



Human Rights Watch Memorandum

Human Rights in Kazakhstan: The Madrid Promises and Beyond

I. Foreign Minister Tazhin's Madrid Pledges

Promise 1: *"In the context of future Chairmanship we are going to incorporate various proposals into a consolidated bill to amend the Media Law, which will reflect the OSCE recommendations as well. This will be the core of the work conducted on media legislation in 2008."*

Kazakhstan does not meet OSCE commitments in relation to the promotion and protection of freedom of expression. The broadcast media are dominated by government loyalists, and independent journalists are threatened and harassed for criticizing the president or government. Libel continues to be a criminal offense.

In February 2008, the Ministry of Culture and Information declined for the second time the draft media law compiled by a working group including civil society representatives. A notable aspect of the draft was its proposal to liberalize the registration procedures for media outlets by replacing the current system, which requires new media outlets to secure permission from the Ministry of Culture in order to begin operating, to one in which they need only to inform the Ministry of Culture.¹ After its refusal, the ministry announced the drafting of a new law and established a working group consisting of ten government and four NGO representatives; the group has met once. Mass media watchdogs and human rights organizations are

¹ Currently a person planning to start a newspaper must submit a variety of documents to the Ministry of Culture which is then obliged to answer within 15 days. But according to Adil Soz, a media rights organization, often the ministry replies after six or more months only and even then it does not permit activities but rather asks for additional documents or argues the documents provided do not comply with the legislation. One suggestion in the draft law was that if a newspaper does not hear back from the Ministry within 15 days it may begin to operate.

skeptical that a new draft law will introduce liberal regulation of the mass media and are concerned that a new law might not be even adopted this year. Meanwhile the media monitoring organization Adil Soz reported that there are new cases of harassment against journalists, and the websites of several political opposition movements and also the English and Kazakh language services of Radio Free Europe/Radio Liberty remain blocked.

All attempts by journalists and media organizations to have criminal penalties for libel in the Criminal Code repealed have been unsuccessful. Criminal libel laws are routinely used against opposition media and political activists. In 2007 alone, the authorities opened 27 criminal cases against journalists for alleged libel, slander and defamation. For example, in January 2007 Kaziz Toguzbaev, a reporter for the independent newspaper *Azat*, was given a two-year suspended sentence for “insulting the honor and dignity” of President Nazarbaev in two articles he published on the website *Kub* in April and May 2006. While in a welcome move, in April 2008, a district court in Almaty revoked the verdict and expunged the conviction from Toguzbaev’s record, as long as criminal libel exists on the books others risk spending time and effort in defending themselves against it.

Not everyone has had the good fortune of having a criminal libel conviction expunged. Nurlan Alimbekov, a young philosopher, was arrested by the National Security Committee of Kazakhstan (KNB), the successor organization of the KGB, in June 2007 for sending emails allegedly insulting the president and inciting ethnic hatred. He was held for several months in a psychiatric ward and in April 2008 transferred to an investigation detention facility (SIZO). Alibek Zhumabaev, an opposition activist, is currently serving a five-year prison term for insulting President Nazarbaev.

The government consolidated its control over the media when the state-run company Samgau bought half the stock of Khabar, Kazakhstan’s largest media conglomerate, at an auction on March 21, 2008, making it a 100 per cent government controlled media network. Khabar includes TV and radio stations and owns the only channel that can be seen in all 16 provinces of

Kazakhstan. Media organizations such as Adil Soz and Medianet interpret this development as a further attempt by the government to restrict access to information and keep a tight rein on independent media.

Free expression and media pluralism are key for human rights improvements and undermining this commitment casts a damning light on Kazakhstan as an upcoming OSCE chair.

Human Rights Watch urges you to call on Kazakhstan's government to comply with its commitments to the OSCE's and other international bodies' commitments to media freedom by fostering, not stifling, independent media. The government should fulfil Mr. Tazhin's pledge to amend the media law in order to simplify the registration process for media. It should also place a moratorium on criminal libel.

Promise 2: With the assistance of ODIHR and the OSCE's other institutions, we intend to take measures to reform the Law on Elections by the end of 2008.

Kazakhstan's government has yet to hold a national election that meets international standards. ODIHR found that the most recent election, the August 2007 parliamentary contest "did not meet a number of OSCE commitments, in particular with regard to elements of the legal framework and to the vote count and tabulation" and "interrupted an ongoing dialogue on election legislation." Due in part to government manipulation and changes to the election legislation following constitutional amendments in May 2007, opposition candidates did not win a single seat in the August 2007 parliamentary elections. ODIHR/OSCE underlined in its Statement of Preliminary Findings and Conclusions that "a number of the new legal provisions conflict with OSCE commitments" such as "excessive requirements for registration of political parties" and "undue limitations on the right to seek public office."²

² The legislation requires that only members of a party can run as candidates, depriving persons the opportunity to run as independent candidates. Furthermore, the amended Constitution increases from five to ten years the time that eligible candidates must have been permanently resident in Kazakhstan, which unreasonably restricts the right to seek public office.

The amendments adopted in May 2007, in combination with current election legislation, will also make it even more unlikely that future elections will be free and fair and meet international standards. The amendments now make it possible for President Nursultan Nazarbaev, who has led Kazakhstan since before independence from the Soviet Union, to run for an unlimited number of terms. Other problematic amendments gave the president the right (as head of the political party which participates in the elections under a proportional representation system) to appoint the chairperson and two members of the Central Election Commission;³ to dissolve the Majilis (Lower Chamber of the Parliament) or the whole parliament on the grounds he defines himself; and the right to appoint 15 out of 47 members of the Senate (the Upper Chamber of the Parliament), as well as to fire them.

While at the beginning of 2008 a working group was created to reform the election legislation it was made clear they were not allowed to reverse the May 2007 amendments to the constitution, nor was the group allowed to amend other laws related to the election law. The group was allowed to amend no more than 50 per cent of the existing laws and not allowed to draft new ones. Neither OSCE nor ODIHR representatives form part of the working group and so far no serious steps were taken to incorporate OSCE recommendations.

On April 17, 2008 Kazakhstan's Senate adopted amendments to the law "On the Republic's Referendum" making constitutional changes more difficult. While currently amendments to the constitution require more than 50 per cent of the votes from all eligible voters, according to the new regulation amendments require two thirds of votes in each of the 16 provinces. The law is currently pending President Nazarbaev's signature. If the law is adopted it will be much more difficult to reverse the May 2007 amendments to the constitution or introduce any other amendments.

³ The CEC consists of seven people: Two members are appointed by the lower house of the parliament (Majlis), two by the upper house (Senate) and three by the president. This means that if there is no other party in the parliament the president and his party appoint the majority of the CEC. In addition, the president appoints 15 of the 47 senators, the other 32 are appointed by the Majlis.

Human Rights Watch urges you to encourage Kazakhstan's government to allow the working group on election legislation to act without undue interference or unreasoned conditions and speedily adapt the legislation according to the OSCE recommendations.

Promise 3: Kazakhstan will take measures to liberalize registration requirements for political parties by the end of 2008.

In a democratic society, the legislative framework should promote a vibrant and multiparty political landscape. But in Kazakhstan, legislative requirements for the establishment of political parties have grown more restrictive. Beginning in 2002, in order to form a political party there must be an initial conference of 1,000 persons representing two-thirds of the regions of Kazakhstan and a membership of 50,000.⁴ At the time, the OSCE denounced the restrictiveness of the new law and predicted that it would have “a chilling effect on the development of political pluralism in Kazakhstan.”⁵ For example, on February 20, 2006, the Ministry of Justice denied registration to the opposition party *Alga* (Forward) claiming that *Alga* did not provide sufficient evidence of its membership. The Astana Municipal Court and the Supreme Court upheld this decision later during that year. In November 2006, *Alga* submitted a new registration application and has been awaiting approval since then. Following Minister Tazhin’s speech in November 2007 Kazakhstan’s government did not take any steps to ease the registration requirements for political parties.

⁴ The 2002 Law on Political Parties raised from 3,000 to 50,000 the minimum number of member signatures required to obtain registration. In the view of the law’s supporters in parliament, the new minimum was imposed to ensure that “any party that claims it represents the interests of and speaks on behalf of the people of Kazakhstan should have a legitimate basis for that.” But the law drew criticism from local and international observers, who claimed that it would restrict parties’ access to the ballot and limit pluralism.”

⁵ Mark Braden, “OSCE/ODIHR Review of Kazakhstan’s New Law on Political Parties,” July 8, 2002; OSCE press release, “New Law on Political Parties Could Seriously Threaten Political Pluralism in Kazakhstan,” June 27, 2002.

Human Rights Watch urges you to call on Kazakhstan's government to no longer delay registering the opposition party Alga and immediately take measures to liberalize the registration requirements for political parties.

Promise 4: *In the context of Kazakhstan's future chairmanship in the OSCE, the state's efforts in refining the system of local self-government will continue.*

The decentralisation of power has been on the Kazakhstan government's agenda for many years as one of the promised political reforms towards implementing civil and political rights and democracy. A key issue has been the process for the selection of regional and local government leaders (*akims*), who are appointed by the president and can be dismissed at his discretion. Since 1995 various working groups have developed draft laws on local self-governance, and in November 2006 the government finally sent a draft law to parliament that is still pending adoption. The draft law provides for the appointment, rather than the election of akims (heads of regional and district governments) and districts.

Human Rights Watch urges you to remind Kazakhstan's leadership of the importance of civic participation and encourage it to speed up the process of decentralization of power, guaranteeing free and fair elections of akims.

II. Other human rights issues

In the past two years Kazakhstan's government has undertaken a number of important steps such as ratifying the International Covenant on Civil and Political Rights (ICCPR) in 2006, signing the Optional Protocol to ICCPR and the Optional Protocol to CAT in 2007 and introducing some reform to the criminal justice system. But it has shown no signs of fundamental change in practice.

For several years already, local human rights groups have been advocating for human rights reforms such as the review of legislation on freedom of

assembly, improvements in the prison system, abolition of the death penalty, reforming the judicial system and introducing legislation to guarantee an independent judiciary, and ensuring accountability for torture. The government's resistance to implement reforms in several of these areas is outlined below.

Freedom of Assembly

Article 32 of the Kazak constitution states that citizens have the right to gather peacefully for rallies, demonstrations, marches and pickets. This right may be limited only "in the interests of state security, public order, protection of health, and the protection of the rights and freedoms of other people." In practice, the right to freedom of assembly is restricted by a presidential ordinance from 1995 that was transformed into a law in December 2004 and violates provisions in Kazakhstan's constitution as well as in the ICCPR. According to the law, demonstrations as small as a one person picket must be registered with the mayor's office ten days in advance. Demonstrations are allowed in Almaty in only one designated area at the outskirts of the city only and in Astana in only two places that are not in the city center. The only meeting allowed in Kazakhstan in the past year was a protest of betrayed private investors in Astana. All other requests from various groups and individuals to hold peaceful demonstrations were turned down by the authorities.

In September 2007, several Kazakh nongovernmental organizations (NGOs) submitted a draft law on freedom of assembly to the Commission on Human Rights under the President.⁶ The draft law incorporates international standards, excluding provisions which would permit unnecessary restrictions be placed on locations where demonstrations can take place. The group of NGOs presented the draft law to an expert council under the commission and asked the commission to send the draft law for review to ODIHR and the Council of Europe's Venice Commission. To date, neither the parliament nor the government has reacted to the draft.

⁶ The NGOs included the Bureau for Human Rights and the Rule of Law, the Charter for Human Rights Foundation as well as the unregistered political party Alga.

Human Rights Watch urges you to call on Kazakhstan's government to review its legislation on freedom of assembly and ensure the laws and regulations on demonstrations are in conformity with Kazakhstan's international human rights obligations on freedom of assembly.

Criminal justice reform

Human rights organizations in Kazakhstan regularly report on arbitrary arrests, violations of detention procedures and fair trial standards, and credible, serious allegations of ill-treatment and torture in detention. For example, two recent trials against alleged religious “extremists” in Shymkent and Karaganda were closed to relatives and independent monitors. On February 25, 2008, the Shymkent Municipal Court in southern Kazakhstan sentenced 14 men to 14 to 19 years’ imprisonment for crimes such as establishing and leading a terrorist group, terrorist propaganda, and planning a terrorist act on the members of the Committee of National Security (KNB). On December 27, 2008 a district court in Karaganda sentenced 29 alleged members of Hizb ut-Tahrir⁷ to five to seven year’s imprisonment. According to Ninel Fokina of the Almaty Helsinki Committee only two of the defendants in the Karaganda trial had a defense lawyer of their own choice. Local human rights groups received complaints by relatives of the defendants about the latter’s ill-treatment in custody but were unable to verify this information due to the closed nature of the trials.

In March 2008, the parliament adopted a law transferring the power to issue arrest warrants from the procuracy to judges. While this is a welcome step, ODIHR as well as local human rights organizations criticized the law because of three provisions: First, the judge who issues the warrant later could be the same judge who considers the case. Second, the hearing regarding the arrest warrant is a closed procedure not open to public monitors. While hearings may normally be ex parte they must at minimum they must be open to review ex post facto to ensure that the warrant was issued in accordance with the

⁷ Hizb ut-Tahrir is an Islamic organization that advocates for the reestablishment of the caliphate in historically Muslim lands.

law. And third, the judge will review only the formal grounds for the arrest and not examine the underlying evidence supporting the arrest. Human rights groups are concerned that the law will not improve the situation to prevent arbitrary detentions.

On April 23, 2008, the parliament ratified the Optional Protocol to the Convention Against Torture, but entered a reservation to delay creation of a national prevention mechanism, as required by the Optional Protocol, for three years. The most recent version of the draft law on the death penalty would effectively block accession process to the Second Protocol to ICCPR.

Human Rights Watch urges to you call on Kazakhstan's government to implement the OSCE recommendations on access to justice and the conduct of trials, including investigation of all allegations of torture.

Freedom of conscience

Local human rights groups and minority religious communities are currently alarmed by a new draft law on religion penalizing “unapproved” religious activities. Forum 18, an independent, international religious freedom group, notes that the draft includes provisions such as “banning missionary activity by people who do not both represent registered religious communities and have state accreditation, and banning small religious communities from maintaining public places of worship or publishing religious literature.” The draft law was developed by a group of parliamentarians and was approved for consideration on April 2, 2008. If adopted the draft law would seriously and unjustifiably restrict the right to freedom of thought, conscience and belief.

Human Rights Watch hopes you will express your concern to Kazakhstan's government that the draft law will prevent individuals from practicing their faith and stigmatize religious minorities and that any new law should fully protect religious freedom. Freedom of thought, conscience, religion or belief is among the most long-standing OSCE human dimension commitments and Kazakhstan should meet its obligations in this area.

Government interaction with civil society

After Kazakhstan was granted the OSCE chairmanship last December, the work of local civil society groups that press for reform became more difficult. On the one hand, the government has established a number of human rights-related working groups, including one to draft a National Plan on Human Rights 2008-2011. But on the other hand, the government appears more prone to deflect or even ignore criticism, since it has, in essence, been given a signal that “that everything is right in the country.”

According to local human rights groups the government continues to push for amendments to national legislation that contradict international human rights principles, such as amendments to the Criminal Code penalizing self-mutilation or introducing lifetime imprisonment for drug crimes. Parliament has been adopting these amendments without any discussion or consultation with independent groups that have expertise in these issue areas.

The OSCE’s own representatives have noted this problem. For example, on March 26, 2008, the then-head of the OSCE centre in Astana, Ivar Vikki said in an interview with the newspaper *Kazakhstanskaya Pravda* that “Kazakhstan should be more active in the human dimension and needs to improve its media law as well as the laws on election and on political parties.”⁸

Kazakhstan’s chairmanship risks undermining the integrity of the OSCE’s human rights principles. Therefore we urge you to hold Kazakhstan to its public pledges to implement reforms. In doing so the OSCE would be helping the pro-reform forces within Kazakhstan and protecting the integrity of the OSCE. Democratic reforms in Kazakhstan would also set an important positive example to other countries in Central Asia.

⁸ The full text of the interview is online available at:
http://www.kazpravda.kz/index.php?uin=1151645457&chapter=1206476403&act=archive_date&day=26&month=03&year=2008.