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KAZAKHSTAN: HUMAN RIGHTS UPDATE

Human Rights Watch Submission to the EBRD

August 26, 2004

Summary

Kazakhstan's vast energy wealth has made it an important geostrategic partner for many countries and institutions and raised the political stakes inside the country significantly. As a consequence, in recent years the government undermined freedoms to shield itself from public scrutiny and political rivals, and to protect its substantial control over the hydrocarbon sector.

In its October 2002 assessment of Kazakhstan, the EBRD stated that "transition toward multi-party democracy and pluralistic society did not match the achievements on the economic front" and noted in particular "backsliding on freedom of the independent media and free functioning of the political opposition." Kazakhstan's record on these issues deteriorated in the eighteen months following this assessment.¹ In the past six months, as the September parliamentary elections have drawn nearer, the government has taken several positive steps toward improvements in political participation, chiefly by registering a prominent opposition political party. In the coming years the Bank should reinforce this positive movement through close monitoring of the situation and forceful engagement with the government to ensure that it moves toward full compliance with the Bank's Article 1 requirements.

Because several points of progress remain incomplete or untested, it is crucial for the international community to adopt a cautious approach and send a consistent message about the importance of implementing promised reforms. For example, as detailed below, the registration of opposition political parties may be vulnerable to arbitrary reversal. Also, the government has signed but not

¹ In February 2004 the United States State Department found that "The Government's human rights record remained poor, and it continued to commit numerous abuses." In its annual report on the Kazakh government's rights record, the State Department noted that the government of Kazakhstan "severely limited citizens' right to change their government and democratic institutions remained weak...[and that it] ...restricted freedom of assembly and association and limited democratic expression by imposing restrictions on the registration of political parties." It further stated that, "Corruption was evident at every stage and level of the judicial process." U.S. Department of State, Country Reports on Human Rights Practices 2003, Released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004, [online] <http://www.state.gov/g/drl/rls/hrrpt/2003/27845.htm> (retrieved August 23, 2004).

ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Similarly, it extended an invitation to the U.N. Special Rapporteur on the Independence of Judges and Lawyers, who visited the country in June 2004. The real test of the government's commitment to domestic reform and international cooperation in this area will be the extent to which it implements the Special Rapporteur's resulting recommendations.

We believe a candid assessment by the EBRD of the Kazakh government's progress and shortcomings in human rights can do much to promote the cause of reform in Kazakhstan. Human Rights Watch therefore recommends that the Bank issue specific benchmarks for improvements in the human rights sphere, particularly in the areas of political participation and freedom of expression. We further urge the Bank to monitor closely the Kazakh authorities' implementation of such benchmarks and to condition engagement with the government on its success in undertaking the necessary reforms. As we have articulated in previous submissions on other countries in the region, we believe that the use of such benchmarks would significantly enhance the Bank's potential to promote human rights reforms as part of its engagement. Such an approach would also establish a process that allows for more direct engagement by other international actors and civil society to help advance progress in the areas identified by the EBRD.

Below we summarize several of our main concerns regarding human rights in Kazakhstan and propose a set of concrete benchmarks for measuring improvements.

Pre-Election Environment

While the political climate has improved somewhat in recent months, the government's overall failure to provide a level playing field for free and fair parliamentary elections in September 2004 has called into question the sincerity of its commitment toward political and human rights reform.

In its July 2004 conclusions issued following its annual Cooperation Council meeting with Kazakhstan, the European Union rightly emphasized the upcoming parliamentary elections, calling for them to be "fair and in line with international standards." The European Union made clear that "a positive assessment of the elections would be an essential consideration in any decision on the bid of the Republic of Kazakhstan to hold Chairmanship of the OSCE in 2009."

The E.U.'s caution was well placed, as the Kazakh government has a history of manipulating elections.² The September 2003 local council election is the most recent example of what may be expected. According to the opposition, the government attempted to exclude rival candidates from the ballot through harassment and intimidation, including arbitrary misdemeanor and other

² See Human Rights Watch, "Kazakhstan: Freedom of the Media and Political Freedoms in the Prelude to the 1999 Elections," *A Human Rights Watch Report*, Vol. 11, No. 11 (D), October 1999; OSCE and ODIHR, Republic of Kazakhstan Parliamentary Elections 10 and 24 October 1999, Final Report, Warsaw: January 20, 2000. [online], http://www.osce.org/documents/odihr/2000/01/1267_en.pdf (retrieved August 23, 2004); and OSCE and ODIHR, Republic of Kazakhstan Presidential Elections 10 January 1999, Mission Assessment, February 5, 1999. [online], http://www.osce.org/documents/odihr/1999/02/1263_en.pdf (retrieved August 23, 2004).

criminal charges. Pro-government parties now dominate the local councils. This could undermine the integrity of the parliamentary elections, as local councils choose electoral commission members, and opposition parties are currently underrepresented on the commissions.

Because the government has a record of manipulating elections, its plans to introduce electronic voting, without a parallel paper ballot to verify the vote, is causing concern that the election may be particularly vulnerable to tampering.

In recent months, the government took the important step of registering hitherto unregistered political parties. Not all of the eleven registered parties are opposition parties—for instance, Asar, registered in 2003, is led by President Nazarbaev’s daughter—but the registrations were nonetheless seen as a sign of greater government tolerance for a diverse political landscape.

Observers, including Human Rights Watch, welcomed the registration of the central branch of the opposition party Democratic Choice of Kazakhstan (DVK) in May 2004, but this is only a first step. The party must register its branches in all sixteen provinces of the country by November 2004 for registration to be permanent.³ DVK will be able to field candidates for the September 19 parliamentary elections, but if even one provincial branch fails in its efforts to register by November, the central party’s registration will be revoked and the DVK will lose any seats it won in the vote.⁴ This leaves potential electoral success by DVK vulnerable to official manipulation.

Persecution of the Political Opposition

The government’s treatment of DVK’s two co-founders belies its commitment to genuine political pluralism. Galimzhan Zhakianov, the party’s leader, was jailed in 2002, following an unfair trial on charges that have been widely viewed as selective and politically motivated. In August 2004, authorities transferred him to a low-security settlement outside the capital, where he would be kept under police supervision and forbidden from taking part in politics. Mukhtar Abliazov was apparently pressured to disavow his political affiliation and halt his political activities as a condition for release from prison in May 2003.

In 2002 and 2003, Human Rights Watch documented government harassment of members and supporters of Kazakhstan’s opposition political parties and movements. In some cases, this harassment took the form of arbitrary criminal and misdemeanor charges and threats of job dismissal, often aimed at preventing the individual from running for public office.

³ This is consistent with Kazakhstan’s law on political parties, article 10 (3) of which states: “During 6 months following state registration of a political party it is required to carry out the registration of its structural subdivisions (branches, representations) with the territorial/regional judicial authorities.” The following section—article 10 (4)—specifies: “Lack of fulfillment of point 3 of this article leads to the cancellation of the state registration of the political party according to the law of the Republic of Kazakhstan.”

⁴ Article 14 of Kazakhstan’s law on political parties states that parties can be liquidated in the event of cancellation of state registration. Meanwhile article 97-1 of Kazakhstan’s election law states that in the case of liquidation of a political party, “the deputies to the Majilis elected on the list of this party shall withdraw from [their] term of office.”

Violations of Freedom of Expression/ Freedom of the Media

Journalists who write about government corruption or other sensitive topics are at constant risk of physical attack and politically motivated lawsuits or criminal charges. Sergei Duvanov, the well-known journalist who reported on the so-called Kazakhgate oil funds corruption scandal, is now on parole after serving prison time for questionable statutory rape charges. An OSCE-commissioned expert judicial review of the case in March 2003 had found that evidence presented at his trial provided insufficient grounds for the conviction. It also found the defense's theory of fabrication was not adequately refuted and that the police investigation was neither complete nor objective.

The suspicious death of journalist Askhat Sharipzhanov has sparked calls for an independent investigation. Sharipzhanov was hit by a car while crossing a street on July 16, 2004, and died as a result of his injuries. Sharipzhanov, age 40, was an editor and journalist for the independent internet news site, Navigator (www.Navi.kz). His work focused on political issues, including government corruption, and he was known as a particularly outspoken critic of government policy. Just prior to July 16, Sharipzhanov had completed interviews with opposition leader Zamanbek Nurkadilov and Altynbek Sarsenbayev, co-chairman of the Ak Zhol party and newly appointed Minister of Information. Significantly, Nurkadilov is the former head of the government's Emergencies Agency, who was fired after he accused Nazarbaev of abuse of office, bribery, and falsifying elections. He had called for Nazarbaev's resignation and has since announced his own intention to run for president in 2006. Sharipzhanov's tape recorder—which was with him just prior to the incident, according to an eyewitness—and the tapes of these interviews were missing at the scene.

In July 2004, the government announced that it would withdraw two lawsuits against an independent Russian language newspaper. But the government undermined this positive move by filing a devastating lawsuit against *Assandi Times*, one of Kazakhstan's leading opposition newspapers. On June 2, 2004 a fake version of the *Assandi Times* was circulated throughout Almaty, filled with stories that misrepresented and undermined the authority of the political opposition.⁵ That day the *Assandi Times*' editorial staff issued a statement that the forged copies "are another step by the presidential administration or by the people close to it, who are trying to discredit our newspaper before the readers." The administration responded by suing the paper and its editors for defamation. On July 15 an Almaty district court fined the newspaper approximately U.S. \$370,000 and ordered the seizure of the paper's bank account and property. This effectively bankrupted the paper and threatened its closure, just two months prior to parliamentary elections. *The Assandi Times* announced its plans to appeal and to continue publication.

On July 22 the Organization for Security and Cooperation in Europe (OSCE) representative for media freedom, Miklos Haraszti, expressed his organization's objections to the heavy fine against the *Assandi Times*. "My first concern is that this decision will force Assandi Times, a major opposition news outlet, out of business, de facto annihilating the newspaper," he said.

⁵ For example, it contained a false statement attributed to Galimzhan Zhakianov denigrating his party, the DVK, and stating "I want to stop being the symbol of an incomprehensible struggle."

On July 22, President Nazarbaev ordered foreign media to include praise of the government and its policies along with any problems or criticism reported, indicating his intolerance of critical media. He was quoted as saying: “Criticism must be preceded by positive information on how fast we are developing and how we have finally overcome the (economic) crisis.” Making clear that failure to comply would have serious consequences, President Nazarbaev reportedly said that his lawyers were prepared to sue foreign media who “discredit the country.”

Kazakh television is dominated either by government or pro-government media, raising concern about equal access to the media for opposition candidates in the September elections.

Harassment of Nongovernmental Organizations

The government continues to control the work of nongovernmental organizations that take on sensitive issues. It harasses NGOs through intimidating visits by security and law enforcement agencies, arbitrary investigations by the tax police, and surveillance by law enforcement and security agents. A government attempt in 2003 to pass legislation seriously restricting the definition of an NGO failed after it met with almost universal condemnation from the local and international human rights community.

Fueling the AIDS Epidemic

Human rights abuse against injection drug users and sex workers in Kazakhstan is fueling one of the fastest growing AIDS epidemics in the world and threatening the country’s economic and social development. Human Rights Watch has documented instances of police brutality, lack of due process, harassment and stigmatization that drive drug users and sex workers underground and impede their access to life-saving HIV prevention services.

Benchmarks

Following are specific reform steps that the Kazakh government should be required to undertake:

- Ensure that the September parliamentary elections are free and fair and meet international standards, including by undertaking the following measures:
 - (i) Desisting from the use of electronic voting or, at minimum, instituting a system that creates a voter-verified paper record that can be used during manual audits to check against the outcome of electronic voting. For instance, paper “receipts” of electronic votes could be issued to voters and deposited by them into ballot boxes before they exit polling places;
 - (ii) Ensuring equal access to the media, particularly the broadcast media, for all electoral candidates;
 - (iii) Refraining from harassment of, and threats against, opposition candidates during the electoral campaign;
 - (iv) Reforming electoral commissions so as to ensure that they include adequate opposition party representation.

- Register all regional branches of the DVK that have submitted documentation in accordance with the law. Refrain from any arbitrary deregistration of the party, either prior to, or following, the parliamentary elections.
- Register all opposition political parties and movements, and nongovernmental organizations that have submitted documentation in accordance with the law.
- Release political opposition leader Galymzhan Zhakianov; allow the OSCE to immediately undertake an independent, expert review of Zhakianov's case and heed the recommendations of the OSCE-commissioned expert review of Duvanov's case, conducted last year, which concluded that the criminal investigation against him was deeply flawed.
- Allow for an independent and impartial review of all civil defamation suits launched by government officials against journalists and independent media outlets.
- In line with the current draft law on freedom of expression scheduled to be considered by parliament in January 2005, amend the civil code to establish a reasonable statutory cap on civil awards for non-pecuniary damages.
- Ensure an independent investigation into the death of opposition journalist Askhat Sharipzhanov and make the results of the investigation public.
- Review government legislation regarding HIV/AIDS, in order to bring it into compliance with international standards on HIV/AIDS and human rights. Expand prevention and treatment services for all persons affected by HIV/AIDS.
- Reform police practices regarding treatment of drug users, particularly harassment of drug users seeking to use or having used needle exchange services for HIV prevention.
- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and issue standing invitations to all U.N. special mechanisms to visit Kazakhstan.