



**An Atmosphere of Quiet Repression**  
**Freedom of Religion, Assembly and Expression**  
**in Kazakhstan**

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# An Atmosphere of Quiet Repression

## Freedom of Religion, Assembly and Expression in Kazakhstan

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## I. Summary

One year ago, Foreign Minister Marat Tazhin of Kazakhstan pledged to the Organization for Security and Co-operation in Europe (OSCE) that his country would improve its human rights policies and practices, in order to conform to the standards expected of a future chair of the OSCE. Kazakhstan is due to take over that chairmanship in 2010, so time is short. While Kazakhstan is not a country with frequent or dramatic government crackdowns on freedoms and human rights, when it comes to exercising fundamental rights such as worship, speech, press freedom, and assembly, Kazakhstan's people live in an atmosphere that is far more circumscribed and fearful than in a country that meets its human rights obligations.

This report is published on the eve of the OSCE's Ministerial Council in Helsinki, scheduled for December 4 and 5, 2008. Foreign Minister Tazhin's reform pledges at 2007's OSCE Ministerial Council in Madrid included promises to amend the media law, reform the law on elections, and liberalize the registration requirements for political parties by the end of 2008. Minister Tazhin's pledges were unprecedented and welcome. On November 11 the government of Kazakhstan sent to parliament draft amendments in all the areas covered by the pledges. However, these measures are unlikely to result in meaningful and needed reform in media and electoral freedoms.

Moreover, Kazakhstan's human rights record is lacking in other areas that need meaningful reform. The report focuses on three areas, each of them key OSCE human dimension commitments: freedom of thought, conscience and religion; freedom of expression; and freedom of assembly. Kazakhstan continues to actively restrict the exercise of these rights, and its upcoming chairmanship, therefore, risks undermining the integrity of the OSCE's human rights principles.

### Religion

At the end of 2006 President Nursultan Nazarbaev signed a decree stating that people should avoid "non-traditional" and "extremist" religious associations. Since then, minority religious groups have been variously categorized as "sects" or "non-

traditional” and have come under increased scrutiny and pressure from the authorities. Many groups that met with Human Rights Watch during 2008 pointed to what they believe is a media campaign that started in early spring 2008, apparently aimed at spreading fear of “non-traditional” religions—and perhaps even aimed at building support for a new draft law on religion that would seriously restrict the right to freedom of thought, conscience and religion.

## **Expression**

In Kazakhstan, journalists operate in an environment of anxiety, faced with constant intimidating lawsuits and, not infrequently, direct threats to their person. Libel continues to be a criminal, rather than a civil, offense and carries stiff penalties. Even when journalists do not admit to outright self-censorship, they speak privately of the tightly regulated environment and topics they do not dare to cover. Threatening phone calls, visits by the police, and successive lawsuits are common. There are no independent television stations, and websites critical of the government are often blocked by the authorities.

## **Assembly**

Public assembly is very tightly controlled, and any politically motivated public meeting is likely to be denied a permit or broken up by police, or both. In none of the cities that Human Rights Watch visited in 2008 were groups allowed to protest or even gather in the city center. Instead, there are designated areas for public gatherings, far from city centers and, at least in Almaty, difficult to access by public transport. When groups assemble in unsanctioned but peaceful protests, authorities react quickly, sometimes with force and sometimes preemptively. Protesters are often detained, put on trial, and face sentences of fines or 10 days’ detention, sometimes more. Conversely, when groups with grievances call on the authorities to meet and hear their questions or concerns, the authorities are rarely responsive.

Human Rights Watch calls on the government of Kazakhstan to go beyond rhetoric and to implement, soon and consistently, the human rights reforms it has promised the OSCE and which are required of it as an OSCE member. In so doing, Kazakhstan would provide an important positive example to other countries of Central Asia.

We call on the OSCE Participating States to hold Kazakhstan accountable for its public pledges to implement reforms. In so doing, the OSCE would be helping the pro-reform forces within Kazakhstan and protecting the integrity of the OSCE.

\* \* \*

This report is based on three Human Rights Watch research missions to Kazakhstan in March, June, and July 2008. The report specifically draws on interviews with nearly 40 representatives of civil society, human rights activists, journalists, and representatives of religious organizations in Almaty, Astana, and Karaganda, as well as interviews and conversations with representatives of international organizations and the diplomatic community in Kazakhstan. Nearly all interviews were conducted in private and in Russian. One of the researchers is a native speaker of Russian, and the other two speak Russian fluently.

The names of some interviewees have been withheld, at their request.

Human Rights Watch also had some access to Kazakh government documents and communication with government officials. In early June 2008, our researchers met with representatives from the Presidential Human Rights Commission, the National Ombudsman and the Ombudsman's National Centre on Human Rights, and the Constitutional Council in Astana to discuss the human rights situation in the country and learn about ongoing reforms as Kazakhstan prepares for the OSCE Chairmanship in 2010.

## II. Political Background

In the four years since Human Rights Watch published its last report on political freedoms in Kazakhstan,<sup>1</sup> the government has shown a disappointing lack of commitment to meaningful improvements in human rights. True, it has undertaken a number of important steps, such as ratifying the International Covenant on Civil and Political Rights (ICCPR) in 2006 and the Optional Protocol to the Convention against Torture in 2008,<sup>2</sup> issuing a declaration recognizing the competence of the United Nations Committee against Torture to consider individual complaints, signing (but not yet ratifying) the Optional Protocol to the ICCPR,<sup>3</sup> and introducing some limited reform to the criminal justice system.<sup>4</sup> But it has shown no signs of fundamental change in practice. Instead, the government has held elections that fell short of international standards, further tightened control over independent media, interfered with the political opposition (among other things, by refusing to register a major opposition party), launched politically motivated lawsuits against its critics, and adopted a number of laws that restrict civil and political rights.

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<sup>1</sup> Human Rights Watch, *Political Freedoms in Kazakhstan*, vol. 16, no. 3(D), April 2004, <http://hrw.org/reports/2004/kazakhstan0404/>.

<sup>2</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted December 18, 2002, G.A. res. A/RES/57/199, [reprinted in 42 I.L.M. 26 (2003)], entered into force June 22, 2006.

<sup>3</sup> Optional Protocol to the International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

<sup>4</sup> 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, local human rights organizations criticized the law because of three provisions: first, the judge who issues the warrant could subsequently be the same judge who considers the case. Second, the hearing regarding the arrest warrant is a closed procedure not open to public monitors. (Under international human rights law, there must be safeguards against arbitrary detention. Because the lawfulness of detention therefore has to be capable of being reviewed, a public record of why the warrant was issued should be available so it can be challenged if necessary. Hearings may therefore normally be ex parte. At minimum they must be open to review ex post facto to ensure that the warrant was issued in accordance with the 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.

In July 2008 the Supreme Court published a normative conclusion that a court issuing an arrest warrant must provide grounds for the arrest and the legality of detaining a criminal suspect. Human Rights Watch electronic correspondence with Evgeniy Zhovtis, director, Kazakhstan International Bureau for Human Rights and the Rule of Law, to Human Rights Watch, November 19, 2001.

## Upcoming OSCE Chairmanship

As early as 2003, Kazakhstan announced its plans to seek the OSCE chairmanship. Its bid for the chairmanship was controversial because of its poor record of adherence to the OSCE's human rights principles, as a result of which its initial bids from 2005 to 2007, for the 2009 chairmanship, were unsuccessful. Responding to OSCE participating states' concerns about Kazakhstan's renewed (and ultimately successful) bid for the 2010 chairmanship, Foreign Minister Marat Tazhin on November 29, 2007, speaking at the OSCE Ministerial Council in Madrid, pledged that Kazakhstan would take several reform steps prior to assuming the chairmanship. These included amending the media law, reforming the law on elections, and liberalizing the registration requirements for political parties by the end of 2008. Tazhin further pledged that Kazakhstan would incorporate recommendations by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in the election legislation, and promised that Kazakhstan's chairmanship would preserve the ODIHR and its existing mandate and refrain from supporting any future efforts to weaken this institution.<sup>5</sup> Minister Tazhin's pledges were unprecedented, for Kazakhstan and the OSCE, and welcome. At the beginning of December the OSCE Ministerial Council approved Kazakhstan's holding the 2010 chairmanship.

On November 11, 2008, the government sent to parliament draft amendments in all legislative areas covered by Minister Tazhin's pledges. As explained below, they would introduce changes that would appear to be more superficial and pro forma than substantial.

Since Kazakhstan was selected for the 2010 OSCE chairmanship the obstacles facing local civil society groups have remained very high. 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, the government continues to deflect or even ignore criticism. Local NGOs believe that the government seeks to portray its having been awarded the 2010 OSCE chairmanship as evidence that its human rights record is in good order. Some Kazakh NGOs believe that the

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<sup>5</sup> For the full text of Foreign Minister Tazhin's address, see Government of the Republic of Kazakhstan, "Address of H.E. Dr. Marat Tazhin, Minister of Foreign Affairs of the Republic of Kazakhstan, at the OSCE Ministerial Meeting, Madrid," November 29, 2007, <http://en.government.kz/documents/publications/page09> (accessed November 22, 2008).



upcoming chairmanship makes it all the more important for the OSCE, participating states, and other intergovernmental organizations to use the period leading up to 2010 to press for reforms.<sup>6</sup>

## Elections

This report does not examine violations of the right to participate in elections or in public affairs, although two chapters of the present report describe limitations on the rights to freedom of expression and assembly, two important pillars of an open system for free and fair elections. But one of the most serious concerns about the appropriateness of Kazakhstan's chairmanship relates to its failure since independence in 1991 to hold a national election that meets OSCE standards for free and fair elections. The ODIHR found that the December 2005 vote that led to the reelection of President Nazarbaev, who has ruled Kazakhstan since the end of the Soviet era, was "flawed."<sup>7</sup> And after the August 2007 parliamentary elections, the ODIHR stated that the elections "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."<sup>8</sup> In those elections, Kazakhstan's ruling party, Nur Otan, won 88 percent of the vote. No opposition parties cleared the 7 percent threshold to win seats.<sup>9</sup>

Opposition leaders denounced the elections as fraudulent and called for new elections in an August 28 letter to President Nazarbaev. But the president brushed off all criticism and claimed that the one-party parliament was a "wonderful opportunity to adopt all the laws needed to speed up our country's economic and political modernization."<sup>10</sup>

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<sup>6</sup> Human Rights Watch interviews with NGO activists from Kazakhstan March to November 2008.

<sup>7</sup> "Kazakh election flawed despite some administrative improvements," Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, December 5, 2005, <http://www.osce.org/item/17236.html>, (accessed November 22, 2008).

<sup>8</sup> Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, "Republic of Kazakhstan. Parliamentary Elections 18 August 2007," Warsaw, October 30, 2007, pp. 2-3, [http://www.osce.org/documents/odihr/2007/10/27638\\_en.pdf](http://www.osce.org/documents/odihr/2007/10/27638_en.pdf) (accessed November 22, 2008).

<sup>9</sup> The unsuccessful opposition parties included Nagyz Ak Zhol and the National Social Democratic Party, which which received 3.09 and 4.54 percent of votes respectively.

<sup>10</sup> Joanna Lillis, "Kazakhstan: President Argues that One-Party Parliament Can Be Engine of Modernization," Eurasianet.org, September 13, 2007, <http://www.eurasianet.org/departments/insight/articles/eav091307.shtml> (accessed October 20, 2008).

The Alga! (Forward!) Party, an opposition liberal democratic party, has not been able to register for nearly three years and could not participate in the 2007 vote. Alga! was founded on the remains of the Democratic Choice of Kazakhstan (known by the Russian acronym DVK) , an opposition political party whose leaders—who had both been members of the ruling political and economic elite—were imprisoned in 2002, and which the government dissolved in 2005.<sup>11</sup> On February 20, 2006, the Ministry of Justice denied Alga! registration on the grounds that the party had not provided sufficient evidence of its membership. Vladimir Kozlov, chair of Alga!’s Coordinating Committee, told Human Rights Watch that the authorities had pressured “state-budget-dependent members [*budzhethniki*, in Russian]”—persons such as students, pensioners, residents of state-managed dormitories, and public servants—to resign from the party.<sup>12</sup> The Astana Municipal Court and the Supreme Court upheld the Ministry of Justice decision later that year. In November 2006 Alga! submitted a new registration application and has been awaiting approval since then. Kozlov noted that in not registering Alga!, the government is not violating any legal provision, as the law on political parties does not prescribe a period during which a party has to be registered. Therefore Alga! cannot file a complaint.

Because the draft amendments to the laws on elections and political parties sent to parliament on November 11, 2008 have not been made public, Human Rights Watch has not been able to review the texts, so information and analysis in this report about their provisions is based on government statements and civil society commentary.

Under the draft amendments, political parties must still gain 7 percent of the vote in order to be represented in parliament, but at least two political forces must be represented in parliament, no doubt a response to strong criticism of the 2007 parliamentary election.<sup>13</sup> If only one party gets past the 7 percent threshold, then parliamentary seats may be distributed to the party garnering the next largest number of votes, though the government statement did not say how the draft

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<sup>11</sup> For further information on the harassment and persecution of members of DVK, see Human Rights Watch, *Political Freedoms in Kazakhstan*, vol. 16, no. 3(D), April 2004, <http://hrw.org/reports/2004/kazakhstan0404/>, p.21.

<sup>12</sup> Human Rights Watch interview with Vladimir Kozlov, Almaty, June 3, 2008.

<sup>13</sup> “The Government has Approved Amendments to the Elections Law,” Kazakhstan Today information service, November 11, 2008.

envisages apportioning these seats. The government draft lowers from 50,000 to 40,000 the minimum number of supporters in order for the party to be registered (notably, prior to the adoption of the 2002 Law on Political Parties the minimum number of required supporters was 3,000),<sup>14</sup> and extends the registration deadline from two to four months. The draft also lowers from 700 to 600 the minimum number of supporters required in each province of Kazakhstan.

The draft amendments do not appear to address the fundamental problems that have marred Kazakhstan's national elections and checks and balances in its political system. In early 2008 the government formed a working group, which included civil society organizations, to develop the draft amendments,<sup>15</sup> but as described below some of the key concerns put forward by civil society appear not to have been addressed in the draft. NGO members of the working group told Human Rights Watch that they were prevented from considering the repeal of seriously flawed provisions of the elections law,<sup>16</sup> and it is unclear whether the as yet unpublished government draft addresses them: for example, there are currently no term limits for Kazakh President Nursultan Nazarbaev; he has sweeping powers to dissolve parliament, is able to appoint a third of the members of the upper chamber, and chooses the chair and two members of the seven-member Central Election Commission.

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<sup>14</sup> Human Rights Watch, *Political Freedoms in Kazakhstan*, p.16.

<sup>15</sup> Human Rights Watch, *Human Rights in Kazakhstan: The Madrid Promises and Beyond*, May 28, 2008, <http://www.hrw.org/en/news/2008/05/28/human-rights-kazakhstan-madrid-promises-and-beyond>.

<sup>16</sup> *Ibid.*

### III. The Right to Freedom of Thought, Conscience and Religion

According to the government's 2007 "Baseline Report on Human Rights in Kazakhstan," published by the Human Rights Commission under the President of the Republic of Kazakhstan, the nation is home to about 40 religious confessions and nearly 4,000 registered religious communities, and the majority of the population is Muslim or Russian Orthodox.<sup>17</sup> The report states that "the country has an environment promoting the peaceful coexistence of all of these communities based on continued dialogue, which is initiated and supported by the government."<sup>18</sup>

In practice, official intolerance—especially toward smaller religious groups—is on the rise. For example, at the end of 2006 President Nazarbaev issued a decree stating that the people of Kazakhstan should avoid "non-traditional" religions.<sup>19</sup> On January 17, 2008, Nazarbaev said during a public address at a meeting of the ruling Nur Otan party that "it is necessary to cut the activities of illegal religious movements in Kazakhstan. Currently, tens of thousands of missionary organizations are working in Kazakhstan. We do not know their goals and tasks and we should not tolerate such arbitrariness." He declared that "religion is separate from the state, but it does not mean that Kazakhstan should become a dumping ground for various religious movements."<sup>20</sup>

The authorities increasingly tend to single out minority religious groups that are characterized as "sects" and/or "non-traditional" such as Jehovah's Witnesses, Hare Krishna devotees, or independent Muslims (people whose Muslim affiliations,

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<sup>17</sup> In a statement to the UN Human Rights Council, Foreign Minister Tazhin stated that there were 40 religious confessions in Kazakhstan. See Government of Kazakhstan, "Statement by H.E. Mr. Marat Tazhin, Minister of Foreign Affairs of the Republic of Kazakhstan at the High-Level Segment 7<sup>th</sup> Session of the Human Rights Council," Geneva, March 4, 2008, <http://www2.ohchr.org/english/bodies/hrcouncil/7session/hls/Kazakhstan-E.pdf> (accessed November 20, 2008).

<sup>18</sup> Human Rights Commission under the President of the Republic of Kazakhstan, "Baseline Report on Human Rights in Kazakhstan," Almaty, 2007, pp. 18, 20. There were 3,119 registered legal entities or branches and 376 small religious groups registered with local authorities.

<sup>19</sup> See Decree no. 228 of the President of Kazakhstan Establishing a State Program for Patriotic Education of Citizens of the Republic of Kazakhstan for 2006-2008, October 10, 2006, [http://www.ayalyalakansko.kz/ru/infobaza/prog\\_patriot.shtml](http://www.ayalyalakansko.kz/ru/infobaza/prog_patriot.shtml) (accessed November 10, 2008), chapter 3.

<sup>20</sup> "Kazakhstan cannot tolerate illegal activities of religious movements," Kazinform, January 17, 2008, <http://www.inform.kz/showarticle3.php?lang=rus&id=196600> (accessed November 22, 2008).

beliefs, and practices are at variance with those acceptable to the Religious Administration of Kazakhstan's Muslims, and are branded as "extremist."<sup>21</sup> The prevailing official practice, as well as proposed amendments to the "Law on freedom of religion and religious associations" (see below), aim more at controlling and harassing "non-traditional" groups than at fostering peaceful coexistence.

## Legal Provisions

Freedom of thought, conscience, religion or belief is among the core OSCE human dimension commitments.<sup>22</sup> As noted in the 1975 Helsinki "Declaration on Principles Guiding Relations between Participating States,"

The participating States will respect ... the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.... Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.<sup>23</sup>

In the subsequent three decades, this commitment has been reiterated and advanced at several OSCE summits. For example, in Budapest in 1994 the Participating States reaffirmed their commitment "to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non

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<sup>21</sup> The Religious Administration of Kazakhstan's Muslims, or Muftiat, is the only central Muslim structure in Kazakhstan, though numerous Muslim communities do not associate with it. For those Sunni communities it is associated with, it oversees mosques, appoints imams, issues fatwas, and organizes hajj. The Muftiat's official website is <http://www.muftiat.kz/rus/index.php?p=main> (accessed November 22, 2008).

<sup>22</sup> The commitments entered into by OSCE participating states are not treaties. See "Excerpts from OSCE Human Dimension Commitments, vol. 1, Thematic Compilation," 2nd edition, OSCE/ODIHR, 2005, [http://www.osce.org/documents/tr/2008/03/30435\\_en.pdf](http://www.osce.org/documents/tr/2008/03/30435_en.pdf) (accessed November 10, 2008), point 4.: "The OSCE process is essentially a political process that does not create legally binding norms or principles. Unlike many other human rights documents, OSCE human dimension commitments are politically, rather than legally, binding."

<sup>23</sup> Conference on Security and Co-operation in Europe, "Final Act. Declaration on Principles Guiding Relations between Participating States," Helsinki 1975, principle VII, paras. 1 and 3, [http://www.osce.org/documents/mcs/1975/08/4044\\_en.pdf](http://www.osce.org/documents/mcs/1975/08/4044_en.pdf), (accessed November 22, 2008).

believers,”<sup>24</sup> and in Istanbul in 1999 they committed themselves “to counter such threats to security as violations of ... the freedom of thought, conscience, religion or belief...”<sup>25</sup> As future OSCE chair, Kazakhstan has a particular responsibility to take these commitments seriously.

Article 18 of the International Covenant on Civil and Political Rights guarantees individuals’ right to hold and to manifest their religious beliefs. It states,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.<sup>26</sup>

The article further provides that “freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>27</sup> The UN Human Rights Committee’s General Comment 22 to Article 18 specifies that freedom of thought, including freedom of conscience and religious conviction, is a right that cannot be limited.<sup>28</sup>

Article 27 of the ICCPR states, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

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<sup>24</sup> Conference on Security and Co-operation in Europe, “Budapest Decisions,” Budapest 1994, Chapter VIII, para. 27, [http://www.osce.org/documents/mcs/1994/12/4048\\_en.pdf](http://www.osce.org/documents/mcs/1994/12/4048_en.pdf), (accessed November 22, 2008).

<sup>25</sup> Organization for Security and Co-operation in Europe, “Charter for European Security,” Istanbul 1999, para. 19, [http://www.osce.org/documents/mcs/1999/11/4050\\_en.pdf](http://www.osce.org/documents/mcs/1999/11/4050_en.pdf), (accessed November 22, 2008).

<sup>26</sup> ICCPR, art. 18, paras. 1 and 3.

<sup>27</sup> Under article 4, the ICCPR allows states parties to derogate from certain articles of the covenant in times of emergency that threaten the life of the nation. Article 4 does not permit states to derogate from a number of articles, among them article 18.

<sup>28</sup> Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1at 35 (1994).

The Kazakh Constitution contains the following rights guarantees:

- Article 22, which states, “[E]veryone shall have the right to freedom of conscience. The implementation of the right to freedom of conscience shall not entail or limit universal human and civil rights and responsibilities before the state.”<sup>29</sup>
- Article 39, paragraph 3, which explicitly forbids subjecting the right to freedom of conscience to “any restrictions in any event.”<sup>30</sup>

In 1992 the Kazakh parliament adopted the “Law on freedom of religion and religious association” (hereinafter, law on religion). Ten years later, in April 2002, when the government was trying to amend the law, Kazakhstan’s Constitutional Council decided that the proposed amendments were at variance with the constitution. If adopted, the amendments to the law on religion would have allowed unregistered religious groups to be banned; required all missionaries to be registered; and denied legal registration to all Muslim organizations outside the framework of the Religious Administration of Kazakhstan’s Muslims.<sup>31</sup>

In February 2005 President Nazarbaev signed the laws “On combating extremism” and “Introducing changes and amendments to several legislative documents in the Republic of Kazakhstan on issues relating to combat extremist activities,” which introduced provisions similar to those about which the Constitutional Council had raised objections. In July 2005 he signed a law introducing amendments and additions to legislation on the grounds of increasing “national security.” This included amendments to the law on religion which, among other things, forbade the activity of unregistered religious communities and required registration for missionary activities.<sup>32</sup>

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<sup>29</sup> Constitution of the Republic of Kazakhstan, entered into force August 30, 1995.

<sup>30</sup> The full paragraph reads, “Any form of restrictions to the rights and freedoms of the citizens on political grounds shall not be permitted. Rights and freedoms stipulated by articles 10-11; 13-15 paragraph 1 of article 16; article 17; article 19; article 22; paragraph 2 of article 26 of the Constitution shall not be restricted in any event.”

<sup>31</sup> For more details on the decision, see Igor Rotar, “Kazakhstan. Relief and Concern in Wake of Religion Law Ruling,” Keston News Service, April 15–19, 2002, <http://www.minelres.lv/minelres/archive/04242002-15:58:52-22561.html> (accessed November 22, 2008).

<sup>32</sup> Law “On religion and religious association,” art. 4.1 and 4.2. For more details of all amendments see Forum 18, “Kazakhstan: Religious Freedom Survey,” December 2005, [http://www.forum18.org/Archive.php?article\\_id=701](http://www.forum18.org/Archive.php?article_id=701) (accessed November 22, 2008). Article 1.1 of the draft religion law defines “missionary activities” as activities aimed at “spreading the faith” of a religious group.

## The New Draft Law on Religion

Another draft law on religion has been making its way through parliament in 2008, and local human rights groups and minority religious communities are alarmed by its provisions to penalize “unapproved” religious activities.

The draft law, “On introducing changes and additions to certain legislative acts on issues of freedom of religion and religious associations,” (hereinafter, draft religion law) was originally submitted to the parliament in January 2007, but in June it was withdrawn by the government. Local human rights groups believe the government took this step because of the upcoming decision on the OSCE chairmanship.<sup>33</sup> The initiative resurfaced in 2008; on June 11 the Majilis (lower chamber of the parliament) approved it on the first reading. In October 2008 the Senate returned the draft to the Majilis for further consideration. At this writing, the draft religion law is in the Majilis.

The day before the first reading, a confidential legal review made by the ODIHR Advisory Panel on Freedom of Religion or Belief was sent to the government of Kazakhstan. Kazakhstan’s Ministry of Foreign Affairs had made an official request for the review on May 16, 2008. The review’s findings are confidential, but could be made public at the government’s discretion. An exchange of comments on the review between the Ministry of Justice’s Committee on Religious Affairs and the ODIHR, has also remained confidential.

The draft amendments to the 1992 law on religion would establish a two-tier system for official recognition of religious communities, dividing them into two types: religious *groups*, which have no status as a legal person and therefore very limited rights, and religious *associations*, which must have 50 members or more in a given locality.<sup>34</sup> A religious association would be the only legally recognized entity for religious communities, thus penalizing small communities or congregations. The

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<sup>33</sup> Evgeniy Zhovtis, Roman Podoprighora, and Ninel Fokina, Commentary on the Draft Law of the Republic of Kazakhstan on Introducing Changes, Amendments, and Additions to Several Legal Acts of the Republic of Kazakhstan on Freedom of Religion and Religious Associations; Almaty, June 2008, p. 2, [http://www.bureau.kz/data.php?n\\_id=247](http://www.bureau.kz/data.php?n_id=247) (accessed November 11, 2008). This draft religion law would amend a number of laws that deal with religion and religious associations, including the 1992 Law on Religion and Religious Associations, the Criminal Code, etc.

<sup>34</sup> Draft religion law, art. 7.3.



draft religion law would require all communities to reregister within 18 months of the law's entry into force.<sup>35</sup>

Religious “groups” (that is, those with fewer than 50 members in a given locality), would, under the draft religion law, be allowed to meet and pray together only at private places. They would not have the right to engage in missionary work or to rent buildings “that are widely accessible” for the purpose of worship.<sup>36</sup> Religious “groups” must register with local authorities, though the terms of this registration are not set out in the draft law.

Under the draft religion law, any religious activity carried out by a member of a local religious association beyond the locality (city, province, etc.) where the religious association is registered is considered missionary work. Anyone can carry out missionary work if he or she has a state registration to do so. Notably, the version of the draft the Senate sent the Majilis drops previous drafts' provisions allowing only members of religious associations to engage in missionary work and establishing an annual quota for missionaries. But one unjustifiable restriction that remains is the requirement that a registered missionary must secure the agreement of the local government to use any religious literature not submitted with his or her registration documents.<sup>37</sup>

A previous draft proposed a requirement for religious associations to have operated for 10 years in Kazakhstan in order to register, and to its credit, the latest draft of the religion law drops this requirement. The draft religion law would still, however, provide for differential treatment of religious associations based on the number of provinces in which they have adherents, which is another way of defining whether a community belongs to a traditional or “non-traditional” religion. In order to be

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<sup>35</sup> Article 2 of the implementation of the amendments to the draft law “On religion and religious associations.” The article cited here refers to the overall introduction to all of these amendments and sets the terms for their entry into force.

<sup>36</sup> The full text of the proposed article 4.3 reads: 1. A religious group is a group of citizens who voluntarily join on the basis of a community of interests to fulfill spiritual needs, without forming a legal person. 2. Members of a religious group may, only within their circle, and only in spaces belonging to members of the group and within the territory or a registered religious group, carry out religious customs and ceremonies, and study religion and religious education. 3. A religious group may not: 1) Carry out missionary work; 2) establish, rent, or maintain for broad public access places for religious worship or religious gatherings. 4. A religious group is subject to registration by local executive authorities.

<sup>37</sup> Draft religion law, art. 3-2 (5)

registered as a national association, a religious association must have operated in at least five provinces of Kazakhstan without any violation of the law.<sup>38</sup> Even so, the distinction between religious communities has no justification and therefore would amount to discrimination against certain minority religious communities, violating Kazakhstan's obligations under international law.

The draft religion law's article 13 bans distribution of religious literature in state buildings and agencies, healthcare facilities, and on public transport. It would also ban people from going house-to-house to distribute religious materials. Significantly, the draft would effectively restrict the distribution of religious materials to specific circumstances and places, which are determined by local governments. This provision appears to be a violation of freedom of religion as it essentially turns this aspect of religious practice from a right (with only limited and necessary restrictions), to a limited privilege, that is only allowed to take place at the discretion of the government.

The draft religion law would prohibit religious associations from receiving donations from "unlawful sources," without clarifying what these are.<sup>39</sup>

The draft religion law has been widely criticized, both inside Kazakhstan and internationally. Evgeniy Zhovtis, director of the Kazakhstan International Bureau for Human Rights and Rule of Law, Roman Podoprighora, law professor at the Caspian Public University, and Ninel Fokina, chair of the Almaty Helsinki Committee, conclude in their 59-page analysis of the draft religion law that it:

- Is oriented toward restricting rights and establishing a licensing regime;
- Is based on a "presumption of guilt" on the part of religious groups;
- Is open to arbitrary interpretation by the authorities; and
- Restricts rights in ways that fully or partly do not fall within the range of reasonable limits on rights provided for in international law.<sup>40</sup>

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<sup>38</sup> *Ibid.*, art. 7.5.

<sup>39</sup> *Ibid.*, art. 16.

<sup>40</sup> Zhovtis, Podoprighora and Fokina, *Commentary on the Draft Law of the Republic of Kazakhstan on Introducing Changes, Amendments, and Additions to Several Legal Acts of the Republic of Kazakhstan on Freedom of Worship and Religious Associations*.

The Association of Religious Organizations in Kazakhstan (AROK),<sup>41</sup> an officially registered organization representing about 600 mainly Protestant communities, sees the draft religion law as a “real threat to religious tolerance, and a real threat to the stability of the country as a result.”<sup>42</sup>

On July 17, 2008, the United States Commission on International Religious Freedom issued a statement expressing its “deep concern” over the draft religion law in that it “would significantly weaken protections for human rights, including religious freedom.” Felice Gaer, chair of the commission, said, “The religion bill threatens Kazakhstan’s international obligations as a nation to safeguard religious freedom and non-discrimination. Kazakhstan appears to be following the lead of other former Soviet republics that are narrowing the space for religious freedom rather than bolstering protections for it.”<sup>43</sup>

## **Problems of Small Religious Communities**

As noted above, Kazakhstan has about 40 religious communities. Among the smaller religious communities in Kazakhstan include evangelical Christians and other Protestants, independent Muslims, Catholics, Buddhists, Jehovah’s Witnesses, Scientologists.<sup>44</sup> Even aside from the draft religion law, such communities already face a variety of challenges, such as hostile treatment by the media and the authorities, harassment by the police, and various administrative hurdles.

### *Scapegoating in the media*

Representatives of religious groups and human rights activists whom Human Rights Watch interviewed in spring and summer 2008 reported that Kazakhstan’s mass

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<sup>41</sup> AROK was established in 1999, during the first attempt at changing the law on religion. The goal at that time was to gather a group to objectively talk about and put forth a unified position on the new draft religion law and all things connected to religious matters. Today, over 600 religious—mostly protestant—groups are represented in this association.

<sup>42</sup> Human Rights Watch interview with Alexander Klyushev, AROK, Astana, July 25, 2008.

<sup>43</sup> “Kazakhstan: USCIRF Deeply Concerned Over Kazakhstan’s Draft Religious Law,” United States Commission on International Religious Freedom press release, July 17, 2008, [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2231&Itemid=46](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2231&Itemid=46) (accessed November 19, 2008).

<sup>44</sup> According to Ninel Fokina, several dozen religious confessions are present in Kazakhstan today. Human Rights Watch telephone interview with Ninel Fokina, November 10, 2008.

media started to write about “sects” and “non-traditional” religious groups about half a year before the draft religion law was sent to parliament.

An example of the kind of coverage this involved was a major two-page article published on April 16, 2008, in the newspaper *Avitrek-Region* from Karaganda, titled “Victims of sects lose property and health.” The article starts by stating that in 2007 and 2008, 50 leaders and members of “non-traditional” religious associations were charged with criminal or administrative offenses, and 13 persons were deported from Kazakhstan because of illegal “missionary activities.” It then quotes the Office of the Prosecutor General saying that “currently Kazakhstan has 1,870 religious organizations whose activities are a threat to national security and stability.”<sup>45</sup>

Alexander Klyushev from AROK is concerned about the scapegoating of certain Christian groups:

I can see that there is a very negative opinion toward evangelical Christians, especially in the south and west parts of Kazakhstan. I can see this in the media when they publish negative articles on evangelical and Protestant churches calling them sectarians. There are a lot of activities by the local authorities, accusing religious association[s] without cause of espionage and agitation for religious dissension. We see what is going on and we find it very disturbing.<sup>46</sup>

According to Yuri Timofeev, head of the Lutheran church in Astana, the media campaign against religious groups started in winter 2007 and continued through spring 2008. One aspect of the campaign was the expanded use of the term “non-traditional religions.” Widely circulated articles were calling for religious organizations “to leave” Kazakhstan because they were “problematic.” The articles were anti-Protestant and hostile to non-traditional Islamic believers, in other words those who worship along lines not approved by the Religious Administration of

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<sup>45</sup> Olga Kabargina, “Victims of sects loose property and health,” *Avitrek-Region*, April 16, 2008.

<sup>46</sup> Human Rights Watch interview with Alexander Klyushev, July 25, 2008.

Kazakhstan's Muslims.<sup>47</sup> Timofeev noted wryly, "It's as if it was decided that non-traditional religions pose a security threat to spiritual health."<sup>48</sup>

### *Denial of registration, police raids, and inspections*

Several religious communities reported obstruction by registration authorities and harassment by the police. For example, a group of Jehovah's Witnesses<sup>49</sup> in Atyrau province has been trying to register for seven years, and say they have been refused on petty grounds time after time. On their fifth attempt, they were refused because they allegedly failed to provide the office phone numbers of their members. "But many of them are pensioners and do not have an office phone," a representative of the Jehovah's Witness Religious Center in Almaty told Human Rights Watch. A sixth attempt at registration was made in January 2008, and when interviewed in July, the representative noted that "so far we have only received a very interesting letter, saying that the Atyrau authorities have too few specialists in their province to be able to adequately consider applications for accreditation."<sup>50</sup> The application was denied in September because, according to one of the Jehovah's Witnesses representatives, the identification document of one of the founding members had expired.<sup>51</sup>

The representative also said that the authorities apparently do have sufficient staff to harass the community. On May 6, 2007, officials of the Atyrau province prosecutor's office conducted a raid during a prayer gathering in the home of one of the Jehovah's Witnesses. They charged the six participants with illegally conducting worship without registration, and all six received administrative fines. The Jehovah's Witnesses contested the ruling, but in both appeals the first court's verdicts were upheld. A year later, in 2008, the authorities raided another prayer meeting of the same six people, plus two others. Each person was charged with illegally conducting

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<sup>47</sup> Human Rights Watch interview with Yury Timofeev, Lutheran mission in Astana, July 28, 2008.

<sup>48</sup> Ibid.

<sup>49</sup> The Jehovah's Witnesses have been operating in Kazakhstan for over 100 years. They have registered 67 local communities in various locations in Kazakhstan since 1991-92. In 1997 the Jehovah's Witnesses registered a national center.

<sup>50</sup> Human Rights Watch interview with a representative of the Jehovah's Witnesses Religious Center (name withheld), Almaty, July 30, 2008.

<sup>51</sup> Human Rights Watch telephone interview with the same representative of the Jehovah's Witnesses Religious Center (name withheld), November 17, 2008.

worship and fined 58,400 tenge (the equivalent of US\$500), with the exception of the person whom authorities identified as the group's leader, who was fined double that amount.<sup>52</sup>

In Kyzylorda province the Jehovah's Witnesses community is registered. But on March 22, 2008, the procuracy raided a prayer meeting they held in a rented location. The authorities let the participants finish their prayers and then filed administrative charges against them for not gathering at the community's official address. In late May the court decided to halt the activities of the community for six months, and this decision was upheld on appeal. "For six months this community has [had] no rights at all," said a representative of the Jehovah's Witnesses Religious Center. "They can neither meet at a private place nor anywhere else."<sup>53</sup>

The Karaganda mission of the Scientology Church<sup>54</sup> underwent two financial audits in spring 2008, one in April and one in May. In addition to checking the group's financial records, the Ministry of Justice sent its operating statute for an expert analysis. Then the mission was told to reregister as a commercial organization on grounds that Scientology is not a religion but an "applied religious philosophy." This is applying a new standard, as the same statute was accepted without problems when the mission registered in 2000. The decision also applied retroactively; it meant that this particular Scientology mission must pay back taxes for the last several years, because its status as a non-taxable religious organization was effectively revoked. So far the other four missions in Kazakhstan have not faced the same problem.<sup>55</sup>

Problems for the Grace Church started on August 24, 2007, when police raided its buildings as well as the apartments of its followers in Karaganda.<sup>56</sup> "The police seized all kinds of data carriers—computers, flashsticks, CDs," Dmitry Kan, bishop of

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Scientology has been registered in Kazakhstan since 2000 and has five missions in the country.

<sup>55</sup> Human Rights Watch interview with Vadim Vitushkin, Scientology Church Karaganda, July 29, 2008.

<sup>56</sup> According to its website, Grace Church is a Christian church with branches in Kazakhstan, Uzbekistan, Mongolia, and Germany. Its mission is "spiritual healing of the community." See [http://grace.church.kz/index.php?option=com\\_content&task=view&id=12&Itemid=81](http://grace.church.kz/index.php?option=com_content&task=view&id=12&Itemid=81) (accessed November 11, 2008).

the National Missionary Christian Center Grace in Karaganda, told Human Rights Watch. Church members were accused of spying, possessing psychotropic drugs, inciting inter-religious enmity, and tax fraud.

Bishop Kan emphasized, “To date, not a single criminal or administrative case has been opened based on the results of this raid. But the media had reported extensively about the accusations and damaged our image.”<sup>57</sup> For example, the *Noviy Vestnik* newspaper published an article titled “Church spying scandal” three weeks after the raid—reporting that the provincial procuracy had officially “stated its interest” in the activities of Grace Church.<sup>58</sup>

Other raids followed in Almaty on January 25 and Kyzylorda on April 15, 2008. The Grace Church has been trying to register a branch in Atyrau for four years without success.<sup>59</sup>

### *Crackdown on missionaries*

A key point of friction between the authorities and small religious groups is missionary activity. This is not a new development; restrictions on missionary activity were part of the proposed amendments to the religion law in 2002. Declared unconstitutional then, the restrictions were nevertheless adopted in 2005. A newly added article 4.1 of the religion law requires all citizens and foreigners engaged in missionary activity to register annually with the Ministry of Justice. They must provide information on religious affiliation, name the territory or territories in which they will carry out their missionary work, and state the time period for conducting that work. All literature and other materials to be used to support missionary work must be provided with the registration application; the use of materials not vetted during the registration process is illegal. In addition, a missionary must produce registration documents, and a power of attorney, from the sponsoring religious organization to be allowed to work on its behalf. The article specifically bans all missionary activity by any individual who does not have a registration.<sup>60</sup> The amendments regarding

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<sup>57</sup> Human Rights Watch interview with Dmitry Kan, Grace Church, Karaganda, July 29, 2008

<sup>58</sup> “Church spying scandal,” *Noviy Vestnik*, September 19, 2007.

<sup>59</sup> Human Rights Watch interview with Dmitry Kan, July 29, 2008.

<sup>60</sup> Law “On religion and religious associations,” art. 4.1.

missionary activity in the new draft law on religion further tighten these restrictions, as noted above.

As of July 2008 according to the Ministry of Justice, 362 foreign missionaries from various religious movements were working in Kazakhstan.<sup>61</sup>

Beginning in 1999 Kazakh authorities have detained several dozen people suspected of Islamic “fundamentalism,” and representatives of religious communities have told Human Rights Watch that in summer 2008 the authorities started a crackdown on Islamic missionaries.<sup>62</sup> For example, in Akmola province, eight missionaries were accused of terrorism and put on trial. Anara Ibraeva, director of the Astana branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, who met with one of the defendants and monitored the case, said it was a travesty: “There were so many violations, so many mistakes in the court documents. It was unbelievable.”<sup>63</sup> It is not clear what, if any, specific act of terrorism the group was alleged to have plotted or committed. Ibraeva said that at trial at least five prosecution witnesses retracted their testimony, stating that it had been coerced by the security services, and that other witness testimony was secret and not aired in court. One of the defendants said all eight were hooded and beaten while being transferred between detention facilities, but there was no meaningful investigation into the incident. In February 2008 the eight were convicted on charges of terrorism, inciting ethnic enmity, unlawful possession of weapons, and unlawful preparation of weapons.

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<sup>61</sup> “Kazakhstan authorities oust foreign missionaries,” Interfax, July 29, 2008, <http://www.interfax-religion.com/?act=news&div=5013> (accessed November 22, 2008).

<sup>62</sup> Those targeted are religious Muslims who pray in private homes rather than in mosques affiliated with the Religious Administration of Kazakhstan’s Muslims, adopt a strict interpretation of the Koran, wear untrimmed beards, study Arabic in private and attempt to study the Quran in Arabic, and believe in the need to restore Islamic law in Muslim lands. They are often branded by the authorities as “Wahhabis.” Since 1999 there have been several rounds of arrests of such religious Muslims, sometimes on charges of possession of “extremist” literature, but more often on illegal narcotics or weapons possession charges. Those detained have claimed the weapons, usually a bullet or two, and narcotics, usually a gram of heroin, were planted by police. See Memorial Human Rights Center, “Kazakhstan: Struggle against ‘Salafites’ in Mangyshlak,” Moscow, January 31, 2007. On file with Human Rights Watch.

<sup>63</sup> Human Rights Watch interview with Anara Ibraeva, Kazakhstan International Bureau for Human Rights and Rule of Law, Astana, July 28, 2008.



The website Ferghana.Ru reported the arrest of 17 Islamic missionaries—two from Russia, the rest from Uzbekistan—in Shymkent on August 8, 2008.<sup>64</sup> The men in the group were handed a 24-hour detention sentence and deportation for engaging in illegal missionary work; the women in the group were sentenced to a fine of about US\$400 and deportation. The entire group was deported. The Interfax news service reported on July 27 that a missionary with Tabligi Jamaat, a Muslim missionary and revival movement, had been detained. The man, a Kyrgyz national, was charged with engaging in missionary work without being registered as a missionary. He was sentenced to 24 hours of misdemeanor detention and deportation; he was deported upon his release.<sup>65</sup>

On July 29, 2008, Minister of Justice Zagipa Baliyeva confirmed publicly that “a large number of foreigners from the United States, Georgia, South Korea, and Japan were expelled from the country by law enforcement authorities following court decisions for violating regulations while working as missionaries without the required registration.” She mentioned explicitly the head of Narconon, an organization associated with the Church of Scientology that promotes a rehabilitation program for narcotic drug users, and seven groups of Tabligi Jamaat missionaries. In her press statement she also said the authorities had “revealed 27 instances of violation of the law on freedom of religion and religious organizations by heads of non-traditional religious organizations, including the possession of material containing propaganda of radical ideas and the teachings of non-traditional religions.”<sup>66</sup>

Maksim Varfolomeev, public spokesman for Krishna Consciousness,<sup>67</sup> explained that it is very easy to accuse somebody of illegal missionary activities:

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<sup>64</sup>“Kazakhstan: Illegal Missionaries – Russian and Uzbek Nationals – Expelled from the Country,” Ferghana.Ru, August 8, 2008, <http://www.ferghana.ru/news.php?id=9868> (accessed November 22, 2008).

<sup>65</sup>“Missionary from Unregistered Movement Tabligi Jamaat to be Expelled from Kazakhstan,” Interfax, July 27, 2008, <http://www.interfax-religion.ru/kaz/?act=news&div=19465>, (accessed November 22, 2008).

<sup>66</sup> “Kazakhstan authorities oust foreign missionaries,” Interfax, July 29, 2008, <http://www.interfax-religion.com/?act=news&div=5013> (accessed November 22, 2008).

<sup>67</sup> Krishna Consciousness started operating in Kazakhstan in 1999. Currently there are about 500 active members and about 1,000 friends and family. They seek to live, and promote by example, an “alternative form of being.” Until 1999 Krishna Consciousness met in a private apartment in Almaty.

For example, Krishna Consciousness has registered six or seven communities in Kazakhstan. Every community can invite foreign guests to pray or teach, but this person cannot travel to one of the other communities to pray and teach there. If the Almaty community invites somebody this same person must separately register as a missionary with the authorities in Semipalatinsk when he is going to our community there. ... I have to say that in recent months the number of deportations of foreigners rocketed upwards.<sup>68</sup>

Varfolomeev described the deportation of the Krishna Consciousness Central Asia director, a US national, who was invited by the community in Aktobe and then came to Almaty. He tried to register as a missionary with the authorities in Almaty but due to the lack of certain documents he was denied registration.

The authorities told him that he could not carry out missionary activities but could meet with other followers of Krishna Consciousness at home. So he cancelled his official program and stayed at [their homes]. One evening several followers of Krishna Consciousness came to visit him and after 15 minutes two officers from the Department of Combatting Terrorism, Separatism and Religious Extremism of the Ministry of Interior showed up and accused him of illegal missionary activities. They told him that one of his visitors had recorded his “singing” on a cell phone and this would be used as evidence. When he returned to Aktobe, the procuracy and the state security police (KNB) issued a decision to deny him reentry to Kazakhstan for five years. We did not receive a report or a court decision. We learned accidentally about this decision.<sup>69</sup>

In theory, illegal missionary activity carries the threat of first a warning, then a fine, and lastly deportation. But according to Varfolomeev, there are very few incidents in

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<sup>68</sup> Human Rights Watch interview with Maksim Varfolomeev, Krishna Consciousness, Almaty, July 20, 2008.

<sup>69</sup> Ibid. Only after the Central Asia leader was deported did the Krishna Consciousness community learn there had been a court ruling ordering the deportation.

which individuals accused of missionary activity are given an official warning. Usually they are just deported.<sup>70</sup>

Yu Sup Bo, the pastor of the Agafe Protestant Church in the Karasay district of Almaty province, was facing deportation when Human Rights Watch visited in July 2008. A Korean national, Yu Sup Bo had been in Kazakhstan since the early 1990s and worked as a missionary since 2000. According to Vladimir Sadikov, a lawyer acting for Yu Sup Bo and her church, she had been accused of doing illegal missionary work. Sadikov had appealed the deportation order, and was awaiting the final decision. He saw the move against the pastor as a direct attempt to close the church, which had been facing other pressures also, as described below.<sup>71</sup>

### *Land and property disputes*

Two religious groups—Krishna Consciousness and the Agafe Protestant Church—told Human Rights Watch in July that they were involved in land and property disputes with the authorities. Forum 18, a Christian initiative that reports on threats against religious freedom against any group, regardless of affiliation, reported in August that it was aware of six property cases against Christian and Muslim communities that were initiated since mid-June 2008 in Almaty province alone.<sup>72</sup>

The conflict about the land belonging to Krishna Consciousness in Almaty province has gone on for several years. There are two plots of contested land: a cooperative farm on one side of a road and, on the other, 60 small houses (*dachas*) that Krishna Consciousness bought in a private transaction and renovated between 1999 and 2003. In 2002, three Krishna Consciousness members bought the farm and registered Krishna Consciousness in Almaty province.

In 2003 the authorities made their first attempt at invalidating the Krishna Consciousness registration. In 2004, changing tactics, the authorities began arguing

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<sup>70</sup> Ibid.

<sup>71</sup> Human Rights Watch interview with Vladimir Sadikov, Almaty, July 27, 2008.

<sup>72</sup> Forum 18, "Kazakhstan: Nationwide religious property seizures continue," August 20, 2008, [http://www.forum18.org/Archive.php?article\\_id=1174](http://www.forum18.org/Archive.php?article_id=1174) (accessed October 21).

that the community could not remain because it was not farming, but conducting religious activities.<sup>73</sup>

From 2003 to 2006, moreover, the local mayor stalled the process by which Krishna Consciousness members could regularize the purchase of their dachas with the local government. He told them that he would privatize their dachas if they formally wrote out a statement that they were not members of Krishna Consciousness. When a group of Krishna Consciousness members collectively complained to the mayor in 2006 he responded by accusing them of using their dachas inappropriately and of not having state registration for the houses. Also in 2006 the local government won a lawsuit on claims that Krishna Consciousness had illegally acquired the land.<sup>74</sup> Subsequently, 26 dachas were seized and bulldozed—12 of them in November 2006 and 14 in June 2007. In addition, the authorities seized 116 acres of farm land. Varfolomeev believes that the land dispute is more than an economic matter because “in every claim you find the phrase that the dachas are use[d] as religious objects to host members of Krishna Consciousness.”<sup>75</sup> The 2006 court ruling did not set out monetary compensation, and the Krishna Consciousness community received none.

After Krishna Consciousness complained to various international actors such as the OSCE, the Kazakh government started to announce they would offer the community an alternative location for its shrine and farm. First Krishna Consciousness was offered a site in the desert, 70 kilometers away from Almaty, where there were no roads, electricity, or schools. When they refused, they were offered two other sites, one of them an abandoned cemetery, the other a land tract a fraction of the size of the land they occupy now and being used by local villages as a garbage dump. The site is recognized as an “industrial zone.” Krishna Consciousness did not agree to this offer either, although they were being pressured by the authorities to sign a contract before the session of the OSCE Parliamentary Assembly in Astana in early July 2008. Varfolomeev commented, “We could feel that the pressure became stronger the closer the session came, and it was clear that they needed our signature

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<sup>73</sup> Human Rights Watch interview with Maksim Varfolomeev, Krishna Consciousness, Almaty, July 22, 2008.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

so that they could say the conflict was solved.”<sup>76</sup> Krishna Consciousness continues to dispute the land seizure in court; at this writing the trial had been twice postponed and was scheduled to resume on November 25.<sup>77</sup>

The Agafe Protestant Church in Karasay district of Almaty province is currently also at risk of losing its property. In 1997 the mission purchased land from the previous owner; it then transferred ownership again in 2000 to the church. On this land, the building that the church is currently using is a former “house of culture.” According to the church’s lawyer, when the mission bought the land and building had fallen into disuse: people were stealing bricks from the building and there was no electricity. The mission and later the church did some repair but the authorities want to seize the building because, they say, it is in such bad shape it poses a “danger to society.” Another of the church’s lawyers told Human Rights Watch that the church had installed new plumbing and electrical wiring, and that the building was in decent shape.<sup>78</sup> The lawyer Vladimir Sadikov said that people whom he identified as being close to the authorities approached him to buy him off and when he refused to accept their bribe, they threatened to break his legs.<sup>79</sup>

## Independent Muslims

In 2005, on the grounds of combating terrorism, Kazakhstan’s Supreme Court designated 11 international organizations as “terrorist,” banning their activity in Kazakhstan.<sup>80</sup> All but one are Islamist organizations, such as al Qaeda and the Islamic Movement of Uzbekistan.<sup>81</sup> Since then, a local human rights group has tried to get copies of the court decisions to learn the basis on which the organizations were declared terrorist and therefore illegal. The group has received only an “informal” response, to the effect that “the decisions cannot be made public

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<sup>76</sup> Ibid.

<sup>77</sup> Human Rights Watch telephone interview with Maksim Varfolomeev, November 17, 2008.

<sup>78</sup> Human Rights Watch telephone interview with another lawyer who preferred not to be named, Almaty, October 22, 2008.

<sup>79</sup> Human Rights Watch interview with Vladimir Sadikov, July 27, 2008. The church is located on a land tract very close to one of Almaty’s largest outdoor markets, which is quite valuable.

<sup>80</sup> *Kazakhstan News Bulletin*. vol. 5, no. 11; March 17, 2005. On file with Human Rights Watch.

<sup>81</sup> The one exception is the Kurdish People’s Congress.

because the Kazakh secret service decided the rulings would be for “internal use only.”<sup>82</sup>

Also in 2005, Kazakhstan adopted its “Law on Extremism,” which criminalizes membership in prohibited extremist organizations. According to article 1, extremism is defined as “the organizing and/or the carrying out of actions by a person, group of people or organization in the name of organizations that are formally recognized as extremist.” Since the definition of extremism is, in effect, whatever the state wishes it to be, in theory the state could use it against any religious association. So far, Hizb ut-Tahrir is the only organization banned under the law. Hizb ut-Tahrir is an Islamic party with branches in many parts of the world, including the Middle East and Europe, which advocates for the peaceful restoration of the Caliphate in traditionally Muslim lands. In addition to Kazakhstan it is prohibited in several countries, including Uzbekistan and Russia.<sup>83</sup>

In December 2007 the Kazybek-bi district court of Karaganda sentenced 29 alleged Hizb ut-Tahrir members to between five and seven years’ imprisonment. The defendants were found guilty of instigating social, racial, tribal or religious enmity (Criminal Code article 164, part 1) and participating in a banned religious and extremist organization in the territory of Kazakhstan (article 337-1, part 1).

According to Ninel Fokina of the Almaty Helsinki Committee, only two of the defendants had a defense lawyer of their choice. “Although the verdict was issued on December 27, 2007, the lawyers received it after the New Year holidays when the appeal period had nearly expired.”<sup>84</sup> During a press conference at the end of March 2008, Fokina noted that the trial was closed to relatives, media, and public organizations and that it was difficult for lawyers, relatives, and human rights

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<sup>82</sup> Human Rights Watch interview with a representative of a human rights group in Kazakhstan, name, date, and location withheld.

<sup>83</sup> For a detailed account of the persecution of independent Muslims in Uzbekistan see Human Rights Watch, *Creating Enemies of the State: Religious Persecution in Uzbekistan* (New York: Human Rights Watch, 2004), <http://hrw.org/reports/2004/uzbekistan0304/>.

<sup>84</sup> Human Rights Watch interview with Ninel Fokina, Almaty Helsinki Committee, Almaty, March 5, 2008.

organizations to receive any official information on the case from the authorities.<sup>85</sup>

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<sup>85</sup> The full transcript of the press conference is available at [www.kyrgyznews.kg/news/apart/comments/16391](http://www.kyrgyznews.kg/news/apart/comments/16391) (accessed November 22, 2008).

## IV. The Right to Freedom of Expression

Kazakhstan does not meet OSCE commitments, or its obligations under international law in general, in relation to the promotion and protection of freedom of expression. The broadcast media are dominated by government loyalists, and a growing proportion of the nation's media outlets are directly owned by the government.

Independent journalists are threatened and harassed for criticizing the president or government policies and practices. Libel continues to be a criminal offense, with harsh penalties including imprisonment and hard labor. Journalists have little, if any, protection from civil libel claims, and there is no legal limit on damages: the result is that spurious cases are frequently brought against journalists who, in many cases, feel obliged to pay out in settlement out of court. These conditions contribute to an atmosphere of anxiety and self-censorship among media professionals.

### Legal Provisions

Kazakhstan, as a state party to the International Covenant on Civil and Political Rights, is obligated to protect the right to freedom of expression, as set out in article 19 of that covenant:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre publique*), or of public health or morals.



Various OSCE documents also commit participating states to protect the freedom of expression. For example, the Istanbul Charter on European Security of the OSCE states,

We [participating states] reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded trans-border and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.<sup>86</sup>

The participants in the 1991 Moscow meeting of the then CSCE's Human Dimension Conference unambiguously agreed that "independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms,"<sup>87</sup> and that any "restriction in the exercise of the right of expression of opinion will be prescribed by law and in accordance with international standards."<sup>88</sup>

Kazakhstan's domestic law also guarantees the right to freedom of expression. Article 20 of the Kazakh Constitution guarantees each citizen "freedom of speech" and enshrines "the right to freely receive and disseminate information by any means not prohibited by law. Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence shall not be allowed." The same article prohibits censorship.<sup>89</sup>

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<sup>86</sup> Organization for Security and Co-operation in Europe, "Charter for European Security," para. 26.

<sup>87</sup> Conference on Security and Co-operation in Europe, "Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE," Moscow, October 3, 1991, para. 26, [http://www.hrni.org/EN/instruments\\_list.php?i=1&j=2&title=General%20Instruments%20in%20the%20Regional%20Systems](http://www.hrni.org/EN/instruments_list.php?i=1&j=2&title=General%20Instruments%20in%20the%20Regional%20Systems), (accessed November 22, 2008).

<sup>88</sup> *Ibid.*, para. 26.1.

<sup>89</sup> Constitution of the Republic of Kazakhstan, art. 20.

Article 2 of the current law “On mass media” reaffirms the provisions made in the constitution but states, “It is not allowed to disclose information that constitutes state secrets or other secrets protected by law; propagate and justify extremism or terrorism; disseminate information revealing techniques and tactics of antiterrorist operations during their implementation; promote the use of narcotic drugs, psychotropic substances and precursors; as well as pornography.”<sup>90</sup>

## The New Draft Law on Mass Media

On November 29, 2007, Foreign Minister Tazhin promised the OSCE in Madrid that his government was “going to incorporate various proposals into a consolidated bill to amend the media law, which will reflect the OSCE recommendations as well.”<sup>91</sup> But two months later, in January 2008, the Ministry of Culture, Information and Public Accord rejected for the second time a draft media law compiled and proposed by a group including civil society representatives.

A notable aspect of the civil society draft was its proposal to liberalize the registration procedures for media outlets. The current system requires new media outlets to secure permission from the Ministry of Culture in order to begin operating; the ministry requires the compilation of documentation that is cumbersome, and itself often drags out the process for many months. Under the draft, new outlets would have needed only to inform the Ministry of Culture in order to start operating.<sup>92</sup>

After its January rejection of the draft, the ministry announced that a new law would be drafted, and established a working group consisting of 10 government and four NGO representatives to discuss proposals for a new draft. During the first meeting of

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<sup>90</sup> Law “On Mass media,” 1999, art. 2, para. 3.

<sup>91</sup> See Government of the Republic of Kazakhstan, “Address of H.E. Dr. Marat Tazhin, Minister of Foreign Affairs of the Republic of Kazakhstan, at the OSCE Ministerial Meeting, Madrid,” November 29, 2007, <http://en.government.kz/documents/publications/page09>, (accessed November 22, 2008). While Tazhin did not specify what these recommendations were, he highlighted three areas of media issues: “reducing criminal liability [sic] for defamation,” “developing media self-regulating mechanisms,” and “liberalizing the registration procedures for media outlets.”

<sup>92</sup> 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.

this working group, the government participants suggested several amendments to the mass media law, which appear to be reflected in the draft law the government sent to parliament on November 11, 2008. The draft amendments would abolish the registration requirement for electronic (that is, television and radio) media, protect the right of journalists to maintain confidentiality of sources (except in “special cases”), allow journalists to taperecord interviews without the interviewee’s consent, and reduce criminal penalties for libel. According to the media watchdog organization Adil Soz (one of the participants in the working group), the first suggestion is insignificant because all TV and radio stations must obtain a broadcasting license from the government, making registration a rather unimportant issue for them. The proposed exception for “special cases,” with respect to maintaining the confidentiality of sources, refers to the exceptional need to reveal sources that are critical to solving a crime. This, however, could open up a loophole.<sup>93</sup> And the proposal of reducing the current maximum penalty of six months imprisonment<sup>94</sup> for criminal libel would not address the real problem that having such an offense in criminal law causes to free expression. According to Adil Soz no journalist has actually been imprisoned for libel during the past 10 years. The problem is rather that the threat of prosecution for criminal libel is used by the authorities to silence journalists.<sup>95</sup>

Criminal libel laws are routinely used to intimidate and silence opposition media and political activists, to keep pressure on them, and to keep them occupied in defending legal cases against them (see below). Media watchdogs generally argue that libel should be dealt with as a civil issue between two individuals or legal entities, not a criminal act.<sup>96</sup> So far, all attempts by journalist and media

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<sup>93</sup> “The government has adopted draft amendments to the mass media law. Adil Soz believes they have almost no significance for improving freedom of expression,” Adil Soz, November 11, 2008, <http://www.adilsoz.kz/site.php?lan=russian&id=207&newsid=1156> (accessed November 23, 2008).

<sup>94</sup> Article 129, paragraph 2 of Kazakhstan’s Criminal Code 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 labor 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.”

<sup>95</sup> Human Rights Watch interview with Tamara Kaleeva, Adil Soz, June 2, 2008.

<sup>96</sup> The OSCE Representative on Freedom of the Media, for example, has consistently urged governments to repeal criminal libel laws or place a moratorium on them. Among the challenges to media freedoms the office of the representative noted in its 2008 factsheet was “Criminalization of journalists’ professional mistakes, for example defamation, that could be handled by

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, 2008, was postponed indefinitely without explanation, although the appointment of a new minister of culture may have been 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 the working group. According to Adil Soz, it did 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.”<sup>97</sup> After the third meeting of the working group on September 17, Adil Soz issued a statement that the draft law presented by the ministry contained only very few superficial changes suggested by civil society groups and that it can be considered at best “a tiny first step” toward meeting international standards.<sup>98</sup>

## Media Background

Although numerous, media outlets in Kazakhstan remain substantially under government control through a variety of direct and indirect means. Of some 2,500

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civil suits or professional self-regulation. See OSCE, Factsheet of the OSCE Representative on Freedom of the Media, July 9, 2008, [http://www.osce.org/publications/rfm/2008/03/30425\\_1083\\_en.pdf](http://www.osce.org/publications/rfm/2008/03/30425_1083_en.pdf) (accessed November 11, 2008).

<sup>97</sup> Human Rights Watch telephone interview with Tamara Kaleeva, Adil Soz, July 21, 2008.

<sup>98</sup> Adil Soz, “We support the Ministry of Culture and Information’s draft law only as the beginning stage of the democratization of the media law,” September 19, 2008, <http://www.adilsoz.kz/?lan=russian&id=207&newsid=1137> (accessed November 22, 2008). The statement said that the new draft law left out such important issues as a ban on monopolization of the media, substituting the current registration system from a licensing regime to a notification regime, and lowering sums allotted for civil defamation.

functioning media outlets,<sup>99</sup> a growing proportion are owned outright by the government.<sup>100</sup>

Most Kazakh media organizations are local or regional, but eight television channels, four radio stations and twenty newspapers enjoy national coverage.<sup>101</sup> Among the more influential print publications are the state-owned *Kazakhstanskaya Pravda* and *Yegeman Kazakhstan*, whose editors-in-chief are appointed by the government, as well as the popular magazine *Karavan* and the independent newspaper *Vremya*. National publications have average circulation rates in excess of 100,000 copies.<sup>102</sup> Major television outlets include the state-owned Kazakh TV and Eurasia TV, as well as Khabar TV and Kazakh Commercial Television (KTK).

The government consolidated its control over the media when Samgau, a state-owned company, purchased all the remaining privately-held stock in Khabar, once the country's most important private media group, at an auction on March 21, 2008.<sup>103</sup> Khabar, which controls *Karavan*, Khabar TV, and another national television station, Caspionet, was previously owned by Rakhat Aliev, the then-husband of Dariga Nazarbaeva, the president's daughter. It owns the only TV channel that can be seen in all 16 provinces of Kazakhstan. In 2007 Aliev, who had fallen out of favor with the government, began to criticize the government through his media holdings. Kazakh prosecutors charged Aliev, then serving as his country's ambassador to the

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<sup>99</sup> Figures for the number of media outlets vary. For example, in July 2006, the Centrasia news agency quoted official figure as 6646 "N. Nazarbaev confirmed the 'Concept of developing civil society' in Kazakhstan until 2011," Centrasia.ru, July 30, 2006, <http://www.centrasia.ru/newsA.php?st=1154269740> (accessed, November 25, 2008). Foreign Minister Tazhin said that there were more than 8000 outlets, "Address of H.E. Dr. Marat Tazhin, Minister of Foreign Affairs of the Republic of Kazakhstan, at the OSCE Ministerial Meeting, Madrid," November 29, 2007, <http://en.government.kz/documents/publications/page09> (accessed November 22, 2008). Kazakh Minister of Culture acknowledged that "6000 media outlets are registered in Kazakhstan, but only one third of them is functioning," *The Journal of Turkish Weekly*, April 20, 2006, <http://www.turkishweekly.net/news.php?id=30205>, (accessed November 25, 2008).

<sup>100</sup> US Department of State, *Kazakhstan, Country Report of Human Rights Practices 2007*, March 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100615.htm>, (accessed November 22, 2008).

<sup>101</sup> Urban Media, *Kazakhstan Media Market – Overview 2005-2006*, <http://www.impz.ae/wp-content/files/File/Kazakhstan-Media%20market%20overview.pdf>, (accessed November 22, 2008).

<sup>102</sup> *Ibid.*

<sup>103</sup> Marina Baymukhamedova, "Kazak [sic] State Tightens Grip on Media," *Institute for War and Peace Reporting Central Asia*, No. 539, March 31, 2008, [http://www.iwpr.net/?p=rca&s=f&o=343708&apc\\_state=henirca200803](http://www.iwpr.net/?p=rca&s=f&o=343708&apc_state=henirca200803), (accessed November 22, 2008).

OSCE, with among other things, kidnapping two prominent Kazakh bankers.<sup>104</sup> In March 2008 a Kazakh court sentenced him in absentia to 20 years' imprisonment for the kidnappings and several other grave crimes, and stripped him of his assets, leaving the company open to the government buyout, and he was later handed another 20-year in absentia sentence for plotting to overthrow the government.

In July 2008 the government's most important media assets, including Khabar, were combined into a government-created holding company, Arna Media, which would imply either full or informal but effective government control over it.<sup>105</sup>

Nongovernmental organizations that monitor the media, such as Adil Soz and MediaNet, therefore interpreted this development as a further attempt by the government to ensure no further development of the independent media.

While major radio and TV outlets have long been under the control of the government and websites critical of the government are often blocked by the authorities, print media still have some scope for investigative journalism, criticism of the government, and other manifestations of freedom of expression. The degree of freedom, however, depends on the relationship the newspaper and its editor-in-chief have with the local authorities. Gulzhan Ergalieva, chief editor of the Russian-language independent *Svoboda Slova*, which is published several times per week, believes that the question of free speech and the degree of media freedom depend largely on the key figures advising the president:

Mass media is under regular attention and control of the authorities. They have categorized the media and in their relation with each newspaper they proceed according to a certain tactic. For example, is

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<sup>104</sup> Aliev was also charged with armed attempt to overthrow the government, disclosure of state secrets, illegal possession of weapons, involvement in organized crime, theft, and abuse of office. See "Former Son-In-Law of the Kazakh President Sentenced to 20 Years for Military [sic] Crimes," <http://www.regnum.ru/news/976886.html> (accessed November 11, 2008).

<sup>105</sup> Bruce Pannier, New Kazakh Media Company Bodes Ill For Independent Press, Radio Free Europe/Radio Free Liberty, July 12, 2008, [http://www.rferl.org/content/New\\_Kazakh\\_Media\\_Company\\_Bodes\\_Ill\\_For\\_Independent\\_Press/1183277.html](http://www.rferl.org/content/New_Kazakh_Media_Company_Bodes_Ill_For_Independent_Press/1183277.html), (accessed November 22, 2008).

it possible to make a deal with this newspaper? How shall we approach this newspaper, as a whole or its parts?<sup>106</sup>

In July Ergalieva gave the opinion that, in connection with Kazakhstan's 2010 chairmanship of the OSCE, the government recognized that a free press is needed to a certain extent, and therefore tolerates print media such as *Svoboda Slova*. The government uses the paper as a means to attest that media freedom exists, she contended: "Nazarbaev tries to improve his rating, and the existence of some independent newspapers is a plus for him."<sup>107</sup>

Not every newspaper has had this good fortune. In February 2008 an Astana court ordered the independent newspaper *Law and Justice* closed on grounds that it was improperly registered. Tokbergen Abiev, the editor-in-chief, said the court made its decision based on a mix-up between two different companies of the same name. He believed the confusion to be deliberate and politically motivated: *Law and Justice* had recently published allegations of corruption among the judiciary. It was the first closure of an independent newspaper in Kazakhstan in more than a year.<sup>108</sup>

## Restrictions on Freedom of Expression

Journalists have described to Human Rights Watch how they operate in an environment of anxiety, fueled by having to deal with constant lawsuits and, at times, direct threats to their person. Even if journalists do not admit to self-censorship, they do speak privately of the tightly regulated environment and topics they decided not to cover. As Gulzhan Ergalieva put it, journalists are considered to be either for the government or anti-government—"either you are ours or the enemy." Any media that present a critical view of the authorities are immediately labeled "oppositionist."<sup>109</sup> Threatening phone calls, visits by the police, and successive lawsuits are common.

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<sup>106</sup> The options the government uses to influence a newspaper can range from pressuring its editor-in-chief, pressure heads of its thematic or regional departments, threatening the entire newspaper with a lawsuit, or threatening individuals, journalists with lawsuits or other acts of reprisal.

Human Rights Watch interview with Gulzhan Ergalieva, *Svoboda Slova*, Almaty, July 25, 2008.

<sup>107</sup> *Ibid.*

<sup>108</sup> Bruce Pannier, "Kazakhstan: One of Few Independent Newspapers Faces Closure," *Eurasia Insight*, February 17, 2008, <http://www.eurasianet.org/departments/insight/articles/pp021808.shtml> (accessed November 22, 2008).

<sup>109</sup> Human Rights Watch interview with Gulzhan Ergalieva, *Svoboda Slova*, Almaty, July 25, 2008.

### *Threats and harrassment*

Arrests, beatings, and imprisonment of journalists are rare in Kazakhstan. A glaring exception was the brutal beating of Marcus Bensmann, a German independent investigative journalist. Between 3 and 4 a.m. on the morning of January 20, 2008, the 38-year-old journalist left the Chocolate night club, where he was researching a documentary on Astana as a booming city. Around three hours later, a passerby found Bensmann on the street, beaten and without shoes or a jacket, in -20°C, windy weather. Bensmann was registered at a private hospital at 8:05 a.m. and diagnosed with a skull fracture, fractured jaw and ribs, and frostbitten limbs.<sup>110</sup> He was repatriated to Germany shortly thereafter, where he underwent further hospital treatment.

Ten days later police arrested three people in connection with the assault. In July, Kazakh Ministry of Internal Affairs officials traveled to Germany to return to Bensmann items the assailants had stolen—including his cell phones, shoes, watch, and jacket—and to take Bensmann’s statement about the incident.<sup>111</sup>

The assailants were charged with robbery, endangerment, and unlawful deprivation of freedom, charges that do not reflect the gravity of the injuries Bensmann sustained.

Because Bensmann was not notified of the trial’s scheduled start in September 2008, his lawyer successfully petitioned to have proceedings postponed until November 21. The trial is in process at this writing.<sup>112</sup>

Kazakh authorities tried to convince Bensmann the assailants sought only to rob him and that the incident had nothing to do with his journalism.<sup>113</sup> While it is not possible for Human Rights Watch to ascribe a motive, Bensmann’s reporting on human rights

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<sup>110</sup> “Kazakhstan: Investigate Attack on German Journalist,” Human Rights Watch press release, January 22, 2008, <http://www.hrw.org/en/news/2008/01/22/kazakhstan-investigate-attack-german-journalist>, (accessed November 23, 2008).

<sup>111</sup> Human Rights Watch telephone interview with Marcus Bensmann, November 24, 2008.

<sup>112</sup> *Ibid.* Bensmann decided not to attend the trial as his doctor believed, especially given the cold weather in Astana, that this would risk damaging Bensmann’s health.

<sup>113</sup> *Ibid.*



abuses and corruption in Central Asia, as well as the documentary he was researching in January 2008, could potentially have made him a target for assault. Generally, officials use more subtle ways to send intimidating message to journalists and editors not to step out of line. For example, Bakhytgul Mekimbai has been a journalist at the widely distributed independent newspaper *Taszhargan* for about 10 years. Over this time she has been harassed on many occasions. When we met with her, the most recent incident had occurred in March 2008:

One day in March, after I got home from work at around 8:30 p.m., the neighborhood police was ringing my bell. When I asked them what they wanted they told me that they had received anonymous phone calls informing them that a foreigner was bringing women into my apartment.... Then they asked me where I am working, as if they would not know. There was a security agent from the KNB with them. I told them that I am a journalist working on an independent newspaper that is anti-Nazarbaev. They apologized and left.<sup>114</sup>

The newspaper's offices were shot at, shattering its windows, on the night of March 31, 2008. Although the police opened an investigation, at the time of the interview with Mekimbai, four months later, no perpetrators had been identified.<sup>115</sup>

Journalists reported to Human Rights Watch that direct physical attacks by the police, against journalists personally and the physical property of editorial offices have decreased in the past couple of years. "Things are much better now," said Gulzhan Ergalieva of *Svoboda Slova*, "Two or three years ago there were murders [of journalists], court cases, and beatings. Now the authorities and the police have changed their tactics." Ergalieva said that before the presidential elections in 2005, the police physically prevented her newspaper from being published. After a public and international outcry following these actions, the government altered its approach. "Now they have us under surveillance, tap our phones. The authorities follow our movements, our conversations." Ergalieva explained that she was conscious of being tailed on her way to and sometimes at important meetings or

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<sup>114</sup>Human Rights Watch interview with Bakhytgul Mekimbai, Taszhagan, Almaty, July 24, 2008.

<sup>115</sup> Ibid.

business dinners, with the “tail” sitting close to her in order to better listen to the conversation. She recalled specific instances when, “after certain telephone conversations [plainclothed security agents] would appear at our meetings. Things like that.” She further explained that the nationwide print media suffer less from threats and harassments than local newspapers. The small papers are much more vulnerable to harassment by local authorities.<sup>116</sup>

### *Use of defamation laws to harass journalists*

In the first half of 2008 the authorities opened seven criminal cases against journalists for alleged defamation; in 2007 the total was 27. Kazis Toguzbaev, a reporter for the independent newspaper *Azat*, was given a two-year suspended sentence in January 2007 for “insulting the honor and dignity” of President Nazarbaev in two articles he published on the website Kub in April and May 2006. Toguzbaev told Human Rights Watch about the conditions of the court ruling:

They warned me that if I write anything else like this that my suspended sentence will automatically be converted into a real one and they’ll add on another new criminal case.... Serving a suspended sentence doesn’t mean you can relax, it means that if there is another criminal case, there is a new sentencing plus the one you haven’t finished.<sup>117</sup>

In April 2008 a district court in Almaty revoked the verdict and expunged the conviction from Toguzbaev’s record. The judge’s ruling stated that Toguzbaev had “demonstrated by his behavior that he was reformed.”<sup>118</sup>

Civil libel lawsuits that involve huge amounts of compensation are another means by which a newspaper can be put under pressure and bankrupted. Olga Volkova, a lawyer with the watchdog group MediaLife in Karaganda, told us in July 2008, “I am

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<sup>116</sup> Human Rights Watch interview with Gulzhan Ergalieva, Svoboda Slova, Almaty, July 25, 2008.

<sup>117</sup> Human Rights Watch interview with Kazis Toguzbaev, journalist, Almaty, July 24, 2008.

<sup>118</sup> Adil Soz, “Journalist Kazis Toguzbaev’s Criminal Record Expunged,” April 18, 2008, <http://www.adilsoz.kz/site.php?lan=russian&id=207&newsid=1057&newsdate=2008-4-01&year=2008> (accessed November 22, 2008).

not aware of libel cases that resulted in a journalist [who served prison time] in the last six years, but the number of civil lawsuits has increased dramatically in the last year and a half.”

Emurat Bapi, the former editor of the independent newspaper *Taszhargan*<sup>119</sup> came under heavy surveillance in spring 2008. So he took a picture of the car following him and the newspaper ran an article with the photo of the car and its number plate in the newspaper on May 13. The article claimed Bapi was being followed by the security services. Three weeks later, the man who owned the car lodged a defamation suit against *Taszhargan*'s current editor Bakhytgul Mekimbai and claimed 10 million tenge (about US\$83,500) compensation. Eventually Mekimbai and the man reached a settlement: *Taszhargan* published a partial correction, and the plaintiff withdrew his claim.<sup>120</sup>

Erlan Jitenov, chief editor of an independent Karaganda weekly *Vzglyad*, told Human Rights Watch that the newspaper is sued, on average, once a month. When *Vzglyad* issues critical articles, those who come under criticism feel they “have to defend their reputation.” For example, when the newspaper writes about workers not getting paid on time the company in question will sue for damages to their reputation.<sup>121</sup>

According to Volkova of MediaLife, one of the problems with the increasing number of lawsuits is that the law does not differentiate between factual information and opinion. She believes that journalists must have the right to express their opinion and not be sued for this. In addition, she argues in favor of a reasonable cap on defamation awards.<sup>122</sup>

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<sup>119</sup> *Taszhargan* is one of Kazakhstan's oldest opposition newspapers. It started working under the name “Dat” in 1998. It was closed several times by court decisions and reopened every time under a different name. In 2003, a court deprived Emurat Bapi, its former editor in chief, of its right to editing for five years. The paper is widely distributed across Kazakhstan.

<sup>120</sup> Human Rights Watch interview with Bakhytgul Mekimbai, journalist, Almaty, July 24, 2008. The newspaper did not retract the fact that Bapi was being followed by the man's car, only that the man did not work for the security services and was not following him.

<sup>121</sup> *Ibid.*

<sup>122</sup> Human Rights Watch interview with Olga Volkova, MediaLife, Karaganda, July 29, 2008.

## *Self-censorship*

Human Rights Watch's interviews with journalists and media organizations indicate that not direct censorship but self-censorship is the more problematic issue for journalists. The authorities use elaborate tactics to push journalists into self-censorship without directly forbidding them to publish certain articles.

Journalists generally told Human Rights Watch that they do not apply self-censorship but acknowledged that they would not write about certain issues that are too "complicated" or too "hot" such as religious issues or ethnic problems.

Vyacheslav Abramov, director of the journalism center MediaNet, told Human Rights Watch that self-censorship is the worst problem for journalists in Kazakhstan. When he was working as a journalist in 2002-03, there was an informal list of people—various politicians, opposition leaders, political scientists, analysts, and the like—about whom articles or information would not be published or whose names could not even be mentioned, and he told us that he believes the situation has not changed.<sup>123</sup>

According to Gulzhan Ergalieva, editor of the weekly *Svoboda Slova*, self-censorship is a problem not only for journalists but for society as a whole. "There is a culture of fear in which journalists operate, so even if the authorities are not cutting words from articles, journalists are thinking about whether they can say certain things. Self-censorship is a reality in Kazakhstan." Her newspaper has asked members of the government to submit articles, but they refused to be published in what is considered an "opposition" newspaper. "If a governor talks to us, it means he is with the opposition."<sup>124</sup>

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<sup>123</sup> Human Rights Watch interview with Vyacheslav Abramov, MediaNet, Almaty, July 22, 2008.

<sup>124</sup> Human Rights Watch interview with Gulzhan Ergalieva, Svoboda Slova, Almaty, July 25, 2008.

## V. The Right to Freedom of Assembly

### Legal Provisions

The right to freedom of assembly is enshrined in article 21 of the International Covenant on Civil and Political Rights. This provides that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre publique*), the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>125</sup>

Kazakhstan’s constitution also provides a protective framework for the right to freedom of assembly. Article 32 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.”<sup>126</sup> Article 39 says that “rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population.”<sup>127</sup>

In practice, freedom of assembly is restricted by a 1995 presidential ordinance that was transformed in December 2004 into the Law “On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan.” According to the law, demonstrations as small as a one-person picket must be registered with the mayor’s office 10 days in advance, and “[t]he application must specify the goal, form, and location of the assembly or its route of movement, the time of its beginning and end, the estimated number of participants, the names of authorized persons [organizers] and persons responsible for public order, place of their residence and work [study],

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<sup>125</sup> International Covenant on Civil and Political Rights, art. 21.

<sup>126</sup> Article 32, Constitution of the Republic of Kazakhstan.

<sup>127</sup> Article 39, para. 1, Constitution of the Republic of Kazakhstan.

and the application date.”<sup>128</sup> The authorities have five days to review and respond to the application.

If a gathering or meeting is held without permission, authorities may press administrative or criminal charges against organizers and participants. According to article 373 of the Code on Administrative Offenses, individuals violating the law on freedom of assembly can be fined or detained for up to 15 days.<sup>129</sup> Article 334 of the Criminal Code provides for up to one year in prison if individuals organize or participate in illegal gatherings or meetings.<sup>130</sup>

Both governmental and civil society bodies have criticized the current law on freedom of assembly. The 2007 “Baseline Report on Human Rights in Kazakhstan,” published by the president’s Human Rights Commission, criticizes the law for failing to comply with international standards and lists a number of problematic provisions such as the failure to define the term “gathering” or “meeting,” such that the authorities can arbitrarily prosecute participants in any public coming together of people; the long application period that makes spontaneous protests impossible; and the room for arbitrary interpretation that article 10 of the law provides for the local authorities.<sup>131</sup> The report also notes that the law does not differentiate between participants in a gathering and monitors or passersby, often resulting in the arrest of

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<sup>128</sup> Article 3 of the Law “On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan,” unofficial translation by Human Rights Watch.

<sup>129</sup> Article 373, Code on Administrative Offences of the Republic of Kazakhstan.

<sup>130</sup> The full text of Article 334 “Violation of the Procedure for the Organization and Conducting of Rallies, Meetings, Picketing, Street Marches, or Demonstrations” reads: 1. Violation of the procedure for the organization or conducting of rallies, meetings, picketing, street marches, or demonstrations, which is committed by an organizer of a rally, meeting, picketing, street march, or demonstration, if this act entailed disruption of transport, or caused considerable damage to the rights and legitimate interests of citizens and organizations, shall be punished by a fine in an amount from one hundred up to eight hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period from one to eight months, or by engagement in public works for a period from one hundred twenty up to one hundred eighty hours, or by detention under arrest for a period up to four months. 2. The organization or conducting of illegal rallies, meetings, picketing, street marches, or demonstrations, which is committed by an organizer of a given rally, meeting, picketing, street march, or demonstration, as well as active participation in illegal rallies, meetings, picketing, street marches, or demonstrations, if these acts entailed consequences stipulated by the first part of this Article, shall be punished by a fine in an amount from two hundred up to one thousand monthly assessment indices, or in an amount of wages or other income of a given convict for a period from two to ten months, or by engagement in public works for a period from one hundred eighty up to two hundred forty hours, or by detention under arrest for a period up to six months, or by imprisonment for a period up to one year.

<sup>131</sup> For more details on this provision see section “Physical marginalization of protests.”

the latter.<sup>132</sup> Between November 2005 and July 2006 the Charter for Human Rights, a Kazakh human rights organization, conducted a monitoring exercise on freedom of assembly in the country. In its 50-page report published in 2007 the Charter concludes that the nation’s legislation “does not provide adequate protection of the right to freedom of assembly.”<sup>133</sup> The report covered 48 gatherings in four cities over a period of eight months, arguing that the government’s response to them demonstrated its arbitrary approach to granting permits and detaining demonstrators.

In September 2007 several Kazakh nongovernmental organizations submitted a draft law on freedom of assembly to the president’s Commission on Human Rights.<sup>134</sup> The draft law incorporated international standards and best practices exemplified in the OSCE/ODIHR Freedom of Peaceful Assembly Guidelines,<sup>135</sup> excluding provisions that had permitted unnecessary restrictions on locations where demonstrations could be held. 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 the ODIHR and the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe. To date, neither the parliament nor the government has reacted to the draft.<sup>136</sup>

## Restrictions on the Right to Freedom of Assembly

### *Physical marginalization of protests*

Article 10 of the law on freedom of assembly allows local authorities broad latitude to “additionally regulate the procedure for conducting gatherings, meetings, marches, pickets and demonstrations with regard to local conditions.” It is a virtual carte blanche to limit freedom of assembly. Going back to the 1995 presidential

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<sup>132</sup> Human Rights Commission under the President of the Republic of Kazakhstan, *Baseline Report on Human Rights in Kazakhstan*, Almaty 2007, pp. 34-35.

<sup>133</sup> Charter for Human Rights, *Freedom of Assembly in Kazakhstan. Country Monitoring Report*. Almaty, 2007, p. 36.

<sup>134</sup> The NGOs included the Kazakhstan International Bureau for Human Rights and the Rule of Law, the Charter for Human Rights Foundation as well as the unregistered political party Alga!.

<sup>135</sup> Organization for Security and Co-operation in Europe/ Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly*, Warsaw 2007, [http://www.osce.org/publications/odihr/2007/03/23835\\_823\\_en.pdf](http://www.osce.org/publications/odihr/2007/03/23835_823_en.pdf) (accessed November 22, 2008).

<sup>136</sup> Human Rights Watch interview with Amangeldi Shormanbaev, Charter for Human Rights, Almaty, July 23, 2008.

ordinance on which the 2004 law is based, the authorities have used this power to designate remote spaces as the only permissible sites for “opposition” gatherings; to manipulate or refuse access to those sites; to falsely accuse citizens of assembling when they are merely together on a street; and to harass those who monitor protests in an effort to document any abuses.

For example, in May 2002 the municipal council of Astana designated the area near the Joint Stock Company “Okan Atriko” and the area near the “Gazservice” at Vtoraya Nagornaya Street for demonstrations. Both places are outside the city center and hard to reach by public transport. In July 2005, the Almaty municipal council designated the area behind the cinema Sary-Arka “to hold nongovernmental activities of a social and political nature.”<sup>137</sup> It takes at least 40 minutes from the city center to reach this location by public transport. In Karaganda, the designated area for gatherings is also at the outskirts of the city. The local council of Taldy-Korgan, in eastern Kazakhstan, issued a recommendation to the local government to require all public demonstrations to take place outside the city limits. The ruling is currently being challenged in court.<sup>138</sup>

The character of a gathering often determines where it can take place. Civil society representatives told Human Rights Watch that it is not unusual that groups having “connections” to the authorities may be given permission to gather in the city center, while NGOs or “oppositional parties” frequently are refused permission to gather publicly.<sup>139</sup>

“We have to ask for permission all the time and they decline our applications all the time,” civil society activist Zauresh Battalova told Human Rights Watch. “The refusals usually refer to the decision of the [Astana] municipal council from 2002. They either tell us somebody else will be holding a meeting at that time in that place, or there is construction in progress.” She recounted an incident in December 2007,

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<sup>137</sup> See: Human Rights Commission under the President of the Republic of Kazakhstan, *Baseline Report on Human Rights in Kazakhstan*, p. 35.

<sup>138</sup> E-mail communication from Evgeniy Zhovtis, director, Kazakhstan International Bureau for Human Rights and the Rule of Law, to Human Rights Watch, November 19, 2008.

<sup>139</sup> Human Rights Watch interviews with Amangeldi Shormanbaev, Charter for Human Rights, Almaty, July 23, and Anara Ibraeva, Astana branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, Astana, July 28, 2008.



when workers of the company KOAT in Astana had planned to organize a picket because they had not received their salaries for more than eight months. On their behalf Battalova applied for permission to gather, as required, 10 days in advance of the tentative date, but was refused on the grounds that a youth group had already been given permission. Later she and the workers learned that the youth group had applied for their assembly permission after Battalova had.<sup>140</sup>

Demonstrations and pickets are not only banished to the outskirts of the cities—they are also generally ignored by the local media. Ainur Kurmanov, an activist from Almaty, commented, “If a protest addresses social issues the local press might write about it, but if the event is organized by the opposition or addresses political issues, the media will not cover it.”<sup>141</sup>

### *Sanctions for defying regulations*

Despite article 10, many people decide to hold their demonstrations in the city center or close to the offices of the authorities they are addressing. Police regularly detain protesters during unsanctioned meetings and demonstrations. Zhanna Baitelova, of Opposition Youth, told Human Rights Watch in July 2008 that she could not recall a single demonstration by her group that had not ended in arrests. She noted that sometimes—but not always—a representative of the prosecutor’s office reads a statement informing the participants that the demonstration is illegal and then police start arresting people. “Of course they have the right [under the law] to detain us, but it is a stupid law [on freedom of assembly].”<sup>142</sup>

On March 25, 2008, a group of 60 people organized a picket near the Almaty municipal building to protest the expropriation of their houses. Ainur Kurmanov of the Social Resistance Group described what followed:

When they arrived, the police were already prepared. Police and Special Forces were waiting for them in buses. A representative from the prosecutor’s office came out and read his traditional statement

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<sup>140</sup> Human Rights Watch interview with Zaresh Battalova, civil society activist, Astana, July 28, 2008.

<sup>141</sup> Human Rights Watch interview with Ainur Kurmanov, Social Resistance Group, Almaty, July 23, 2008.

<sup>142</sup> Human Rights Watch interview with Zhanna Baitelova, Opposition Youth, Almaty, July 23, 2008.

[that the gathering was illegal], and on his command the arrests started. Police grabbed the banners and arrested the most active participants. They arrested 11 people. The next day, they were sentenced during an administrative court hearing.”

Alternatively, as Kurmanov noted, “It can also happen that nobody is arrested during the event and then the police come to your home in the evening, detain you, take you to a court hearing and then have you pay a fine or you end up in detention.”<sup>143</sup> On November 7, 2007, a group of approximately one hundred protesters gathered in Panfilov Park in Almaty and then marched to the administrative court building to protest a legislative initiative to provide firearms to staff of the administrative court and marshals. (Previously, the marshals had been involved in implementing mass evictions: when homeowners resisted leaving their houses the marshals had often beaten them with truncheons.) The demonstration reached the administrative court and Kurmanov read a petition outside the building. Nobody was arrested at the scene, but a week later police came to Kurmanov’s workplace, arrested him, and drove him to the court, where he was sentenced to seven days’ administrative detention.<sup>144</sup>

In September 2007, 36 individuals, including elderly and disabled persons and children, were waiting outside the main gate of the presidential administration in Astana for two officials to exit the building. The officials were presidential administration staff responsible for reviewing letters from the public; those gathered had sent a letter to the National Security Council seeking redress on compensation for land that had been seized. Anara Ibraeva, of the Kazakhstan International Bureau for Human Rights and Rule of Law, described what happened: “They did not protest. They did not have any banners and were not shouting any slogans. They just waited for these two individuals to come out and give them an answer as they had promised in a letter. Presidential administration guards called the police, who came [on buses, bringing dogs with them], and the people were all hauled off to the police station. They were kept until the evening and were denied access to a lawyer. Finally, they

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<sup>143</sup> Human Rights Watch interview with Ainur Kurmanov, Social Resistance Group, Almaty, July 23, 2008.

<sup>144</sup> Ibid.

were informed that they had allegedly staged an unsanctioned meeting although they were just standing and waiting on a public square.”<sup>145</sup>

### *Threats to deter protests*

Kurmanov and other activists told Human Rights Watch that the authorities sometimes use pressure through parents or universities to discourage activists from organizing or participating in protests. Both Ainur Kurmanov of the Social Resistance Group and Zhanna Baitelova, of Opposition Youth, said they knew cases where students were denied their certificates or were otherwise harassed because they had participated in demonstrations. For example, Dmitry Tikhonov, an activist with the student movement in the southern city of Taraz, had applied to hold a protest against a price increase for public transport. After he had registered the application on July 1, 2008, he was called before the university authorities and questioned about his political ideas and party affiliation. The authorities urged him to cancel his application and threatened him with expulsion. Afterwards he was summoned for a “chat” with the municipality Department for Political Issues, which served as a subtle warning, and police came to his home several times. On the evening of July 8, an unknown assailant beat him up in the entryway to his house. “Only when we threatened the authorities to hold solidarity pickets all over the country and in Moscow the harassment stopped,” said Kurmanov.<sup>146</sup> Meanwhile, the municipality banned the demonstration Tikhonov had tried to register.

### *Harassment of monitors*

Not only participants but also monitors of unsanctioned gatherings are at risk of arrest, especially when they are already known to the police. The journalists or activists who arrive to monitor a gathering stand 15 to 20 meters from the demonstrators; they have still and video cameras, which are openly displayed; they show identification to the organizers and police before the event.

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<sup>145</sup> Human Rights Watch interview with Anara Ibraeva, Kazakhstan International Bureau for Human Rights and Rule of Law, Astana, July 28, 2008.

<sup>146</sup> Human Rights Watch interview with Ainur Kurmanov, Social Resistance Group, Almaty, July 23, 2008.

Zhanna Baitelova told Human Rights Watch about a picket against building an underground parking lot at the Central Square in Almaty on March 1, 2008: “Very often we do not participate but just monitor. [But] the moment we arrive, the police think, ‘Aha, the organizers,’ and strike.... On March 1, there were people with banners and slogans, and Denis [Alimbekov, a human rights defender and lawyer and one of the monitors] left his car and stood in the sun to warm up. At that moment the police ran towards him and arrested him.”<sup>147</sup>

Zauresh Battalova, was also arrested when she monitored the youth demonstration authorized to take place when her own workers’ protest had been refused (see above). On December 15, 2007, after her own application to hold a demonstration that day was declined,<sup>148</sup> she and four others decided to monitor a students’ demonstration. The police detained Battalova without an arrest warrant, while she was monitoring the demonstration, and held her at district police quarters for three hours without informing her about her rights and without allowing her to contact her lawyer. At the court hearing on December 22, in which Battalova and the four others were charged with holding an “unsanctioned picket,” Battalova was given just five minutes with her attorney to prepare a defense statement. Three defendants were given a warning, one received a fine of five times the monthly minimum pay, and Battalova was sentenced to 20 times minimum pay.<sup>149</sup>

### *Coping with restrictions on assembly*

Since the law on assembly hardly allows citizens to gather and protest, civil society activists have had to become quite creative. For example, Zauresh Battalova told Human Rights Watch, “In our society there is an understanding that organizing a demonstration or gathering is an anti-governmental or anti-presidential activity. Therefore in our applications we have now started to call the aim of our demonstrations, for example, ‘Demonstration for housing rights’ instead of ‘Demonstration against the violation of housing rights.’” Presumably the former

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<sup>147</sup> Human Rights Watch interview with Zhanna Baitelova, Opposition Youth, Almaty, July 23, 2008.

<sup>148</sup> See section “On physical marginalization of protests” of this chapter.

<sup>149</sup> Human Rights Watch interview with Anara Ibraeva, Astana branch of the Kazakhstan International Bureau for Human Rights and Rule of Law and Zauresh Battalova, civil society activist, Astana, July 28, 2008.

would be viewed as less threatening and more likely to receive approval by the authorities.

Another strategy is to organize open-air “citizens’ gatherings” on private land and thereby avoid the requirement to seek a permit. In April 2008 Battalova and like-minded activists started a series of events regarding housing issues. While the authorities in Astana permitted the first demonstration on April 6, they refused to permit the demonstrations for all months to follow. “We started to hold citizens’ gatherings. Of course we are surrounded by staff from the prosecutor’s office and the Department for Internal Affairs, and everything is videotaped,” said Battalova. “But we make sure that this is a gathering and not a demonstration. We do not have slogans, banners or demands. Instead we have a chair and secretary of the gathering and write up minutes.”<sup>150</sup>

The government still tried to keep people from participating in those meetings, she said. “For example, on July 6, they changed the route of buses or stopped *mashroutkas* (shared taxis) and sent them back. They also gathered people at their workplaces and told them not to participate in the meeting. When people came in their private cars, traffic police stopped them asking, ‘Where are you going? You’d better turn around, otherwise we need to write down your license plate and next time you might face even more problems.’ And of course some people were scared and drove home. Normally, around 2,000 or 2,500 people attend the monthly meeting, but that day only 400 came. July 6 is the birthday of the president and we had around 4,000 police in town.”<sup>151</sup>

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<sup>150</sup> Human Rights Watch interview with Zauresh Battalova, civil society activist, Astana, July 28, 2008.

<sup>151</sup> Ibid.

## VI. Recommendations

### To the Government of Kazakhstan

#### *Regarding freedom of thought, conscience, and religion*

- Encourage a climate of tolerance and mutual respect for differing tendencies of thought, conscience, and religion by desisting from accusatory statements about minority confessions.
- Bring the draft law on “On freedom of religion and religious associations” into conformity with the Kazakh constitution and international human rights standards.
- Ensure the draft law “On freedom of religion and religious associations” fully protects religious freedom, permits individuals to practice their faith, and does not stigmatize religious minorities.
- Ensure equality between religious communities regardless of their religious identity, size, or duration of activities in Kazakhstan.
- Ensure that the draft law complies with the “Guidelines for Review of Legislation Pertaining to Religion or Belief” prepared by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), in consultation with the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe.
- Make public the ODIHR’s review of the draft law “On freedom of religion and religious associations.”

#### *Regarding freedom of expression*

- Comply with Kazakhstan’s commitments to the OSCE’s standards on media freedom by fostering, not stifling, independent media.
- Amend the media law in order to simplify the registration process for media.
- Place a moratorium on criminal libel cases and review the relevant articles in the Criminal Code with a view toward abolishing criminal libel.
- Establish a cap on defamation awards and acknowledge that in defamation cases ample consideration should be given for opinion and critical reporting

- on persons and matters that are of public interest, such as the performance of public officials.
- Adopt measures to protect the physical safety of journalists, including prompt and thorough investigation and prosecution of persons responsible for acts of violence and intimidation against journalists, including when such perpetrators are public officials.
  - End the government's monopoly on nationwide television and radio broadcasting.

### *Regarding freedom of assembly*

- Review the legislation on freedom of peaceful assembly and ensure the laws and regulations on demonstrations are in conformity with Kazakhstan's international human rights obligations on freedom of assembly.
- Ensure that the Human Rights Commission under the President sends the draft law on freedom of assembly drafted by a group of NGOs for review to the ODIHR and the Council of Europe's Venice Commission, and include this draft in a review of the legislation on freedom of assembly.
- Incorporate practices exemplified in the OSCE/ODIHR Freedom of Peaceful Assembly Guidelines in the legislation on freedom of assembly.
- Abolish legal provisions that permit unnecessary restrictions on locations where demonstrations can take place.
- Train staff of law enforcement agencies to cooperate with organizers and participants of public assemblies.

### **To the OSCE**

The Permanent Council, the outgoing Finnish Chairmanship and the 2009 Greek Chairmanship, individual participating states, the ODIHR, the Representative on Freedom of the Media, and the OSCE Centre in Almaty should continue sustained engagement with Kazakhstan to ensure it meets its obligations with respect to all OSCE commitments, including freedom of thought, conscience, religion or belief, freedom of expression, and freedom of peaceful assembly.

- The Permanent Council, the Chairmanship, and the ODHIR should urge the government to consider new legislation on public assemblies, and to request an ODHIR expert review of this legislation
- The Permanent Council should urge the Kazakh government to comply with the call made by the OSCE Representative on Freedom of the Media for the abolition of criminal defamation laws in Kazakhstan.

### **To the European Union**

- Work together with other OSCE participating states to ensure the OSCE and Kazakhstan carry out recommendations made in this report.
- Urge the Kazakh government to revoke those elements of domestic law that contradict or are applied contrary to international law and infringe the basic rights of Kazakh citizens.
- Use Kazakhstan's upcoming OSCE chairmanship and Foreign Minister Tazhin's pledges to push for concrete progress in human rights and make such progress a core objective of EU engagement with Astana, including but not exclusively in the framework of the human rights dialogue.
- Increase technical assistance to the Kazakh authorities on the drafting and effective implementation of legislation including reform of the media law, the religion law and the law on freedom of assembly. Make these reforms an integral part of the EU Rule of Law Initiative in the framework of the EU Central Asia strategy.

### **To the United States**

- Maintain a principled stand on Kazakhstan's human rights performance, and redouble efforts to ensure that the government fulfills its promises to improve that performance.



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