



THE UN UNIVERSAL PERIODIC REVIEW OF KAZAKHSTAN

for consideration at the 34th session of the UPR Working Group in November 2019

Joint submission by:

The Open Dialogue Foundation (ODF) was established in Poland in 2009 on the initiative of Ukrainian student and civic activist Lyudmyla Kozlovska (who currently serves as President of the Foundation). Since its founding, statutory objectives of the Foundation include the protection of human rights, democracy and the rule of law in the post-Soviet area. The Foundation originally focused its attention primarily on Kazakhstan, Russia, Ukraine and – since 2016 – Moldova, but this area of interest was expanded in July 2017 due to the rapidly deteriorating situation in Poland and other EU member states affected by illiberal policies implemented by their populist governments. ODF pursues its goals through the organisation of observation missions, monitoring especially individual human rights' violation cases. The Foundation also has extensive experience in the field of protection of the rights of political prisoners and refugees. Based on its work, ODF publishes analytical reports and distributes them among the UN, EU institutions, OSCE, Council of Europe, foreign ministries and parliaments. The Foundation has its permanent representative offices in Warsaw and Brussels.

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The Italian Federation for Human Rights (FIDU) is active since 6 October 1987 as Italian Helsinki Committee. FIDU promotes the protection of human rights as enshrined in the Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, the Charter of Fundamental Rights of the European Union of 2007 and in other relevant international documents. FIDU therefore intends to work to spread the knowledge of human rights, monitor and report their violations, create greater awareness in public opinion, and exert influence on the States so that they comply with their own commitments on human rights. FIDU is based in Rome and operates throughout Italy and worldwide; carries out its activities

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Kharkiv Institute for Social Research (KHISR) is a Ukrainian independent think tank (est. 1999) involved in advocating for best human rights standards into the following spheres: access to justice, assessment of police performance, public oversight of the police, preventing torture and ill-treatment, reforming social services at the community level, quality of medical aid in custody and prisons, discrimination of vulnerable groups, security of local communities and community policing, rights of internally displaced persons etc.

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1. ODF, FIDU and KHISR present this Submission with recommendations within the framework of the consideration of the UPR of Kazakhstan. Over more than nine years, ODF has presented expert opinion on human rights in Kazakhstan, obtaining information from first hand and in-country experience. We are in touch with Kazakhstani activists, counsels, human rights defenders and we receive powers of attorney from victims of politically motivated persecutions. The ODF organised several observation missions on human rights in Kazakhstan.
2. In addition, in 2018-2019, the FIDU has been carrying out a human rights monitoring mission in Kazakhstan. The ODF is cooperating with FIDU observers and using the materials and observations they have collected. Members of the Mission attend trials and meet with representatives of the authorities and civil society as well as victims of political prosecution. Representative of the KHISR Andrew Chernousov was member of FIDU mission as an expert on access to justice, torture and accountability of law enforcement agencies.
3. In this Submission ODF and FIDU present information about the situation with freedom of association and peaceful assembly, freedom of opinion and expression, freedom of the press, persecutions of human rights defenders and the situation with torture in Kazakhstan. The provisions of law that are used to prosecute dissidents are noted. Incidents of mass detentions and the use of excessive brute force against peaceful protesters are indicated. We also point to the fact that in Kazakhstan, activists and journalists are subjected to criminal prosecution and sentenced to prison terms for civil society, human rights and trade union activities, participation in peaceful assemblies and criticism of the authorities in social networks.
4. The Submission points to the acute problem of the absence of the rule of law and Kazakhstan's refusal to comply with the recommendations of the UN treaty bodies regarding the release of

political prisoners. Lawyers, who participate in politically motivated cases, face various obstacles, threats and persecutions. The data indicating the systematic nature of torture and impunity for their use are given in the submission. Kazakhstan declares its adherence to democratic principles, but at the same time, it consistently refuses to comply with the recommendations of the UPR regarding respect for human rights, ensuring a fair trial and combating torture.

I. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

5. During the previous UPR, Kazakhstan refused to implement the recommendation to review its legislation that restricted freedom of assembly and association. In particular, Kazakhstan refused to cancel the procedure under which any peaceful assembly is possible only with the permission of the authorities. In their communications with the UN and the EU, the Kazakhstani authorities claim that freedom of assembly is not being harassed. However, over the past few years, the situation with freedom of assembly and association in Kazakhstan has deteriorated significantly. Participants in peaceful assemblies are subjected to mass detentions, interrogations and criminal prosecutions.
6. Kazakhstani legislation prohibits informal associations and regards organising and participating in an illegal gathering to be a criminal offence. Kazakhstan's Law "On the Procedure for Organising and Conducting Peaceful Assemblies" provides for the possibility of holding a peaceful assembly only if local authorities allow it. In almost all cases, the authorities reject requests for a peaceful assembly. For example, in August 2018, the Almaty authorities refused a local resident's request to hold a rally 40 times.
7. In 2015 the Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai noted that such strict regulation of peaceful assemblies in Kazakhstan makes this right completely meaningless¹. The authorities stated that they did not consider the findings of the Special Rapporteur to be accurate, noting that "it is important for the mandate holders to provide an objective and transparent observation".
8. In 2016 in different regions of Kazakhstan peaceful meetings were held against the sale of land to foreigners, after which more than 1,000 participants were detained, of which more than 30 protesters were subjected to administrative arrest. In November 2016 human rights activist Max Bokayev was sentenced to 5 years' imprisonment for taking part in these peaceful assemblies and criticising the authorities on social networks. In April 2017, the UN Working Group on Arbitrary Detention called for his immediate release and compensation (Opinion No. 16/2017)². However, Kazakhstani authorities refuse to release Bokayev.
9. Another wave of mass and brutal detentions of participants of peaceful assemblies is connected with the fact that on 13 March 2018, a Kazakhstani court issued a ruling recognising the peaceful opposition movement "Democratic Choice of Kazakhstan" (the DCK) as an "extremist" organisation and banning its activities in Kazakhstan. The reason for the ban was the accusations of "spreading extremist appeals" through social networks. The court's decision³ states that the DCK "incites social discord", "forms a negative image of the authorities", "provokes protest sentiments", and "encourages political disobedience".
10. Referring to this court's decision, the General Prosecutor's Office of Kazakhstan declared that individuals would bear criminal responsibility for support and 'positive approval' of the ideas of the

¹ <http://freeassembly.net/reports/kazakhstan/>

² https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_16.pdf

³ <https://www.facebook.com/gulnara.ju/posts/1549569151855938>

DCK and its leader Mukhtar Ablyazov, and particularly for: publishing posts in their support on social networks and participation in rallies or protest actions organised by the DCK⁴.

11. Based on the decision to ban the DCK, from March 2018 to March 2019, more than 700 people were subjected to arbitrary detention for participating in peaceful assemblies. 129 of them provided the Open Dialogue Foundation with documents on their cases and powers of attorney to protect their rights. Based on this, a collective complaint to UN and EU bodies was prepared⁵.
12. The authorities used brute force against peaceful protesters who were not inclined to act violently. The reason for the mass detentions was the mere fact that the authorities hadn't given permits for holding the rallies. These actions constitute a disproportionate restriction of the freedom of peaceful assembly. Moreover, cases of surveillance and detention of activists at the exit from houses before the beginning of peaceful assemblies became systemic.
13. In particular, mass detentions based on the decision to ban the DCK took place in different cities during peaceful assemblies: on 10 May 2018 more than 150 people were detained; on 23 June 2018 more than 200 people were detained; on 6 July 2018 more than 50 people were detained; on 16 December 2018 more than 20 people were detained; on 27 February 2019 more than 200 people were detained; on 22 March 2019 more than 100 people were detained. The protesters demanded the release of political prisoners, end to torture in Kazakhstan, they also stood in support of tuition-free education, expressed their dissatisfaction with the results of the work of the authorities.
14. At all the aforementioned rallies the police detained peaceful protesters and dragged them along the asphalt. Elderly people, children with their parents, journalists, and random passers-by were brought to the police station. The detainees were not allowed to contact their counsels. Law enforcement officers took phones from the detainees and checked their correspondence on social networks. In many cases, the detainees were held at the police stations until late at night, they were fingerprinted. During interrogations, detainees are asked what their political beliefs are, whether they support the DCK, have read the DCK manifesto, or support Nursultan Nazarbayev.
15. At all the aforementioned rallies, cases were recorded in which the basis for detention was the fact that the person was wearing blue clothes, or was holding blue ribbons or blue balloons. The authorities attribute these things to supporting the DCK, as blue is the colour of the DCK symbols.
16. In addition, in February 2019, other cases of suppression of peaceful assemblies were reported, including, in particular, the protest of the unemployed citizens in Zhanaozen and the protest of mothers of many children. Several dozen participants in the peaceful assemblies in Zhanaozen were detained. For Yerzhan Yelshybayev the statements made at the rally ended with criminal charges of 'inciting social discord'. Besides this, in February 2019, hundreds of mothers with large families have been protesting in different regions of Kazakhstan. They demand an improvement in the level of social security. They reported the exertion of pressure from the authorities. Meruert Aytimova from Kyzylorda reported that at the police station she was slapped in the face.
17. During the previous UPR, Kazakhstan rejected the recommendations to amend the Law on Trade Unions, which restricts the activities of independent trade unions. The persecution of independent trade unions has intensified.
18. On 4 January 2017, a Kazakhstani court banned the Confederation of Independent Trade Unions of Kazakhstan, accusing it of failing to comply with the Law on Trade Unions. This law, adopted in 2014, requires local trade unions to register with the Ministry of Justice and become members of a higher-

⁴ <http://prokuror.gov.kz/rus/novosti/press-release/o-priznanii-dvizheniya-dvk-ekstremistskim>

⁵ <https://en.odfoundation.eu/a/8949,collective-complaint-be-quiet-or-be-charged-with-extremism>

level trade union within six months. The Ministry of Justice prevented the registration of the Confederation of Independent Trade Unions. However, the court refused to hear the arguments of the Confederation and liquidated it. On 5 January 2017, more than 600 oil industry workers employed with Oil Construction Company went on hunger strike to protest this decision. As a result, about 60 of them were fined 130-330 euros for “violation of the legislation on holding rallies”.

19. As a result of this major strike, trade union activists Amin Eleusinov and Nurbek Kushakbaev were sentenced, respectively, to 2 and 2,5 years in prison. In 2018 they were released on parole. Former chairperson of the Confederation of Independent Trade Unions Larisa Kharkova was sentenced to 4 years of restraint of liberty, confiscation of property and 5 years of a ban on holding senior positions in civil society associations.

II. FREEDOM OF OPINION AND EXPRESSION

20. During the previous UPR, as well as in communication with the EU, the Kazakhstani authorities stated that their legislation protects freedom of expression. However, in recent years the oppression of freedom of opinion and expression has increased significantly.
21. On 1 January 2015, the new criminal law has entered into force, which was adopted in disregard of UN, OSCE and EU recommendations. Vague and politicised articles of the new Criminal Code are used against representatives of the civil society. The articles used include: ‘inciting social discord’ (Article 174), ‘libel’ (Article 130), ‘dissemination of knowingly false information’ (Article 274), ‘violation of the order of organising rallies’ (Article 400), ‘provoking people to participate in an illegal strike’ (Article 402). The authorities refused to implement the recommendations of UN and EU bodies to review these articles.
22. After the decision of a Kazakhstani court to ban the DCK, ‘criticism of the authorities’ and ‘support of opposition ideas’ have become grounds for detentions, interrogations and criminal prosecutions. Based on the ruling to ban the DCK, more than 30 people were subjected to prosecution for criticising the authorities in social networks. In these cases, the majority of those prosecuted are charged under the following criminal articles: ‘participation in the activities of an organisation after its recognition as extremist’ (Art. 405 of the CC), “providing information services to a criminal group” (Art. 266 of the CC), “incitement of social discord” (Art. 174 of the CC), ‘public calls to seize power’ (Art. 179 of the CC). Currently, there are more than 15 political prisoners in Kazakhstan.
23. Several people have already been sentenced to prison terms for “subscribing to the pages of the DCK and Ablyazov”, “calling for participation in rallies”, and criticising the authorities in social networks: Ablovas Dzhumayev was sentenced to 3 years’ imprisonment (prosecutors are now demanding a conviction for his wife, Aygul Akberdiyeva); Almat Zhumagulov was sentenced to 8 years in prison, while Kenzhebek Abishev – to 7 years; Aset Abishev was sentenced to 4 years in prison. A number of people were sentenced to restriction of freedom for expressing an opinion in support of the DCK's opposition ideas: Bakiza Khalelova, Azat Ibrayev, Arman Alakayev, Farit Ishmukhametov, Muratbek Argynbekov, Bolatkhan Zhunusov. The court banned Bakiza Khalelova from writing comments “aimed at discrediting the activities of the authorities” on social networks.
24. Social networks users such as Ruslan Ginatullin, Igor Chuprina and Igor Sychev are being punished with imprisonment for posting material inconvenient to state authorities. In December 2018, blogger Sanat Dosov, who was sentenced to 3 years in prison for criticizing the policy of the President of Russia regarding Ukraine on social media, was released on parole.

25. Aron Atabek, Sanat Bukenov, Makhambet Abzhan are serving prison terms for their civic and human rights activities. In 2018, a farmer and civil society activist Yedige Batyroov was released, who served 3 years in prison on charges of “knowingly false denunciation” (Article 419 of the CC).
26. In 2017 the former head of NGO ‘The Centre for Social and Political Studies’ Olesya Khalabuzar was sentenced to 2 years of restraint of liberty, as a text of the leaflet criticizing the Land Reform was found on her computer. In 2019 activist Dilnar Insenova was sentenced to 2 years of restriction of liberty and 2 years of ban of participation in public activity on charges of “embezzlement” during the time of heading the NGO.
27. Vladimir Kozlov is a Kazakhstani opposition politician who spent almost 5 years in prison. He was convicted for supporting the oil workers of Zhanaozen, who were shot by the police on 16 December 2011. On 4 August 2016 Kozlov was released on parole. At the moment, Kozlov cannot use banking and insurance services, as he is included in the list of ‘persons connected with the financing of terrorism and extremism’. At the moment, the list includes about 1,500 citizens of Kazakhstan (in particular, Olesya Khalabuzar, Bakiza Khalelova, Bolatbek Blyalov) who have been convicted under articles that the authorities have classified as ‘extremist’.
28. During the previous UPR, Kazakhstan denied the facts of punitive psychiatry. However, the authorities continue to apply this practice. The civil society activists Natalia Ulasik and Ardak Ashim were subjected to punitive psychiatry in retaliation for criticism of the authorities on social media. In May 2018, under pressure from the international community, the authorities released Ashim from the mental hospital. Natalia Ulasik spent about 2 years in a psychiatric hospital and was released in 2018.
29. Kazakhstan has carried out politically motivated prosecution with the use of INTERPOL mechanisms, extraditions and international legal assistance against dissenting voices, primarily with the aim of laying hands on the opposition politician Mukhtar Ablyazov, his family members and former colleagues from the EU. On 9 December 2016, the French Council of State stressed the political nature of the case against Ablyazov and refused his extradition⁶. The EU states have refused to extradite individuals involved in the case: Tatiana Paraskevich, Artur Trofimov, Kuanysh Nurgazin, Alexander Pavlov, Muratbek Ketebayev, Syrym Shalabayev, Victor Khrapunov, Leyla Khrapunova and Roman Solodchenko.
30. In October 2017, Kazakhstani journalist and opposition activist Zhanara Akhmetova was arrested in Ukraine due to the extradition request from Kazakhstan. The authorities of Kazakhstan may have carried out operational activities in Ukraine. Now Akhmetova is released, but she is still at risk of extradition.

III. FREEDOM OF THE PRESS

31. The Kazakh authorities have repeatedly refused to decriminalize defamation, insulting and disseminating of knowingly false information under the justification that these crimes are necessary to stop the attempts to “use free speech” against the “interests of the individual, society and state”. The authorities also expressed support for the measures taken to suspend or block media outlets with the aim of “ensuring information security”.
32. The authorities continue to narrow the space for free media activities. On 1 January 2016 the new amendments to the Law on Mass Media was entered into force. The law provides that the

⁶ <http://www.conseil-etat.fr/Actualites/Communiqués/Decision-d-extradition>

infrastructure of “online press” should be situated exclusively on the territory of Kazakhstan. Since 1 January 2017, amendments to the Law on Communications have come into force in Kazakhstan, giving special services the right to ‘block the work of social networks and access to Internet resources’ without a court decision. On 25 October 2018, the government of Kazakhstan passed a decree which grants the law enforcement agencies the right to block the Internet “in case of potential or actual social, natural or technical emergency”. New amendments to the legislation have been in force since 2018, prohibiting journalists from distributing personal or commercial data without the consent of the subject of such data, as well as prohibiting anonymous comments on media sites.

- 33.** Journalists of the “Uralsk Week” newspaper faced criminal charges for anonymous comments under their publications, and are also subject to lawsuits regarding the protection of reputation. In 2018, the website Ratel.kz was shut down due to technical violations in its registration documents, and its editor-in-chief was accused of dissemination of knowingly false information'. According to the press organisation 'Adil Soz', there were 15 cases of closure or suspension of media outlets in 2017, and 92 cases in 2018.
- 34.** In October 2015 a journalist Yaroslav Golyshkin was sentenced him to 8 years in prison for conducting a journalistic investigation. In May 2016 journalist of the ‘Nakanune.kz’ portal Gyuzyal Baydalina was sentenced to 1,5 years in prison on charges of ‘spreading knowingly false information’. By the decision of the Appellate Court the term of imprisonment was replaced with a suspended sentence. The portal ‘Nakanune.kz’ was forced to cease its activity.
- 35.** A former editor-in-chief of the ‘Tribuna’ newspaper Zhanbolat Mamay was accused of ‘money laundering’ within the framework of the case of opposition politician Mukhtar Ablyazov. According to charges, Mamay's newspaper ‘received sponsorship from Ablyazov’. Mamay refused to ‘confess to the crime’, after which he was beaten in the detention facility. On 7 September 2017, the court sentenced Mamay to 3 years of restriction of freedom and imposed on him a 3-year ban on engagement in journalistic activities. The newspaper ‘Tribune’ ceased its activity.
- 36.** The media managers who had received the state funding but later came into conflict with the authorities, have also been subjected to persecution. The example is the case of Seytkazy Matayev, the chairman of the Union of Journalists of Kazakhstan, and his son, Aset Matayev, the head of the ‘KazTag’ news agency. They were released from prison in 2017 and 2018.
- 37.** The authorities are increasingly resorting to the practice of detaining journalists in order to prevent coverage of peaceful assemblies. In April and May 2016 more than 50 journalists who were reporting about peaceful assemblies against amendments to the Land Code were detained. In February and March 2019, journalists Saniya Toyken and Svetlana Glushkova, who covered peaceful protests, were detained.
- 38.** In addition, within the framework of the ban the DCK, the Kazakhstani authorities are blocking social networks. In 2018, the Minister of Information and Communications, Dauren Abaev, confirmed that interruptions in the work of social networks (in particular, YouTube and Facebook) were connected with the ‘technical work on the removal of unlawful materials’ of the DCK. Due to efforts of Kazakhstani authorities, Ablyazov's Instagram profile with more than 170 000 subscribers⁷ had been blocked for several months. The participation in DCK groups in social networks is the basis for prosecution for “support for an extremist organisation” and “incitement of social discord”. In this way the authorities resort to intimidation of society.

⁷ <https://www.instagram.com/mukhtarablyazov/?hl=uk>

IV. HUMAN RIGHTS DEFENDERS

39. The Kazakhstani authorities deny the facts of pressure on NGOs. At the same time, they persecute individual human rights defenders and have adopted new legislation that strengthens control over human rights NGOs. In 2016, amendments to the legislation were introduced, requiring NGOs that receive foreign funds to submit additional reports. Human rights NGOs (e.g. "Liberty") are subject to additional tax audits.
40. In Kazakhstan, lawyers systematically face threats, intimidation, surveillance and other kinds of pressure. This especially concerns those who enter into the defence of those who are charged for political reasons. 99.8% of court judgments in the country are convictions. Moreover, in 2018 Kazakhstani authorities adopted a new law that lead to state control over the Bar Association.
41. Kazakhstan's authorities find ways to persecute even those lawyers who have been forced to leave the country. Kazakhstani human rights activist and lawyer Botagoz Jardemalie had been furnishing legal consultations to the opposition politician Mukhtar Ablyazov and other persons being prosecuted for political motives in Kazakhstan. Kazakhstan made attempts to bring about her extradition. In 2013, the Belgian authorities granted Jardemalie political asylum. In 2016, INTERPOL removed her name from the wanted list. Kazakhstan organised surveillance of Jardemalie and was probably involved in an attempt to kidnap her. Belgian police is investigating these incidents⁸. In order to force Jardemalie to return to Kazakhstan and 'cooperate with the investigation bodies' in the case against Ablyazov, the authorities subjected to torture and illegally prosecuted her brother Iskander Yerimbetov (look point 48 of this Submission).
42. In July 2018, human rights defender Elena Semenova visited Strasbourg, where she conducted a series of meetings with Europarlament deputies and recounted the multitudinous facts of torture of prisoners in Kazakhstan. After returning to Kazakhstan, a criminal case was initiated against her on a charge of "spreading knowingly false information". On 8 October 2018 authorities did not permit Elena Semenova to fly out to Strasbourg for a human rights meetings. After Semenova's case had received international publicity, the criminal prosecution of her was closed, but she continues to be persecuted by the prison administration.
43. On 14 February 2019, members of the human rights monitoring mission of the Italian Federation for Human Rights (FIDU) Liudmyla Voloshyna and Valerii Iavtushenko were illegally expelled from Kazakhstan. They focused on monitoring human rights violations and also publicized the case of the judge Malik Kenzhaliyev, who provided audio recordings of conversations, during which he was required to pass a guilty verdict in the case of activist Aigul Akberdiyeva. The judge acknowledged the facts of pressure and threats from intelligence agencies, after which he declared 'refusing the assistance of human rights defenders'. After that FIDU observers were detained, and the consul was not allowed to see them.
44. In March 2019, the Kazakhstani authorities opened a criminal case against Serikzhan Bilash, who defends the rights of ethnic minorities in the Xinjiang province in China. An attorney reported that the investigators were exerting pressure on Bilash.

⁸ <https://www.levif.be/actualite/belgique/comment-le-kazakhstan-traque-les-dissidents-politiques-en-exil-aussi-en-belgique/article-normal-781657.html>

V. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT IN PLACES OF DETENTION

45. In 2011, by his decree, the President of Kazakhstan transferred the detention facilities and prisons from the jurisdiction of the Ministry of Justice to the Ministry of Internal Affairs. Human rights defenders sharply criticised the decision which made the penitentiary system even more closed to observers and vulnerable to violations. Kazakhstan has ignored the recommendations of the UN Committee against Torture and the UN Human Rights Committee on the transfer of the penitentiary system back to the Ministry of Justice.
46. According to statistics given by Penal reform international, in 2015, Kazakhstan recorded 1,413 cases of torture during criminal proceedings, and in 2016 - 1,460 cases⁹. Annually, the NGO Coalition Against Torture registers approx. 200 incidents of torture in penitentiary institutions in Kazakhstan¹⁰. According to official statistics of the General Prosecutor's Office, from 2008 to 2018, 500 cases of torture were recorded in the Unified Register of Pre-Trial Investigations. Only in 8 cases, the complaints of the victims of torture were satisfied. In 2026 cases, investigations were closed for various reasons¹¹.
47. Torture victims are warned about criminal charges for false denunciation, which deter many from filing a complaint. Cases of defendants being tortured in places of detention in order to obtain "confessions" are systematically recorded. In exchange for "cooperation with the investigation" the accused are promised release or reduction of their sentence. For example, the authorities released the victims of ill-treatment Aset Nurzhaubay and Muratbek Tungishbayev from custody only after they and their relatives to publicly declare "repentance", abandon opposition ideas and discredit human rights organisations and international observers.
48. Political prisoner Iskander Yerimbetov repeatedly reported that employees of the special services had tortured him in a bid to exert pressure on his sister, Botagoz Jardemalie, political refugee and lawyer of the opposition politician Mukhtar Ablyazov. At an individual meeting with Antonio Stango, President of the FIDU and Marcin Świącicki, member of the Polish Sejm, in the pre-trial detention centre, Yerimbetov said that his cellmates there beat him with a wooden stick wrapped in a towel. According to Yerimbetov's mother, the stick was given to them by a jail guard. Ignoring the data of human rights defenders and the demands of the international community, on 22 February 2018 authorities closed the criminal case on torture. The court trial on the case was carried out with an accusatory bias and gross violations¹². Iskander Yerimbetov was sentenced to 7 years in prison, and his colleagues Dmitriy Pestov and Vasilina Sokolenko, who stated about pressure by investigators, to 5 years in prison. On 20 November 2018, the UN WGAD came to the conclusion that Yerimbetov's detention and arrest were arbitrary, and the right to a fair trial was not ensured (the Opinion No. 67/2018)¹³. The authorities do not comply with the Opinion the UN WGAD to release Yerimbetov.
49. According to the information available, businessman Muratkhan Tokmadi was subjected to torture in the NSC detention facility. Based on Tokmadi's testimonies obtained under torture, the authorities initiated a new trial in absentia against opposition politician Mukhtar Ablyazov and sentenced him to life imprisonment.
50. Life-threatening diseases of the political prisoner Mukhtar Dzhakishev have worsened, in conditions of non-provision of proper medical assistance he is at risk of stroke and heart attack. The Interior

⁹ <https://informburo.kz/novosti/pochti-1500-sluchaev-pytok-zaregistrovano-v-kazahstane-v-2016-godu.html>

¹⁰ <https://www.notorture.kz/mezhdunarodnyi-den-v-podderzhku-zhertv-pytok-npo-prizyvajut-pravitelstva-ca-prekratit-praktiku-pytok/>

¹¹ <https://www.kazpravda.kz/news/obshchestvo/rost-kolichestva-pitok-i-zhestkogo-otnosheniya-nabludaetsya-v-turmah-kazahstana>

¹² <https://en.odfoundation.eu/a/9026,the-iskander-yerimbetov-case-the-trial-of-the-kazakhstan-regime-s-hostage> ;

<https://www.nhc.no/en/kazakhstan-must-release-iskander-yerimbetov-and-co-defendants/>

¹³ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_67.pdf

Ministry has repeatedly denied Dzhakishev's requests to be admitted to a private hospital. Kazakhstan does not comply with the decision of the UN Human Rights Committee (Communication No. 2304/2013)¹⁴ to release Dzhakishev. In 2018 the Kazakhstani authorities repeatedly did not allow international observers to visit Dzhakishev.

51. The Kazakhstani authorities have repeatedly referred to the introduction of the National Preventive Mechanism as an example of their fight against torture. However, the NPM remains highly dependent on central authorities. In November 2018, citing the findings of human rights organisations, the UN Human Rights Committee concluded that the NPM does not monitor all places of detention, and continues to remain dependent on the office of the Ombudsman. The activity of Ombudsman is regulated by presidential decree. In practice, the Ombudsman is not independent. For example, in the case of Iskander Yerimbetov, the office of the ombudsman referred to the findings of law enforcement agencies, according to which Yerimbetov's injuries appeared due to him having "bumped into a nightstand and a bed".
52. During the last several years, the authorities of Kazakhstan have been ignoring the repeated demands of the UN and the EU to ensure proper investigation of the Zhanaozen tragedy. On 16 December 2011, in Zhanaozen the police dispersed a peaceful demonstration by oil workers, with the use of firearms. According to official figures, at least 17 people were killed, but unofficial sources claim there were as many as 70 casualties. 22 oil workers testified in court that they had been subjected to torture. The Kazakhstani authorities are referring to the fact that the Ministry of the Interior refused to initiate a criminal case concerning torture 'due to a lack of 'elements of the crime'. The complaints were examined by the Ministry of the Interior, the very department whose representatives, according to oil workers, had subjected them to torture.

VI. RECOMMENDATIONS

Freedom of association and peaceful assembly:

53. Amending the legislation on peaceful assemblies in order to bring it into line with the provisions of the ICCPR, in particular to introduce a notification procedure for holding peaceful assemblies instead of the existing authorisation procedure.
54. Removing the ban on the existence of informal public associations from legislation.
55. Stopping the practice of applying disproportionate measures in the form of mass forceful detentions of peaceful protesters, as well as refraining from criminal prosecution for expressing the right to peaceful assembly.
56. Amending trade union legislation to eliminate barriers to the activities of independent trade unions.
57. Implementing UN WGAD's recommendations for the release of civil society activist Max Bokayev.

Freedom of opinion and expression:

58. Decriminalising the following articles: 'libel' (Article 130 the CC) and 'dissemination of knowingly false information' (Art. 274 of the CC), as well as reviewing the vague and politically motivated article 'inciting social discord' (Art. 174 of the CC) in accordance with the ICCPR requirements.

¹⁴ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f115%2fD%2f2304%2f2013&Lang=en

59. At the legislative level, to give a clear definition to the concept of “extremism”, so as to avoid its broad interpretation and selective application.
60. To end politically motivated imprisonment and prosecution of journalists, bloggers, human rights defenders, trade unions and civil society activists.
61. Ensuring the implementation of international commitments to carry out justice reform.
62. To eliminate the practice of punitive psychiatry against critics of the government.
63. Given that most decisions of the UN treaty bodies are not implemented by Kazakhstan, ensuring the implementation of these decisions, in particular with regard to violations of freedom of opinion and expression, freedom of peaceful assembly.
64. Revoke the decision to ban the peaceful opposition movement “Democratic Choice of Kazakhstan”, as it does not have legal certainty and makes it possible to sentence people to prison terms for exercising their right to freedom of expression and assembly.

Freedom of the press:

65. To amend the legislation, making it impossible to mete out disproportionate punishments in the forms of suspension or bans on the circulation of newspapers for technical and formal violations.
66. Repealing the amendments allowing the blocking of web-site in the absence of a court order.
67. To cease the practice of closing, suspending, blocking and obstructing the work of all media outlets and blocking social media.
68. To cease the practice of intimidating, arresting and prosecuting journalists and bloggers for exercising their right to freedom of expression and information.

Human rights defenders:

69. Provide conditions for the free and safe work of human rights defenders and members of international human rights missions.
70. Abandon the practice of banning activists from attending international human rights meetings.
71. Avoiding further persecutions, including criminal prosecution, of activists for their legitimate human rights activities.
72. To guarantee the independence of lawyers and lawyers’ self-government, cease persecution of lawyers and ensure their safety.
73. To cease the harassment of, and restrictions on, civil organisations whose activities are oriented on protection of human rights, development of the rule of law and democratic reforms.

Torture and other CID treatment in places of detention:

74. To withdraw the penitentiary system from the jurisdiction of the Ministry of Internal Affairs and return the supervision to the Ministry of Justice.
75. Ensuring full functional and financial independence of the National Preventive Mechanism, as well as increasing the efficiency and publicity of its functioning in accordance with the Optional Protocol to the Convention against Torture.

- 76.** Strengthening the mandate of the Commissioner for Human Rights and ensuring their functional independence.
- 77.** Elimination of the widespread practice of evidence collection by demanding 'confessions' and 'cooperation with the investigation'.
- 78.** Conducting a proper and thorough investigation into the allegations of torture, including by increasing the number of cases of torture brought to the trial stage.
- 79.** Abandoning the practice of threatening to charge alleged victims of torture or ill-treatment with "knowingly false denunciation".
- 80.** Implementing the recommendations of the UN WGAD and the UN Human Rights Committee regarding the release of victims of torture Iskander Yerimbetov and Mukhtar Dzhakishev.
- 81.** Reviewing the criminal cases in which it was recorded that the evidence and testimony was obtained under torture.
- 82.** To observe the rights of prisoners in accordance with the Minimum Standard Rules for the Treatment of Prisoners.
- 83.** Allowing international observers to places of detention in order to monitor compliance with detention conditions and human rights.
- 84.** Conduct of an independent and effective investigation, with the participation of the international community, into the circumstances of the shooting of peaceful striking oil workers in Zhanaozen in 2011 and allegations of mass torture, as well as bringing to justice the officials who gave the corresponding orders.