarbayev that were subsequently shared online. This is despite a ruling of the UN Working Group on Arbitrary Detention calling for his immediate release and credible concerns that he is suffering abuse by prison guards.⁹⁵

Along with the stick wielded against union leaders, the carrot often deployed by the Government when trying to encourage workers to go along with state plans to 'optimise' the oil sector and privatise functions of oil service companies was an 'early retirement' scheme where they would get an upfront lump sum equivalent to 50 per cent of salary for five years. This would often be alongside support for them to retrain for other forms of work or to start their own businesses, as well as other

⁹⁰ Joanna Lillis, Kazakhstan's Dungan community stunned by spasm of deadly bloodletting, February 2020, <https://eurasianet.org/kazakhstans-dungan-community-stunned-by-spasm-of-deadly-bloodletting>; Joanna Lillis, Kazakhstan: Trial over deadly ethnic violence leaves bitter taste for Dungans, Eurasianet, April 2021, <https://eurasianet.org/kazakhstan-trial-over-deadly-ethnic-violence-leaves-bitter-taste-for-dungans>

⁹¹ ITUC CSI IGN, Kazakhstan: Statement of the ITUC Pan-European Regional Council, April 2017, <https://www.ituc-csi.org/kazakhstan-statement-of-the-ituc/>; RFE/RL's Kazakh Service, Hunger Strike Protests By Oil Workers Growing In Western Kazakhstan, January 2017, <https://www.rferl.org/a/kazakhstan-oil-workers-hunger-strike/28241775.html>

⁹² ITUC CSI IGN, List of affiliated organisations, November 2019, https://www.ituc-csi.org/IMG/pdf/list_of_affiliates_nov_2019.pdf

⁹³ IndustriALL Global Union, IndustriALL calls for release of Kazakh trade union leader, July 2019, <http://www.industrialunion.org/industriall-calls-for-release-of-kazakh-trade-union-leader>

⁹⁴ IndustriALL Global Union, Kazakh union leader Erlan Baltabay released, March 2020, <http://www.industrialunion.org/kazakh-union-leader-erlan-baltabay-released>

⁹⁵ Human Rights Council, Advance Unedited Version, Freedom Now, May 2021, https://www.freedom-now.org/wp-content/uploads/AUV_WGAD-Opinion_2021-5-KAZ.pdf; Freedom Now, Kazakhstan: Freedom Now Condemns Treatment of Imprisoned Labour Activist, July 2021, <https://www.freedom-now.org/kazakhstan-freedom-now-condemns-treatment-of-imprisoned-labor-activist/>

inducements to prevent or end strike action in order to keep a lid on the potential for wider political unrest. In keeping with the Government's philosophy of modernisation within the system they have offered training to trade unionists on how to negotiate their grievances through the labour code rather than resorting to strikes that they will continue to repress.

The passage in 2020 of long-overdue amendments to the law on trade unions gave some degree of hope for the future if it were to be properly implemented. The changes, which came after repeated criticisms from the International Labour Organisation, would not force local or sectoral unions to become part of a national federation.⁹⁶ However, so far signs are not encouraging given that the Industrial Trade Union of Fuel and Energy Workers was suspended for six months in February 2021 on the basis of non-compliance with provisions of the old 2014 Trade Union law that had supposedly been removed in the 2020 amendments.⁹⁷ The lack of progress has led the ILO to continue its criticisms over Kazakhstan's lack of implementation of its reforms at its June 2021 sitting of its Committee on the Application of Standards.⁹⁸

In line with their peers around the world workers in Kazakhstan's gig economy, which has significantly expanded in recent years including through a significant rise in delivery services during the pandemic, have been organising to improve their pay and working conditions amid efforts by bosses to weaken them. Over the last few months couriers working for international companies Wolt and Glovo have engaged in public protests and unofficial strike action, while such protests were narrowly avoided at local firm Chocofood.⁹⁹ Attempts at unionising the couriers are ongoing despite risks of reprisals from both the companies and the Government.

Media freedom

Unsurprisingly, given the political tensions outlined above, Kazakhstan faces a number of media freedom challenges. The country ranks 155th out of 180 in the Reporters without Borders (RSF) 2021 World Press Freedom Index.¹⁰⁰ As with much else there is some degree of differentiation in the states reaction to outlets with links to the opposition and other organisations that are simply critical of it. Independent news websites such as Vlast.kz and Mediazona have been able to grow their readership and undertake hard hitting investigations, becoming more outspoken in the Tokayev-era and testing the limits of the levels of criticism the system will allow. Radio Free Europe/Radio Liberty (RFE/RL) is able to operate in the country, and is afforded some protection given US Government advocacy on its behalf, but its journalists are facing pressure when covering protests and other contentious issues. Instagram (the country's most used social media platform) and YouTube are increasingly home to critical voices, albeit ones that often stay focused on social and economic rather than party political challenges.¹⁰¹

Traditional media is much more restricted with many opposition and independent newspapers having been forced to close. Independent TV channels were squeezed off the airwaves in the late 90s after a massive hike in licensing fees and tighter bureaucratic pressure on dissenting voices.¹⁰² After a cat and mouse game with the authorities lasting between 2002-2016 the last iterations and offshoots of Kazakhstan's highest profile opposition-aligned newspaper Respublica were forced to

⁹⁶ Mihra Rittman, Kazakhstan Adopts Long-Promised Amendments to Trade Union Law, Human Rights Watch, December 2020, <https://www.hrw.org/news/2020/12/17/kazakhstan-adopts-long-promised-amendments-trade-union-law>

⁹⁷ Human Rights Watch, Kazakhstan: Independent Union Under Threat of Suspension, January 2021, <https://www.hrw.org/news/2021/01/28/kazakhstan-independent-union-under-threat-suspension>

⁹⁸ International Labour Conference, Committee on the Application of Standards, July 2021, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_804447.pdf

⁹⁹ Radio Azattyk, In Almaty, Glovo couriers who went on strike tried to block the street, July 2021, <https://rus.azattyk.org/a/v-almaty-obyavivshie-zabastovku-kurery-glovo-popytalis-perekryt-ulitsu/31345823.html>

¹⁰⁰ RSF, 2021 World Press Freedom Index, <https://rsf.org/en/ranking#>

¹⁰¹ Sher Khashimov and Raushan Zhandayeva, Kazakhstan's Alternative Media Is Thriving—and in Danger, Foreign Policy, July 2021, <https://foreignpolicy.com/2021/07/12/kazakhstan-alternative-media-thriving-danger/>

¹⁰² *Ibid.*

close and a number of its journalists were jailed.¹⁰³ The few independent minded print outlets that remain, such as Uralskaya Nedelya in Oral and Dat in Almaty, continue to face heavy pressure. For example, Lukpan Akhmedyarov, editor of Uralskaya Nedelya, faced threats earliest this year for reporting a leak from a high profile local corruption trial.¹⁰⁴ Akhmedyarov had previously been heavily assaulted in 2012 for his work in exposing another corruption scandal.

Officials have regularly denied accreditation to independent journalists, limiting their ability to cover official government announcements and the rules have now been formally tightened requiring journalists to be paired with an official chaperone ('a host') when covering government events.¹⁰⁵ Similarly media workers have repeatedly been arrested or harassed whilst covering unsanctioned protests over recent years. Overall the Justice for Journalists Foundation recorded 24 incidents of physical attacks or threats of violence against Kazakhstani media workers in 2020, as well as a far broader range of online and bureaucratic harassment.¹⁰⁶ Galiya Azhenova's essay draws attention to a number of these incidents.

There are warning signs ahead for Kazakhstan's online media. The laws on spreading misinformation during COVID have been used to chill reporting and particularly activism from online commentators with political connections.¹⁰⁷ The case of Temirlan Ensebek, a satirist who was detained by police and forced to close down (on charges of disinformation) his Instagram channel over parodies featuring Nazarbayev, is a reminder that while the criminal offense of defamation (slander) has been recently removed from the Criminal Code, laws against 'insult' (the 'humiliation of honour and dignity of other person') and in particular insult against government officials remain (including specific provisions, Article 373, relating to Nazarbayev as leader of the nation and his family that could have led to up to three years in prison for Ensebek).¹⁰⁸ Galiya Azhenova also points how the transfer of defamation from the criminal to administrative code has left local police trying to judge complex issues of free speech and therefore instigating lots of administrative cases for criticism of local officials. The Ministry of Information is preparing a new draft law on digital media (on Mass Communications) that is believed to be likely to include a definition of 'internet resources' thereby extending a number of different restrictions that apply in print and on television to online platforms as a way of curbing its current relative freedoms.

Cashing in

Kazakhstan's resource wealth have enabled many of those with access to political influence to become very wealthy, amid the scramble for oil in the mid-1990s and the subsequent boom years, perhaps few more so than First President Nazarbayev's own family. Gauging the true extent of the family's wealth is a difficult task but a recent investigation by RFE/RL identified at least \$785 million in European and US real estate purchases made by Nazarbayev's family members and their in-laws in six countries over a 20-year span.¹⁰⁹

¹⁰³ See Joanna Lillis, *Dark Shadows: Inside the Secret World of Kazakhstan*, IB Taurus, October 2018.

¹⁰⁴ RSF, *Regional newspaper editor harassed after investigating real estate scandal*, February 2021, <https://rsf.org/en/news/regional-newspaper-editor-harassed-after-investigating-real-estate-scandal>

¹⁰⁵ Order of the Minister of Culture and Information of the Republic of Kazakhstan dated June 21, 2013 No. 138, https://online.zakon.kz/m/document/?doc_id=31431046#sub_id=100

CPJ, *Kazakhstan adopts new accreditation requirements that journalists fear will promote censorship*, March 2021, <https://cpj.org/2021/03/kazakhstan-adopts-new-accreditation-requirements-that-journalists-fear-will-promote-censorship/>

¹⁰⁶ Justice for Journalists Foundation, *Kazakhstan, 2020*, https://jff.fund/report-2020_2/#kz

¹⁰⁷ IPHR, *Kazakhstan: Massive restrictions on expression during COVID-19; sudden banning of peaceful opposition*, August 2020, <https://www.iphronline.org/kazakhstan-massive-restrictions-on-expression-during-covid-19-sudden-banning-of-peaceful-opposition.html>

¹⁰⁸ Paolo Sorbello, *Kazakhstan Decriminalizes Defamation, Keeps Hindering Free Media*, June 2020, <https://thediplomat.com/2020/07/kazakhstan-decriminalizes-defamation-keeps-hindering-free-media/>; Legislationline, *Penal Code of the Republic of Kazakhstan*, July 2014, https://www.legislationline.org/download/id/8260/file/Kazakhstan_CC_2014_2016_en.pdf

¹⁰⁹ Mike Eckel and Sarah Alikhan, *Big Houses, Deep Pockets*, RFE/RL, December 2020, <https://www.rferl.org/a/kazakhstan-nazarbayev-family-wealth/31013097.html?fbclid=IwAR38vC-WSKYBgPMTm--5XVstgP5c3oesqt7eomZmsfeUiQJahO5QThDmcGU>

One of the first major public debates about corruption in the ruling elite was the ‘Kazakhgate’ scandal that came to public attention in 2002 and 2003 with US Prosecutors alleging that around \$80 million in funds from US oil companies were diverted into Swiss bank accounts for the use by President Nazarbayev and other leading officials in order to help win contracts on the Tengiz oilfields. The US businessman (and Counsellor to the President of Kazakhstan) James Giffen who was at the heart of the case would eventually serve no jail time after most of the charges were dropped, not because the financial transfers did not take place, but on the basis that there were reasonable grounds to believe he had been working with the CIA at the time of the affair.¹¹⁰ Kazakhstani journalists who covered the story were less fortunate with one of the main investigators of the case, Sergei Duvanov, subsequently jailed on what were widely seen as fabricated rape charges and pressure was put on newspapers such as Respublica that had covered the story.¹¹¹

While, as in Kazakhgate, allegations would occasionally touch Nazarbayev himself (including recently when businessman Bulat Utemuratov, alleged by US diplomats to be his financial fixer, was swept up in the ongoing saga over retrieving BTA assets from Ablyazov, with three billion USD in assets frozen by the UK courts) more often than not public discussion around the family’s wealth centred on his children and in particular the husbands of the oldest two daughters.¹¹²

Dinara Kulibayeva and her husband Timur Kulibayev, a businessman who held many senior positions in state affiliated bodies (including the sovereign wealth fund Samruk-Kazyna) and throughout the energy industry (including sitting on the board of Russian energy giant Gazprom), have become the second richest people in Kazakhstan.¹¹³ The Kulibayevs are known to have substantial holdings in the UK, including the former home of Prince Andrew (Sunninghill Park), a connection that would periodically be raised in the British press over allegations that the Prince did favours for Kulibayev whilst serving as UK trade envoy and over his closeness to Kulibayev’s former mistress Goga Ashkenazi.¹¹⁴ More recently, in December 2000, the Financial Times alleged Kulibayev’s involvement in a scheme to siphon millions of dollars from a Chinese pipeline contract.¹¹⁵

Nazarbayev’s oldest daughter Dariga Nazarbayeva has had the highest profile presence in Kazakhstan’s public life over the years and had been often touted as a potential successor to her father. After a media ownership career in the 1990s, she formally entered politics in 2003 with her own ‘Azar’ party that was elected to the Mazhilis in 2004. Her party would formally merge with her father’s Otan party to create Nur-Otan, the ruling party of Kazakhstan to this day. After sitting out the next Parliament she returned in 2012 on the Nur-Otan list, becoming the Nur-Otan Parliamentary leader and Deputy Chair of the Mazhilis from 2014-15 before becoming Deputy Prime Minister for a year and then joining the Senate in 2016. Upon Tokayev’s assentation to the Presidency Dariga would become Chair of the Senate and the formal next in line to the Presidency.

¹¹⁰ RFE/RL, After Seven Years, ‘Kazakhgate’ Scandal Ends With Minor Indictment, August 2010,

https://www.rferl.org/a/After_Seven_Years_Kazakhgate_Scandal_Ends_With_Minor_Indictment_/2123800.html; Steve LeVine, Was

James Giffen telling the truth?, Foreign Policy, November 2010, <https://foreignpolicy.com/2010/11/19/was-james-giffen-telling-the-truth/>

¹¹¹ Joanna Lillis, Kazakhstan: Nazarbayev-linked billionaire sucked into UK court battle, Eurasianet, December 2020,

<https://eurasianet.org/international-criticism-of-duvanov-conviction-mounts-against-kazakhstan>. See also Joanna Lillis, Dark Shadows: Inside the Secret World of Kazakhstan, IB Taurus, October 2018.

¹¹² <https://eurasianet.org/kazakhstan-nazarbayev-linked-billionaire-sucked-into-uk-court-battle>

¹¹³ https://forbes.kz/ranking/50_bogateyshih_biznesmenov_kazahstana_-_2020

¹¹⁴ Robert Booth, Prince Andrew tried to broker crown property deal for Kazakh oligarch, The Guardian, July 2016,

<https://www.theguardian.com/uk-news/2016/jul/03/prince-andrew-broker-crown-property-kazakh-oligarch>; Ian Gallagher, Kazakh-born socialite ‘Lady Goga’ who partied with her ‘very, very close friend’ Prince Andrew at her 30th birthday reveals she leads a far quieter life after turning 40, Mail Online, March 2020, <https://www.dailymail.co.uk/news/article-8113173/The-quiet-life-Lady-Goga.html>

¹¹⁵ Financial Times, The secret scheme to skim millions off central Asia’s pipeline megaproject, December 2020,

<https://www.ft.com/content/80f25f82-5f21-4a56-b2bb-7a48e61dd9c6>; Eurasianet, Financial Times: Kazakh leader’s son-in-law skimmed millions from Chinese loans, December 2020, <https://eurasianet.org/financial-times-kazakh-leaders-son-in-law-skimmed-millions-from-chinese-loans>

Until 2007 she was married to the controversial oligarch Rakhat Aliyev, whose notorious reputation has repeatedly sinned the credibility of the system over his financial dealings and links to criminality. Aliyev would ultimately be carted-off to Vienna as Ambassador to Austria and the OSCE as claims of his involvement in the murders of two bankers began to swirl.¹¹⁶ He would ultimately be charged and sentenced in absentia in Kazakhstan for those crimes, alongside allegations of a further murder of opposition politician Altynbek Sarsenbayev, the suspicious death of his former mistress Anastasiya Novikova, as well as allegations of torture, kidnapping and evidence of money-laundering. Aliyev would ultimately be found hanged in an Austrian prison in 2015 while awaiting trial over the murder of the bankers.¹¹⁷ The link to Aliyev was of later relevance to a high profile, and ultimately unsuccessful, case by the UK National Crime Agency that sought to use an Unexplained Wealth Order to freeze ownership of three UK homes worth £80 million belonging to Nazarbayeva and her family. The National Crime Agency had argued that the properties came from Aliyev's ill-gotten gains but the court sided with Nazarbayeva's position that these assets had been procured with her own money.¹¹⁸ However, in the wake of the trial she was surprisingly removed as Chair of the Senate (and from the line of Presidential succession) by President Tokayev in May 2020 and it remains unclear whether this was due to the public impact of the revelations of her wealth or an internal power struggle that led to her removal. Later in 2020 further revelations of the extent of Nazarbayeva's UK property holdings were revealed when she was found to be the owner of £140 million worth of buildings on Baker Street in Central London.¹¹⁹ Despite these further revelations about the size of her personal wealth she made her return to Kazakhstani politics in January 2021 by returning to the Mazhils as a Nur-Otan parliamentarian.¹²⁰

As the situation of Nazarbayev's daughters and indeed Muktar Ablyazov shown above illustrate the UK is a major external venue for the investments and entanglements of Kazakhstan's elite. Recent analysis has shown that Kazakhstan was one of the major beneficiaries of the UK's Tier one Investor visa system (or Golden Visas as they are known) with 205 Kazakhstani's gain UK residency in the period 2008-2015 (the fifth most common country and the largest per capita excluding microstates).¹²¹ While luxury property market may act as a store of wealth from Kazakhstan it is worth noting that according to the UK Government's most recent figures Foreign Direct Investment from Kazakhstan into the UK totalled less than one million pounds in 2019.¹²²

The former first family are far from only people with political connections in being able to make their fortunes in post-Independence Kazakhstan. Just to cite one indicative example, RFE/RL recently exposed how former high ranking officials in the Education Ministry, particularly the family of Bakhytzhon Zhumagulov, own most of Kazakhstan's for-profit colleges and universities.¹²³ Access to

¹¹⁶ See: Joanna Lillis, *Dark Shadows: Inside the Secret World of Kazakhstan*, IB Taurus, October 2018.

¹¹⁷ Joanna Lillis, *Kazakhstan: Rakhatgate Saga Over as Former Son-in-Law Found Hanged*, Eurasianet, February 2015, <https://eurasianet.org/kazakhstan-rakhatgate-saga-over-as-former-son-in-law-found-hanged>

¹¹⁸ BBC News, *Kazakh family win Unexplained Wealth Order battle over London homes*, April 2020, <https://www.bbc.co.uk/news/uk-52216011>

¹¹⁹ George Greenwood, Emanuele Midolo, Marcus Leroux and Leigh Baldwin, *Strange case of Dariga Nazarbayeva, mystery owner of Sherlock Holmes's Baker Street address*, The Times, November 2020, <https://www.thetimes.co.uk/article/strange-case-of-dariga-nazarbayeva-mystery-owner-of-sherlock-holmes-baker-street-address-23q7c2fpl>

¹²⁰ Sumaira FH, *Nazarbayev's Daughter Secured Seat In Kazakh Parliament On Ruling Party's Ticket*, Urdu Point, January 2021, <https://www.urdupoint.com/en/world/nazarbayevs-daughter-secured-seat-in-kazakh-1138712.html>

¹²¹ John Heathershaw, *Twitter post*, Twitter, July 2021, <https://twitter.com/HeathershawJ/status/1414900706771865602?s=20>; Susan Hawley, George Havenhand and Tom Robinson, *New Briefing: Red Carpet for Dirty Money – The UK's Golden Visa Regime, Spotlight on Corruption*, July 2021,

<https://www.spotlightcorruption.org/new-briefing-red-carpet-for-dirty-money-the-uks-golden-visa-regime/>; Dominic Kennedy, *National security review of golden visas for investors*, The Times, July 2021, <https://www.thetimes.co.uk/article/national-security-review-of-golden-visas-for-investors-mz5zsnf0c>

¹²² Department for International Trade, *Trade & Investment Factsheets, Kazakhstan*, UK Gov, July 2021,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998607/kazakhstan-trade-and-investment-factsheet-2021-07-07.pdf

¹²³ Ron Synovitz and Manas Kaiyrtayuly, *How Top Officials, Relatives Scooped Up Kazakhstan's Higher – Education Sector*, RFE/RL, June 2021, <https://www.rferl.org/a/kazakhstan-universities/31326535.html>

political influence over sectors of the economy have led to opportunities for officials, their families and associates to enrich themselves.

Religion

As with so many issues in Kazakhstan the state's approach to religion is rooted in its desire to maintain stability, both between its citizenry and of the system as a whole. Kazakhstan is a predominantly Muslim Country (72 per cent) but given the residual size of its Russian population Orthodox Christianity retains a significant toe hold (23 per cent) alongside other religions linked to smaller minority groups.¹²⁴ So as a result of the post-Independence demographics and Nazarbayev's own vision of the nation, Islamic identity played less of a role than in its Central Asian neighbours as a building block of Kazakhstani national identity (as indeed did the initial reticence to conflate Kazakhstan's nation-building project with ethnic Kazakh identity, though it would be infused with Kazakh folk symbolism such as the Samruk bird). As such Kazakhstan's constitution does not make any reference to Islam or any other specific religion, retaining its secular status.¹²⁵

Kazakhstan has used this approach religion as a key part of its nation branding not only internally but on the world stage. Since 2003, Kazakhstan has hosted a Nazarbayev-centric interfaith initiative known as the Congress of Leaders of World and Traditional Religions that brings together senior figures from larger 'mainstream' or 'traditional' denominations of world religions.¹²⁶ It preaches mutual toleration and understanding for the mainstream institutions that the Government of Kazakhstan believes it can do business with at a domestic level and use strategically at an international level to promote an image of tolerance and peace, as well as a role for Kazakhstan (and Nazarbayev personally) as a convenor to promote those goals. For religious groups that fall outside the 'traditional mainstream' however it can be much tougher. As a result Kazakhstan can find itself lauded by international actors for promoting religious tolerance, while simultaneously being recommended for placement on the State Department's Special Watch List for Religious Freedom by the US Commission on International Religious Freedom (albeit the State Department has not given yet it this designation).¹²⁷

The challenge in Kazakhstan, as in the secular world, is with the issue of unregistered groups where the state makes it hard to register and cracks down on anything that is not. Kazakhstan's 2011 Law on Religious Activity and Religious Associations set stringent requirements on what types of groups could be registered and how, with a minimum of 50 Kazakhstani citizens required to set up a local religious organisation through to at least 5,000 members (with 300 in each oblast as well as in Almaty, Nur-Sultan and Shymkent) to set up a national organisation.¹²⁸ There are also heavy restrictions on proselytisation, such as requirements that religious materials can only be distributed on the premises of a registered religious groups, which have been seen to target Jehovah's Witnesses and evangelical protestant groups. There has, however, been a downward trend in the number of administrative offenses recorded each year in relation to this law, with 139 cases reported in 2020 down from 284 in 2017 according to the religious freedom organisation Forum 18.¹²⁹

¹²⁴ Pew Research Center, Religious Composition by Country, 2010-2050, <https://www.pewforum.org/2015/04/02/religious-projection-table/>

¹²⁵ Legislationline, The Constitution of the Republic of Kazakhstan,

https://www.legislationline.org/download/id/8207/file/Kazakhstan_Constitution_1995_am_2017_en.pdf

¹²⁶ Congress of Leaders of World and Traditional Religions, <http://religions-congress.org/>

¹²⁷ United States Commission on International Religious Freedom, Annual Reports, <https://www.uscirf.gov/annual-reports>

¹²⁸ Legislationline, The Law of the Republic of Kazakhstan of October 11, 2011, No 483-IV, On Religious Activity and Religious Associations, https://www.legislationline.org/download/id/4091/file/Kazakhstan_Law_religious_freedoms_organisations_2011_en.pdf

¹²⁹ Felix Corley, Kazakhstan: 134 administrative prosecutions in 2020, Forum 18, February 2021, https://www.forum18.org/archive.php?article_id=2634

The newly independent state built on the legacy of Soviet religious management and registration by creating the Spiritual Association of Muslims of Kazakhstan under which all registered mosques are affiliated. Wearing of the hijab in schools is restricted through the widespread application of school uniform policy preventing the wearing of religious symbols.¹³⁰

As elsewhere in the region concerns about religious radicalisation stem both from concerns about the risk of terrorism and from the growth of groups that fall outside of the state's control. Non-violent extremist groups such as Tablighi Jamaat and Hizb ut-Tahrir are banned and the use of the term 'extremist' has been used widely in arrests of government critics (both religious and secular) without proven ties to violence.

Women's and LGBTQ+ rights

In terms of women's political leadership in Kazakhstan's the OSCE note that 'women held only one out of 17 (regional) Akim and two out of 22 ministerial positions' at the time of the January 2021 Parliamentary elections. Despite the introduction of a 30 per cent quota the number of women in the newly elected Mazhilis actually fell from 29 to 28 seats.¹³¹

As noted above and in the essay by Dr Khalida Azhigulova efforts to introduce new legislation focused on improving women's rights have met with push back from socially conservative forces. At the moment the legislation on tackling domestic violence in Kazakhstan is weak, with cases usually dealt with under the administrative code (for minor offenses) rather than Criminal Code (which is used only for severe assaults), leading to a situation where the penalties for dropping a cigarette on the street (classified as petty hooliganism) are harsher than for most domestic violence cases.¹³² In 2020, 45,000 cases of domestic violence were initiated through the administrative code but is far lower than the true extent of the situation due to under reporting and even then more than 60 per cent of the cases are withdrawn before a ruling is made due to pressure for family reconciliation.¹³³ It is positive that President Tokayev has recommitted to a law on domestic violence as part of his recent Human Rights Decree but the details remain likely to be keenly fought over, such as whether 'minor beatings' would become a criminal offense or not.¹³⁴ Attempts to bring in laws against sexual harassment have stalled under pressure from the similar social conservative forces.

International Women's day (March 8th) has often been a flashpoint between women's rights activists and socially conservative forces across Central Asia. In a positive step in 2021 the Women's March was given permission by the city authorities in Almaty for the first time and between 500-1,000 women's rights activists were able to protest in what has been described as Kazakhstan's largest women's march.¹³⁵ However, the state remains reticent to allow groups undertaking more 'radical' advocacy on both women's and LGBTQ+ rights to get a hearing. The group Feminata has been repeatedly denied official registration and its leaders were recently attacked by unknown assailants in Shymkent whilst holding a private meeting on gender equality before being detained by police 'for their own safety'.¹³⁶

¹³⁰ Zhanagul Zhursin and Farangis Najibullah, The Hijab Debate Intensifies As School Starts In Kazakhstan, RFE/RL, September 2019, <https://www.rferl.org/a/the-hijab-debate-intensifies-as-school-starts-in-kazakhstan/30148088.html>

¹³¹ OSCE, Kazakhstan - Parliamentary Elections, 10 January 2021, <https://www.osce.org/odihr/elections/kazakhstan/470850>

¹³² Amina Chaya, What's wrong with the domestic violence law in Kazakhstan? Part two, Masa Media, November 2020, <https://masa.media/ru/site/chto-netak-szakonom-obytovom-nasilii-vkazakhstane-chast-vtoraya>

¹³³ Evgeniya Mikhailidi, Alina Zhartieva, Nazerke Kurmangazinova, Victorious Violence, Vlast, February 2021, <https://vlast.kz/obsshestvo/43869-pobedivsee-nasilie.html>

¹³⁴ Kazinform, Domestic and domestic violence: MPs and experts talked about the new law, October 2020, https://www.inform.kz/ru/semeyno-bytovoe-nasilie-deputaty-i-eksperty-rasskazali-o-novom-zakone_a3710389

¹³⁵ Malika Aulalipova and Timur Nusimbekov, The Largest Women's March in the History of Kazakhstan, Adamar, March 2021, <https://adamdar.ca/en/post/the-largest-women-s-march-in-the-history-of-kazakhstan>; Asylkhan Mamashevich, National values, LGBT rights and "justification before the European Parliament". How did the society evaluate the women's march?, Radio Azattyq, March 2021, <https://www.azattyq.org/a/kazakhstan-gender-equality-different-opinions/31142716.html>

¹³⁶ Human Rights Watch, Kazakhstan: Feminist Group Denied Registration, September 2019, <https://www.hrw.org/news/2019/09/13/kazakhstan-feminist-group-denied-registration>; Mihra Rittmann, Activists Detained in Kazakhstan

More broadly for LGBTQ+ Kazakhstanis the situation remains tough. Homosexuality was decriminalised in 1998 (unlike in Uzbekistan and Turkmenistan) but the legal frameworks to protect the community are piecemeal (based on generalised anti-discrimination provisions in the Constitution) and cultural attitudes remain deeply hostile in large segments of society.¹³⁷

In 2015 and 2018-19 attempts were made by the Government to introduce a Russian style law on 'propaganda' about 'non-traditional sexual orientation' that would have restricted the ability for members of the LGBTQ+ community and rights activists to speak openly about their concerns.¹³⁸ These efforts were pushed back after both local campaigning and pressure from Kazakhstan's western partners, but there are concerns efforts will be made in Parliament to try again in the near future. Aigerim Kamidola's essay highlights current measures to past a draft Law 'On the Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Family and Gender Policy' that would remove the term gender from existing the anti-discrimination law and replace it with 'equality on the basis of sex'. This move taps into narratives that have seen the concept of gender stigmatised both as a general label attached to LGBTQ+ and Women's rights ('gender ideology') by illiberal or anti-Western 'anti-Gender' campaigners across the post-Soviet space, as well as being used in a more narrow sense as to specific debates around rights and protections for transgender people.

International influence

Kazakhstan has so far successfully pursued a multi-vector foreign policy that has enabled it to negotiate tricky regional relationships and project a positive image of the country on the world stage Kazakhstan. The country has remained part of the Moscow-oriented post-Soviet regional infrastructure such as the Commonwealth of Independent States, the Collective Security Treaty Organisation and more recently the Eurasian Economic Union. Despite the somewhat fraught domestic political challenges China has been steadily growing its influence with over 18 per cent of Kazakhstan's total trade and almost five per cent of its total inward investment, as well as a deepening security relationship that includes membership of the Shanghai Cooperation Organisation.¹³⁹ For a long-time under President Nazarbayev Kazakhstan assumed a regional leadership role within and to some extent on behalf of Central Asia, though in recent years Uzbekistan's President Mirziyoyev has ended his country's virtual isolation and the regional balance is somewhat more evenly split between the region's most populous country (Uzbekistan) and its richest (Kazakhstan).

At the same time, Kazakhstan has dramatically deepened its economic ties to the West as touched on above. The EU is Kazakhstan's largest external trading partner, accounting for 30 per cent of its external trade, and the country is the first in Central Asia to conclude a new Enhanced Partnership and Cooperation Agreement (EPCA) which came into force in 2020. The EU institutions have tended to raise human rights and governance issues within the confines of its formal human rights dialogue

¹³⁷ 'For Their Own Safety', Human Rights Watch, June 2021, <https://www.hrw.org/news/2021/06/01/activists-detained-kazakhstan-their-own-safety>

¹³⁸ The Constitution contains Article 14. 2 which promises 'No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or *any other circumstances*'. See The Constitution of the Republic of Kazakhstan, Legislationonline, https://www.legislationline.org/download/id/8207/file/Kazakhstan_Constitution_1995_am_2017_en.pdf; RFE/RL Kazakh Service, Sexual Minorities In Kazakhstan Hide Who They Are To Avoid Abuse, June 2021 <https://www.rferl.org/a/kazakhstan-lgbt-hide-from-abuse/31316186.html>

¹³⁸ Draft Law 'On protection of children from information harming their health and development', 2015; Ministry of Information and Communication of the Republic of Kazakhstan, the Instruction 'On Classification of Informational Products' and 'Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development', 2018.

¹³⁹ Zhanna Shayakhmetova, Positive Dynamics Observed in Trade Between Kazakhstan and China, The Astana Times, April 2021, <https://astanatimes.com/2021/04/positive-dynamics-observed-in-trade-between-kazakhstan-and-china/>

processes, though the European Parliament has often been more vocal on these issues despite ratifying the EPCA.¹⁴⁰

The OSCE has always been an important part of Kazakhstan's diplomatic initiatives with Kazakhstan holding the chairmanship in office in 2010 and using the opportunity to host a rare summit of the organisation's heads of Government (it was the last time such an event has taken place, with the next most recent OSCE summit taking place in 1999).¹⁴¹ As a sign of Kazakhstan's continuing involvement Former Foreign Minister Kairat Abdrakhmanov became the High Commissioner on National Minorities (HCNM) in December 2020. Other initiatives to put Kazakhstan (and particularly Astana, now Nur-Sultan) on the map include the Congress of Leaders of World and Traditional Religions as noted above and the 'Astana process' which has seen Kazakhstan host peace talks over the Syrian crisis since 2017.

Kazakhstan's position as a relatively prosperous, well connected country with a broad base to its international relations means that there are some opportunities for international influence over the trajectory of its performance on human rights issues but these should not be overstated. Its leadership, and particularly a number of younger generation of officials and leaders, care about Kazakhstan's reputation, something it has worked hard to promote internationally as a good partner and modern country. There is an ongoing desire from Kazakhstan to continue to receive foreign investment and support, particularly as the world transitions away from fossil fuels. However, it is far from clear that these considerations outweigh the desire to maintain the political and economic status quo, particularly amongst the upper echelons of the state and particularly the security apparatus.

¹⁴⁰ Ayia Reno, "You need to have not only beautiful reform packages." EU special envoy on relations with Kazakhstan, Radio Azattyq, January 2021, <https://rus.azattyq.org/a/kazakhstan-eu-relations-peter-burian-special-representative-central-asia/31029755.html>; European Parliament, RC-B9-0144/2021, https://www.europarl.europa.eu/doceo/document/RC-9-2021-0144_EN.html

¹⁴¹ OSCE, Summits, <https://www.osce.org/summits>

What our authors say

Colleen Wood writes that the Kazakhstani authorities say they want to increase the 'efficiency' of state-society relations while also improving the country's human rights record. She examines what this looks like for the defence of human rights like freedom of association and assembly and draws on two examples to illustrate how the regime envisions an efficient relationship between the state and civil society. First, tracing the 'mothers' protests' that happened across Kazakhstan in early 2019, she argues that Kazakhstani authorities prefer a robust civil society that would trade contentious, direct action for helping the Government efficiently provide public services. Second, she considers the experience of feminist initiative Feminita, which struggled to register as a public foundation, to show that Kazakhstani authorities want to make the landscape of civil society should be made efficient and smooth through NGO registration laws which make associational life legible to the state.

Aina Shormanbayeva and Amangeldy Shormanbayev argue that a monopoly system of power and economy has been built in Kazakhstan, which has a mirror effect on the political, media, public spheres. To maintain this monopoly, they say that the repressive apparatus represented by law enforcement agencies has been strengthened. The authors offer their ideas for the possible modernisation of Kazakhstan through constitutional and territorial reforms, which would entail changes both in the political system and in the distribution of financial resources between the centre and the regions. The authors see the main goal of modernisation as improving the access of citizens to governing the country and making decisions.

Tatiana Chernobil explains that for a little more than a year, police in Kazakhstan have been using kettling to curtail peaceful assemblies throughout the country. The official explanation has been that this is a measure to prevent social and political disruption. In Kazakhstan kettling is not stipulated by law and looks arbitrary and entirely disproportionate. Despite the outcry from human rights defenders and lawyers, the official reaction has been to seek to include this tactic under the law instead of acknowledging its deep problems with and stopping using it against peaceful protesters. By the OSCE's standards, this police tactic is permissible only in exceptional circumstances to stop or prevent imminent violence or chaos. Kazakhstan should closely follow the international human rights recommendations regarding the policing of peaceful assemblies and should respect freedoms of expression and of peaceful assembly. It should amend its law on peaceful assemblies to make the right to the freedom of peaceful assembly a right and not a privilege and discontinue punishing people for the failure to comply with the strict and overly bureaucratic orders set by the state in that law. Police should be made accountable and responsible for violations of human rights during the policing of public gatherings.

Mihra Rittmann describes in her essay how an unresolved oil workers' strike in western Kazakhstan in 2011 became the catalyst for the Kazakh Government's sustained crackdown on independent labour organising. Rittmann briefly covers what happened in Zhanaozen in 2011 and the violence that brought an end to the strike that December. She details the adoption of a restrictive trade union law in 2014 and subsequent challenges independent trade unions faced trying to comply with the law, as well as politically motivated criminal cases brought against outspoken labour leaders. Rittmann points to an international response to the crackdown and concludes by suggesting that the Government's efforts to fully suppress independent labour organising have failed. She ends by offering recommendations on what the Kazakh Government should do moving forward.

Galiya Azhenova explains how COVID-19 has exacerbated the media freedom challenges in Kazakhstan. She notes that online meetings gave greater power to officials to avoid scrutiny and that the freedom of movement of journalists was curtailed by quarantine and lockdown measures. She draws attention to recent attacks on journalists by both the police and public. Sadly the removal of defamation from the Criminal Code seems to have led to a spike in new administrative cases initiated by police over criticisms of the performance of local officials. She argues that the recent changes to the law on mass media have strengthened state control and notes that the Government seems to be preparing to bring forward new proposals for a Law on Mass Communication that extend the powers of the state over the internet.

Anna Gussarova explores the nexus between the Kazakh statecraft of data protection, technology-driven digitisation efforts and the culture and awareness of data protection. Her essay builds on the need and the pitfalls of GDPR-like regime to be designed and implemented in one of the Central Asian countries with an emphasis on evidence-based policy recommendations to protect personal data, introduce crisis management toolkit and adopt long-term strategic cyber resilience in post-COVID authoritarianism system.

Dr Khalida Azhigulova explores the heated debate surrounding the 2020 Kazakhstani Bill on Countering Domestic Violence, and the two concurrent campaigns by supporters and opponents, which ended in the cancellation of the Bill following the information attack by the newly emerged local alt-right groups. She also looks at why alt-right groups succeeded in cancelling the bill and argues that such campaigns will grow stronger if the Government fails to gain people's trust through real democratisation reforms.

Aigerim Kamidola examines the so-called 'Anti-gender' Bill in Kazakhstan which aims at complete erasure of the concepts 'gender' and its composites from national legislation. By situating the Bill in the tapestry of recent failed attempts of Kazakhstani legislators to pass legislation on domestic violence, sexuality education, anti-bullying along with their repeated efforts in adoption of 'gay propaganda' ban, she demonstrates that its review in the Parliament is another manifestation of the rising reactionary trend curtailing women's and LGBTQ+ rights in Kazakhstan. In her further analysis Aigerim places this backslide in the wider context which reveals that what is locally encased by state and private actors as protection of 'traditional values' is in fact 'catch up' with conservative global backlash against so-called 'gender ideology'. The piece concludes with recommendations to the Kazakhstani Government within its international human rights obligations.



2. Human rights and civil liberties in Kazakhstan: A matter of efficiency?

By Colleen Wood¹⁴²

On June 10th 2021, Kazakhstan's President Kassym-Jomart Tokayev signed a decree to improve the country's human rights record. He emphasised the rights of citizens with disabilities and victims of human trafficking as priority areas, in addition to ensuring the right to freedom of association, expression, and 'public order'. The decree comes on the heels of two years of heightened dissent and protests in Kazakhstan, so what are the prospects for reform in the realm of civil liberties?

Prospects for top-down reform in Kazakhstan

There are several possible ways to interpret the regime's stated dedication to improving civil liberties and human rights. On the one hand, Tokayev has overseen several significant reforms, including the abolishment of the death penalty in 2019 and introducing direct election of mayors of rural districts and small towns. While the issue areas Tokayev mentioned specifically in his June 10th decree may not invite a sweeping overhaul of Kazakhstan's political system, targeted policy changes could nonetheless have a consequential impact on many people's lives.

On the other hand, it is difficult not to see the June 10th decree in the same light as Tokayev's post-inaugural embrace of the 'listening state'. The 'listening state' was meant to foster open dialogue and collaboration between state and society. In pursuit of building a 'listening state,' there was talk of allowing online petitions in addition to e-government portals where citizens could lodge complaints about the civil administration or public services. The 'listening state' has been criticised

¹⁴² Colleen Wood is a PhD candidate at Columbia University. Her research is supported by the National Science Foundation, and her writing has been published in *Foreign Policy*, the *Washington Post*, and *The Diplomat*. Image by Francisco Anzola under (CC).

as reactive micromanagement that responds to those who can make the most noise online, and is more hot air than a coherent reform to superpresidentialism.¹⁴³

More likely, it seems that the decree will involve tiny tweaks to the Criminal Code, as with reforms to regulations on peaceful assembly passed in June 2020. The new law only marginally relaxed constraints while preserving the state's ability to restrict Kazakhstanis' freedom of assembly. Under the new law, organisers still need to submit advance notification to local authorities, who have the final say in whether a gathering is permitted. The location for gatherings is still at the discretion of local authorities as well. Mass detention of protesters who gathered on June 6th 2020 to criticise the new law showed this 'reform' to be more cosmetic than meaningful.

While there could be meaningful reform in spheres the regime sees as 'social' (and therefore less threatening), such as improving education and accessibility for people with disabilities or opening up space for women in the workforce, it seems likely that efforts to ensure Kazakhstanis' civil liberties will involve superficial tinkering of existing restrictions.¹⁴⁴ Any tinkering will be done in the name 'increasing efficiency of interaction with non-governmental organisations'.¹⁴⁵

What does this efficiency look like for the defence of human rights like freedom of association and assembly? What are the implications for those working in the human rights sphere? The regime's appreciation of efficiency can be mapped on two dimensions: first, a robust civil society can help the Government efficiently distribute public goods, a neoliberal maxim that asks discontented citizens to trade direct action with social services; second, that the landscape of civil society should be made efficient and smooth through NGO registration laws that make associational life legible to the state.

Civil society as a tool of efficient governance

The death of five young girls on February 4th 2019 in Astana resonated sharply across Kazakhstan, inspiring a series of escalating 'mothers' protests' across the country. There was a split among the discontented, with some continuing to protest at different government offices and others opting to collaborate with local officials for support in offering social services.

Initially the crowds demanded the resignation of authorities responsible for the fire, their demands grew more sophisticated, specifically on benefits and proper housing. They articulated a frustration with the uneven distribution of Kazakhstan's oil wealth, criticising the fact that average citizens suffer while elites build glitzy buildings and feel the benefits of Kazakhstan's international status.

As the mothers' demands changed, they also tried targeting a range of government bodies at various administrative levels: they gathered at Akimat offices, at the Ak Orda, at the Ministry of Labour, at Nur-Otan party building. On some occasions, government officials came to diffuse the crowd by meeting with women one-on-one; on others, police dragged women to the ground or detained them.

In February 2020, then-president Nursultan Nazarbayev asked the Government to resign for its failure to improve standards of living and announced a multi-trillion tenge basket of support for social-welfare programmes, much of which was targeted directly at families with many children.¹⁴⁶

¹⁴³ CAA Network, Season 3. Power and Society in Central Asia. Episode 2. Hearing state or political parties, March 2021, <https://www.caa-network.org/archives/21539/cezoz-3-vlast-i-obshhestvo-v-centralnoj-azii-epizod-2-slyshashhee-gosudarstvo-ili-politicheskie-partii>

¹⁴⁴ Laura Kopzhassarova, How Accessible is Kazakhstan for People with Disabilities?, CABAR, April 2021, <https://cabar.asia/en/how-accessible-is-kazakhstan-for-people-with-disabilities>; Zhanar Sekerbaeva, "Feminita" urges to abolish the list of prohibited occupations for women, Feminita, July 2020, <https://feminita.kz/2020/07/feminita-urges-to-abolish-the-list-of-prohibited-occupations-for-women/>

¹⁴⁵ Official Site of the President of the Republic of Kazakhstan, "On further measures of the Republic of Kazakhstan in the field of human rights," June 2021, <https://akorda.kz/ru/o-dalneyshih-merah-respubliki-kazakhstan-v-oblasti-prav-cheloveka-9505>.

¹⁴⁶ Diana Jacobs, Kazakh Mothers: Proving A Force For Change, Current Time, February 2019, <https://en.currenttime.tv/a/kazakhstan-mothers-protests/29880082.html>

But when Tokayev took office, he shifted the tone significantly, speaking out in favour of rolling back social services to avoid people growing dependent on government handouts.¹⁴⁷

The ‘listening state’ had stopped listening to these mothers, whose demands morphed from the material to meta-political over time. At a demonstration at the Astana Akimat on February 6th, one woman grabbed attention with an impromptu speech where she demanded, “No one should be persecuted based on some political or social categories, no one should be persecuted for giving everyone freedom. There should not be any censorship, and tomorrow all of this should be on TV, so that all this can be seen and heard.”¹⁴⁸

While some mothers continued to show up to unsanctioned protests, with criticism of both the situation with social services and citizens’ freedom of speech, others refrained from explicit criticism of authorities and the ruling party, instead collaborating with the Government to achieve their goals.

One such example is the women who registered a public foundation called Strong Mothers Nur-Sultan in March 2020. The founders distanced themselves from the mothers’ protests: “But we were with those aggressive mothers, but those who asked the state for fair benefits, benefits, housing,” Raigul Serikbaeva, the Director of Strong Mothers, told a Tengrinews.kz reporter in May 2021.¹⁴⁹ Strong Mothers Nur-Sultan provides affordable daycare, 5,000 tenge a month (about 11 USD) for families with at least four children, and 10,000 for everyone else; the Government pays the salaries of the teachers, and Strong Mothers is just responsible for rent. In addition to offering daycare services, teachers offer classes in world languages and school subjects for children and consultative support and computer classes for mothers, who do not know how to submit requests for reduced-price housing through the government portal.

Strong Mothers Nur-Sultan fills an immediate need for many women in Kazakhstan’s capital city; they do so through financial support from the Government, with close support from local bureaucrats and up-and-coming party functionaries. The women behind Strong Mothers Nur-Sultan clarified their understanding of the role that civil society should play in Kazakhstan in an Instagram post on March 5th 2021: “In our country, NGO activists are proposing special projects for the social protection of women, improving their living standards, a golden bridge between the local government and the population!”¹⁵⁰

This is one vision of efficiency implied in Tokayev’s decree, one in which active, dedicated citizens fill gaps in the provision of public services without criticising the regime for the fact that gaps exist in the first place. In and of itself, citizens’ active engagement in their communities is a worthy goal; many of the people working tirelessly in this sphere are making incredible contributions to the neediest in their communities. However, it presents unreasonable constraints on associational life to subsume citizens’ rights to direct action and advocacy – which, admittedly, can be messy and bring about uncomfortable public conversations about the nature of government power – under a notion of civil society as service provision.

Efficient civil society through NGO registration process

Kazakhstan has a robust legal framework controlling associational life, and it is illegal to organise a public association without registration. Despite these laws, not all groups active in civil society are

¹⁴⁷ Orken Joyamergen, New mechanism for providing TSA. What is the reason for the discontent?, Radio Azattyk, January 2020, <https://rus.azattyq.org/a/kazakhstan-social-benefits-paid-to-families-with-children/30375765.html>

¹⁴⁸ Azattyq TV, Mothers with many children in Astana are making social demands – RFE / RL, YouTube, February 2019, <https://www.youtube.com/watch?v=mvxY2G5BCHg>

¹⁴⁹ Renat Tashkinbaev, “We are the same women who went to the rallies.” How mothers with many children have changed. Tengrinews, May 2021, https://tengrinews.kz/article/myi-samyie-jenschinyi-kotoryie-vyihodili-mitingi-izmenilis-1580/?fbclid=IwAR3W9_i-C1KgRunYRDp4tFBFSptRDgKwMWDCGf_37UF_Z9XNFrbRVGFfRgg

¹⁵⁰ Strong_mothers_NS, Instagram post, Instagram, March 2021, <https://www.instagram.com/p/CMB-tWxJeaW/>

registered. Some groups eschew the process altogether, opting to organise more informally; this is a way to avoid restriction and surveillance from the state, but also makes groups vulnerable to repression. Other groups want to register, but are denied the opportunity or stripped of their registration. Authorities often explain this in procedural terms, pointing to incomplete or improperly submitted paperwork, but this framing is often just a thinly veiled attempt to block potentially threatening activity. The case of *Feminita*, an intersectional feminist initiative founded in December 2017 by Zhanar Sekerbayeva and Gulzada Serzhan, offers an example of how authorities in Kazakhstan attempt to use the registration process to tame public associations.

Feminita's team first submitted the required paperwork to the Ministry of Justice in December 2017; after being denied for supposed inconsistencies in their charter, Sekerbayeva and Serzhan resubmitted the documents in February 2018. Their request was again denied, with authorities vaguely citing *Feminita*'s failure to fix the errors in the first submission. The two activists applied for registration a third time on December 20th 2018; on January 3rd 2019, the Ministry of Justice sent the standard denial, citing some violations in the charter paperwork.

Sekerbayeva and Serzhan filed a lawsuit against the Almaty branch of the Ministry of Justice. Medeu District Court judge Timur Zhumamuratov ruled that *Feminita*'s goals posed a threat to society, arguing that the charter 'does not aim to strengthen moral and spiritual values, spiritual culture, prestige and the role of the family in society.' Additionally, *Feminita*'s charter supposedly calls for making changes in the political sphere, which Zhumamuratov argued is unacceptable for a public fund. They deduced that officials were bothered by one paragraph in the charter, which indicates that *Feminita* would 'provid[e] support and development of the potential of communities of women with disabilities, LGBTQ+ communities, sex workers in Kazakhstan in order to protect their rights and legitimate interests.'¹⁵¹

After appealing the Medeu District Court's decision in September 2019, *Feminita* tried another angle to receive registration.¹⁵² In October 2019 a group of United Nations special rapporteurs sent an application for registration to the Ministry of Justice on *Feminita*'s behalf. Yet again, registration was denied, but the Minister of Justice Marat Beketayev asked Yevgeny Zhovtis – a well-respected human rights defender and the Director of the Kazakhstan International Bureau for Human Rights and Rule of Law – to serve as a mediator in negotiations between *Feminita* and the Ministry of Justice. On July 2nd 2020, after an online meeting between *Feminita*, Zhovtis, and the Vice Minister of Justice, representatives of the Ministry made a surprising announcement. They claimed that 'amendments' to *Feminita*'s charter were approved and the organisation would be granted registration. This announcement was denied by Sekerbayeva, who said that *Feminita* did not agree with the Ministry of Justice's proposed amendments. Sekerbayeva told local media, "We are outraged that our registration is being forced like this because the time of some kind of reporting is approaching," referencing the looming submission of a national report on the implementation of the International Covenant on Civil and Political Rights.¹⁵³

With its international reputation on the line, authorities rushed to solve the stalemate in *Feminita*'s registration as a public foundation. The solution was 'efficient' insofar as it was streamlined; the Ministry of Justice did away with the troublesome clauses in *Feminita*'s charter without the group's approval. This is the vision of 'efficiency' in relations between state and society: one that does not

¹⁵¹ KIBHR, Shame, disgrace and fear of change, May 2019,

https://bureau.kz/novosti/sobstvennaya_informaciya/styd_sram_i_strakh_peremen/

¹⁵² Human Rights Watch, Kazakhstan: Feminist Group Denied Registration, September 2019,

<https://www.hrw.org/news/2019/09/13/kazakhstan-feminist-group-denied-registration>

¹⁵³ Dinara Zharkeeva, The Ministry of Justice will register the public fund "Feminita" in Kazakhstan, *informburo*, July 2020,

<https://informburo.kz/novosti/minyust-zaregistriruet-obshchestvennyy-fond-feminita-v-kazahstane.html>

disrupt the state's vision of social order, and one that can be toted out for approval from international bodies.

These two examples demonstrate that efficiency in state-society relations does not imply a vibrant, pluralistic civil society. Just as the OSCE described Kazakhstan's January 2021 parliamentary election as 'efficiently run' while also criticising the lack of competition and severe curbs on the freedom of assembly and expression, the instances of authorities' silencing of demonstrators demanding better social provisions for families and their attempt to coerce Feminista to register on their terms demonstrate that efficiency is not a sufficient standalone value.¹⁵⁴

(In)efficiencies in securing human rights and civil liberties in Kazakhstan?

Tokayev's mention of increasing the efficiency of interaction with NGOs in the broader pursuit of improving Kazakhstan's human rights record implies that there are inefficiencies. Probably he has in mind inefficiencies in the neoliberal sense, that NGOs could do the work of bulky bureaucracy more cheaply and effectively. But the bundle of rights that Tokayev has deemed a priority present a conceptual gap that is more consequential for Kazakhstan's potential to improve its human rights record.

Tokayev emphasised citizens' right to 'public order' as well as civil liberties like the freedom of expression, assembly, and association. Putting the right to public order – which is defined at the whim of authorities – on the same level as freedom of expression and assembly creates a possibility to justify restrictions protest and associational life for the sake of preserving order. Setting up a false dichotomy between these categories of rights plays into the narrative of stability and public order that has functioned as the cornerstone of the regime's claim on power for decades.

This equivalence between the right to public order and free speech is enshrined in Kazakhstan's legal code: Kazakhstan's constitution guarantees the right to free assembly and expression, but myriad rules in the Criminal Code restrict these rights in the name of law and order. It is possible to interpret these inconsistencies between the Constitution and Criminal Code as an inefficiency that should be promptly addressed; further reform is needed to reduce the constraints on associational life in Kazakhstan, above and beyond the tiny steps taken in the law on public gatherings passed in June 2020. But these inconsistencies in and of themselves are not necessarily a normative concern, insofar as they drive different theories of change, reform, and improvement among political actors in Kazakhstan.

Some believe in incremental reform that is achieved through educating authorities and collaborating with government bodies. This involves close monitoring of abuses and going through proper legal channels to redress them; it involves going through the hoops required to register a political party, to try and run a campaign and to take a seat at the table. Others prefer more expansive changes – the overhaul of Kazakhstan's system of government from a superpresidential system to a parliamentary one, for example – to gradual reform. They opt for direct action and street protests over government working groups and committees, pointing to their constitutionally-protected right to peaceful assembly to justify skirting the required procedure for sanctioned protests. This ideological and tactical pluralism may not be 'efficient,' but securing the rights of all to participate in politics is central to improving Kazakhstan's human rights record.

¹⁵⁴ OSCE PA, Lack of real competition, limitations to fundamental freedoms left voters without genuine choice in Kazakhstan's parliamentary elections: observers, January 2021, <https://www.oscepa.org/en/news-a-media/press-releases/2021/lack-of-real-competition-and-limitations-to-fundamental-freedoms-left-voters-without-genuine-choice-in-kazakhstan-s-parliamentary-elections-international-observers-say>



3. Constitutional reform is the basis for change in Kazakhstan

By Aina Shormanbayeva and Amangeldy Shormanbayev¹⁵⁵

Kazakhstan needs to change the paradigm of development from crony capitalism and the monopolisation of all important spheres (starting from the economy through to civil society) in one hand and dependence of the people on the state to a new paradigm of free economic development with rule of law and an independent civil society which protects the public interest.

The consolidation of power by Nazarbayev has led to a lack of real political opposition and independent media, a strengthening of the repressive apparatus (police, prosecutors, courts, and national security agencies) and a dramatic shrinking of civic space in Kazakhstan. This process has lasted for the past 25 years. In result, the society, consisting of people dependent on the state, is vulnerable and unable to control its country or defend its interests. Dependence on the state takes many different forms, from pensions, to scholarships and grants for students, benefits and allowances for large families, and people with disabilities, as well as unemployment benefits. This means, in our view, that there is economic dependence as there are limited possibilities to find a job for independent people in this monopolised economy.

Currently political power in Kazakhstan is split between the oligarchic groups with the support of law enforcement. In our view, changes to this system should start with constitutional reform and then

¹⁵⁵ Aina Shormanbayeva and Amangeldy Shormanbayev are human rights defenders at the International Legal Initiative (ILI) with more than 20 years' experience in protecting human rights in Kazakhstan. Since 2010 they are working in International Legal Initiative, one of the leading independent human rights defending organisations of Kazakhstan. Amangeldy Shormanbayev is a specialist on constitutional law, election, rule of law and political rights. Aina Shormanbayeva is a specialist on civil rights, as well as economic and social rights.

subsequent administrative and territorial reform to build a new system of self-governance, which will entail a radical reform of all other legislation, including the electoral system.

The constitution is the basis of legal system. Constitutional reform in Kazakhstan should include not only changing the Constitution of Kazakhstan, but changing the electoral legislation, the competence of the President and Parliament, the legislation about political parties, trade unions and the structure of the Government and other issues. To establish the real system of self-governance it is necessary to change the system of dividing the country's territories into regions. In our opinion, the number of regions at the moment fully reflects the idea of centralisation and monopolisation of all financial flows in one hand. For example, the Karaganda region with a territory equal to the size of several European countries is governed by one person - the Akim of the region. We propose the creation of 44 regions instead of the current 19. In regards to the de-monopolisation of the political system, there is a need to divide the budget into central and local with a fairer division. It will allow the residents to participate in making decisions and governance, for example, to form the budget of their region or district. In our view, this will have a positive effect on infrastructure projects and give an impetus to the development of business independent from the center, as well as weaken the power and influence of the oligarchs. Rule of law and a strong civil society could be the limiting factor on the influence of oligarchs on the local level.

Different groups of Kazakhstani society (including political activists, non-registered political parties, NGOs, ordinary people) are discussing on the social media the issue of changing the presidential form of government to a parliamentary system. Part of society presents the parliamentary form as a panacea for dictatorship and the concentration of power in one hand. However, in the current conditions in Kazakhstan, a purely parliamentary form carries the risks of oligarchisation of the Parliament. We believe that at this historical moment, Kazakhstan needs a mixed, presidential-parliamentary form of government. It should be borne with Kazakh history in mind, that personality that has played and continues to play a large role. The society is constantly discussing the question of who can be the leader of the people in the transitional post-Nazarbayev period. The institutions of parliamentarism, by analogy with Europe, have not yet been formed, therefore, for the transitional period, we consider it necessary to retain the President and make a choice in favour of a mixed system of power, a presidential-parliamentary system.

Civil society could play the main role in expressing the public demands for change. In response to the request of society, our organisation has developed a draft of the new Constitution of the Republic of Kazakhstan (hereinafter referred to as the Draft), taking as a basis the current Constitution of the Republic of Kazakhstan. This draft is still in the works and is not yet published. Our draft at the moment is a concept of possible changes. During its preparation, the experience of modern constitutionalism of the US, Singapore, Poland, Ukraine and Kazakhstan were studied. At the same time, the Polish experience (not including recent changes by the current ruling party) gained priority due to the presence of a number of similar conditions (a unitary state, the former Soviet experience, and a successful integration into the European community).

The project proposes to create a mixed system of a presidential-parliamentary republic. Elections to the Mazhilis and the Senate are proposed to be made universal and direct, which implies the rejection of the proportional system (Mazhilis) and indirect elections (Senate). The elections would be held in single-mandate majoritarian constituencies. The role of parties in democratic systems is to unite people on the same ideological platform. The possibility to create a political party not dependent on the ruling power at present is close to zero, taking into account the barriers for registration of a party (currently the law requires you to have 20,000 members to register party).¹⁵⁶

¹⁵⁶ Article 10(6) of the Law of Republic of Kazakhstan about political parties #344-II of 15 July 2002. See (in Russian) https://online.zakon.kz/Document/?doc_id=1032141&doc_id2=1032141#activate_doc=2&pos=22;-188&pos2=4;-80

For this, it will be necessary to additionally amend the law on parties and reduce the requirements from 20,000 people to 200. These changes are due to the fact that the current parties have failed to earn the trust of society and are artificial formations both in the pro-government and in the opposition camp. In this we see the psychological aspect as well. In our society, individuals are traditionally more trusted than organisations.

The project assumes that from now on a 'strong' President will exist not as a result of a super-concentration of powers, but as a person with real political authority. The separation of powers and responsibilities allows you to create a system of political competition. At the same time, the President has the right to dissolve Parliament in certain circumstances under our proposals. The Members of the Parliament (MPs) elected either as individuals or party representatives can create factions in the Parliament.

The Government will be created by the President and receive a vote of confidence from the Mazhilis. In our concept, the Government is accountable to Parliament. The powers of the Prosecutor General are transferred to the Minister of Justice (this should entail a reform of the prosecutor's office). Also, norms on local self-governance have been introduced into the text of the Draft, without which it is impossible to start the process of effective cleansing of corruption at the local level.

At the moment, we do not see the desire of the President and current Parliament to carry out such modernisation through constitutional and regional reform, since their task is to preserve and maintain their current monopoly on power. In our opinion, society can be the trigger of such changes, which, depending on the situation, can be carried out smoothly or abruptly.

Tasks of the new constitutional reform

- Choosing a model: Preserving a super-presidential republic, reducing the powers of the President in favour of Parliament, or creating a parliamentary republic. This requires the preservation of all the basic institutions of the supreme power, except for the Government. The Government will become part of the Cabinet of Ministers under the President.
- Restoration of the separation of powers into three branches of government, namely:
 - The executive branch - the President and his cabinet;
 - Legislature – the Senate and Mazhilis; and
 - The judiciary is the Supreme Court with the power to hear cases of violation of constitutional norms.
- Checks and balances: The branches of government could be achieved by clarifying powers, including in relation to each other, for which it is necessary to clarify the procedure for dissolving Parliament, the right of veto, impeachment, and resignation of members of the cabinet of ministers under the President.
- Administrative and territorial reform as a tool for solving a number of tasks related to the formation of branches of government. In this matter, we propose to radically change the territorial division of Kazakhstan. As a result of the reform, 44 territorial communities are formed instead of 19 regions and cities of republican significance. Additionally, it will be necessary to adopt a law on local self-government (LSG) and amend the law on local government to form local authorities and create LSG bodies.
- Restoration of the representative function of the Parliament, for which we propose to increase the number of Senate deputies to 88. Senate deputies will be directly elected by citizens, two from each territorial community, the number of which would now be 44. We also propose the number of Mazhilis deputies to be 219 people. Elections to the Mazhilis are held in majoritarian multi-member constituencies in proportion to the number of voters.
- Elimination of the imperative mandate of the deputies: The mandate of a deputy is valid for the entire term of office, regardless of his party affiliation. The deputy must be allowed to

act independently both from the party faction in Parliament and from pressure from the executive branch.

- Restoring the legislative function of Parliament: Provide MPs with the right to initiate legislation on all bills, except for the draft budget law. This proposal should be implemented in the second wave of changes only after the imperative mandate of the deputies is eliminated.
- Judicial reform: We propose to reduce the number of judges of the Supreme Court to nine judges. At the same time, three subjects will be able to nominate judges to the Supreme Court - the President (two judges), the Mazhilis (four judges), and the Senate (three judges). As part of the judicial reform, we propose to implement the following:
 - Enhancing the role of the courts in declaring laws unconstitutional;
 - Enhancing the role of courts in recognising acts of executive authorities, state agencies, councils and enterprises as illegal;
 - The introduction of rules allowing for the filing of claims in the interests of an unlimited number of persons - in defense of public interests; and
 - Liquidation of the prosecutor's office and its affiliation to the Ministry of Justice. In this case, in order to prevent concentration of powers, the Committee of the Penitentiary System, which was proposed to be subordinated to the Ministry of Justice, should be made an independent body created or established by the Parliament.
- Restoring the powers of the branches of government by aligning the powers of subsidiary bodies - the Security Council, the Legal Policy Council, etc. The activities of such subsidiary bodies must be brought in line with the principle of separation of powers and not violate the constitutional prerogative of the bodies and branches of government.
- Strengthening the role of society and the individual citizen in decision-making and participation in the management of state affairs. This requires the restoration of self-nomination during the presidential elections, as well as the restoration of majoritarian elections to maslikhats (local representative bodies) and the new LSG bodies.
- Reducing the state apparatus and bringing the decision-making level closer to citizens where they live. As a result of the administrative-territorial reform, the regional and district levels of government will be liquidated. Instead, a three-tier system of local territorial and self-governance will be created, namely Territorial community (TC), Aul District and Aul (Aul in Kazakh means village). At the level of the Territorial community and the Aul District there will be their own budgets and maslikhats.
- Public administration will remain for some state functions at the TC level and above at the interregional level in the form of offices or departments. For example the border or customs service.
- Disputes between government agencies and the TCs on issues of competence will be resolved in interdistrict courts of administrative justice.

In our opinion, judicial reform is the most important part of Kazakhstan's modernisation.

There is a need to support grassroots initiatives in business. Using modern digital technologies to do business will allow people to be less dependent on the state. Independent people create an independent civil society. In parallel to these processes the active part of civil society should push the Government to reform the justice system. In the last hundred years the power has been in the hands of NKVD (currently MIA) and BCHK (KGB - Committee of national security), whose aim is to protect power and privileges. This repressive system needs to be destroyed and new law enforcement systems need to be built on the basis of human rights which are the common values for all the people without discrimination. All these changes will make the change of paradigm that Kazakhstan so desperately needs.



4. Police kettling in Kazakhstan

By *Tatiana Chernobil*¹⁵⁷

As recently as July 6th 2021, a couple of dozens of peaceful protesters were kettled by police in Almaty, Kazakhstan. The protest was held in breach of the legal requirement to inform city authorities of the intent to hold an assembly. The protesters were supporters and members of the unregistered Democratic Party of Kazakhstan (DPK), and on July 6th, the Capital City Day in Kazakhstan, they were opposing the expansion of Chinese businesses in Kazakhstan and protesting against the personality cult of the former President of Kazakhstan, Nursultan Nazarbayev, whose birthday was chosen for Capital City Day.

Many previous attempts by the DPK and other political movements in Kazakhstan to hold rallies during the past year were met with the same response – police kettling. On July 6th, the protesters, including a woman in a wheelchair, shortly after the beginning of the rally were trapped in by a squad of athletic men in black T-shirts, balaclavas covering their faces and bulletproof vests marked ‘Police’ on them. These men in black would not say a word during the entire operation. Before asking the police to “take measures”, a representative of the City Office routinely reminded the protesters that their rally was illegal because they had not filed a notification with the city administration about it and because of the pandemic restrictions.

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Kazakhstan-style kettling typically lasts between three to ten hours. The one on July 6th lasted for around ten hours. Throughout it the peaceful protesters were not allowed out of the blockade unless they agreed to immediately go home one by one. Many chose to stay.

Half-a-year before, on January 10th 2021, the parliamentary elections day, two groups of protesters were kettled in Almaty outdoors at the temperature of below zero Celsius, for up to six and eight hours respectively. They were a small group of DPK supporters and an even smaller group of young protesters from Oyan, Qazaqstan (Kazakh for Wake-up, Kazakhstan) youth movement. No food or drinks were allowed to be passed in for the group of DPK supporters. During the eight hours of their blockade all their friends or family could smuggle them were several small bottles of water and a few paper cups of hot tea. The Oyan, Qazaqstan group were luckier, their friends could pass them some street food and hot drinks. Despite their numerous requests to let them out, people from neither of the groups could even go use the restroom. Unable to stand it any longer, several women in the DPK circle and men from the Oyan, Qazaqstan urinated right there in front of everyone. The police saw that but did not react.

Police in Kazakhstan started using this tactic relatively recently, testing it for the first time also on DPK supporters in June 2020. Before the usual police response in the cases of unauthorised peaceful gatherings was to brutally pack up everyone in police cars and take them to police stations to then either let the people go in a few hours or to start administrative cases against them for violation of the law on peaceful assemblies. Kettling, on the other hand, is used without any legal formalities: the police do not follow the regular procedure for stopping and arresting people and the exhausted protesters are allowed to leave at the end without charges. Officials consider kettling a more humane tactic than forceful dispersals of public rallies. Indeed, no known cases have been brought so far against the contained protesters, but the tactic itself is hardly any more humane or lawful.

This new tactic from the start violated the national legislation and international human rights law. In Kazakhstan, under the law, any restrictions on personal liberty by police are considered a *de facto* arrest and shall only be allowed to prevent or stop a crime or public disorder under way.¹⁵⁸ However, in all the cases of police kettling in Kazakhstan so far there was no crime, public violence, or disorder to be prevented. The only violation on the part of the protesters each time was that they had broken the law by not informing the authorities of their small and peaceful rallies.

At the end of December 2020, after a three-hour long kettling of political activists in Almaty on December 16th, Independence Day, the Minister of Internal Affairs said that the protesters themselves did not want to disperse. He could not say what law or ruling the police based their detention of peaceful protesters on by keeping them captive in the street for hours without information on the legal grounds for such arrest nor about their rights, without food or water, or access to a lawyer. The Minister said that such a tactic was prompted by the illegal behaviour of the protesters themselves who had failed to notify the city authorities of their rally. The Minister advised those who thought to have been affected to complain to supervising authorities.

Commenting to a journalist on two other cases of police kettling on February 28th 2021, one in Nur-Sultan and one in Almaty (where in the Almaty case the activists were kettled for ten-and-a-half hours), the country's Ombudswoman said that it was a lawful measure used to prevent public

¹⁵⁸ See, for example, Normative Ruling #2 of the Constitutional Council of the Republic of Kazakhstan of April 13th, 2012 (<https://adilet.zan.kz/rus/docs/S1200000002> in Russian only). In it the Constitutional Council ordered to consider "any restrictions on the freedom of a stopped person including on the freedom of movement such as forcefully containing someone in a certain place, forcefully taking them to a police station (capturing, locking in a room, enforcing to go somewhere or to stay still, etc.), as well as other actions that significantly limit one's liberty, regardless of assigning that person any procedural status or of completing any other formal procedures" a *de-facto* arrest (italics added).

disorder, and that such a tactic was commonly used in other countries and that it was permitted by the OSCE standards:

“There are OSCE recommendations about it. This is a measure to promote security. After an open discussion with public activists it should be approved as a legal provision.”¹⁵⁹

Indeed, kettling is mentioned in the recently updated edition of the OSCE Manual on Monitoring Freedom of Peaceful Assembly.¹⁶⁰ It is described as a “strateg[y] of crowd control that rel[ies] on containment (“kettling or “corralling”), where law enforcement officials encircle and enclose a section of assembly participants.”¹⁶¹

However, what Kazakhstani officials keep failing to notice is that this manual strongly advises against using kettling as a norm but only “on an exceptional basis, where it is necessary and proportionate to do so in order to prevent violence during an assembly.” More often than not used indiscriminately, this tactic, in the OSCE’s assessment, may result in a violation of the rights to liberty and freedom of movement. The manual cites the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association who noted in 2013 “that kettling is “intrinsically detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature” and has opposed this practice.”¹⁶²

In another OSCE manual, the Human Rights Handbook on Policing Assemblies, it is explicitly said that “force should never be used on an assembly just because of a failure to comply with a notification requirement” and that “the police should avoid any use of force as long as an assembly remains non-violent, even if the assembly is unlawful.”¹⁶³ The by-default rule in policing assemblies according to the OSCE should be “encouraging good behaviour [rather] than constantly wait to confront bad behaviour”.

It was not the first time Kazakhstan had chosen to misinterpret international human rights standards regarding the freedom of peaceful assembly. The current law on peaceful assemblies adopted in May 2020 mentions the presumption in favour of peaceful assemblies but unlike in the OSCE Guidelines on Freedom of Peaceful Assembly, where this principle is pointed out as one of the core obligations of the state and means “an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed”, in Kazakhstan it is more of an obligation of the people and means favouring strictly legal over peaceful but illegal assemblies.¹⁶⁴ Even single-person peaceful pickets are curbed when they are held without duly notification of authorities in accordance with the law.

For example, in July 2021, a dozen of policemen kettled around an artistic performer Askhat Akhmediarov and an eco-activist Aliya Akhmalisheva in Nur-Sultan. The activists were protesting commercialisation of Boszhyra Nature Park in the West of Kazakhstan but were doing so without prior notification of authorities.

¹⁵⁹ Nurgul Tapaeva, Ombudswoman has called kettling a measure to promote security, Radio Azattyq, RFE/RL, March 2021, <https://rus.azattyq.org/a/31127170.html>

¹⁶⁰ OSCE, Handbook on Monitoring Freedom of Peaceful Assembly, Second Edition, December 2020, <https://www.osce.org/odihr/monitoring-peaceful-assembly>

¹⁶¹ *Ibid*, page 54.

¹⁶² Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, United Nations General Assembly, June 2013, A/HRC/23/39/Add.1, para. 37, <https://undocs.org/A/HRC/23/39/Add.1>; OSCE, Handbook on Monitoring Freedom of Peaceful Assembly, Second Edition, December 2020, <https://www.osce.org/odihr/monitoring-peaceful-assembly>

¹⁶³ OSCE, Human Rights Handbook on Policing Assemblies, March 2016, page 62, <https://www.osce.org/odihr/226981>; *Ibid*, page 100.

¹⁶⁴ European Commission for Democracy Through Law (Venice Commission) and OSCE Office For Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD (2019)017re, Strasbourg / Warsaw, July 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e); *Ibid*, Point 21, page 9.

Another sad case of kettling for the sake of safeguarding the law took place in May 2021 in Nur-Sultan. Then, the Orynbekovs family of a father, a mother and their nine small children were kettled by police when they were trying to go to the Presidential Administration to complain about the continued failure by their local authorities to help improve their housing conditions.

This kind of abuse of the law to curtail the freedom of assembly and other human rights is a common practice in authoritarian states. It is well addressed in the European Court of Human Rights' judgement in the case of *Primov and Others v. Russia*: "While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself."¹⁶⁵

In Kazakhstan safeguarding the law has become an official justification for the police to violate the law themselves by kettling peaceful protesters – the tactic that is nowhere to be found in the national legislation.

At a press-briefing on June 11th 2021 Erlan Turgumbayev, the Minister of Internal Affairs of Kazakhstan, said the following about the use of kettling by police in Kazakhstan:

"Different countries have different laws and use different methods. On the subject of kettling, it is a standard police tactic of blocking and containing a crowd with the use of cordons. The blockage methods used involve using auto transport, iron railings, and police personnel as physical force. It is used everywhere in the world, there's nothing new.

[We do not use] the word 'kettling', we call it "blocking a place where a group of people violates public order." This tactic is detailed in the internal orders and instructions.

Indeed, several times we blocked places where unauthorised protests were happening, but in comparison to the police in other countries, we did not use water or sound cannons, or other ammunition. Practically always our policemen stand without firearms, rubber buttons, or gas guns, and they stop these violations of the law by their physical strength only.

There's not been any cases of torture whatsoever. We allowed everyone who wished to leave the blockade to do so. We were offering food and water. There has been no violence. There's always ambulance and doctors available when this happens."¹⁶⁶

After the case of kettling on January 10th 2021 in Almaty, when an ambulance had to be called for at least four protesters, one of whom was a pregnant woman and another a 18-year girl who nearly fainted while waiting to be let out to use the restroom, several protesters reported a crime against the Almaty police claiming inhuman or degrading treatment, unlawful arrest, and abuse of power.

Under the Kazakhstani law, reports against the police are investigated by the anti-corruption agency and vice versa to avoid the conflict of interest. In this case, no sooner than the protesters filed their report of the crime against the police, the city of Almaty anti-corruption agency turned it over to the police's own disciplinary service. A criminal case was never opened because after a month-long internal checking the police returned the file to the anti-corruption agency saying no wrongs had been found in the actions of the police and that no protesters had suffered any illegal treatment whatsoever.

¹⁶⁵ European Court of Human Rights, *Primov and Others v. Russia*, 17391/06, June 2014, para 118, <http://hudoc.echr.coe.int/eng?i=001-144673>

¹⁶⁶ Bagdat Asylbek, [Minister] Turgumbayev on the Kettlings out in the Freezing Weather: There Have Been No Torture, People Just Wouldn't Want to Leave, Radio Azattyq, RFE/RL, June 2021, <https://rus.azattyq.org/a/31302246.html>

The protesters' further complaint to a court about the failure of the anti-corruption agency to start an investigation into the police's actions did not bring any result. The court agreed with the conclusions of the police and endorsed the anti-corruption agency's decision not to start a criminal case. The upper-instance court supported this decision.

In its report to the anti-corruption agency about the findings of their internal enquiry, the Almaty police said that on January 10th 2021, based on the information on social media about the upcoming unauthorised rallies in Almaty, "in order to prevent destabilisation of the socio-political situation" the city police dispatched 3,482 police staff and 334 police cars to enforce the law. The report did not mention anything about any cases of violence or disruption of public order on that day. It only said that by police count the total number of protesters throughout the city on that day whom the police prevented from "destabilising the socio-political situation" was less than a hundred. Three-and-a-half thousand police staff against a hundred of peaceful protesters resulting in many violations of human rights is what happens when the state frowns on peaceful assemblies.

The new law on peaceful assemblies entered into force in June 2020 on the day the first example of kettling being used was registered. This law meticulously regulates organisation and conduct of peaceful assemblies and instructs the organisers and participants what exactly they should do prior to and during their assembly. Any deviation is considered a breach of this law and is punishable by a warning, a fine, or an imprisonment for up to ten days. When an assembly is held without notifying the authorities, the punishment increases to up to 15 days in jail. This law was presented as a breakthrough, the government was saying that peaceful assemblies could now be held without permission from the authorities but via a simple notification procedure. The pandemic of COVID-19 has not allowed to test this law in full yet, but what the practice has shown so far is that this law is used to curb dissenting voices and not to promote freedom of assembly.

Recommendations regarding the use of kettling by police are universal and obvious. They can be found in the OSCE's Human Rights Handbook on Policing Assemblies in the chapter on Management Disorder and Violence in the section on Containment.¹⁶⁷ The main idea is that kettling should only be used as a last resort and only against violent protesters to prevent escalation of violence. Kazakhstan in its management of assemblies should follow the principles of democratic policing and should stick to its human rights obligations. The OSCE should make sure its member-states apply this Organisation's standards in good faith and that they do not use the OSCE's name to cover up for any violations of human rights.

Meanwhile the victims of police kettling on January 10th are preparing a submission to the UN Human Rights Committee.

¹⁶⁷ See 8 above, page 101.



5. A sustained crackdown on independent worker organising – Kazakhstan, a case study

By Mihra Rittmann¹⁶⁸

Ten years ago this summer, hundreds of oil workers in western Kazakhstan were in the midst of a stand-off with their employers in one of longest and most consequential strikes in Kazakhstan's recent history. The unresolved seven-month strike ended in bloodshed in mid-December 2011, when police and government troops opened fire on workers and others, killing at least 12 people. In the months following, authorities put dozens on trial, including some of the most outspoken worker activists. The Government adopted a new repressive trade union law and a new labour code, in June 2014 and November 2015 respectively, both of which restricted workers' right to organise, bargain collectively, and to strike. Since then, Kazakh authorities have engaged in a concerted crackdown on independent labour organising, leaving trade union activists convicted on politically motivated charges and banned from engaging in trade union activities, and independent trade unions and confederations shuttered or suspended.

This essay will briefly cover what happened in Zhanaozen in summer 2011, detail the ensuing crackdown on independent labour organising that resulted in all but decimating Kazakhstan's

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independent trade unions, and conclude by offering recommendations on what the Kazakh Government should do moving forward.

2011 oil workers' strike

Over two thousand oil workers in three separate companies in western Kazakhstan put down their tools in May 2011 calling for better pay and working conditions.¹⁶⁹ The three strikes lasted between one and a half and seven months. Local courts ruled that the strikes were illegal because they began spontaneously (outside of the legal framework for holding strikes), and authorities brought administrative charges against the people they considered to be the leaders of the strikes. Human Rights Watch (HRW) documented how both companies and Kazakh authorities violated both international labour and human rights law in response to legitimate union activity;¹⁷⁰ and how a union lawyer was wrongfully imprisoned for six years on overbroad criminal charges of “inciting social discord” for speaking to workers about wage disparities.¹⁷¹

Despite the Government's attempts to break the strikes and the mass dismissals of striking workers by companies, hundreds of workers persisted with their demands. Kazakhstan's longest lasting strike ultimately came to an end on December 16th 2011, when clashes broke out in Zhanaozen's central square, and police and government security forces responded by opening fire on oil workers and others who had gathered there. In total, at least 12 people were killed and hundreds were wounded, according to official figures. Three other individuals died in the violence, two as a result of bodily injuries and one in a related fire, and dozens of police were wounded in the clashes, according to the prosecutor general's office.¹⁷²

HRW documented serious and credible allegations of ill-treatment and torture of people in Zhanaozen in the immediate aftermath of the violence, including the death of a 50-year-old man after he apparently sustained injuries in police custody.¹⁷³ In the months following, authorities arrested and prosecuted outspoken oil workers and others for instigating the violence and convicted almost all 37 people who had been put on trial, despite their serious allegations of torture by law enforcement officers apparently to coerce testimony against themselves or others.¹⁷⁴ Authorities also prosecuted political opposition figures and shut down independent and opposition media in the months that followed.¹⁷⁵

The events prompted the highest levels of government, including Kazakhstan's president, to turn their attention to labour relations. But instead of amending existing legislation to protect workers' rights to unionise and collectively bargain, in accordance with international labour and human rights standards, Kazakh authorities penalised workers for the unrest and took steps to tighten government controls over trade union activity. Nursultan Nazarbayev, Kazakhstan's then-president, in public comments he gave in July 2012 called people who provoke social and labour conflicts

¹⁶⁹ Rittmann, Mihra, *Striking Oil, Striking Workers: Violations of Labour Rights in Kazakhstan's Oil Sector*, HRW, September 2012, <https://www.hrw.org/report/2012/09/10/striking-oil-striking-workers/violations-labor-rights-kazakhstans-oil-sector>.

¹⁷⁰ *Ibid.*

¹⁷¹ HRW, *Kazakhstan: Appeals Hearing Should Vindicate Labour Rights*, September 2011, <https://www.hrw.org/news/2011/09/14/kazakhstan-appeals-hearing-should-vindicate-labor-rights>.

¹⁷² “Text of the speech of Nurdaulet Suindikov, the official representative of the Prosecutor General of the Republic of Kazakhstan” (“Текст выступления официального представителя Генеральной прокуратуры Республики Казахстан Суиндикова Нурдаулета”), Prosecutor General of the Republic of Kazakhstan, February 2012, <http://prokuror.kz/rus/novosti2/?cid=0&rid=4302>.

¹⁷³ HRW, *Kazakhstan: Protect Detainees from Torture and Ill-treatment*, December 2011, <https://www.hrw.org/news/2011/12/22/kazakhstan-protect-detainees-torture-ill-treatment> and HRW, *Kazakhstan: Detainee Dies After Police Beating*, December 2012 <https://www.hrw.org/news/2011/12/22/kazakhstan-detainee-dies-after-police-beating>.

¹⁷⁴ HRW, *Kazakhstan: Oil Workers Convicted in Flawed Trial*, June 2012, <https://www.hrw.org/news/2012/06/04/kazakhstan-oil-workers-convicted-flawed-trial>.

¹⁷⁵ HRW, *Kazakhstan: Opposition Leader Jailed*, October 2012, <https://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed>, and Human Rights Watch, *Kazakhstan: Growing Crackdown On Free Speech*, December 2012, <https://www.hrw.org/news/2012/12/13/kazakhstan-growing-crackdown-free-speech>.

“provocateurs and parasites” and instructed legislators to draft a new trade union law.¹⁷⁶ In June 2014, a new and more restrictive trade union law was adopted, which opened the door to a crackdown on independent labour organising.¹⁷⁷

Decimating Kazakhstan’s independent trade unions

The 2014 trade union law restricted the ability of workers to organise and form trade unions and ensured that Kazakh authorities had even greater influence over worker organising. From then on, all existing trade unions had to re-register with the Justice Ministry within one year of the law’s adoption in accordance with a new and burdensome two-step registration process. The law also imposed a mandatory affiliation requirement, obligating local trade unions to affiliate with an industrial union, and industrial unions to affiliate with a higher-tier trade union body, such as a confederation or federation of trade unions. The mandatory affiliation requirement blatantly violated international labour rights standards protecting the right of trade unions to freely determine their structures.¹⁷⁸

The registration requirements made it especially difficult for independent trade unions in Kazakhstan, with fewer members overall, to re-register. The Confederation of Free Trade Unions of Kazakhstan (KSPK), the country’s largest independent national-tier trade union, was unable to meet the geographical and representational requirements of the law. The Justice Ministry denied KSPK re-registration, despite their multiple good-faith attempts.¹⁷⁹ Larisa Kharkova, KSPK president, told HRW in 2016 that almost without exception, not a single industrial-tier trade union that intended to affiliate with KSPK was able to re-register in the stipulated one-year time frame.¹⁸⁰

KSPK then sought to register under a new name: Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK). In February 2016, KNPRK successfully completed the first step in the process. To complete the registration process, KNPRK had still to confirm its status as a national-tier trade union. Burdensome registration requirements and the limited timeframe all but ensured that KNPRK and its lower tier affiliates, who were also struggling to comply with the new registration requirements, would be unable to comply with the law.

In December 2016, the Justice Ministry moved to liquidate KNPRK for non-compliance with the country’s restrictive trade union law, along with three of its affiliated industrial trade unions representing medical workers, domestic workers, and mine workers. On January 4th 2017, an economic court in Shymkent, a city in southern Kazakhstan, ordered the permanent closure of the Confederation of Independent Trade Unions of Kazakhstan.¹⁸¹ The Government also banned the three affiliated industrial unions.

Since its forced closure, KNPRK has tried several additional times to register with the Justice Ministry, to no avail.

¹⁷⁶ “It is necessary to establish legal responsibility for provoking labour conflicts – Nazarbayev” [“Нужно установить правовую ответственность за провоцирование трудовых конфликтов – Назарбаев”]. Zakon.kz, June 2012, <https://www.zakon.kz/4500376-nuzhno-ustanovit-pravovuju.html>.

¹⁷⁷ Rittmann, Mihra, We are Not the Enemy, Violations of Workers Rights in Kazakhstan, November 2016, <https://www.hrw.org/report/2016/11/23/we-are-not-enemy/violations-workers-rights-kazakhstan>.

¹⁷⁸ ILO Convention 87 stipulates laws should not “unduly affect organisational structure and composition of the unions.” ILO Freedom of Association and Collective Bargaining Training Sheet (copy on file with Human Rights Watch).

¹⁷⁹ See: HRW Report, We are Not the Enemy, Violations of Workers Rights in Kazakhstan, Restrictions on Freedom of Association and the Right to Organize, which details Kazakhstan’s restrictive new trade union law, https://www.hrw.org/report/2016/11/23/we-are-not-enemy/violations-workers-rights-kazakhstan#_ftn71.

¹⁸⁰ HRW interview with Larisa Kharkova, April 2016.

¹⁸¹ HRW, Kazakhstan: Trade Union Shut Down, January 2017, <https://www.hrw.org/news/2017/01/10/kazakhstan-trade-union-shut-down>.

Targeting labour activists with politically motivated criminal cases

As the Justice Ministry moved to permanently shutter independent trade union bodies, the authorities also targeted independent and outspoken trade union leaders, including the head of KNPRK, Larisa Kharkova, and two others who had participated in protests against KNPRK's forced closure, Amin Eleusinov and Nurbek Kushakbaev, with politically motivated criminal cases.

On April 7th 2017 Kushakbaev was sentenced to two-and-a-half years in prison for the "crime" of calling on workers to carry out a strike that had been declared illegal in court.¹⁸² He was also ordered to pay material damages of US\$80,000 and subjected to a two-year ban engaging in trade union activities. On May 16th 2017, another Kazakh court sentenced the trade union leader Amin Eleusinov to two years in prison on politically motivated embezzlement charges.¹⁸³ The court banned him from engaging in trade union activities for five years and required him to pay US\$26,300 in damages.

A Shymkent court on July 25th 2017, convicted Larisa Kharkova, head of the Confederation of Independent Trade Unions of Kazakhstan, of abuse of office.¹⁸⁴ She was sentenced to restrictions on her freedom of movement, 400 hours of community service, and banned from holding a leadership position in any non-governmental organisation, including trade unions, for five years.

Authorities in Kazakhstan also targeted the trade union leader Erlan Baltabay, who, following his colleagues' arrests and trials, assumed a more outspoken position on labour rights issues in Kazakhstan.¹⁸⁵ On July 17th 2019, a Shymkent court convicted Baltabay on politically motivated charges of misappropriating union funds and sentenced him to seven years in prison and banned him from engaging in civic activities, including trade union activism, for seven years.¹⁸⁶ Although he was released by presidential pardon in August 2019, he was sentenced to five months in prison in October 2019 for failing to pay the required fine. He remains banned from trade union activities.

An international response

The adoption and implementation of Kazakhstan's restrictive trade union law in 2014, along with the authorities' concerted efforts in subsequent years to suppress independent trade union organising, garnered increasing international attention, especially from the International Labour Organisation (ILO). Since 2015, Kazakhstan has been repeatedly singled out for review – and subsequently reprimanded – by the Committee on the Application of Standards, the body at the ILO tasked with reviewing states' compliance with ILO Conventions. This committee is a tripartite body of governments, trade unions, and employers' organisations that annually reviews some of the most serious cases of noncompliance with international labour standards, which indicates how seriously concerned some of Kazakhstan's international partners are about labour rights violations in the country.

The significant, sustained, and negative international attention to Kazakhstan's labour rights record finally pushed Kazakhstan to address some of the criticisms regarding its labour rights record. In May 2018, Kazakhstan accepted a high-level ILO monitoring mission, during which it pledged to reform the trade union law and some other problematic labour legislation. Two years later, in May 2020, Kazakhstan adopted promised amendments to the trade union law that helped to improve the

¹⁸² HRW, Kazakhstan: Union Leader Jailed, April 2017, <https://www.hrw.org/news/2017/04/13/union-leader-jailed-kazakhstan>.

¹⁸³ HRW, Kazakhstan: Trade Union Leader Jailed, May 2017, <https://www.hrw.org/news/2017/05/17/kazakhstan-trade-union-leader-jailed>.

¹⁸⁴ HRW, Kazakhstan: Trade Union Leader Convicted, July 2017, <https://www.hrw.org/news/2017/07/26/kazakhstan-trade-union-leader-convicted>.

¹⁸⁵ Erlan Baltabay spoke on behalf of KNPRK during the 2017 review of Kazakhstan by the International Labour Organisation's Committee on the Application of Standards in Geneva, Switzerland in June, 2017.

¹⁸⁶ HRW, Kazakhstan: Union Leader Jailed, July 2019, <https://www.hrw.org/news/2019/07/19/union-leader-jailed-kazakhstan>.

regulatory framework for registering trade unions and lifted the mandatory affiliation requirement.¹⁸⁷

While amendments helped to address some of the labour rights concerns in legislation, Kazakh authorities' hostility to independent worker organising persists. On February 5th 2021, the *Specialised Interdistrict Economic Court in Shymkent suspended the independent Industrial Trade Union of Fuel and Energy Workers (ITUFEW) for six months for allegedly failing to register in accordance with Kazakhstan's trade union law, dealing another serious blow to freedom of association and the right of workers to organise.*¹⁸⁸ The industrial trade union was one of the few independent trade unions still operating in Kazakhstan.

Do workers in Kazakhstan have the right to strike?

While the right to strike is guaranteed in Kazakhstan's Constitution and Labour Code, in reality, workers must exhaust cumbersome and lengthy mediation procedures before they can consider declaring a strike, making it difficult, and in some instances, impossible, for workers to hold a legal strike.¹⁸⁹ Furthermore, in 2014, Kazakhstan introduced criminal sanctions for actions provoking workers to continue a strike declared illegal by a court (Criminal Code article 402). In May 2020, Kazakhstan reduced maximum sanctions for the offense from a three-year prison sentence to a fine.

For many years, Kazakhstan also imposed a blanket ban on strikes by workers employed in "hazardous production facilities," which includes the entirety of the oil and gas sector, as well as on "railway transport and civil aviation workers, medical workers, and service providers (including workers in public transport, water supply, electricity, heat, and communications)." Following sustained pressure from the ILO, in May 2020 Kazakhstan's Labour Code was amended to allow service providers and oil and gas workers to hold strikes, provided they ensure minimum or uninterrupted services.¹⁹⁰

Given the obstacles to staging legal strikes, workers in practice resort to spontaneous, short-term industrial actions, sidestepping burdensome collective bargaining procedures, to make their grievances known. Doing so exposes them to risk of dismissal, as well as possible administrative or criminal prosecution. According to media reports, in February 2021 over a dozen workers were dismissed from an oil company in western Kazakhstan after they participated in a strike demanding higher wages.¹⁹¹ In April 2021, oil workers who staged a strike in Zhanaozen were informed by their employer that the strike was "illegal" and told they must come back to work.¹⁹²

Under international human rights law, any penalties for participating in an illegal strike should be proportionate to the offense or fault committed. The ILO has made clear that sanctions for participating in strikes are acceptable only when national law itself is consistent with international standards on freedom of association, which is not the case in Kazakhstan.¹⁹³

¹⁸⁷ HRW, Kazakhstan Adopts Long Promised Amendments to the Trade Union Law, December 2020, <https://www.hrw.org/news/2020/12/17/kazakhstan-adopts-long-promised-amendments-trade-union-law>.

¹⁸⁸ HRW, Kazakhstan: Independent Union Under Threat of Suspension, January 2021, <https://www.hrw.org/news/2021/01/28/kazakhstan-independent-union-under-threat-suspension>.

¹⁸⁹ Constitution of the Republic of Kazakhstan, art. 24, pt. 3; Kazakhstan Labour Code, art. 171.

¹⁹⁰ Kazakhstan Labour Code, art. 176, 2-1.

¹⁹¹ Zhursin, Zhanagul and Dilara Isa, "Workers are increasingly going on strike. What does it mean?" [Работники всё чаще выходят на забастовки. О чём это говорит?], Radio Azattyk, February 2021, <https://rus.azattyq.org/a/31097676.html>.

¹⁹² Toiken, Saniyash, "The company proposed to striking workers in Zhanaozen to go back to work" [Бастующим в Жанаозене работникам компания предложила возобновить работы], April 2021, <https://rus.azattyq.org/a/31216965.html>.

¹⁹³ The CEACR has stated that "sanctions for strike action, including dismissals, should be possible only where strike prohibitions are in conformity with the principles of freedom of association." CEACR: Direct Request concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) Kazakhstan (ratification: 2000), adopted 2003, published 92nd ILC session (2004), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2224882

Worker mobilising – new hope?

Despite all these challenges, workers in Kazakhstan continue mobilising. Since the start of 2021, there have been increasing media reports of small worker collectives in Kazakhstan independently staging industrial actions and then organising and announcing their intent to form trade unions.

In March, striking oil workers in the Aktobe region in western Kazakhstan voted to form a new trade union to protect their interests.¹⁹⁴ In May, construction workers in Kazakhstan's capital, Nur-Sultan, announced that they had registered a new trade union, 'Umit'. Their elected union leader, Kairat Aydar, told Radio Azattyk that the construction workers had decided to unionise after striking in December 2020 against dangerous working conditions.¹⁹⁵ In Almaty, food delivery couriers, many of whom are contract workers for food delivery apps, decided to unionise after striking against low pay and worker dismissal.¹⁹⁶

These worker initiatives to organise and unionise are especially important against the backdrop of authorities' efforts to stifle and suppress independent trade union organising in Kazakhstan. It is critical that neither the companies that employ the workers, nor the Kazakh authorities, interfere in their efforts, but allow workers to organise and register their trade unions, and that they be allowed to operate without harassment or retaliation.

Conclusion

While the Kazakh Government's sustained attacks on independent labour organising over the last ten years is a deep stain on the country's human rights record, there is room for cautious optimism. Workers in disparate parts of the country have independently organised in recent months in defence of their rights. The long-term criticism of Kazakhstan's restrictive trade union law by the ILO and local and international trade union and human rights bodies has already pushed Kazakhstan into reforming the trade union law and introducing a number of other positive legislative changes.

And the pressure on Kazakhstan is not letting up. At this year's International Labour Conference, the Committee on the Application of Standards issued its most extensive and strongly worded conclusions and recommendations on Kazakhstan yet. In addition, the committee required the Kazakh Government to accept a direct contacts mission by the ILO to Kazakhstan to assess the situation and for the Kazakh Government to report back to the committee before next year's conference on "measures taken... to comply with the Convention."¹⁹⁷

Kazakhstan needs to start implementing meaningful labour rights reforms, which are essential to protect workers from rights abuses. Kazakhstan's international partners, including the European Union (and its member states), the United Kingdom, and the United States, can support Kazakhstan in these efforts by raising concerns about ongoing labour rights abuses in the country, and by calling on the Kazakh government to respect and uphold international labour rights standards.¹⁹⁸

¹⁹⁴ Zhursin, Zhanagul, "Striking workers at KMK Munai form new union and end strike" [Бастовавшие рабочие «КМК Мунай» сформировали новый профсоюз и прекратили забастовку], Radio Azattyk, March 2021, <https://rus.azattyq.org/a/31171394.html>.

¹⁹⁵ Zhoymergen, Orken, "Capital builders registered a trade union to protect their rights" [Столичные строители зарегистрировали профсоюз для защиты своих прав], Radio Azattyk, May 2021, <https://rus.azattyq.org/a/31265431.html>.

¹⁹⁶ Mazorenko, Dmitriy, "Kazakhstan couriers are pushing back against the gig economy, Open Democracy, June 2021, <https://www.opendemocracy.net/en/odr/kazakhstani-couriers-are-pushing-back-against-gig-economy>. See also: Mazorenko, Dmitriy, "Couriers of all Kazakhstani food delivery services create a union" [Курьеры всех казахстанских сервисов доставки еды создают профсоюз], Vlast.kz, May 2021, <https://vlast.kz/novosti/45043-kureriy-vseh-kazahstanskiy-servisov-dostavki-edy-sozdaut-profsouz.html>.

¹⁹⁷ Committee on the Application of Standards, International Labour Conference, 109th Session, Geneva 2021, CAN/PV.CCL, June 2021, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_804447.pdf. See also: HRW, ILO Slams Kazakhstan for Longstanding Labour Rights Abuses, June 2021, <https://www.hrw.org/news/2021/06/22/ilo-slams-kazakhstan-long-standing-labor-rights-abuses>.

¹⁹⁸ The European Union, the United States, the United Kingdom, and Canada, all expressed concern about the lack of meaningful progress on labour rights in Kazakhstan during the June 2021 ILO Committee on the Application of Standards' review of Kazakhstan. Previously, the European Parliament has twice endorsed the ILO's conclusions. See: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0203_EN.html.

HRW urges the Kazakh Government to take the following steps to bring Kazakh law closer to international human rights standards and improve the environment for independent trade union organising and association:

- Comply fully with the conclusions adopted in 2015, 2016, 2017, 2019 and 2021 by the ILO Committee on the Application of Standards;
- Cease the harassment of independent trade union activists, including by lifting restrictions on trade union activism of Larisa Kharkova, Amin Eleusinov, and Erlan Baltabay;
- Set aside the court-ordered closure of the Confederation of Independent Trade Unions of Kazakhstan, and the six-month suspension of the Industrial Trade Union of Fuel and Energy Workers, and allow the KNPRK and ITUFEW to register and operate without interference;
- Repeal Criminal Code article 402 criminalising “calling on workers to participate in a strike that has been found illegal by a court,” as incompatible with the right to freedom of association, the right to organise, and the right to strike.



6. COVID-19 and increased state control in the information space

By Galiya Azhenova¹⁹⁹

2020 and 2021 so far has been a time of pandemic and quarantine, starting with an extremely difficult lockdown with restrictions on freedom and mitigation measures changing from time to time.

The media and journalists has been in the worst possible position during this time in comparison to the pre-COVID-19 era. Access to information, its receipt and distribution has worsened due to the transition of officials, responsible persons in ministries, departments and courts, to working online. This has allowed officials to not answer uncomfortable questions from journalists at briefings, interrupt questions and replies from the media, turn off microphones, to be considerably late in issuing press releases in the state Kazakh language and other problems. There are only a few known cases when colleagues were so massively indignant at the turning off of microphones that one of the other journalists demanded that their colleague be allowed to rejoin the online conference on the Zoom platform. This case with the journalist Serikzhan Mauletbai was reflected in the monitoring by the Adil Soz Foundation.

Journalists were deprived of the opportunity to ask questions directly during many of the online meetings with large departments. Journalists were required to send questions to the chat

¹⁹⁹ Galiya Azhenova is Head of the Public Center for Expertise on Information Disputes at the Adil Soz International Fund for the Protection of Freedom of Speech. She has extensive experience in this position related to the organisation and preparation of linguistic research at the request of lawyers, journalists, individuals and legal entities for submission to court and law enforcement agencies to protect their rights. Together with her colleagues, she also works to monitor violations of the freedom of speech of the media and journalists. Previously she was connected with the state TV channel 'Kazakhstan', where for 20 years she worked as a journalist, editor and TV presenter in social programs and the news sector.

beforehand, and then during a meeting a moderator would read them out. The organisers of the press conferences filtered questions, and often ‘inconvenient’ questions were not included into discussions by moderator or speakers.

The police have also started attacking journalists. The journalists of ‘Astana’ and ‘Informburo’ TV channels (one of them who was Bakhrom Abdullaev) arrived at a fire in the Shymkent region late in the evening and were attacked by the police while reporting on it. After a public outcry, the journalists received apologies from the police authorities explaining that the police had not broken anything and that a mistake was made because the journalists did not have on identification vests. In another case, the same journalists were attacked by the police during the filming of a strike by villagers protesting against the closure of the jewelry factory and the arrest of the head of the factory.

Saniya Toiken, a correspondent for Radio Azattyk, a journalist with a vast experience of work in different and difficult regions of our country, the only winner of the International Women's Media Foundation (IWMF) award in the nomination ‘For Courage in Journalism’, was repeatedly beaten and obstructed from her professional activities by the police. She told the Adil Soz Foundation correspondent that on: *“October 24th 2020 a middle-aged man in civilian clothes took my phone away from me, threw me to the ground. No one helped me, I got up and ran after him to return my phone, because it was [a] corporate phone and I was responsible for it. I asked [for him to] give back my phone. Then people tried to take away my phone from that man. One policeman recognised me from the crowd and asked me to let that man go.”* The journalist got her phone in a police station with all the videos and materials she had taken deleted off it. Additionally, the examination confirmed that Saniya was injured in the incident.²⁰⁰

In July 2021, the head of the press service of at the Almaty police department, S. Azirbek, called the Saniya Toiken “shameless”, characterised her behaviour as shameful and accused the journalist's dead mother of badly parenting her daughter. In this verbal skirmish via WhatsApp, the journalist did not receive an answer to her question from either S. Azirbek or their deputy. She was also warned that from now on journalists would receive information via time consuming official channels of communication.

Ordinary citizens think: If officials and the police do not stand on ceremony with journalists, then why should we?

On June 9th 2020, the film crew of the information and analytical portal Azattyq Ruhya, journalist Rishat Askarbekuly and a cameraman, were attacked by a group of women near the house where a family tragedy occurred (a 69-year-old Almaty resident shot his son-in-law and daughter, and then committed suicide). One of the women grabbed the phone from the journalist's hands and threw it with all her might on the asphalt. Then she pounced on the cameraman to take away his camera. The journalist and crew called the police and wrote a statement about the attack. However, attacks on journalists are rarely followed up on and police attacks on journalists are not punished at all.

During the period of lockdown and quarantine, it was difficult for journalists to move within the cities and regions. Even with an editorial card, assignment, journalist's membership card, or identity card, they were required to obtain permission from the Akimat, the local executive body. They were not allowed to take any photos or videos of ambulances and patients, even when they were outside the clinics. Society demanded adequate and correct information on the virus, the number of the infected, deaths and recoveries, the availability of equipment, medicines and drugs, but journalists were given very limited or incorrect and conflicting information. Although the Criminal Code

²⁰⁰ CPJ, Kazakh police assault, injure journalist Saniya Toiken covering protests in Nur-Sultan, October 2020, <https://cpj.org/2020/10/kazakh-police-assault-injure-journalist-saniya-toiken-covering-protests-in-nur-sultan/>

contains Article 158 'Obstruction of the lawful professional activity of a journalist' since 2006 not a single complaint has reached the court.

According to Ranking.kz, in 2020, incidents related to the lack of access to the Internet became noticeably more frequent in the country.²⁰¹ Over the last year the indicator increased more than 2.7 times and reached 2,000 cases. As in the previous year, the Internet was blocked on the eve of and during the period of unauthorised protests.

Legislative changes

The issue regarding the liability for defamation (Article 130 of the Criminal Code of the Republic of Kazakhstan) has been discussed for many years in the media and the legal community due to the impossibility of proving intent and meaning, as well as due to the extreme, harsh penalties in the event of a guilty verdict. As a rule, a court decision of this kind was not cancelled and the punishment was often in the form of large fines or even imprisonment. There was also a possibility of recovering millions of tenge as a moral damage in a related civil order. In addition, a person convicted under a criminal article could potentially become restricted to travel abroad and could have trouble being hired. The Adil Soz Foundation asked the President to instruct the Supreme Court to develop a bill on the decriminalisation of defamation in order to include this type of offense in the Civil Code instead of the Criminal Code.

However, contrary to the expectations of society - journalists, lawyers and human rights defenders – 'Defamation' has instead been moved from the Criminal Code to the administrative one. The law was developed by the General Prosecutor's Office. Now journalists face a serious fine and a maximum of 30 days in prison (instead of three years) in case defamation is proven. District police officers got involved in defamation cases, with absolutely no understanding of the linguistic and special understanding of the text, which has resulted in a stream of administrative court decisions against activists and members of their families. For example, in the oil and gas producing region Mangistau, people who expressed their own opinion or assessment in a negative but decent form regarding a civil servant on the Internet, are being obliged to pay a fine in the amount of 180 to 200 MCI (500,000 tenge, which is about \$1,200. For comparison: the average salary of workers is about 70,000-80,000 tenge).

The law of the Republic of Kazakhstan 'On Mass Media', in force since 1999, and amended in 2020, strengthens bureaucratic control over freedom of expression. The work on a fundamentally new law, adequate to the realities of the digital era, promised in 2017 by the then Minister of Information and Social Development Dauren Abaev (who has been First Deputy to Head of the Presidential Administration since May 2020) is currently in stagnation. By the end of 2020, the Ministry informed the Adil Soz Foundation that the ministry's specialists had developed a draft concept of the Law on Mass Communication, but never shared its text, citing the need for revision, which usually means the process of coordination with the Presidential Administration and the Government.

An expert group of human rights defenders, civic activists, IT specialists, researchers, journalists and lawyers released a statement that the Law of the Republic of Kazakhstan (in short 'On the regulation of digital technologies'), signed by the President on June 25th 2020, was adopted without widespread consultation with civil society and on a tight schedule during a pandemic. The authors of the statement believe that the law on digital technologies creates the conditions for illegal surveillance and the leakage of personal data, since there is no independence, transparency and accountability of the newly authorised body. They argue that there is no clear wording in the law and that it might cause excessive control over correspondence, traffic in the network, and citizens' behaviour on the

²⁰¹ See <http://ranking.kz/>

Internet, creating a restriction over it Internet resources, as well as not providing society any civil control over the issue.

All these changes announced by the Government are aimed at strengthening state control in the information space.



7. Technology-surveillance nexus beyond COVID-19: The outskirts of digitalisation in Kazakhstan

By Anna Gussarova²⁰²

In Kazakhstan, personal data protection has become critical in responding to the outbreak of COVID-19. On one hand, facial recognition, artificial intelligence, and biometrics have been chaotically introduced across different sectors of public life under 'Digital Kazakhstan' the national digitisation strategy, including healthcare.²⁰³ On the other, despite all optimism and success of technology-based solutions, they result in disturbing and far-reaching consequences with regard to privacy, confidentiality, and data protection.

The Kazakh Government's large-scale digitalisation efforts expose the manipulation of technology for the purpose of digital surveillance of citizens (particularly activists) and excessive collection of personal data during a state of emergency and quarantine to stop the spread of COVID-19.²⁰⁴ While these violate fundamental rights and freedoms, including privacy, the Kazakh digital endeavour is

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²⁰³ 'Digital Kazakhstan' State Program, Zerde Holding, "Digital Kazakhstan" state program (zerde.gov.kz); Petrenko E.S., Shevyakova A.L. (2019) Features and Perspectives of Digitisation in Kazakhstan. In: Popkova E. (eds) Ubiquitous Computing and the Internet of Things: Prerequisites for the Development of ICT. Studies in Computational Intelligence, vol 826. Springer, Cham. https://doi.org/10.1007/978-3-030-13397-9_91.

²⁰⁴ Anceschi, Luca. "The Persistence of Media Control under Consolidated Authoritarianism: Containing Kazakhstan's Digital Media." 23, no. 3 (2015): 277-295.

not in line with its Privacy Law.²⁰⁵ It reveals the poor application of law enforcement with an omnipresent threat of the violation of the rule of law, pervasive corruption, and opaque public administration, challenging state ability and credibility to respect and ensure safe collection, processing, and storage of Kazakhstanis personal data and meet international standards and protocols in data protection and cyber resilience.²⁰⁶

The conflict between the apparent benefits of biometric tools, including applications such as SmartAstana and Ashyq, designed explicitly as a health instrument to combat COVID-19, and capturing our physical characteristics will likely stay for years on end.²⁰⁷ Technological solutions, caused by the need to curtail country's epidemiological situation in biggest cities and nationwide, will continue to transform into long-term mechanisms for collecting, processing, and storing the personal data of millions of Kazakhstanis. While containing the COVID-19 outbreak is vital, and the health of many might outweigh the privacy of one, will this push us three steps further towards a fully-fledged surveillance society in Kazakhstan?²⁰⁸ How experienced are Kazakhstanis in matters of personal data protection? How anxious are they about controlling access to their personal data and how do they perceive the role of the state in these matters?

This paper explores the nexus between the Kazakh statecraft of data protection, technology-driven digitisation efforts and the culture and awareness of data protection. It builds on the need and the pitfalls of a GDPR - like regime to be designed and implemented in one of the Central Asian countries with an emphasis on evidence-based policy recommendations to protect personal data, introduce crisis management toolkits and adopt long-term strategic cyber resilience in a post-COVID authoritarian system.²⁰⁹

Data protection and Kazakh Digitalisation Agenda

The outbreak of coronavirus in Kazakhstan has adversely impacted the protection of personal data despite the construction of a specialised agency. The entire routine of life has switched to an online format: citizens began to consume online services such as trading, online banking, and shopping day-to-day. While COVID-19 has generated rapid and quite shocking digital and technological shift anticipated so long by the Kazakh Government's large-scale digitalisation efforts, universally protected human rights and freedoms, such as the right to privacy, freedom of movement, the right to access information of those infected have been severely violated.

One can easily recall ridiculous examples of human rights abuse reported by local media about how the doors were welded and the entrances closed when an infected individual was identified; or how information about a person was disseminated in chat rooms for the purpose of further bullying, humiliation and discrimination; or the use of medical secrecy to not disclose information on sick Parliament members and other authorities; or used as obstacles for election observers and activists

²⁰⁵ Law of the Republic of Kazakhstan on Personal Data and Its Protection, Zakon.kz, Закон Республики Казахстан от 21 мая 2013 года № 94-V «О персональных данных и их защите» (с изменениями и дополнениями по состоянию на 01.07.2021 г.) - ПАРАГРАФ-WWW (zakon.kz).

²⁰⁶ Anna Gussarova, Beyond the GovTech: The Pitfalls of Kazakhstan's Digitalisation Agenda, in Digital Silk Road in Central Asia: Present and Future ed. By Nargis Kassenova and Brendan Duprey, DAVIS Center, Harvard, June 2021, https://daviscenter.fas.harvard.edu/sites/default/files/files/2021-06/Digital_Silk_Road_Report.pdf

²⁰⁷ Dana Zhaik, Virusny monitoring: Kak koronavirus rasprostranil mirovuyu slezhku [Monitoring of Virus: How COVID-19 spread global surveillance], The Steppe, April 2020, <https://the-steppe.com/tehnologii/virusnyy-monitoring-kak-koronavirus-rasprostranil-mirovuyu-slezhku>

²⁰⁸ Natalie Ram and David Gray, Mass surveillance in the age of COVID-19, Journal of Law and the Biosciences 7, no. 1, May 2020, <https://academic.oup.com/jlb/article/7/1/Isaa023/5834621>; Moran Amit, Heli Kimhi, Tarif Bader, Jacob Chen, Elon Glassberg, and Avi Benov, "Mass-surveillance Technologies to Fight Coronavirus Spread: The Case of Israel, Nature Medicine 26, no. 8, May 2020, <https://www.nature.com/articles/s41591-020-0927-z>

²⁰⁹ EU General Data Protection Regulation on law in privacy and data protection, implemented in 2018. Full document can be found here General Data Protection Regulation (GDPR) – Official Legal Text (gdpr-info.eu)

to hold peaceful assemblies.²¹⁰ All these matters underpin the essence of the usual violation of human rights and freedoms in regular times in Kazakhstan, something which turns out to be even worse during a COVID-19 outbreak.

In addition, leaks of personal data continue to happen, and private IT specialists are staying alert on those cases. For instance, the Centre for Analysis and Investigation of Cyber Attacks ‘TSARKA’ announced another medical leak in their Telegram channel in 2020. Their system found “245,000 audio recordings of telephone conversations and tens of gigabytes of personal data from the integrated state database, which has been available to any unauthorised user for more than six months.”²¹¹ Interestingly, the Kazakh Ministry of Healthcare denied the fact of a data breach and any further resolution of the situation, while no public information has even been available. A similar outcome can be traced in the DAMUMED case, with data leaks and postscripts of non-existent family members or fake visits to doctors since 2018 without proper solution until nowadays.²¹² Another example was in 2019 when several leaks of personal data from Central Election Commission and General Prosecutor’s Office were also publicly reported by TSARKA without proper and transparent investigation from the Ministry of Interior.²¹³ All these cases highlight the negligence of rule of law and respect for human rights guaranteed by privacy legislation, constitution, and international human rights norms.

There is no doubt that digitalisation comes with risks. In Kazakhstan, digital transformation is subject to the predominant role of the state, excessive attention to the ICT sector and the need to obtain quick quantitative results (most often these are the country's positions in the UN global e-government development index, ranking of smart cities and cybersecurity) through the creation of new jobs and receiving potential financial profit from the introduction of new technologies.²¹⁴ In addition, the Kazakh ability to achieve its strategic digitalisation goals is fairly limited and contingent on foreign aid and support in technology, investment, and skills.²¹⁵

An excessive emphasis on ICT perhaps could lead to a more rapidly digital transformation, which has been repetitively indicated in national programmes and addresses of the President to the people. However, such an aggressive and opaque approach to digitisation of public services ignores knowledge and strategic culture in understanding the long-term benefits, repercussions and side effects for people, their freedoms and trust in Government. These far-reaching implications of quick solutions in bringing and introducing technologies for the modernisation agenda have led to the choice of the Russian and Chinese software, technologies, and digital securitisation practices by under-regulating data protection and expanding digital surveillance. As of now, it still remains unclear how and whether government agencies, particularly security services, will respect the rights of citizens to protect personal data and how the Government will balance between the right to privacy and maintaining public order and ensuring national security.

²¹⁰ Aisha Kutubaeva, Minzdarv ne rekomendoval zavarivat’ dveri i zakryvat’ tselye pod’ezdy na karantin [Healthcare Ministry does not recommend to weld doors and shut down entrances to houses], Liter, May 2020, <https://liter.kz/eto-ne-my-mizdrav-ne-rekomenduet-zavarivat-dver-i-zakryvat-czelyj-podezd-na-karantin/>; “Karagandintsev zakryli v pod’ezde na zamok [People from Karaganda were denied and locked entrance],” March 20, 2020, Карагандинцев закрыли в подъезде на замок (liter.kz)

²¹¹ Rabiga Dyussenkulova, MinYust vysskazalsya ob utechke dannykh kazakhstantsev [Ministry of Justice commented over leaks of personal data], Tengrinews, July 2020, https://tengrinews.kz/kazakhstan_news/minyust-vyiskazalsya-ob-utechke-dannykh-kazahstantsev-408386/

²¹² Also reported by TSARKA and citizens from different parts of Kazakhstan.

²¹³ TSARKA Official account on Facebook, https://m.facebook.com/story.php?story_fbid=2636221533272242&id=1674347306126341; Rathel, Utechka dannykh iz bazy Genprokuratury: schet idet na mesyatsy [Data leak from General Prosecutor’s Office Database: It goes for months], Ratel, February 2020, http://www.ratel.kz/kaz/utechka_dannykh_iz_bazy_genprokuratury_rk_schet_idet_na_mesyatsy?fbclid=IwAR2Rvr0DA GyJGUIGLBCDuic-sGpyWH9IBICn2tUoP34XfREbMXOWjoI-t5s

²¹⁴ Kazakhstan has ranked 29th in the UN e-Government Development Index, 26th in e-Participation Index, 31st in ITU Global Cybersecurity Index out of 182 countries significantly improving its positions for the past ten years.

²¹⁵ Anna Gussarova and Serik Jaksylykov, Zashchita personal’nykh dannykh v Kazakhstane 2.0. Tsyfrovoy sled COVID-19 [Data Protection in Kazakhstan 2.0. COVID-19 Digital Footprint], Soros Foundation Kazakhstan, March 2021, http://files.caiss.expert/Personal%20Data_Covid%20Implications.pdf

Public opinion and digital whataboutism

To understand what the Kazakh people think about digital rights and freedoms two rounds of research were conducted by Anna Gussarova and Serik Jaksylykov in 2019 and 2020 for the first time in the country.²¹⁶ Almost half (48 per cent) of those who became more concerned over security of their personal information during the quarantine are afraid of becoming a victim of fraud. Those respondents who noted that they began to care more and think about data protection were asked about types of threats they are worried the most. Almost half (48 per cent) also fear being scammed. Most of all people are concerned about the safety of their bank accounts, savings, and property. Next goes the threat of violating the secrecy of personal information (29 per cent) and unwanted advertising, such as spam (16 per cent).

When it comes to bridging the gap between the state and the people, at least every third respondent expressed their negative attitude to the Government's plans to implement the 'National Monitoring System'.²¹⁷ The National Security Committee intends to use this tool to ensure national and public security, identify threats, emergencies, violations of public order and terrorist acts, as well as provide exchange of information with external information systems.²¹⁸ The desire of state bodies to collect more personal and biometric information about its citizens concerns 53 per cent of the respondents. However, almost two thirds of the respondents seem to be supportive of the collection and use of their personal information, including through outdoor CCTV for facial recognition in order to improve security in the country. These quite contradictory polling results also correspond to ongoing debates over so called 'security certificate'.²¹⁹ There is both criticism of and support for this initiative. While the former group are outraged by the violation of the right to privacy, the latter are ready to sacrifice this right for the sake of national security. However, big tech companies have blocked this certificate as it allows the state to spy on its citizens and intercept their Internet traffic.²²⁰

One of the noteworthy observations when comparing the results of focus group discussions in 2019 and the national survey in 2020 was the attitude towards the role of the state. Whereas in 2019 there was a deep belief in conspiracy theories and an explanation of what is happening by surveillance and wiretapping by law enforcement agencies, in 2020 the public opinion poll recorded certain desperation. This showed through sentiments that "people have no choice and authorities will still do what they want anyway," despite inconsistent support for national digital initiatives, vigilance, and a risk of being scammed.²²¹

Another major finding from the 2020 national poll is a critically low level of digital awareness and understanding of their rights. One of the key characteristics of digital culture in the country is the

²¹⁶ 12 focus groups in biggest cities of Kazakhstan in 2019 and a national poll of 1,500 respondents in 2020 were conducted to understand data protection issues in Kazakhstan by the author. Anna Gussarova and Serik Jaksylykov, *Zashchita personal'nykh dannykh v Kazakhstane: status, riski i vozmozhnosti* [Data Protection in Kazakhstan: Status, Risks and Opportunities], Public Policy Initiative, Soros Foundation Kazakhstan, April 2020, https://www.soros.kz/wp-content/uploads/2020/04/Personal_data_report.pdf; Anna Gussarova and Serik Jaksylykov, *Zashchita personal'nykh dannykh v Kazakhstane 2.0. Tsyfrovoy sled COVID-19* [Data Protection in Kazakhstan 2.0. COVID-19 Digital Footprint], Soros Foundation Kazakhstan, March 2021, http://files.caiss.expert/Personal%20Data_Covid%20Implications.pdf

²¹⁷ On the approval of the Rules for the functioning of the National video monitoring system, November 30, 2020, On the approval of the Rules for the functioning of the National video monitoring system - "Adilet" ILS (zan.kz)

²¹⁸ "Bol'shoy Brat: Kak Budet Rabotat' Sistema Videomonitoringa v Kazakhstane [Big Brother: how the national video monitoring system will work in Kazakhstan]," *Forbes*, February 2020, *Большой брат: как будет работать национальная система видеомониторинга в Казахстане — Forbes Kazakhstan*

²¹⁹ This has been the third attempt to implement a security certificate in Kazakhstan: the first time in January 2016, the second time in 2019 and in 2020 again when the initiative triggered a negative response from civil society and IT companies, including Apple, Google, and Mozilla. "O sertifikate bezopasnosti [About Security Certificate], Digital Rights and Freedoms Landscape, December 17, 2020, O sertifikate bezopasnosti (drfl.kz).

²²⁰ "Certificate cannot be trusted" warning in Kazakhstan, <https://support.mozilla.org/en-US/kb/certificate-cannot-be-trusted-warning-kazakhstan>; Catalin Cimpanu, *Kazakhstan government is intercepting HTTPS traffic in its capital*, ZDNet, December 2020, <https://www.zdnet.com/article/kazakhstan-government-is-intercepting-https-traffic-in-its-capital/>

²²¹ Ibid.

level of knowledge among Internet users about their rights in the field of data protection. Focus group discussions held in 2019 strongly suggested that only a small part of Kazakhstanis who use the Internet know their rights both in national law and international best practices. The results of the 2020 survey fully endorsed the observations collected a year ago. Only 12 per cent of respondents were able to say that they are well aware of their rights in the field of data protection. 55 per cent of respondents either do not know their rights (26 per cent), or their knowledge is very limited (29 per cent). And more importantly the majority (60 per cent) of the respondents expressed their need to learn more about their digital rights.

Finally, the most attractive example to be guided by in choosing a policy in data protection and digital rights is the European Union, which collected 13 per cent of answers while China was mentioned by almost every fifth respondent as the least desirable trajectory for the Kazakh society.

While the research findings seem quite cynical and pessimistic and civil society is telling the truth to state authorities, there is still no dialogue between the two and what matters to the latter is to maintain power and insult minorities and activists. The transformation of the well-known Soviet practice of whataboutism has continued to result in human rights violation, including in the digital domain, supported by censorship, and spying to preserve the authoritarian status quo. This is truly rigid to guarantee in a digitalised world when the entire state apparatus can hardly fully control or securitise.²²²

New trends and loops

One of the key trends in the Kazakh digitalisation efforts is massive and chaotic introduction of artificial intelligence and facial recognition systems. While these emerging technologies could lead to long-term economic benefits, the authorities should consider risks associated with the provision, collection, analysis, and storage of personal data.²²³ Making these processes more transparent will significantly curtail potential vulnerabilities, adequately respond to crisis situations, and enhance the cyber resilience of the Kazakhstani ecosystem. Besides, these developments could add more transparency 'by default' and state's failure to manage them, as 'security by design' has not been introduced.

Considering the recent large-scale cases of personal data leaks, it is essential to draft and develop a national strategy for the use and implementation of artificial intelligence algorithms in various spheres of public life with the focus on ethical norms and human rights as well as legal framework that still does not exist. What is needed is to develop a two-pillar policy: i) long-term vision for AI (an inclusive approach which supports evidence-based research and multi-stakeholder cooperation); and ii) ethical principles and values for AI, as human rights, such as confidentiality and privacy, protection of personal data, human dignity, non-discrimination, and consumer protection, are at stake. And here exploring European and British partners' capacity and expertise will become more useful and vital than the rapid introduction and copy-pasting of the Chinese abusing experience in the implementation of AI and facial recognition technologies.²²⁴ In addition to convenience of collecting, analysing, and processing big data, it is crucial to ensure its security and prevent leaks,

²²² Mordechai Gordon, Opinion: The problem with 'whataboutism', CT Post, February 2021, <https://www.ctpost.com/opinion/article/Opinion-The-problem-with-whataboutism-15964005.php>

²²³ Damir Serikpaev, Askar Mamin: U iskisstvennogo intellekta v Kazakhstane est' potentsial [Askar Mamin: AI Has Potential in Kazakhstan], Forbes, January 2020,

https://forbes.kz/process/technologies/askar_mamin_ekonomicheskij_effekt_ot_primeneniya_ii_mojet_sostavit_okolo_25_mlrd/

²²⁴ For instance, drafting a Strategy for AI and Ethics in using digital technologies is one of the examples to learn from the UK or the EU. Or exploring the concept of digital rights and freedoms for economic welfare could be another option. Besides, Cyber Security Awareness Month could be something to begin with to involve civil society and business to build public-private partnerships and introduce cyber hygiene. Other bilateral efforts in capacity building for the Kazakh civil servants would definitely strengthen local ecosystem and invest in manpower.

hacks, and unauthorised access to personal data of citizens, while respecting their rights and freedoms.

Another thing refers to inability to apply privacy and data protection legislation against state agencies and government officials (and state-affiliated companies). The law on personal data and its protection does not work, and the state does not fulfil its obligations to protect the personal data of its citizens. Recent attempts to cooperate with civil society organisations to introduce amendments to the law could seem encouraging, while many controversial articles remain unaddressed (i. e the right to be forgotten).²²⁵ Fines and liability for violation of the law should apply to everyone, including government agencies and their representatives. Dismissal cannot remain a punishment for violation of the law because it defines clear mechanisms for bringing to justice. Since personal data is subject to protection and its guarantor is the state, this means that everyone, without exception, must comply with the developed technical and legal parameters.

Development and introduction of transparent risk management protocols are essential in balancing between national security and people's freedoms and rights. The National Data Protection Agency needs to develop regulations on data leakage incidents and unauthorised access to personal data. Incidents of data leakage, unauthorised access to personal data should be timely reported by organisations where such crisis situations occur to national data protection agency. This is a normal standard protocol; a set of tools and practices not only present in the European GDPR but across the world. Besides, this step will not only strengthen the component for protecting systems and personal data, but also reduce the existing grey areas that can be used for corruption purposes. More importantly, these practices should be massively implemented in all government agencies working with databases.

Finally, any speculations or suggestions about the state of surveillance mostly lack empirical evidence and research findings. However, Kazakhstan is still trying to find its place in the digital space, exploring Shoshana Zuboff's Surveillance Capitalism and Jack Balkin's National Surveillance State.²²⁶ On the one hand, the Kazakh Government uses surveillance tools, data collection to detect problems, control the population and provide social services. On the other hand, it is a long way from solving management problems by analysing received information due to lack of knowledge, expertise, and qualified manpower. While coronavirus will probably stay with us longer than anticipated, there is no longer any excuse to exploit fear, curtail human rights and enact emergency legislation with long-term repercussions beyond health crisis.

Hence, it is vital to have a working privacy law with enough expertise and power of the Data Protection Agency (the Information Security Committee of the Ministry of Digital Development, Innovation and Aerospace Industry) to make sure legislation is properly applied without violation of separation of power and intrusion from security services to 'control the situation and public order'. The Kazakh DPA should become the guardian of digital rights and data protection in the country. Besides, it should have coordinating functions to gather all government bodies to resolve digital issues, including on a regular basis, and form a digital agenda in the country, considering the risks to the architecture of privacy and personal data.

²²⁵ Tamara Vaal, "V Kazakhstane usovershenstvuyut zakon o zaschite personal'nykh dannyykh [Kazakhstan Will Amend the Law on Data Protection and Its Protection]," *Vlast*, April 13, 2021, В Казахстане усовершенствуют закон о защите персональных данных - Аналитический интернет-журнал Власть (vlast.kz)

²²⁶ Shoshana Zuboff, *Surveillance Capitalism*, Project Syndicate, January 2020, <https://www.project-syndicate.org/onpoint/surveillance-capitalism-exploiting-behavioral-data-by-shoshana-zuboff-2020-01/russian?barrier=accesspaylog>; Jack M. Balkin, *The Constitution in the National Surveillance State*, *Minnesota Law Review* 93, 2008, https://digitalcommons.law.yale.edu/fss_papers/225/

The Information Security Committee of the Ministry of Digital Development, Innovation and Aerospace Industry should strengthen bilateral and multilateral cooperation with similar foreign departments and agencies across the EU to develop national "cyber diplomats" in all government bodies.

The Kazakh Data Protection Agency should develop regulations on data leakage incidents and unauthorised access to personal data. These cases should be reported by organisations in which similar crises occur within certain timeframe and communicate with the clients. This is a normal standard protocol, a set of tools and practices not only present in the European GDPR, but also in many companies across the world. The introduction of transparent risk management protocols will not only strengthen the component for protecting systems and personal data, but also reduce the existing grey areas that can be used for corruption and espionage purposes. These practices should be massively implemented in all government agencies working with databases.



8. Alt-Right groups in Kazakhstan: How they succeeded in cancelling a Bill against domestic violence

By Dr Khalida Azhigulova²²⁷

The scope of domestic violence in Kazakhstan

Domestic violence has been a serious long-standing problem in Kazakhstan. The official statistics of the Ministry of Interior and the General Prosecutor's Office, safe for certain discrepancies, demonstrate that there has been a steady increase in registered domestic violence criminal offenses since 2017.²²⁸ [See: Table 1 at the end of this essay]

The problem has become even more acute during the pandemic. According to the data of the Ministry of Interior, during a two month lockdown in 2020, the level of domestic violence increased by 41.7 per cent compared to the same period in 2019.²²⁹ During eight months of 2020, the police received about 130,000 reports of domestic violence. Yet, administrative proceedings were initiated only for 30,000 cases and criminal proceedings were initiated in 2,500 cases.²³⁰ That is, only 25 per cent of cases of domestic violence reached the court.

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²²⁸ The official statistics on domestic violence cases are not publicly available and can be provided only upon request

²²⁹ Diana Abdullayeva, В Казахстане в период карантина уровень бытового насилия вырос на 41,7%, Informburo, August 2020, <https://informburo.kz/novosti/v-kazahstane-v-period-karantina-uroven-bytovogo-nasiliya-vyros-na-417-.html>

²³⁰ KazInform, Около 130 тысяч обращений по признакам бытового насилия поступили от казахстанцев, September 2020, https://www.inform.kz/ru/okolo-130-tysyach-obrascheniy-po-priznakam-bytovogo-nasiliya-postupili-ot-kazahstancev_a3697861

The low percentage of cases brought to court can be explained by the fact that the majority of the population generally share a patriarchal view on domestic violence as a private family issue rather than a human rights violation. For this reason, survivors of domestic violence are often found under pressure from their relatives to refuse to report or file personal applications with police to initiate proceedings. Even if an application has been made, survivors are often forced to withdraw their applications and reconcile with their abusers.

The official domestic violence statistics are not gender and age disaggregated. Yet, the analysis of the media reports indicates that women and children fall victim of the most serious domestic violence cases. For example, in 2020 alone the following incidents shocked the public: in Western Kazakhstan, a husband killed his wife and two daughters and then burned down the house;²³¹ in Southern Kazakhstan, a husband brutally attacked his wife with an axe;²³² in Northern Kazakhstan, a husband beat and brutally killed his wife in front of their children; and in the capital city of Nur-Sultan, a husband had been stalking his ex-wife and then stabbed her multiple times to death.²³³ In all incidents, the investigation showed that the murders had been preceded by a series of domestic violence incidents. Moreover, it turned out that the victims' relatives and neighbours were aware of the violence but did not report to police either because of fear of retaliation or because they did not want to interfere in a 'family conflict'.

Moreover, according to 2017 UNICEF research, 75 per cent of Kazakhstani parents support corporal punishment for their children to control their behaviour, and 50 per cent of children aged between two and 14 were subjected to domestic violence.²³⁴

Advocacy campaign for reform of the domestic violence legislation²³⁵

One of the main reasons for the prevalence and increase in domestic violence in Kazakhstan is the lack of efficient legislation. Since as early as 2013, the UN Committee on the Elimination of Discrimination Against Women (CEDAW), international organisations and local human rights NGOs have been appealing to the authorities of Kazakhstan to improve domestic legislation on prevention and response to domestic violence.²³⁶ Eventually, at the beginning 2020, Members of Parliament (MPs) initiated a Bill on Countering Domestic Violence which was to supersede the 2009 Law on Prevention of Domestic Violence.

Three main legal acts that currently regulate domestic violence issues in Kazakhstan are the 2009 Law on Prevention of Domestic Violence (2009 DV Law), the 2014 Administrative Offences Code and

²³¹ Roza Nurgaliyeva, Осужден пожизненно заживо сжегший жену и двоих дочерей житель ЗКО, Newtimes, July 2020, <https://newtimes.kz/obshchestvo/114554-osuzhden-pozhiznenno-zazhivo-szhegshii-zhenu-i-dvoikh-docherei-zhitel-zko>

²³² KazInform, Житель Туркестанской области осужден к 11 годам за попытку зарубить топором жену, August 2020, https://www.inform.kz/ru/zhitel-turkestanskoj-oblasti-osuzhden-k-11-godam-za-popytku-zarubit-toporom-zhenu_a3686120

²³³ Tengrinews, Астанчанин из-за ревности зарезал свою жену, April 2020, <https://tengrinews.kz/news/astanchanin-iz-za-revnosti-zarezal-svoyu-jenu-400532/>

²³⁴ Kazakhstan Today, Почти 75% взрослых казахстанцев одобряют телесное наказание при воспитании детей, January 2018, https://www.kt.kz/rus/society/pochti_75_vzroslih_kazahstancsev_odobrajut_telesnoe_nakazanie_pri_vospitanii_detej_1153651781.html

²³⁵ The discussion of the pro-Bill campaign is based on the following analytical articles: Masa Media, Что не так с Законом о бытовом насилии в Казахстане? Часть первая, November 2020, <https://masa.media/ru/site/chto-ne-tak-s-zakonom-o-bytovom-nasilii-v-kazakhstan-e-chast-pervaya>; Masa Media, Что не так с Законом о бытовом насилии в Казахстане? Часть вторая, November 2021, <https://masa.media/ru/site/chto-netak-szakonom-obytovom-nasilii-vkazakhstan-e-chast-vtoraya>; KazInform, Семейно-бытовое насилие: депутаты и эксперты рассказали о новом законе, October 2020, https://www.inform.kz/ru/semeyno-bytovoe-nasilie-deputaty-i-eksperty-rasskazali-o-novom-zakone_a3710389; Aigul Tulebayeva, Семейно-бытовое насилие: вся правда о новом законе, Inbusiness.kz, October 2020, <https://inbusiness.kz/ru/news/semeyno-bytovoe-nasilie-vsya-pravda-o-novom-zakone>

²³⁶ CEDAW, Concluding observations on the fifth periodic report of Kazakhstan Adopted by the Committee at its seventy-fourth session, 21 October–8 November 2019,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/KAZ/CO/5%20&Lang=En; CEDAW, Concluding observations on the combined third and fourth periodic reports of Kazakhstan, Adopted by the Committee at its fifty-seventh session, 10 - 28 February 2014,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKAZ%2fCO%2f3-4&Lang=en

the 2014 Criminal Code, both of which establish legal liability for different types of domestic violence depending on their gravity.

The adoption of the 2009 DV Law related to an image-building project and political ambition of Kazakhstan - to become a chairperson of the Organisation for Security and Cooperation in Europe (OSCE). Having been OSCE's member since 1992, in 2001, Kazakhstan made an application to become its chairperson. However, the US and the UK blocked this application and demanded that Kazakhstan first engage in human rights and democratisation reforms. As a result of these reforms, the DV Law was adopted in December 2009 before Kazakhstan assumed chairpersonship in January 2010.²³⁷

The 2009 DV Law contained a few progressive novelties for that time: it defined domestic violence and its forms; introduced a protective order against domestic abusers; established competence of various governmental bodies to prevent and respond to domestic violence (e.g., police, education, health, local state bodies); established competence of shelters for survivors; and listed various preventive measures.

However, over time the practical application of the Law exposed the following gaps:

1. First, the Law lacked an efficient coordinating mechanism among relevant governmental bodies and NGOs. In practice, the Ministry of Interior with its police departments has been the only governmental body that dealt with domestic violence daily, but only when incidents have already occurred. Other Ministries and local municipal bodies have been barely involved in the prevention of domestic violence.
2. Second, the measures provided by the Law in effect did not help *prevent* and *restrain* domestic violence. The Law lacked a comprehensive approach in prevention, response, and restraint of domestic violence. Also, up until now the Government has not adopted any national plan on educating the population to zero tolerance to any type of violence, which could have helped gradually change the local social norms.
3. Finally, current domestic legislation provides for inadequate punishment for domestic violence that is quite lenient to perpetrators but fails to protect survivors from the first or repetitive incidents.

Since 1997, the Criminal Code of Kazakhstan contained five articles that established criminal liability for various forms of domestic violence: grievous bodily harm, moderate bodily harm, minor bodily harm, assault and battery, and cruel treatment (which applied in case of at least three episodes of physical abuse within one year).²³⁸

However, in 2017 the Ministry of Interior pushed for decriminalisation of the two most often applied articles: assault and battery and minor bodily harm, and they were introduced to the Administrative Offences Code. Thus, since 2017 a perpetrator of these offences could face either a fine (an equivalent of 100 USD) or an administrative arrest of up to 15 days. However, in 2019 the Ministry of Interior convinced Parliament to replace a fine with a written warning by the court for a first time offence, claiming that fines created a burden on a family's budget.

Such changes have led to an absurd situation: a domestic abuser can break limbs, ribs, a jaw, or inflict a head injury to a family member, but if the injured person is hospitalised for less than 21

²³⁷ Adam Hug, Kazakhstan at a Crossroads, The Foreign Policy Centre, April 2011, <https://fpc.org.uk/publications/kazakhstanatacrossroads/>

²³⁸ 1997 Criminal Code of Kazakhstan (unofficial English translation provided by the Ministry of Justice of the Republic of Kazakhstan), https://adilet.zan.kz/eng/docs/K970000167_

days, then these injuries are considered minor bodily harm, and a perpetrator will get only a warning. Such punishment is much milder than the punishment for littering, noise nuisance or breaking speed limit. Moreover, the Ministry of Interior managed to pass a legal norm that the same penalty applies to former spouses. That is, a woman can be divorced, but her ex-husband can pursue her and beat her while facing only a written warning.

It is to address these gaps that the Bill was developed. Its first draft was published on the website of Parliament on March 2nd 2020. Over the next six months before the Bill entered Parliament, discussions on each norm took place in a Parliamentary working group which comprised of several MPs, representatives of concerned Ministries, the General Prosecutor's Office, the Supreme Court, the Human Rights Commissioner, and human rights NGOs and scholars. Discussions were often heated as the Ministry of Interior and the General Prosecutor's Office strongly opposed NGOs' proposal to criminalise assault and battery and minor bodily harm, while other Ministries opposed new functions, meaning additional obligations and workload, to identify and prevent domestic violence.

Advocacy campaign against the 2020 Bill on Countering Domestic Violence

On September 23rd 2020, Mazhilis, the lower chamber of Parliament, approved the general concept of the Bill during the first reading.²³⁹ The second reading with article-by-article voting was planned in a few weeks to be followed by the adoption of the new law by the end of the year. However, the new law was never adopted due to a successful anti-bill campaign by newly emerged alt-rights groups.

The anti-bill campaign started in October 2020, when a small group of independent lawyers, bloggers and members of little known groups started spreading false and manipulative information about the Bill, its alleged consequences for Kazakhstani families, and calling for the entire cancellation of the Bill.²⁴⁰ According to an independent journalist inquiry, the same group of people had been earlier spotted advocating against a new Code of Health, vaccination and COVID-related rules, such as wearing a mask in public places, and was also involved in spreading various conspiracy theories and false information about the COVID-19 pandemic.²⁴¹

Their main claims against the Bill copied the rhetoric of the Russian alt-right NGOs who attacked a similar domestic violence bill in Russia in December 2019:

- *'The Bill promotes so-called 'Western' values and gender equality, which is against our traditional values, according to which a wife must obey her husband and children must obey their parents'*
- *'The Bill interferes with family life and aims to destroy our families'*
- *'If you spank your child, the juvenile police will take her/him away, like in Europe. Your child will then be sent to Europe for adoption by LGBTQ+ people or for organ harvesting'*
- *'The Bill will allow to put alleged abusers to mental health facilities for mandatory psychiatric treatment'*

²³⁹ Website of Parliament of Kazakhstan, 'Мажилис одобрил депутатский законопроект о противодействии семейно-бытовому насилию', September 2020, <https://www.parlam.kz/ru/mazhilis/news-details/id48134/1/15>

²⁴⁰ Summary of the anti-bill campaign and its claims is based on the analysis of related public social media posts and the following analytical articles: Yuna Korosteleva, Ювенальное спасение, Vlast.kz, December 2020, <https://vlast.kz/obsshestvo/42682-juvenalnoe-srasenie.html>; Aiguzel Kadir, Законопроект против насилия в семье: спасение или капкан для родителей?, Sputnik.kz, November 2020, <https://ru.sputnik.kz/society/20201106/15412461/zakonoproekte-po-semeyno-bytovomu-nasiliju.html>; «Победившее насилие», Vlast.kz, 22 февраля 2021 года, <https://vlast.kz/obsshestvo/43869-pobedivsee-nasilie.html>

²⁴¹ Medet Yessimkhanov, Pavel Bannikov, Assem Zhapisheva, Досье: Кто стоит за лоббированием отмены законов и распространением конспирологии в Казахстане, Factcheck.kz, February 2021, <https://factcheck.kz/socium/dose-kto-stoit-zalobbirovaniem-otmeny-zakonov-i-rasprostraneniem-konspirologii-v-kazaxstane/>

- *'If a parent refuses to vaccinate their children or buy a smartphone or chocolate to their child, he/she will commit domestic violence, and the child will be taken away by juvenile police.'*

On October 6th, an anti-bill petition with above-mentioned arguments was launched on a website Citizengo.org, which according to an independent journalist inquiry belonged and was supported by alt-right groups based in Russia and Europe.²⁴²

Initially, the MPs who initiated the Bill and governmental bodies did not comment on the petition. However, the campaign was getting more and more widespread. The appeal to sign the petition was actively shared through social media and parents' chats in messengers. Campaigners organised regular social media streams and press conferences for journalists, worked with local opinion leaders, celebrities and Instagram influencers in regions who then called upon their followers to support the cancellation of the bill. As a result, moral panic was created and grew stronger.

Leaders of the anti-bill movement claimed to speak on behalf of the People of Kazakhstan and sent hundreds of emails to the Speaker of Parliament and to the President to cancel the Bill. Simultaneously, MPs who initiated the Bill fell victim to a cyber-bullying campaign: their images were used to insult them and damage their reputations by calling them 'enemies of the people' and 'fascists'. Again, these are the types of insults which are mainly used in Russia, but not in Kazakhstan.

Surprisingly, the Ministry of Interior, the General Prosecutor's Office and other governmental bodies that participated in drafting of the Bill refused to engage in a dialogue with alt-right groups to refute their false claims and expose manipulative information to protect the Bill. They chose a role of bystanders leaving human rights NGOs alone to cope with attacks of alt-right groups. Yet, all attempts to defend the Bill failed. Anyone who supported the Bill was immediately attacked by cyber-bullies in the form of insults and threats to personal safety. Again, the Ministry of Interior did not interfere to stop cyber-bullying against human rights NGOs.

In December 2020, a women's rights NGO 'NeMolchi.KZ' launched a petition in support of the Bill. In two weeks, the petition collected over 80,000 votes, while the anti-Bill petition collected some 22,000 votes.²⁴³ Nonetheless, on December 11th 2020, the aide to the President, Tamara Duisenova, announced on her Facebook page that Parliamentary deliberations on the Bill would resume on January 15th 2021 after the upcoming elections to Parliament. She further added that the deadline for voting on the Bill was extended till May 2021.

However, the anti-bill activists continued their campaign. In the absence of any official communication from authorities, the moral panic grew stronger and ended up in protests by mothers in major cities of Kazakhstan in January 2021.²⁴⁴ The reaction of the President was immediate at this time. On 21 January 2021, the President of Kazakhstan Kassym-Zhomart Tokayev called for more thorough examination of the Bill's norms and account of all opinions, while the Chairperson of the Parliamentary Committee on Social and Cultural Development Jamilya Nurmanbetova announced that the current draft of the Bill would be recalled for revision.²⁴⁵ However, by the end of January the bill disappeared from the website of Parliament and never

²⁴² Medet Yessimkhanov, Досье: CitizenGO — ультраконсервативное лобби под видом площадки для петиций, Factcheck.kz, August 2020, <https://factcheck.kz/v-mire/dose-citizengo-ultrakonservativnoe-lobbi-pod-vidom-ploshhadki-dlya-peticij/>

²⁴³ Data provided by Dinara Smailova, the President of the 'NeMolchi' Public Foundation, December 2020; Alexandra Alyokhova, Что полезного было в скандальном законопроекте «О бытовом насилии»? 365info, <https://365info.kz/2021/02/chto-poleznogo-bylo-v-skandalnom-zakonoproekte-o-bytovom-nasilii>

²⁴⁴ Radio Azattyk, В Нур-Султане группа матерей потребовала «разъяснить» законопроект о бытовом насилии, January 2021, <https://rus.azattyq.org/a/31050272.html>

²⁴⁵ Sputnik, Токаев прокомментировал нашумевший проект закона о семейно-бытовом насилии, <https://ru.sputnik.kz/society/20210121/16095219/tokayev-proekt-zakon-o-semeyno-bytovom-nasilii.html>

returned to Parliament. Thus, it took alt-right groups less than four months to cancel the bill that had been advocated for by human rights NGOs since 2013.

Conclusion and Recommendations

The emergence of alt-right groups in Kazakhstan during the 2020 pandemic has become a new and unexpected political phenomenon for both authorities and human rights NGOs. It can be argued that the Government and Parliament of Kazakhstan were caught by surprise by the fast-developing anti-bill campaign and were not prepared to deal with the situation erroneously choosing to ignore it. However, the lack of official communication and explanation by the Government only exacerbated the situation leading to the growth of moral panic and people's mistrust in authorities.

In February 2021, the alt-right activists registered an official NGO – 'Kazakhstani Union of Parents' – and continue to advocate against every bill and governmental decision which they view as interfering with their right to privacy, family life and traditional upbringing of their children. Under this pretext, they launched a campaign against COVID-19 vaccination, which now seriously undermines Governmental efforts to contain the spread of infection. Thus, the Government first let the alt-right groups become influential, but now suffers losses from their campaigns. To counterbalance this influence, the Government needs to gain the trust of the population. This can be achieved only if the Government engages in real democratisation reforms.

Table 1 - 2009-2020 Statistics for registered domestic violence offences in Kazakhstan provided by the Ministry of Interior of Kazakhstan

Year	Crimes			Administrative Offences			Protective Orders	
	Murder	Grievous bodily harm	Moderate bodily harm	Assault and Battery (administrative offence since 2017)	Minor bodily harm (administrative offence since 2017)	Domestic violence offences without physical abuse	Issued by police	Issued by Court (if a case reached the court)
2009	320	291	160	936	n/a	15,072	n/a	n/a
2010	268	240	128	2147	n/a	28,235	10,750	546
2011	281	286	125	2,644	7,635	35,399	35,290	3,820
2012	285	278	105	1,875	5,878	34,055	38,363	3,711
2013	218	231	126	2,350	6,091	29,492	55,764	4,821
2014	188	205	143	540	18,109	39,480	63,012	5,250
2015	82	196	119	n/a	n/a	59,693	63,223	4,869
2016	93	219 193*	121 106*	n/a 2,893*	n/a	22,890	64,132 65,942*	5,301
2017	87	181 149*	116 99*	n/a 2,193*	7578	27,890	61,046 61,046*	5,934
2018	144	350 305*	314 282*	5,736 3,310*	9812	23,754	64,852 64,852*	6,605
2019	116	393 329*	356 319*	7,233 7,223*	16123	25,626	73,541 73,529*	7,712
2020	128**	372** 413*	327** 354*	6,781** 3,438*	13481**	23,518**	73,335** 78,832*	9,235**

* Data provided by the Prosecutor's General Office of Kazakhstan

** Data provided for 11 months of 2020 by the Ministry of Interior



9. ‘Anti-gender’ bill and Kazakhstan’s ‘catch up’ with global conservative backlash

By Aigerim Kamidola²⁴⁶

On April 24th 2020, Mazhilis, the lower chamber of the Parliament of the Republic of Kazakhstan, commenced consideration of the draft Law ‘On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Family and Gender Policy’ (‘Draft Law’).²⁴⁷ The Draft Law proposed amendments to the Law ‘On State Guarantees on Equal Rights and Equal Opportunities for Men and Women’ dated December 8th 2009 (‘Law’):

1. To change the term “gender equality” to the words “equality on the basis of sex” throughout the entire text of the Law.
2. To amend the Preamble of the Law (*“The current Law regulates public relations in the sphere of ensuring state guarantees on equal rights and equal opportunities for men and women*

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²⁴⁷ Parliament of the Republic of Kazakhstan, accessible at: <http://www.parlam.kz/ru/mazhilis/itreceived>

and establishes fundamental principles and norms on creating the conditions for gender equality in all spheres of state and public life”) to read as follows: “The current Law regulates public relations in the sphere of ensuring state guarantees on equal rights and equal opportunities for men and women and establishes fundamental principles and norms on achieving equality on the basis of sex in all spheres of life”.

3. To repeal paragraph one of Article 1 [on Key concepts used in the Law] (“1) gender is a social aspect of relations between men and women which manifests itself in all spheres of life”).
4. To amend paragraph two of Article 1 (“2) gender equality is a legal status which guarantees men and women equal rights and equal opportunities and real access to participation in political, economic, social, public and cultural spheres of life irrespective of sex”) to read as follows: “2) equality of the basis of sex is the presence of general and specific rights which establishes opportunities for achievement of equal results by representatives of male and female sex in all spheres of life.”

On June 6th 2020, at the second meeting of the working group on the Draft Law, the drafters supported the amendments and further suggested to change the ‘gender equality’ term to ‘equality of men and women’ defining it as ‘the presence of general and specific rights which guarantee achievement of *de facto* equality of men and women in all spheres of life’.

In ‘Reasoning and Approach’ of the Draft Law the drafters claim that the amendments are designed to implement Article 2(a) of the Convention on the Elimination of Discrimination against Women (‘CEDAW’ or ‘Convention’) in line with “the recommendation of gender analysis of legal acts of the Republic of Kazakhstan” which concluded that ‘gender equality is a sociological category, but not a legal and regulatory category’.

Yet, the CEDAW Committee itself, stressing that in addition to the prohibition of sex-based discrimination the Convention ‘covers gender-based discrimination’²⁴⁸, in November 2019 commended Kazakhstan for ‘that gender-based discrimination is prohibited by law in the State party’ by the Law ‘On State Guarantees of Equal Rights and Equal Opportunities for Men and Women’, and specifically recommended to ensure that the Law is ‘effectively implemented’ and complemented with adoption of ‘comprehensive anti-discrimination legislation’ which encompasses all internationally recognised prohibited grounds of discrimination including gender.²⁴⁹

In an interview MP Irina Unzhakova, an initiator of the amendments, stated that there are 50 different genders and that legislators aim at reinstating two sexes: men and women. MPs also highlighted that the legislative novelties are based on ‘international best practices’.

The amendments in the Draft Law are extremely concerning as they constitute complete erasure of the concept of ‘gender’ from national legislation and replacement of the term ‘gender equality’ with the essentialist binary - ‘equality on the basis of sex’ or ‘equality of men and women’. Noting that concepts of gender and sex are not interchangeable, potential effects of the Draft Law could undermine equality, non-discrimination and enjoyment of rights by everyone, especially women, gender-diverse, gender non-conforming and transgender people living in Kazakhstan.

Kazakhstan’s international human rights obligations under Articles 2 of International Covenant on Civil and Political Rights (‘ICCPR’) and International Covenant on Economic, Social and Cultural Rights

²⁴⁸ Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, December 2010, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/28&Lang=en

²⁴⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Kazakhstan, CEDAW/C/KAZ/CO/5, November 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/KAZ/CO/5&Lang=en

(‘ICESCR’), and Article 1 of CEDAW encompass an obligation to ensure equality and non-discrimination where gender is considered as a protected characteristic along with the category of sex.²⁵⁰ The fact that the amendments contrary to international human rights law are presented to the general public and justified by Kazakhstani legislators as a positive effort to implement its international human rights obligations is a clear distortion. The ‘international best practices’ and claims of countable 50 genders, referred by lawmakers, stem from a right wing rhetoric supported by conservative lobbyist groups targeting so-called ‘gender ideology’ in a number of countries in Europe, Americas and the post-Soviet region and do not constitute widely accepted customary or treaty-based international human rights standards and practice.²⁵¹

At the 2019 Nairobi Summit on ICPD25 Kazakhstan made a commitment to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’), which paramountly recognises ‘the structural nature of violence against women as gender-based violence’ and provides the most comprehensive legal framework on preventing and combating violence against women to date with definitions of ‘gender’, ‘gender-based violence’, and ‘gender equality’ at its core.²⁵² Incompatibility of the proposed amendments in the Draft Law with this latest international commitment demonstrates its rather outward oriented nature. On May 12th 2021, at the Ministry of Justice, civil society held a roundtable on the discussion of the implementation of UN recommendations with representatives from the Ministry of Internal Affairs, whom reported of the Government’s intent to withdraw from the commitment to ratify the Istanbul Convention altogether as it allegedly contradicted ‘traditional values’ and imposed an obligation to deliver on LGBTQ+ rights.

The initiative to erase ‘gender’ from national legislation is another instance in a series of state-sponsored ‘anti-gender’ activities targeting the rights of women and LGBTQ+ people and stirring a backlash against sexual and reproductive rights in Kazakhstan. It follows repeated attempts of passing a ban on so-called ‘gay propaganda’ in 2015 and 2018, and 2021:²⁵³ providing for prohibition of dissemination of information on ‘non-traditional sexual orientation’ to minors; enactment of restrictions for trans people to exercise their right to legal gender recognition;²⁵⁴ most recently the failure of Kazakhstani legislators to adopt an early amendment suggested to the new Health Code on the introduction of some sexuality education;²⁵⁵ and a new law on combating domestic violence, and anti-bullying legislation following the demands of mobilised groups opposing the amendments throughout the 2020-2021 Parliamentary session.²⁵⁶ Among the reasoning of the latter groups are

²⁵⁰ Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, December 2010, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/28&Lang=en

²⁵¹ Claire Provost, Tatev Hovhannisyian, ‘Home-grown’ European funding for religious extremism overshadows foreign cash, openDemocracy, June 2021, https://www.opendemocracy.net/en/5050/home-grown-european-funding-for-religious-extremism-overshadows-foreign-cash/?fbclid=IwAR2bGfboYkfHy6j1vO7ZEyddnCAj43T7EOsOjM6h-YWEAv_CyZtfGi46mo; Claire Provost, Nandini Archer, Revealed: \$280m ‘dark money’ spent by US Christian right groups globally, openDemocracy, October 2020, <https://www.opendemocracy.net/en/5050/trump-us-christian-spending-global-revealed/>

²⁵² New Bill in the Republic of Kazakhstan on prevention and response to gender-based violence and ratification of Istanbul Convention, November 2020, <https://www.nairobisummiticpd.org/region/kazakhstan>; Council of Europe Convention on preventing and combating violence against women and domestic violence, Preamble, May 2011, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>; Council of Europe Convention on preventing and combating violence against women and domestic violence, Articles 2 and 3, May 2011 <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

²⁵³ Law ‘On protection of children from information harming their health and development’, 2015; Ministry of Information and Communication of the Republic of Kazakhstan, the Instruction ‘On Classification of Informational Products’ and ‘Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development’, 2018

²⁵⁴ Aisha Zhenishbekova, Kazakhstan: New Rules of Gender Transitioning Make it Difficult to Access Medical Assistance, CABAR.asia, April 2021, <https://cabar.asia/en/kazakhstan-new-rules-of-gender-transitioning-make-it-difficult-to-access-medical-assistance>

²⁵⁵ Юна Коростелёва, Сексуально непродвещенные, Vlast.kz, May 2020, <https://vlast.kz/obsshestvo/39711-seksualno-neprosvesennye.html>

²⁵⁶ Viktoriya Kim, Kazakhstan’s Domestic Violence Survivors Push for Legal Protections, Human Rights Watch, December 2020, <https://www.hrw.org/news/2020/12/22/kazakhstans-domestic-violence-survivors-push-legal-protections>; Маншук Асаутай, Проект о противодействии семейному насилию. Чем вызваны споры? Радио Азаттык, January 2021, <https://rus.azattyq.org/a/kazakhstan-new->

claims that sexuality education would ‘push children to change their sex’ and allegations that defining the concept of bullying would result in ‘children growing up as gays and lesbians’. In 2021, a joint journalistic investigation by Factcheck.kz and Masa Media has revealed that the groups stirring such backlash in Kazakhstan operate in concert and are also engaged in spreading misinformation on anti-vaccination.²⁵⁷ It also shows that the groups use non-transparent funding, have transnational ties with Russian counterparts as well as connections with the Government, securing them seats in relevant parliamentary working groups.

With Kazakhstani legislators’ introduction of the ‘anti-gender’ Draft Law and rejection of legislation combating domestic violence, bullying, and strengthening sexual and reproductive rights, Kazakhstan thus follows the suit of the decades long global backlash against so-called ‘gender ideology’ catching up with a conservative trend sweeping Central and Eastern Europe, Russia, and the post-Soviet region. While previously legislative and policy changes targeting gender were channelled rather covertly through state institutions, they are now increasingly lobbied and openly advocated by means of organised conservative groups and private actors using the language of rights and public participation. The legislators’ sway towards demands of such groups to the detriment of the state’s obligation under international human rights law is an alarming sign.

2020 research conducted by Alma-TQ, a local transgender group, illustrates that 80 per cent of the respondents had faced discrimination or violence on the basis of their gender identity, 70 per cent had faced psychological abuse, and a third of Trans people were subject to physical violence.²⁵⁸ With lack of protection in law and in practice, the adoption of the Draft Law will mean decreasing space for free expression, exacerbate violence and hate targeting women, gender-diverse, gender non-conforming and transgender people who already face harassment, the threat of violence, and discrimination in access to justice, healthcare, education, and employment on a daily basis.²⁵⁹

In his latest 2021 report on Gender Theory, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (‘SOGI’) Victor Madrigal-Borloz has highlighted that it is a state obligation to recognise that lack of legal recognition of gender and gender identity is an enabling factor of violence, hate, and rights violations on the basis of SOGI and that narratives that imperil rights of women perpetuate discriminatory stereotypes regarding trans and gender diverse people.²⁶⁰ With this and states bearing responsibility for activities of private actors under international human rights law, the move to hand over the responsibility for the gender backlash and ongoing erosion of women and LGBTQ+ rights to private anti-gender groups coupled with state’s inaction to explicitly recognise those rights in the national legislation do not spare the Kazakhstani Government and legislators from their international obligations to respect, protect, and fulfil the rights.²⁶¹

draft-domestic-violence/31062716.html; Амина Чайя, Что такое буллинг и нужен ли Казахстану закон о нем? masa.media, April 2021, https://masa.media/ru/site/bulling-zakon-kazakhstan#mcetoc_1f37eqkff1q

²⁵⁷ Досье: Кто стоит за лоббированием отмены законов и распространением конспирологии в Казахстане, Factcheck.kz, February 2021, https://factcheck.kz/socium/dose-kto-stoit-za-lobbirovaniem-otmeny-zakonov-i-rasprostraneniem-konspirologii-v-kazakhstane/?fbclid=IwAR2PcOpBtkn32NU4srS1O59qTst4rcBEWlmF_eE09oz6-ttMTH4Vupqhtug Кто стоит за лоббированием отмены законов и распространением конспирологии в Казахстане, masa.media, February 2021, https://masa.media/ru/site/kto-stoit-za-lobbirovaniem-otmeny-zakonov-i-rasprostraneniem-konspirologii-v-kazakhstane#mcetoc_1ev9f7fab3n

²⁵⁸ Alma-TQ Initiative Group, Мы живём, пока нас не видят, 2020, <https://www.alma-tq.org/biblioteka>

²⁵⁹ Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan to the Fifth Periodic Report by the Kazakhstan, January 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fKAZ%2f33738&Lang=en

²⁶⁰ UN Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/47/27, June 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/123/16/PDF/G2112316.pdf?OpenElement>

²⁶¹ Convention on the Elimination of Discrimination against Women, Article 2(e), December 1979, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

Contrary to the right to participate in public affairs under Article 25 of ICCPR and Article 33 of the Constitution of Kazakhstan, the drafting of the ‘anti-gender’ bill, along with the amendments aimed at strengthening legislation on domestic violence and sexual and reproductive rights being rejected amidst the height of pandemic under the state-wide quarantine with little or no transparency and minimal participation of independent civil society organisations and representatives with relevant expertise.²⁶² This further demonstrates that the timing is not an accident but rather regarded by the legislators as propitious time to seize an opportunity to evade public scrutiny for the reactionary ‘catch up’ with conservative global backlash thriving in Europe and Russia. With the existing national gender machinery and related mechanisms established in Kazakhstan in 2000s as a part of the donor-driven liberal project complementing economic restructuring, the ‘catch up’ demonstrates socio-political effects of the path-dependent character of neoliberal reform projects in Kazakhstan.²⁶³

Recommendations

In light of the above, the state should:

- Reject the amendments in the Draft Law on the complete erasure of the concept of ‘gender’ from national legislation and replacement of the term ‘gender equality’ with ‘equality on the basis of sex’ and (or) ‘equality of men and women’. Reinstate and reinforce the concepts of ‘gender’ and ‘gender equality’ throughout the national legislation and in practice;
- Implement its international human rights obligations on equality and non-discrimination in compliance with provisions of Articles 2 of ICCPR and ICESCR, Article 1 of CEDAW, and recommendations of the respective treaty bodies;
- Include and consult with independent civil society organisations and activists, with relevant expertise in the field of gender equality, non-discrimination, and sexual and reproductive rights at all stages of further discussions of the Draft Law and related bills;
- To conduct a wide awareness raising campaign on explanation of concepts of ‘gender’ and ‘gender equality’ across state bodies and wider public with participation of independent civil society organisations and activists, with expertise in the field of gender equality, non-discrimination, and sexual and reproductive rights, and take positive measures to counter the narratives around so-called ‘gender ideology’ used by conservative lobbyist groups to misinform communities and undermine the advancement of gender equality, women’s and LGBTQ+ rights;
- Accelerate ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence with *de facto* adherence to Convention’s fundamental principles and implementation of its comprehensive legal framework upholding ‘gender equality’ as well as preventing and combating ‘gender based violence’; and
- Hold accountable state and private actors, including mobilised ‘anti-gender’ groups, for spreading misinformation, use of opaque funding schemes, investigate their ties with transnational networks inciting hate, violence, restriction of human rights, and take positive actions to stop privileged access to decision-making for such opponents of women’s and LGBTQ+ rights.

²⁶² Constitution of the Republic of Kazakhstan, Article 33, August 1995, https://online.zakon.kz/Document/?doc_id=1005029

²⁶³ Светлана Шакирова, Женское движение в Центральной Азии: “еще не” или “уже в прошлом?” Гендерные исследования, September 2006, <http://d1019822.idhost.kz/site03/politol/8.php>; Алтынай Камбекова, “Вызовы феминистской солидарности в Казахстане” in Голоса феминизма в центральной Азии. Сборник эссе, (Almaty: The Rosa-Luxemburg-Stiftung Central Asia, 2020), 75-85.



10. Conclusions and recommendations:

By Adam Hug²⁶⁴

As we approach the 30th anniversary of Kazakhstan's independence this publication finds the country at an important inflection point in its history. The gradual passing of the torch from the First President (Nazarbayev) to President Tokayev, the growing articulation of social concerns in recent years as living standards have been squeezed for many, and the uncertain future that lies ahead for its economy given the global transition away from fossil fuels, all give cause for pause and reflection.

Over the last 30 years Kazakhstan's ruling elite has delivered substantial economic growth - albeit particularly benefiting itself - and has mostly maintained stability between the country's different ethnic groups. This has come at the clear cost of almost all political freedoms and many civil liberties. The Government and its supporters still argue that gradual change will enable Kazakhstan to transition to democracy and help 'evolve' the political culture in Kazakhstan. The Government's critics, understandably point to the lack of change at the heart of the country's political system over the last 30 years, where reforms have helped deliver improvements in the standards of living and the delivery of state services but have not lead to a meaningful transfer in political power from the elite to the citizen. The only political choice in Kazakhstan, such as Tokayev assuming the Presidency, is exercised by those already in power.

While President Tokayev has promised a 'listening state' and committed to delivering reforms that would improve freedoms and make the Government more responsive, so far change from what has gone before has been relatively limited. President Tokayev's approach seems to be an updating of

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the existing path of modernisation without democratisation or reform within the system that improves state efficiency and outcomes while mostly retaining existing authoritarian power structures.

While the bulk of the population has so far broadly (if sometimes grudgingly) accepted the trade-off between stability and repression, the recent protest movements have highlighted that this cannot necessarily be taken for granted going forwards. The negative outlook for Kazakhstan's oil and gas wealth, may further exacerbate the existing inequalities within society and frustration at the kleptocratic nature of the current system.²⁶⁵

So when examining how to try to achieve real change in Kazakhstan there are two main tracks that local activists are pursuing. As Colleen Wood puts it well in her essay *'Some believe in incremental reform that is achieved through educating authorities and collaborating with government bodies. This involves close monitoring of abuses and going through proper legal channels to redress them; it involves going through the hoops required to register a political party, to try and run a campaign and to take a seat at the table.'*

Others prefer more expansive changes – the overhaul of Kazakhstan's system of government from a superpresidential system to a parliamentary one, for example – to gradual reform. They opt for direct action and street protests over government working groups and committees, pointing to their constitutionally-protected right to peaceful assembly to justify skirting the required procedure for sanctioned protests. This ideological and tactical pluralism may not be 'efficient,' but securing the rights of all to participate in politics is central to improving Kazakhstan's human rights record.'

What seems clear is that both approaches together are going to be needed in order to drive more fundamental change in Kazakhstan, both in terms of outcomes for citizens and in the nature of the system. Both sets of activists will need both increased local mobilisation and international support to help drive specific changes to make each path more navigable.

President Tokayev's June 2021 Decree 'On further human rights measures in Kazakhstan' and the upcoming human rights action plan provide a helpful framework through which to assess the Government's willingness to change its current course in response to input from local and international partners.²⁶⁶ Tokayev has committed the Government to take further steps to address:

- *'The mechanisms of interaction with the UN treaty bodies and special procedures of the UN Human Rights Council;*
- *Ensuring the rights of victims of human trafficking;*
- *Human rights of citizens with disabilities;*
- *The elimination of discrimination against women;*
- *The right to freedom of association;*
- *The right to freedom of expression;*
- *The human right to life and public order;*
- *Increasing the efficiency of interaction with non-governmental organisations; and*
- *Human rights in criminal justice and enforcement, and prevention of torture and ill-treatment.'*²⁶⁷

²⁶⁵ Casey Michel, Nazarbayev and the Rise of the Kleptocrats, October 2016, <https://thediplomat.com/2016/10/nazarbayev-and-the-rise-of-the-kleptocrats/>

²⁶⁶ President of Kazakhstan, President Tokayev Signs a Decree on Further Measures of the Republic of Kazakhstan in the Field of Human Rights, June 2021, <https://www.gov.kz/memleket/entities/mfa-delhi/press/news/details/215657?lang=kk>

²⁶⁷ *Ibid.*

These are important topics but given past performance there is an understandable degree of skepticism that this will amount to substantive change in the more controversial aspects of this agenda. This publication has highlighted a number of key ways in which the Government of Kazakhstan could prove its sceptics wrong if it so chooses.

For example if the Government is genuine about wanting to build a partnership model with local civil society and to 'increase the efficiency of its interactions' with them it has to stop targeting NGOs with punitive tax inspections and it should reduce the deliberately burdensome reporting requirements created in 2015-16 designed to put pressure on such organisations. Their staff need to be protected from threats and harassment, with President Tokayev taking responsibility for the actions of his different ministries and agencies rather than allowing them to conflict with each other.

The decision to allow independent candidates for local Akims is an important step forwards, though the pre-qualification restrictions are a cause of concern. Ultimately, however, even gradual change within the system will require improving 'freedom of association' by making it easier for political parties to register than the current requirements for 20,000 members and a 1,000 member initiating conference and a similar number of signatories. Aina Shormanbayeva and Amangeldy Shormanbayev suggest that a more suitable number for registration would be 200. Even more than the law on paper there needs to be a clear political signal from President Tokayev that those who participate in the founding of a political party will not be targeted for reprisals, enabling those currently unregistered or nascent political parties to become registered and stand at future elections. At present there is no indication that those in power wish to substantively alter the nature of Kazakhstan's party system to allow genuine competition at any level of power. Therefore the direct elections taking place at a local level will struggle to deliver the gradual evolution of the political culture currently being claimed for them if all the positions are taken by those from within or affiliated with the existing power structures.

The situation with currently banned political parties is somewhat more complex, given that international best practice around sources of party funding generally prohibit money coming from abroad and place criteria around its provenance. However, what is clear is that peaceful activists seeking change to the political system are being targeted and harassed by the Government simply for membership of organisations that it has deemed extremist (on the basis of the link to Mukhtar Ablyazov) without any evidence that these activists wish to overthrow the Government by violent means, which been shared with the international community. The Government should reform its use of powers under Article 405 and Article 174 of the Criminal Code to stop targeting individual protestors or those liking posts about these banned groups (the QDT/DVK and Koshe) on social media, protecting both their rights to freedom of association and expression.²⁶⁸

Since the passage of reforms to the law on peaceful assembly passed in May 2020 the impact on improving freedom of assembly has been limited, though there have been some improvements such as the Women's March being able to be held legally for the first time in 2021. Given that under the revised law both citizens and groups of citizens can give notice of a protest it seems unclear as to why there is a prohibition added to make it harder for unregistered parties and groups to exercise their right to free assembly given that they are a 'group of adult citizens'.²⁶⁹ The repeated harassment of activists from unregistered groups such as Oyan, Qazaqstan and the Democratic Party undermines President Tokayev's promises for reform in the area of freedom of assembly and freedom of expression.

²⁶⁸ Legislationline, Criminal Code of the Republic of Kazakhstan (2014, amended 2016) (English version), <https://www.legislationline.org/documents/section/criminal-codes/country/21/Kazakhstan/show>

²⁶⁹ Legislationline, On the procedure for organising and holding peaceful assemblies in the Republic of Kazakhstan, May 2020, <https://www.legislationline.org/download/id/8924/file/Kazakhstan%20-%20Peaceful%20assemblies%20EN.pdf>

While the case for deeper reform of the laws on peaceful assemblies remains urgent, even within the framework of the current law there is more that could be done to create a clear guidance with list of duties that local authorities should fulfil to proactively enable peaceful protest rather than simply providing a list of demands for protestors. Both the Government of Kazakhstan and the international community should record the number of protests that have ended up being legally sanctioned. Making further improvements in this area should be a key part of improvements under the human rights action plan to fulfil the ‘right to freedom of association’ and the ‘right to freedom of expression’.

As Tatiana Chernobil writes in her essay ‘kettling’ is a police tactic designed for use in extreme circumstances where protests risk spiralling out of control into violence rather than as a routine policing procedure for peaceful protests. Its widespread use should be curtailed to ensure the application of ‘human rights in criminal justice and enforcement’. It should not be seen as a softer alternative to arrests and the use of administrative sentences against protestors, because peaceful protestors need to be able to freely exercise their rights to free assembly under both the Constitution and International Human Rights law without fear of either kettling or arrest.

One of the most insidious aspects of the Government of Kazakhstan’s efforts to clamp down on independent activism has been the growing use of ‘freedom restrictions’ as part of sentences or instead of custodial sentences that prevent activists from continuing their work criticising the Government. Even when activists have been released from dubious sentences after international pressure, the restriction on their blogging, political social or union activism often remains. It is a mechanism that keeps campaigners on a tight leash, casting a chilling effect across civil society whilst limiting much of the international outcry that accompanies imprisoning political, social and labour activists. The current approach clearly breaches ‘the right to freedom of association’, ‘the right to freedom of expression’ and ‘human rights in criminal justice and enforcement’. There are numerous examples listed in the introduction and individual essays of existing restrictions that should be removed from activists including Max Bokayev, Alnur Ilyashev, Asya Tulesova, Larisa Kharkova, Amin Eleusinov and Erlan Baltabay.

Similarly in the realm of ‘freedom of expression’ the human rights action plan should look at reforming Kazakhstan’s laws on the ‘Public insult and other infringement on honour and dignity’ of politicians and other public figures. These restrictions, which carry potential prison terms of up to three years in jail for ‘insults’ spread online, are widely used to restrict political criticism.²⁷⁰ Galiya Azhenova’s essay shows how the reforms to transfer defamation legislation from the Criminal to the Administrative code has led to local police issuing lots of administrative violations against journalists, showing the need for better training and oversight in the short term and the need for further reform to make defamation a civil matter. The targeting of journalist by police when going about their work also needs to be addressed.

Ongoing restrictions on independent trade unions, as outlined in Mihra Rittmann’s essay, need to be lifted including the current suspension the Industrial Trade Union of Fuel and Energy Workers, and independent confederations need to be able to register and operate without interference. These restrictions and those on the right to strike, including Article 402 of the Criminal Code noted by Rittmann, are in breach of the ‘right to freedom of association’ as well as the right to organise and should be replaced with measures that ensures that peaceful industrial action is recognised as being a legal right, in line with ILO conventions and the conclusions adopted repeatedly by the ILO Committee on the Application of Standards.

²⁷⁰ Legislationline, Criminal Code of the Republic of Kazakhstan (2014, amended 2016) (English version), <https://www.legislationline.org/documents/section/criminal-codes/country/21/Kazakhstan/show>

In order to fulfil the President's stated objectives on the 'the elimination of discrimination against women' it will be important to make progress on the stalled legislative efforts to create a new law on domestic violence and to improve the response of law enforcement and local authorities in addressing it. Steps should also be taken to move forward with legislative action on sexual harassment that has also stalled. The current efforts to remove the concept of gender equality from Kazakhstan's legislation, as set out in Aigerim Kamidola's essay, risks emboldening forces in the country's politics that may undermine both women's and LGBTQ+ rights and lead to an increase in hate crime. Making this change is also likely to breach its international obligations under Articles 2 of ICCPR and ICESCR and Article 1 of CEDAW. As Kamidola argues in her essay accelerating the ratification and implementation of the Council of Europe (Istanbul) Convention on preventing and combating violence against women and domestic violence would be an important step that would not only assist Kazakhstan's efforts towards the 'the elimination of discrimination against women', but also on 'ensuring the rights of victims of human trafficking'.

The themes addressed by Anna Gussarova's essay around human rights in Kazakhstan's digital space cut across a number of themes within the President's Decree and perhaps should be addressed as a specific action area within the human rights action plan. She makes a number of important arguments about improving legislation (such as a functioning privacy law), building state capacity (such as strengthening the Information Security Committee of the Ministry of Digital Development, Innovation and Aerospace Industry to become a more powerful Data Protection Agency to act as the guardian of Kazakhstan's digital rights) and increasing the transparency with which it operates in the digital space. She rightly warns of adopting surveillance technology and tactics from Kazakhstan's Chinese and Russian neighbours but instead urges it strengthen collaboration with EU Member States, US and UK agencies responsible for data protection. She recommends that Kazakhstan should develop regulations on data protection and management along the lines of the EU's GDPR system.

Beyond the framework of the President's Human Rights Decree there is a lot more work to be done to fulfil his pledge to make Kazakhstan a 'listening state'. There is scope for the reforms to local government by the direct election of local Akims, that are starting this month at a village level and then expanding up to higher tiers of local Government in future years, to significantly improve governance standards and local accountability. However, this will only happen if there is genuine electoral competition with true independents allowed to stand and (following on from any changes to registration suggested above) new parties able to compete. Without this, more open political environment the shift to direct election would simply replace a system where local officials are accountable to the central state rather than local people through the means of appointment and replace it with officials owing their position to higher-ups with Nur-Otan or other pro-Government parties. At a national level, as already noted, there is a long-way to go until political pluralism is realistic prospect but there should still be scope within the current system to further strengthen the role of the Mazhils and official oversight bodies such as the Office of the Human Rights Ombudsman to make more limited improvements. The essay by Aina Shormanbayeva and Amangeldy Shormanbayev of the International Legal Initiative Foundation sets out a more expansive vision of possible structural reform through creating smaller local regions and transferring significant powers from the President to Parliament. They believe these proposals should be incorporated in a widespread reform of the constitution.

When examining potential tools available to those in the international community wishing to exert influence to improve Kazakhstan's performance on human rights there needs to be a recognition of both the opportunities and limitations at present. Kazakhstan's position as an upper middle income country, therefore not a significant recipient of international aid (ODA), and with a well-developed

multi-vector foreign and economic policy gives its leaders significant room for manoeuvre.²⁷¹ It has already had a new Enhanced Partnership and Cooperation Agreement enter into force with its largest trading partner-the EU- ahead of its regional neighbours.²⁷²

This is not however to imply that Kazakhstan is impervious to international influence or pressure on human rights. Its leadership, and particularly a number of younger generation officials and leaders, care about Kazakhstan's reputation, something it has worked hard to promote itself internationally as a good partner and modern country. There is an ongoing desire from Kazakhstan to continue to receive foreign investment and support, particularly as the world transitions away from fossil fuels. It also remains extremely keen to balance out its relations with Russia and China, given concerns about encroachment and influence both historic and current. However, it is far from clear that these considerations could yet outweigh the desire to maintain the political and economic status quo, particularly amongst the upper echelons of the state and the security apparatus.

Nevertheless, as shown throughout this publication, interventions by Western Governments and pressure from international human rights groups in support of local campaigns can make a difference in particular cases of egregious human rights abuse and to free political prisoners. The EU has a structured human rights dialogue with Kazakhstan which has long argued gives it some ability to influence behaviour in a setting behind closed doors, though some activists remain skeptical about the use of the mechanism. It is to be hoped that the UK can seek to replicate a structured human rights dialogue as part of the new bilateral deal it is negotiating to replace the EU EPCA.²⁷³

Kazakhstan remains keen to receive international technical assistance to help it modernise the state and its delivery of public services to achieve reform within the current system, with a more limited impact on the core nature of political power. Kazakhstan also currently receives significant lending from International Financial Institutions with the World Bank's \$4.15 billion for 13 projects and Regional Development Banks such as the EBRD whose current portfolio totals €2.43bn.²⁷⁴ Again this mixture of finance and technical expertise can help improve specific outcomes and provide a small degree of leverage if the international community chose to use it in that way but these figures need to be set in the context of the \$62 billion reserves in Kazakhstan's National Oil Fund.²⁷⁵

As set out in the previous 'Retreating Rights' publications on Kyrgyzstan and Tajikistan, the gradual progress of global anti-corruption measures (such as the UK's Unexplained Wealth Orders) and both corruption and human rights focused 'Magnitsky' sanctions provides opportunities for Western countries to hold the elites to authoritarian and kleptocratic states to account. At present Magnitsky sanctions have not been deployed by the US, EU or UK in relation to Kazakhstan. For both practical and diplomatic reasons the UK National Crime Agency may be reticent, in the wake of the failure of its case against Dariga Nazarbayeva, to take on new Unexplained Wealth Order cases that relate to Kazakhstan, but it is important to ensure it is given the support to move forward with future cases where it believes the evidence warrants further action.

A further measure the UK and other countries are currently debating is reform of so-called 'golden visas' for investors. At present there are at least 205 Kazakhstani holders of these investor visas but less than one million pounds of FDI was coming in to the UK from Kazakhstan in the last recorded

²⁷¹ For example Kazakhstan no longer receives bilateral allocations from the EU's Development and Cooperation Instrument (DCI) but does have access to some funding from regional programmes. See EU DG International Partnerships, https://ec.europa.eu/international-partnerships/where-we-work/kazakhstan_en

²⁷² EU Commission, DG Trade, https://ec.europa.eu/trade/policy/countries-and-regions/countries/kazakhstan/index_en.htm

²⁷³ It should be noted that the UK-Uzbekistan PCA contains human rights as a subset of the wider political dialogue but whatever the format there needs to be a specific process for addressing human rights challenges within the relationship.

²⁷⁴ EBRD, Kazakhstan data, <https://www.ebrd.com/kazakhstan-data.html>

²⁷⁵ Sam Bhutia, Tracking Kazakhstan's sovereign wealth funds through the last oil slump, Eurasianet, January 2020, <https://eurasianet.org/tracking-kazakhstans-sovereign-wealth-funds-through-the-last-oil-slump>

year (2019) which suggests that the UK is being used predominantly to store personal wealth in the luxury property market rather than as a wider opportunity for economically productive investment.²⁷⁶ The UK delivering on its long-overdue commitments to produce a beneficial ownership register for property and reforms to the reporting requirements of its overseas territory tax havens would also help increase transparency about the extent of the wealth accrued by Kazakhstan's ruling elite.

So this publication finds that Kazakhstan is passing through a period of transition with its present and future looking somewhat more unsettled than its recent past. The extent of Kazakhstan's human rights challenges are substantial, particularly as they relate to anything that could upset the existing political and economic order that the countries' ruling elite benefit from so substantially. President Tokayev's stated commitments to create a 'listening state', his recent human rights decree and wider promises of reform give benchmarks against which performance can be measured. It will be hugely important to support local civil society in holding him to these commitments, supported by a mix of international pressure (both for systemic change and on specific abuses) and continued technical support, the latter which may still improve outcomes for Kazakhstani citizens even within the current system of modernisation without democratisation. Reforms to transparency and anti-corruption measures in Western jurisdictions can hopefully assist in holding those who have abused the current system to a measure of account.

Recommendations

Based on the findings of the research in this publication the Government of Kazakhstan should:

- Stop targeting NGOs with punitive tax inspections and burdensome reporting requirements;
- Make it easier for parties to register and protect political activists from state harassment;
- Consider opportunities for constitutional reform that would enhance the powers of Parliament and strengthen checks on executive power;
- End the use of anti-extremism legislation powers under Article 405 and Article 174 of the Criminal Code to target protestors or those liking or sharing opposition posts on social media;
- Further reform the law on public assembly to end restrictions on unregistered groups and improve guidance to local authorities;
- Stop using kettling as a policing tactic for peaceful demonstrations;
- End the use of 'freedom restrictions' in sentencing that prevent activists and bloggers from continuing their work. Remove the current restrictions from activists including Max Bokayev, Alnur Ilyashev, Asya Tulesova, Larisa Kharkova, Amin Eleusinov, and Erlan Baltabay;
- Stop the continued harassment of independent trade unions and striking workers;
- Remove laws on insulting the honour and dignity of public officials used to silence criticism;
- End police harassment of independent journalists and improve how officials treat them
- Improve data protection and privacy regulation and enforcement;
- Deliver on commitments to produce new laws on domestic violence and sexual harassment, while retaining protections on the right to gender equality; and
- Ensure that direct elections for local officials provide opportunities for accountability and pluralism. Consider further local government reforms to increase its connection to citizens.

²⁷⁶ Department for International Trade, Kazakhstan Investment Factsheet, July 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998607/kazakhstan-trade-and-investment-factsheet-2021-07-07.pdf

To the international community:

- Raise systemic problems and individual cases of abuse both in private and in public; and
- Examine the use of international mechanisms for tackling corruption and kleptocracy, including improved transparency requirements, reform of 'golden visas', Magnitsky sanctions and anti-corruption tools such as Unexplained Wealth Orders where appropriate.

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