

**DECLARATION OF YEVGENIY ZHOVTIS,
CHAIR OF THE BOARD OF KAZAKHSTAN INTERNATIONAL
BUREAU FOR HUMAN RIGHTS AND RULE OF LAW**

UPR PRE-SESSION ON KAZAKHSTAN, GENEVA, OCTOBER 2014

Presentation of the Organisation

This statement is delivered on behalf of a Coalition of Kazakhstani human rights NGOs including Kazakhstan International Bureau for Human Rights and Rule of Law, Kazakh human rights organization which has 11 branches in the regions of Kazakhstan and is a member of number of coalitions including World Movement for Democracy, Civic Solidarity Platform, FIDH, Coalition for International Criminal Court, Coalition Against Torture in Central Asia and some other.

National consultations for the drafting of the national report

There were three rounds of national consultations for the drafting of the national report and one round-table was organized by the Ministry of Justice of the Republic of Kazakhstan and held in September 2014 where about 50 NGOs and a number of state officials discussed different human rights issues related to UPR. An informal coalition of Kazakhstani human rights organizations prepared their own report and in last two years organized a number of public hearings inviting representatives of state bodies to participate. Some state officials attended these hearings. Unfortunately national report does not address human rights NGOs concerns.

Plan of the Statement

The statement addresses the following issues: (1) freedom of association, (2) freedom of assembly; (3) freedom of religion and belief; (4) follow-up on Zhanaozen events.

Statement

I. Freedom of association

A. Follow-up to the first review

Kazakhstan banned unregistered public associations, i.e. joint social activities of citizens in the form of organizations, created without governmental permission, are prohibited and punishable by administrative or criminal penalties. Public associations could be registered as local, regional (having branches in two or more regions of the country) and national (having branches in more than a half regions of the country) and activities of public associations are limited within the

regions of their official registration. Administrative legislation contains the provision allowing authorities to suspend or to liquidate public association even for minor technical violations. The registration of political parties is very complicated and burdensome.

At the first Universal Periodic Review of Kazakhstan in 2010, several states raised concerns and put recommendations to the Government relating to this practice. The Government accepted recommendation made by Slovenia on improvement of the legislation on political parties (number 43).

B. New developments since the first review

Since the first review a number of members of the political party to be registered was reduced from 50 000 to 40 000 but is still very high.

A new law on trade unions was adopted which limited the right to organize trade unions and was criticized by ILO and International Confederation of Free Trade Unions.

According a new Criminal Code of Kazakhstan adopted in July 2014 a new legal definition was introduced – “leader of public association” which do not comply with the principle of legal certainty and predictability.

The Government is drafting amendments to the legislation on NGOs with the aim to put foreign funding and reporting of NGOs, in particular foreign ones, under a strict control.

C. Recommendations

We therefore urge that the following recommendations have to be made.

To:

- 1) Bring legislation related to the right to freedom of association in conformity with the international standards;*
- 2) Eliminate a provision about the mandatory registration of public associations allowing informal groups to exist legally;*
- 3) Bring limitations and sanctions related to the violation of the legislation related to freedom of association in conformity with international standards, in particular with the principle of proportionality;*
- 4) Review the new law on trade unions and bring it in conformity with the ILO standards;*
- 5) Reduce the minimal number of members of political party to be registered to 5000 members or less and bring the procedures of registration of political parties in conformity with international standards.*

II. Freedom of Assembly

A. Follow-up to the first review

The right to organize and hold peaceful assembly is possible in Kazakhstan solely upon receiving the obligatory permission and is bound by a number of

conditions which need to be fulfilled, thus reducing the right to a minimum. In particular, in practically all major cities and regional centers, the holding of peaceful assemblies: pickets, rallies, marches and demonstrations is permitted only in one or two places (usually in areas situated far from the center), which renders absolutely meaningless all the important elements of peaceful assembly, such as: conveying messages to the authorities, the principle of ‘sight and sound’ in the picketing of authorities, whose actions dissatisfy citizens, or attracting public attention.

By the term “assembly”, the authorities mean all forms of public actions. People are detained for flash mobs, for attempting to hand over a petition, for demanding to have a meeting with officials, etc. Kazakhstan’s law and practice regarding the right to assembly directly contravene the Guidelines of OSCE/ODIHR and Venice Commission of Council of Europe on Freedom of Assembly.

At the first Universal Periodic Review of Kazakhstan in 2010, several states raised concerns and put recommendations to the Government relating to this practice. The Government accepted recommendation made by Sweden to make efforts to speedily draft and implement the new law on the right to assembly with fewer demands regarding prior registration and fewer requirements for information concerning, for example, the participants in an assembly, and to clarify policy intentions for State authorities or others entrusted with implementing decisions under the new law (number 94).

B. New developments since the last review

No new law on peaceful assembly was drafted. In the new Criminal Code of Kazakhstan adopted in July 2014 not only unsanctioned rallies, pickets, demonstrations are punishable but also any “unlawful public actions”. It does not comply with the principle of legal certainty and predictability as it is unclear what public actions are meant and what public actions are “lawful”.

C. Recommendations

We therefore urge that the following recommendations have to be made.

To:

- 1) Bring legislation related to the right to freedom of assembly in conformity with the international standards, in particular with the OSCE/ODIHR and Venice Commission of Council of Europe Guidelines on Freedom of Assembly;*
- 2) Cancel the decisions of local legislatures according which only two-three places in big cities are allowed for peaceful assemblies to be held;*
- 3) Bring limitations and sanctions related to the violation of the legislation related to freedom of assembly in conformity with international standards, in particular with the principle of proportionality.*

III. Freedom of religion and belief

A. Follow-up to the first review

Activities of unregistered religious organizations are prohibited. It is possible to conduct religious worship collectively, as set out in international human rights instruments, only after obtaining permission from the government in the form of registration. At the same time, discriminatory requirements were set for such registration and activities. In particular, at least 50 names are required for registration of a religious community at a local level, and said community is limited to operating within a specific region. Should it wish to conduct its activities in more than one region (province) of the country, it should have at least 500 people, and nationally - at least 5000. Without registration, people are not even permitted to meet for religious purposes in a private home.

In principle, gathering to worship in a private home is non-permissible, as, for the purpose of worship, all religious communities should have designated separate buildings. Religious literature cannot be distributed freely; it is subject to censorship as there exist a necessity to obtain a positive religious expertise.

The Government supports the activities of dozens of non-governmental centers against so-called “destructive sects” stigmatizing religious minorities.

At the first Universal Periodic Review of Kazakhstan in 2010, several states raised concerns and put recommendations to the Government relating to this practice. The Government rejected recommendations of Norway and Mexico (number 4, 16) on abolishing the mandatory registration of religious organizations and accepted recommendations of general nature made by Kuwait Philippines and Algeria (number 22, 23, 93). The Government also accepted recommendation of Netherlands (number 63) on extension the rights enjoyed by traditionally established religions to believers of non-traditional religions, and to enable them to carry out their peaceful activities free from Government interference, the recommendation of United Kingdom (number 98) on raising the awareness of law enforcement officials so that individuals may exercise their right to freedom of religion or belief free from harassment or threat of human rights violations and of USA (number 100) to reach out to the Special Rapporteur on Freedom of Religion and Belief to arrange a visit at the earliest possible opportunity.

B. New developments since the first review

Since the first review more than 1500 religious groups were denied registration or were not reregistered under the reregistration procedure established according the new law on religious activities and religious organizations adopted in 2011. This law was criticized by OSCE/ODIHR, EU and a number of human rights organizations. Several dozens believers were brought to justice, fined or expelled from Kazakhstan (if foreign citizens) for preaching not in places

(addresses) of registration, for disseminating religious literature, for conducting missionary activities without a permission and so on.

In 2013 criminal case were opened against one spiritual leader Kashkumbayev and atheist Kharlamov. In 2014 Special Rapporteur on Freedom of Religion and Belief visited Kazakhstan issuing preliminary statement with a number of critical points.

According a new Criminal Code of Kazakhstan adopted in July 2014 sanctions against unregistered religious groups were increased.

C. Recommendations

We therefore urge that the following recommendations have to be made.

To:

1) Bring legislation related to the right to freedom of religion and belief in conformity with the international standards;

2) Bring limitations and sanctions related to the violation of the legislation related to freedom of religion and belief in conformity with international standards, in particular with the principle of proportionality.

IV. Follow-up on Zhanaozen events

On December 16, 2011, clashes between police and people who had gathered on the central square, including striking oil workers, broke out in a small city Zhanaozen in Western Kazakhstan. A number of people were killed and other injured. Oil workers and leaders of opposition were blamed of mass disorder and sentenced to long-term imprisonment. During the trial oil workers claimed that they were tortured. No independent investigation was conducted. Several police officers were also convicted but already got early release. Some oil workers are still in prison.

Despite the calls from international community including UN High Commissioner on Human Rights no international investigation was allowed.

Recommendation.

1) To create an independent international commission and conduct thorough and full investigation of Zhanaozen events ;

2) To release oil workers who are still in prison.