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“Promises to Keep: Kazakhstan’s 2010 OSCE Chairmanship”
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Thank you, Chairman Hastings and the other members of the Commission, for allowing me to submit this written statement. Human Rights Watch is pleased to have the opportunity to contribute our findings and recommendations to this hearing on Kazakhstan. The Commission’s hearing has come at a very crucial moment in the lead- up to Kazakhstan’s scheduled OSCE chairmanship in 2010.

Human Rights Watch very much welcomes the pledges that Kazakhstan’s Foreign Minister Tazhin made last November at the OSCE Ministerial Council in Madrid to reform the media law and the law on elections, to liberalize the registration requirements for political parties, and to incorporate recommendations by the Office for Democratic Institutions and Human Rights (ODIHR) in election legislation. Minister Tazhin pledged that these reforms would take place by the end of 2008. He also promised that Kazakhstan’s chairmanship would preserve the ODIHR and its existing mandate and refrain from supporting any future efforts to weaken this institution. These pledges are a modest but important step for Kazakhstan toward fulfilling its aspired international leadership role.

Human Rights Watch has closely followed Kazakhstan’s bid for the OSCE chairmanship over the last years and expressed strong concern over moves by the government to restrict fundamental rights and freedoms. In March and June 2008, Human Rights Watch representatives went to Astana and Almaty to meet with government officials, civil society and international organizations to discuss the human rights situation in Kazakhstan and familiarize themselves with ongoing reforms. In meetings with Human Rights Watch, Kazakhstan’s public officials reiterated their commitment to Minister Tazhin’s pledges. This is good news. But in practice, the government has made almost no concrete progress towards implementing the pledges.

When Kazakhstan assumes the chairmanship, the OSCE and the public will look to it to embody and project OSCE values. The chairmanship is also an opportunity for the

international community to press for concrete progress in long overdue reforms. For both reasons, it is important for OSCE participating states to engage with Kazakhstan to ensure that these pledges are fulfilled by the end of 2008, and to ensure progress on other human rights reforms *prior* to 2010.

Today, we are pleased to share our main findings and recommendations regarding Minister Tazhin's promises with the Commission. Information on additional human rights issues are available in the memorandum that was submitted as additional written material for inclusion in the hearing record.

Key Findings:

General situation: 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 the UN Convention Against Torture (CAT) in 2007 and introducing some reform to the criminal justice system.

In discussions with Human Rights Watch, policy makers often draw comparisons among Central Asian government's human rights practices, and in their eyes the government of Kazakhstan benefits from such comparisons. But the government has shown a disappointing lack of commitment to human rights reform and has shown few if any signs of fundamental change in practice.

Kazakhstan is not a country with frequent or dramatic government crackdown on freedoms and human rights. One finds rather an atmosphere of quiet, subtle repression.

As noted above Tazhin's Madrid pledges are most welcome. But they are very much a modest beginning to addressing Kazakhstan's human rights problems. 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. So far the government has resisted implementing meaningful reforms in these areas. The government has certainly created a difficult environment for the exercise and promotion of human rights that is out of line with OSCE standards and far less than what one would expect of the leadership of an organization grounded in human rights principles.

Media legislation: 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 policies and practices. Libel continues to be a criminal offense.

In Madrid, Minister Tazhin promised that the government was “going to incorporate various proposals into a consolidated bill to amend the media law, which will reflect the OSCE recommendations as well.” Three months later, in February 2008, the Ministry of Culture, Information and Public Accord declined, for the second time, to accept a 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, Information and Public Accord in order to begin operating, with one in which they need only to inform the Ministry of Culture, Information and Public Accord.¹ After rejecting the draft, the ministry announced that a new draft would be undertaken and established a working group consisting of ten government and four NGO representatives; the group has met once.

During the first meeting of this working group, the government officials suggested several amendments to the mass media law, which would, among other things, abolish the registration requirement for electronic (i.e., television) media, protect the right of journalists to maintain confidentiality of sources, except in “special cases”, and reduce criminal responsibility for libel. According to the media watchdog Adil Soz, the first suggestion is insignificant because all TV and radio stations must obtain a license first, making registration a rather unimportant issue for them. The proposal relaxing criminal responsibility for libel - by abolishing the current maximum penalty of six months imprisonment² – is a rather superficial measure. According to Adil Soz not a single

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.

² Article 129, paragraph 2 reads: Libel which is contained in a public speech, or in a publicly displayed work, or in mass information media, shall be punished by a fine in an amount from two hundred up to five hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period from two to five months, or by engagement in public works for a period from one hundred eighty up to two hundred forty hours, or by correctional labour for a period from one year up to two years, or by restriction of freedom for a period up to two years, or detention under arrest for a period up to six months.

journalist was imprisoned for libel during the last ten years. The imprisonment clause is rather used as a threat by the authorities to silence journalists.³

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. Media watchdogs argue that libel is a civil issue between two individuals or legal entities but not a criminal act. So far, all attempts by journalists and media organizations to have criminal penalties for libel in the Criminal Code repealed have been unsuccessful.

The second meeting of the media law working group, scheduled for May 27, was postponed indefinitely without explanation, although the appointment of a new Minister of Culture, Information, and Public Accord may be a factor. The working group ultimately met on July 18 for one hour, which did not allow adequate time discussion according to Adil Soz. On July 21 the members of the working group received a draft law from the head of working group. Although Human Rights Watch has not had the opportunity to study the draft, according to Adil Soz it does not include any ideas proposed by civil society groups. The members of the working group were told that they had one day to examine the draft and submit their comments “because the government wants to see this done quickly.”⁴

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

Election legislation: 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

³ Human Rights Watch interview with Tamara Kaleeva, Adil Soz, Almaty, June 2, 2008.

⁴ Human Rights Watch telephone interview with Tamara Kaleeva, Adil Soz, July 21, 2008.

commitments” such as “excessive requirements for registration of political parties” and “undue limitations on the right to seek public office.”⁵

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;⁶ to dissolve the Majlis (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.

In Madrid, Minister Tazhin promised that “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.” While at the beginning of 2008 a working group of around 15 government officials and four civil society representatives 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. The working group has met twice so far; the first meeting centered on setting up the second meeting. At the second meeting the government proposed conducting a series of seminars on elections.⁷ While seminars and the like are welcome, they are no substitute for substantive electoral reform.

Registration of political parties: 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. Since

⁵ 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.

⁶ 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.

⁷ Human Rights Watch interview with Yevgeniy Zhovtis, Bureau for Human Rights and Rule of Law, Almaty, June 2, 2008.

2002, in order to form a political party it is necessary to have an initial conference of 1,000 persons representing two-thirds of the regions of Kazakhstan and a membership of 50,000.⁸ At the time, the OSCE denounced the restrictiveness of this new law and predicted that it would have “a chilling effect on the development of political pluralism in Kazakhstan.”⁹ 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.

In Madrid, Minister Tazhin said that Kazakhstan will take measures to liberalize registration requirements for political parties by the end of 2008. We are not aware of any steps taken by the government of Kazakhstan towards fulfilling this promise.

In recent years the United States took a principled stand on Kazakhstan’s chairmanship bid but ultimately went with the consensus to schedule Kazakhstan’s chairmanship for 2010, arguing that this would provide an opportunity to constructively engage the government for positive change. Now we ask that you redouble your efforts to hold Kazakhstan’s government to its commitments.

We ask that you convey two strong messages to the government in Astana: first, that it is important for Kazakhstan’s government to **meet the above mentioned commitments by the end of 2008**; and second, that it is important for the government to **significantly improve its record on honoring other OSCE commitments before it takes over the organization’s chairmanship in 2010**.

⁸ 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.” “President signs law “On political parties,”” Kazakhstan News Bulletin Released weekly by the Embassy of the Republic of Kazakhstan, Vol. 3, No. 24, July 17, 2002. www.kazakhembus.com/071702.html [retrieved on March 8, 2004] But the law drew criticism from local and international observers, who claimed that it would restrict parties’ access to the ballot and limit pluralism.

⁹ 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 **comply with its commitments to the OSCE's and other international bodies' standards on media freedom** by fostering, not stifling, independent media. The government should fulfill 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, with a view to abolishing the offense.
- to encourage Kazakhstan's government to **allow the working group on election legislation to act without undue interference or subject to unreasonable conditions** and speedily adapt the legislation according to the OSCE recommendations.
- 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.

Thank you very much for considering our information and recommendations. I remain at your disposal should the Commission request anything further on this issue.

For additional Human Rights Watch reporting on the human rights situation in Kazakhstan, please see:

- July 8, 2008 letter to Finish Foreign Minister and OSCE CiO Alexander Stubb regarding his upcoming trip to Kyrgyzstan and Kazakhstan, hrw.org/english/docs/2008/07/08/kyrgyz19299.htm
- May 2008 memorandum "Human Rights in Kazakhstan: The Madrid Promises and Beyond," hrw.org/english/docs/2008/05/29/kazakh19061.htm
- April 8, 2008 letter to France's Foreign Minister Bernard Kouchner in advance of his trip to the region, hrw.org/english/docs/2008/04/08/eca18430.htm
- April 8, 2008 briefing paper "Benchmarks, Consultations and Transparency: Making the EU Central Asia Strategy an Effective Tool for Human Rights Improvements," hrw.org/backgrounder/2008/cao408/cao408web.pdf
- November 30, 2007 press release "Kazakhstan: OSCE Chairmanship Undeserved," hrw.org/english/docs/2007/11/30/kazakh17458.htm