### KAZAKHSTAN FOLLOW UP REPORT

Kazakhstan International Bureau for Human Rights and Rule of Law  
International Foundation for Protection of Freedom of Speech “Adil Soz”  
Almaty Helsinki Committee  
Children Foundation of Kazakhstan  
Committee of Public Defense  
Public Association Feminist League

(as of: 20 November 2012)

**Recommendation 7**  
The State party should strengthen its efforts to ensure that the Commissioner for Human Rights enjoys full independence, and in this regard should provide it with adequate financial and human resources in line with the Paris principles (General Assembly resolution 48/134, annex).

- **Grade:** B2  
  - **Overview:** Limited progress. A consolidation of the Commissioner for Human Rights’ legislation, financial and human resources is being considered by the authorities. However, despite the fact that the new draft law has passed the first reading in the lower house of parliament, the adoption process has been in standstill for several years now.

- **Overview:** Not known

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**Recommendation 21**  
The State party should ensure that when establishing the National Preventing Mechanism as provided for under the optional protocol to the CAT, does not compromise but rather improve the execution of its core functions as a National Human Rights Institution in line with the Paris Principles.

- **Grade:** B2  
  - **Overview:** Limited progress. The draft law of March 2012 on the National Preventing Mechanism (NPM) foresees additional Ombudsman’s branches (1 person per 1 region). However, the NPM Law does not provide for inspections agencies, except for the Ministry of Interior institutions. Also, the scope of the NPM draft Law is limited to monitoring only pre-trial detention centers and correctional facilities. Furthermore, the Ombudsman members will be appointed by the President and the public organizations and the public monitoring Commission will be financed under the state social program.

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**Grade A:** State response satisfactory:  
**Grade B:** State response partially satisfactory:  
- **B1:** some progress has been achieved but there is a need for additional information.  
- **B2:** some progress has been achieved but considerable additional measures are needed

**Grade C:** State response is not satisfactory

**C:** No measures were taken by the State to implement the recommendations.  
**N/A:** no information available
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Grade</th>
<th>Description</th>
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<tbody>
<tr>
<td>25</td>
<td>C</td>
<td>The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise the right to freedom of expression in accordance with the Covenant. As a rule the authorities estimate that all public actions need prior authorisation. Internet access is restricted and its users are tightly monitored by the State.</td>
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<tr>
<td>26</td>
<td>C</td>
<td>The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant. It should ensure that the exercise of this right is subjected to restrictions which comply with the strict requirements of article 21 of the Covenant. No progress despite the Prosecutor’s statement of 2011. No steps were taken to repeal the law of 17 March 1995. An application for a permit from local State bodies is still needed and very often rejected without explanation. No progress. As a rule, people participating in non-authorised peaceful assemblies are being arrested and brought to Court.</td>
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1. See the draft law http://www.pavlodar.com/zakon/?dok=00450&ogl=all

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B1: some progress has been achieved but there is a need for additional information.

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**N/A: no information available**
Kazakhstan: NGO Report on the Follow-up to the Concluding Observations

Paragraph 7

While noting the State party’s intentions to confer on the Commissioner for Human Rights (CHR) the additional mandate to act as a National Preventive Mechanism on torture under its Ombudsman Plus project, the Committee is concerned that the CHR was established by a presidential decree and has not applied for accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Committee is also concerned at the CHR’s lack of independence and inadequate budgetary and human resources to undertake its current mandate (art. 2).

<table>
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<tr>
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<tr>
<td>The State party should strengthen its efforts to ensure that the Commissioner for Human Rights enjoys full independence, and in this regard should provide it with adequate financial and human resources in line with the Paris principles (General Assembly resolution 48/134, annex).</td>
<td>B2</td>
<td>A consolidation of the Ombudsman institute legislations, financial and human resources in terms is being considered by the authorities.</td>
<td></td>
</tr>
<tr>
<td>The Commissioner for Human Rights should apply for accreditation to the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.</td>
<td>N/A</td>
<td>No information available.</td>
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<tr>
<td>The State party should ensure that when establishing the National Preventing Mechanism as provided for under the optional protocol to the CAT, does not compromise but rather improve the execution of its core functions as a National Human Rights Institution in line with the Paris Principles</td>
<td>B2</td>
<td>The draft NPM Law(^3) includes additional Ombudsman’s branches (1 person per region). However, the NPM Law does not provide for inspection agencies except for Ministry of Interior institutions. The National Preventing Mechanism will be formed of the Ombudsman, the public monitoring commission and public associations. However, the NPM Law is limited in its scope since it would only monitor pre-trial detention centers and correctional facilities. Also, it appears that the public organizations and the Public Monitoring Commission are financed under the state social program.(^4) Two alternative draft laws were elaborated in 2011 by the civil society with the support of the OSCE but were never taken into consideration by the Parliament.</td>
<td>A new legislation widening the credentials of the Ombudsman’s office is still in steady discussions despite the fact that it has passed the first reading in the lower house of parliament. (^5)</td>
</tr>
</tbody>
</table>

\(^1\) “Amendments and additions to some legislative acts of the Republic of Kazakhstan on the establishment of a national preventive mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment” (http://adilet.minjust.kz/rus/docs/P1200000400


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C: No measures were taken by the State to implement the recommendations.
N/A: no information available
Paragraph 21
The Committee expresses concern at reports that corruption is widespread in the judiciary. The Committee also expresses concern at the lack of an independent judiciary in the State party and at the conditions for appointing and dismissing judges, which do not guarantee the proper separation of powers between the executive and the judiciary. The Committee also expresses concern regarding the State party’s response about the President’s role as “coordinator” of all three branches of government. The Committee is particularly concerned at reports that the Office of the Procurator General has a dominating role in the judicial system, such that it has the power to stay the execution of judgements handed down by courts (arts. 2 and 14).

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<td>The State party should take steps to safeguard, in law and practice, the independence of the judiciary and its role as the sole administrator of justice, and guarantee the competence, independence and tenure of judges.</td>
<td>C</td>
<td>The additions to the Constitution of the Republic of Kazakhstan “On the Judicial System and Status of Judges”; made in 2011, do not take into account the recommendations of the Venice Commission and the ODIHR (OSCE).</td>
<td>In the past two years 15% of the judges have been dismissed on grounds of budgetary and others were also dismissed for disciplinary breaches. Corruption is also present in Courts. Additionally, it appears that a vast majority of Kazakhs fail to have access to justice due to the excessive workload of judges, worsened by the recent cut backs in the number of judges. A study conducted by the Association of Sociologists and Political Scientists of Kazakhstan found that 70.6% of participants do not believe that the “ordinary person” can count on a fair and impartial hearing. More importantly, 81.7% of participants and 84.1% of SMEs are reported to know of a way to circumvent Court decisions. The judiciary is still subordinated to the presidential authority. For instance, Nataliya Sokolova, the lawyer representing about 2000 striking oil workers at Zhanaozen was sentenced to 6 years of imprisonment for “inciting” the strike. On 19 November 2012, the Aktau City Appeal Court upheld the prosecutor’s request to confirm the decision of the lower court sentencing the opposition leader Vladimir Kozlov to seven years of imprisonment.</td>
</tr>
</tbody>
</table>

6 http://www.zonakz.net/articles/38107?mode=reply
7 http://www.freedomhouse.org/report/nations-transit/2012/kazakhstan
8 http://www.hrw.org/news/2012/11/15/kazakhstan

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Kazakhstan: NGO Report on the Follow-up to the Concluding Observations

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<td>C</td>
<td>State response is not satisfactory</td>
<td>The state party particularly should take action to eradicate all forms of interference in the judiciary and ensure the prompt, thorough, independent and impartial investigations into all allegations of interference, including those by means of corruption, and to prosecute and punish perpetrators, including judges who may be involved in this. In October 2012, Judge Aliya Zhumasheva of the Kachirs District Court of Pavlodar Region was subjected to disciplinary sanctions for having resisted demands from the Prosecutor’s Office to issue convictions.9</td>
</tr>
<tr>
<td>C</td>
<td>No reform of the Prosecutor has yet been taken.</td>
<td>The state party should review the powers of the Prosecutor’s Office/General Prosecutor’s Office, so that actions of the body do not undermine the judiciary’s independence. The principle of equality of arms is still not achieved and the prosecution arguments carry more weight than the defence side during the court hearings. The recommendations of the UN Special Rapporteur on the independence of judges are still relevant (Report 2005).</td>
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Paragraph 25

The Committee expresses concern at reports that the State party does not respect the right to freedom of expression. The Committee, in particular, expresses concern at reports that threats, assaults, harassment and intimidation of journalists and human rights defenders have severely reduced the exercise of freedom of expression. The Committee also expresses concern at the existence of provisions under the Criminal Code on defamation of public officials, and recently the enactment of the Law on the Leader of the Nation, which introduces a new article 317-1 to the Criminal Code prohibiting and punishing insults and other offences against the honour of the President (arts. 19).

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<td>The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise the right of freedom of expression in accordance with the Covenant.</td>
<td>C</td>
<td>No progress. Litigations involving journalists and media usually result in a conviction on grounds of defamation under Art.129 or Art.130 of the Criminal Code. Art.129 of the Criminal Code was amended on 9 November 2011 decreasing the prison penalty from three years to either the imposition of a fine from 100 to 400 MCI, community service for a period up to 180 hours, corrective labour for up to one year or sentence of imprisonment for the same term. However, this amendment did not provide any safeguards against violation of freedom of expression. Furthermore, Art.317 para.1 of the Criminal Code provides that any affront infringing the honour and dignity of the President is punishable with up to 1 year prison sentence.</td>
<td>As a rule the authorities estimate that all public actions (including cultural) require prior authorisation. Internet access is restricted and its users are tightly monitored by the State, as per January 2012 amendments of the December 2011 legislation “On approval of the provision of telecommunication services”. Generally, the legal proceedings against the media were mostly brought by State officials. Political activists and journalists are reported to be accused of “incitement of social hatred” under Article 164 of the Penal Code.</td>
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<td>In this regard, it should review its legislation on defamation and insults to ensure that it fully complies with the provisions of the Covenant</td>
<td>C</td>
<td>No progress.</td>
<td></td>
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Grade C: State response is not satisfactory
C: No measures were taken by the State to implement the recommendations.
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The State party should refrain from using its libel law solely for the purpose of harassment or intimidation of individuals, journalists and human rights defenders. In this regard, any restrictions on the exercise of freedom of expression must meet the stringent requirements of paragraph 3 of Article 19.

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<td>B</td>
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Attacks on journalists remain frequent:
1) In April 2012, Lukpan Akhmedyarov was attacked in the city of Uralsk
2) In August 2012, Ularbek Baytaylak was brutally beaten in in Astana suburb
3) In August 2012, The opposition Golos Respubliki’s newspaper correspondent, Andrey Tsukanov, was attacked by unknown perpetrators in Almaty.

Attacks on unionists are also a subject of concern. For example, the leader of the Socialist movement of Kazakhstan, Ainur Kurmanov, and the leader of the independent trade union, Zhanartu Esenbek Uktesbayev, were both forced to leave the country in October 2011 as they were being threatened with imprisonment.

In none of these cases investigation was carried out.

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10 A number of unknown individuals attacked him from behind, hitting him on the head with a heavy object, stabbing him several times and shooting at him with an air gun. He required emergency surgery for the injuries he sustained, which included a bad head injury and stab wounds to his lungs, kidneys, stomach and other vital internal organs. The attackers were not found. (http://www.bureau.kz/data.php?page=1&n_id=4369&i=ru);

11 After beating him, the perpetrators covered him with stones in order to symbolize his funeral. At day break, he was hospitalised and sustained serious injuries. A number of Baytaylak’s articles, which were published in the Dat and Chetvertaja Vlast newspapers and in the Albyn Tamyr journal, have proved to be of critical reporting sources. (http://www.bureau.kz/data.php?page=1&n_id=4939&i=ru)

12 As Tsukanov was on his way home when he was attacked from behind and hit on the head from which he lost consciousness. The attackers took his passport, bank cards, cell phones, journalist accreditation, as well as a train ticket to the city of Taraz where he was meant to go to cover the trial against human rights activist Vadim Kuramshin. (http://www.bureau.kz/data.php?page=1&n_id=4939&i=ru)

13 http://iwpr.net/report-news/kazakstans-politicised-labour-disputes
Paragraph 26

The Committee expresses concerns at reports that the right to freedom of assembly is not respected in the State party. The Committee is particularly concerned at reports of undue restrictions on the right to freedom of assembly, such as the designation of areas for holding assemblies, which are routinely located in the outskirts of city centres in order to attract low public attention. The Committee is also concerned at reports that applications for permission to hold assemblies are often declined on the grounds of public order and national security, but that people continue to stage unauthorized assemblies, which put them at risk of being arrested and charged for breaching a number of administrative regulations, thereby severely restricting their right to freedom of assembly (art. 21).

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<td>The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights of freedom of assembly under article 21 of the Covenant.</td>
<td>C</td>
<td>Despite 2011’s Prosecutor General office initiative to amend the law on peaceful assemblies to ensure its compliance with the Covenants’ standards, no further steps were taken.</td>
<td>Kazakhstan has yet to pass a new legislation on freedom of assembly, repealing the law of 17 March 1995 as mentioned in the National human rights action plan of 2009-2012. However, since the Prosecutor’s statement of 2011 no steps were taken. There is a need to submit an application for a permit from local State bodies, which is usually rejected without explanation. People participating in non-authorised peaceful protests are being arrested by the police and are sentenced with fines or administrative imprisonment for up to 15 days. Moreover, police practice of preventive arrests of civil activists prior taking part in a protest still results in their conviction for participating in a protest. According to Kazakhstan’s legislation, only public associations can apply to local authorities to obtain permits for peaceful assemblies: no individuals are eligible to apply for a permit.</td>
</tr>
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It should moreover ensure that the exercise of this right is subjected to restrictions, which comply with the strict requirements of article 21 of the Covenant. | C | No actions were undertaken. As a rule, people participating in non-authorised peaceful assemblies are being arrested and brought to Court. | The recommendations of city councils providing in each city only for one designated space far from the city center for peaceful assemblies are still considered laws, although they are not registered in the cities’ Departments of Justice. |

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14 [http://www.pavlodar.com/zakon/?dok=03163&all=all](http://www.pavlodar.com/zakon/?dok=03163&all=all)

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