



Feature Article  
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## Human Rights Reforms in Kazakhstan

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Kazakhstan's leaders have long expressed ambitious goals for the country's development, and worked to make the country a force in international affairs. To a considerable degree they have succeeded. Kazakhstan has played an important role in international organizations, including chairing the Organization for Security and Cooperation in Europe and obtaining a non-permanent seat on the UN Security Council. The country has also played an important role in international peace and security, including through its support for nuclear non-proliferation and its mediation of a number of international disputes. These many steps on the international scene have provided Kazakhstan with considerable goodwill and respect. Meanwhile, Kazakhstan's leadership have set ambitious goals for the country's future. These include a closer partnership with the



*President Kassym-Jomart Tokayev at the Council for Public Trust*

European Union through an Enhanced Partnership and Cooperation Agreement, the goal of obtaining membership in the Organization of Economic Cooperation and Development, and most potently, for Kazakhstan to be part of the world's 30 most developed nations by 2050.

Kazakhstan's international image, and its ambitious development goals, have one thing in common: their biggest challenge arises from certain aspects of Kazakhstan's domestic situation,

particularly those relating to individual rights and freedoms. As became clear during Kazakhstan's candidacy for the OSCE chairmanship, international concerns regarding individual rights and freedoms in the country constituted a significant challenge that led to reservations from influential member countries and, fairly or not, delayed Kazakhstan's chairmanship. More broadly, while Kazakhstan's contributions to international peace and security are widely recognized, criticism concerning human rights issues in the country continue to emerge both from partner governments, international organizations, and non-governmental bodies.

More importantly perhaps than international criticism, the situation in this sphere is the perhaps most significant challenge to the realization of the leadership's ambitious goals for Kazakhstan's future. To take only one prominent example, Kazakhstan has made membership in the OECD a benchmark for its ambition to reach a level of development among the 30 most advanced in the world. The World Bank's Worldwide Governance Indicators provide useful data to measure the development of Kazakhstan's governance on a series of factors ranging from government effectiveness and political stability, to control of corruption and voice & accountability. On some of these indicators, such as regulatory quality and government effectiveness, Kazakhstan is already fairly close to the OECD average, with the difference being about 20 points on a scale of 1 to 100, and shrinking rapidly. The gap is wider in terms of rule of law and corruption control, being

about 40 points, and also showing rapid improvement. But when it comes to voice and accountability, a category defined as "the extent to which citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media) the gap is almost seventy points, with little change in the indicator between 2009 and 2019.<sup>1</sup> In other words, Kazakhstan is rapidly reaching the level of OECD countries in terms of its government effectiveness, and making important strides in controlling corruption and improving the rule of law. But the likelihood that it will achieve membership in the OECD, or otherwise reach its developmental goals, must be considered remote without significant improvement in the category of voice & accountability, which captures areas that include freedoms of expression, association, and media. This is the case not just because organizations like the OECD monitor these types of indices, but because such freedoms form an integral part of the development of countries to the highest level existing in the world today – particularly in a world where heavy reliance on extractive industries may no longer be possible. Indeed, the development of a knowledge-based highly developed economy has historically been strongly interlinked with significant improvements in individual rights and freedoms.

The fulfillment of the goals established and proclaimed by Kazakhstan's leaders, therefore, will require considerable and transformative domestic reforms. As will be seen in this study, this reality forms the background for a shift that has taken

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<sup>1</sup> Assel Satubaldina, "Kazakhstan Improves Position in World Bank's Worldwide Governance Indicators Report," *Astana Times*, October 8, 2020.

(<https://astanatimes.com/2020/10/kazakhstan-improves-position-in-world-banks-worldwide-governance-indicators-report/>)

place in the country's state-building model. While this model originally prioritized top-led economic development at the expense of political reform, Kazakhstan's long-term success in economic development has required a shift to a model where economic and political reforms must be implemented in parallel. Of course, the economic downturn since 2014 also poses challenges, as it may lead some parts of the leadership to urge caution in implementing reforms.

### **Kazakhstan's State-Building Model**

The World Governance Indicators cited above harbor an obvious question: if Kazakhstan has improved so rapidly on so many indicators, why is there hardly any movement in terms of "voice and accountability"? The World Bank's data is no outlier: datasets by Freedom House and the Polity Project come to similar conclusions. The answer to this question lie in part in Kazakhstan's Soviet legacy, its precarious location, and its development model.

**The Soviet legacy** remains, to this day, an important factor hampering the development of the countries that formed part of the USSR. Countries in Central and Eastern Europe that had retained their independence during the Soviet period and were incorporated into the Soviet bloc performed relatively well following the collapse of Communism, and rapidly developed market economies and democratic institutions. (Some of the states, it should be noted, have since regressed in an illiberal direction) The same was true for the Baltic states, which had existed independently up until the second world war. By contrast, states that gained their independence in 1991, and which prior to Soviet rule

had been incorporated into the Russian empire, did not develop similarly. The reason was threefold: first, they had to build most institutions of statehood from scratch, and could not simply retool the existing institutions. Second, the institutional culture they did inherit – that of the Soviet Union itself – was incomparably more authoritarian and repressive than that of the "satellite states" in eastern Europe. And finally, whereas the central and east European states benefited from large western assistance programs and were soon offered the prospect of membership in the EU and NATO, no similar assistance or promise of inclusion existed for the successor states of the Soviet Union.

In addition, Kazakhstan's international exposure at independence was very circumscribed, as exchange programs between the Soviet Union and the West were dominated by natives of the Slavic republics. The only significant exception to this was the visit of prominent Kazakh writer Mukhtar Auezov to the United States in 1960. All in all, this meant that the Soviet mentality that dominated all institutions of government would continue to prevail for several decades to come. This mentality centered on the domination of the state over society, and the employment of law in the pursuit of this domination. Therefore, the concept of "rule of law" did not exist, as law was an instrument of the state. Similarly, the concept of a civil servant did not exist: a bureaucrat represented the state, and was an instrument to control society and impose the will of the state on individuals. To make matters worse, from the 1970s onward the Soviet system of government had fallen prey to systemic corruption, meaning that

government jobs had become an important source of private profit as well.<sup>2</sup>

Some years after independence, the Kazakh government managed to introduce young graduates of foreign universities into key managerial positions. This was the case in particular after the acceleration of Kazakhstan's visionary Bolashak scholarship program in the second decade of independence. That, in turn, was followed by the creation of Nazarbayev University, which sought to provide high-quality undergraduate education in-country. But while such programs provided high-quality cadres for the central government institutions, they could not similarly replace thousands of clerks, police officers, local administrators or teachers. The replacement of these bureaucrats and their replacement by civil servants in the true sense of the word would by necessity be a generational effort. Indeed, it is only now, thirty years after independence, that the post-Soviet generation is gradually taking over the reins of the government at all levels.

This state of affairs has generally been ignored – and was fully omitted from the influential “transition paradigm,” prevalent in the 1990s, which assumed that the collapse of Communism and the planned economy would, almost automatically, lead to a transition to a multi-party liberal democracy.<sup>3</sup> As has become painfully obvious, the basic conditions for such a development were not present in the successor states of the Soviet Union.

To this must be added **Kazakhstan's precarious geopolitical position**. Upon independence, less than 40 percent of the country's population was

ethnically Kazakh. The emergence of ethnic and regional conflicts in several areas of the Soviet Union was compounded by the growing popularity of irredentist right-wing nationalist forces in Russia that demanded territorial adjustments, including laying claims to large parts of northern and eastern Kazakhstan. Meanwhile, extremist interpretations of Islam were on the rise in the territories to Central Asia's south, and had shown an ability to make headway in certain areas of southern Central Asia. Against this background, Kazakhstan's leadership upon independence rejected the option of embarking on an uncontrolled process of liberalization. The country's elites, led by President Nursultan Nazarbayev, attributed the civil war in Tajikistan and the ethnic conflicts in the Caucasus in great part to such uncontrolled liberalization. Their conclusion was that political liberalization would be doomed to failure in the absence of economic development and strong state institutions. In fact, they viewed such liberalization as potentially fatal for the young state of Kazakhstan, as it could lead to growing mutual animosity among ethnic Kazakh and ethnic Russian nationalists, while also allowing extremist Islamist elements to gain influence. Instead, they considered it necessary for the state, acting as a responsible parent as it were, to step in to manage relations among various groups in society, in order to ensure that a balance was kept that maintained order in society.

Such concerns did not abate in the decades that followed, even though Kazakhstan's leadership proved astute at managing nationalists and extremists of all stripes. By the end of the second decade of

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<sup>2</sup> Konstantin M. Simis, *The Corrupt Society: The Secret World of Soviet Capitalism*, New York: Simon & Schuster, 1982.

<sup>3</sup> Thomas Carothers, “The End of the Transition Paradigm”, *Journal of Democracy*, vol. 13 no. 1, 2002.

independence, it became clear that both China and Russia were developing in a strongly authoritarian direction, and that Kazakhstan would need to manage their rivalry in Central Asia. The leadership in Kazakhstan also observed the fallout of popular revolutions in several post-Soviet states in 2003-05, as well as similar upheavals in the Arab world in 2011-12. To say that Kazakhstan's leadership was unimpressed would be an understatement. The instability and conflict that followed most of these upheavals reinforced the conviction among the Kazakh leadership that the state must retain control of the modernization and reform process. While this meant a continued prioritization of top-led reforms, it also had a flip side: Kazakhstan's leadership concluded that these upheavals were a result of poor management and governance, and thus reinforced the necessity for the state's leadership to maintain its legitimacy among the population by increasing its delivery of public goods.

This forms the background to **Kazakhstan's developmental model**, which has tended to prioritize economic development over political reforms. Kazakhstan's leadership persistently argued that it followed a formula of evolutionary reforms, which put economic reforms before political ones. According to this logic, each stage of political reforms is presumably linked to the country's level of socio-economic development. From this standpoint, the leadership has emphasized concepts such as evolution, organic development and a political process

based on national consensus. On this basis, political reforms are born mainly out of intra-elite deliberations and implemented top-down. This top-down perspective, in which the state is viewed as the central engine of social development, is undoubtedly colored by the Soviet experience. Yet it also bears strong resemblance to the historically successful cases of bureaucratic authoritarian socio-economic development in Japan and South Korea.<sup>4</sup> Kazakhstan's distinct approach to reforms can be contrasted with the type of pluralistic political processes found in European democracies, in which reforms tend to emerge out of a more competitive and conflictual process that pits different ideologies, groups and interests against one another, leading to bargaining and compromises. In this system, rapid changes of power are facilitated through the electoral mechanism, which Kazakhstan's leadership perceived as a risk to the young state's national unity and stability.<sup>5</sup>

It is no coincidence that Kazakhstan's allegiance to this model of development coincided with a period of historically high oil prices. Political scientists have long pointed out that "rentier states," which derive much of their income from rents rather than taxation, struggle in terms of democratic development, as the government's largest source of income is disconnected from the population, while also enabling the government to co-opt challengers in society rather than responding to demands for reform.<sup>6</sup> Most obviously, high oil prices ensured that

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<sup>4</sup> Juldyz Smagulova, "Language Policies of Kazakhization and Their Influence on Language Attitudes and Use", in Aneta Pavlenko, ed., *Multilingualism in Post-Soviet Countries*, Bristol: Multilingual Matters (2008): 175

<sup>5</sup> See discussion in Svante E. Cornell and Johan Engvall, *Kazakhstan in Europe: Why Not?* Washington: Central Asia-

Caucasus Institute & Silk Road Studies Program, Silk Road Paper, October 2017. (<http://silkroadstudies.org/publications/silkroad-papers-and-monographs/item/13254>)

<sup>6</sup> Michael Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*, Princeton: Princeton University Press, 2012.

the leadership did not consider political reforms to be urgent.

Kazakhstan's model of development, however, has undergone considerable change. This truly began in the aftermath of the 2008 financial crisis, which temporarily reduced oil prices and hit Kazakhstan's banking sector hard. This crisis removed the prevailing sense of complacency, and led President Nazarbayev to kickstart a process of diversification of the economy. While oil prices bounced back, they crashed again in late 2014, this time compounded by Western sanctions against Russia, a key trading partner for Kazakhstan.<sup>7</sup> It soon became clear that oil prices were not about to return to their formerly high levels anytime soon, if ever. Against this background, the forces that were arguing for deep political reforms in the country saw their hand strengthened within the ruling elite. It could even be said that the 2015 crisis altered the informal social contract in Kazakhstan: previously, the government had delivered ever rising living standards, something that lessened demands for political change. Conversely, the government's message of belt-tightening from 2015 onward carried it with it a greater responsibility to respond to demands for change also in the political realm. The net result was a shift, in which Kazakhstani leaders gradually saw that the notion of advancing economic reforms first, and holding off political reforms, was no longer sustainable. Economic diversification now required the liberalization of the economy, including the promotion of regional trade. Given the domination of various political forces over sectors of the economy, all of this touched on political matters. In other

words, the political system needed reform in order for the economy to diversify and develop. The government therefore recognized the need to pursue political and economic reforms in parallel. As will be seen below, Kazakhstan's President Kassym-Jomart Tokayev took this reform agenda to a new level in several initiatives launched following his inauguration.

### President Tokayev's Reform Agenda

After taking office in 2019, President Tokayev used two State of the Nation addresses to express deep criticism of the state of affairs in various sectors of the state and society, while announce his intention to press for far-reaching reforms. In so doing, President Tokayev has sought to balance continuity with change – designating three key principles for his reforms, namely continuity, justice, and progress. The continuity principle pledges to stay on the political course set by the country's First President, Nursultan Nazarbayev, and preserve the achievements of the first three decades of independence. The principle of justice, importantly, pledges to root policies in the equality of rights for all citizens and the creation of opportunities for all. The principle of progress signifies change, in aiming for social renewal "in all spheres of society." Inherent in this last principle is nothing less than the transformation of the country's political system, including over time greater transparency, greater popular participation in decision-making processes, a transition to a multi-party political system

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<sup>7</sup> Jack Farchy, "Currency Devaluation Places Kazakhstan Central Bank under Pressure," *Financial Times*, September

15, 2015. (<https://www.ft.com/content/48495ba8-579f-11e5-a28b-50226830d644>)

and the enhancement of local self-government bodies.

A central element in this vision is the notion of the “listening state.”<sup>8</sup> This notion stands in contrast to the Soviet legacy, in which the state sought to shield and protect itself from society, relying on structural violence to maintain power. Tokayev’s idea is to shift the nature of the state in Kazakhstan to one that is attentive to the needs of the population, provides mechanisms for popular feedback, and responds to the demands expressed by the people. This should not be mistaken for an intention to rapidly liberalize the political system: Tokayev’s vision expects the emerging citizen initiatives and groups to be constructive and non-radical, and maintains the ability and willingness of the state to crack down if emergent forces depart from this expectation.

President Tokayev, thus, has placed his bet on an accelerated gradual transformation of Kazakhstan. If successful, this transformation, everyone understands, will eventually lead to the creation of a liberal democratic system. Where Tokayev departs from many Western observers and advocates is in seeing the way toward this goal in a gradual rather than immediate process of political change. Many democracy advocates view democracy both as a means and an end: in this view, the way to reach liberal democracy is by liberalizing the political system immediately. President Tokayev, in line with the prevailing view in Kazakhstan’s leadership, rejects this view as dangerously naïve, instead

maintaining a strong role of the central authorities, which over time will steer the country in the right direction while slowly and gradually making the changes that will eventually lead the country to become a liberal democracy. While this view is controversial, it also has some backing in the international experience, not least in potentially following the example of Asian success stories like Taiwan and South Korea, while avoiding the pitfalls of rapid liberalization processes that reverted rapidly to illiberalism and authoritarian backtracking, as in Russia and Venezuela.<sup>9</sup>

How, then, has President Tokayev’s agenda handled the human rights concerns that have been present for a long time in Kazakhstan? The following sections will examine this question, looking in turn at five key areas: law enforcement abuse, women’s rights, freedom of assembly, freedom of expression and media, and religious freedom.

### Law Enforcement Abuse

Law enforcement is recognized as one of the post-Soviet institutions most resistant to change. This stems in part from the roots and nature of the Soviet police force, and from the continued role of law enforcement in maintaining stability and regime security in the decades following independence. The roots of the Soviet police were in the notorious People’s Commissariat for Internal Affairs (NKVD), which later transformed into a Ministry for Internal Affairs, known by its Russian acronym MVD. The

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<sup>8</sup> S. Frederick Starr, “First Glimpses of Tokayev’s Kazakhstan: The Listening State?” *Atlantic Council*, September 17, 2019. (<https://www.atlanticcouncil.org/commentary/long-take/first-glimpses-of-tokayevs-kazakhstan/>)

<sup>9</sup> See eg. Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, New York: W.W. Norton, 2007.

Ministry had large responsibilities including policing, penitentiaries, and even psychiatric care. The Soviet police force was known as the *militsiya*, an indication of the militarized nature of the force. Its main focus was not to serve the population but to control it on behalf of the ruling party and the government.<sup>10</sup> Similarly, the judicial system was structured in a way that provided little distinction between judges and prosecutors, and with strong political influence of the Communist party on the judicial system.

Reforming Soviet legacy law enforcement has been a daunting task. As Erica Marat's comparative study indicates, the degree of reform of post-Soviet police forces is not directly linked to the level of democratic development of a state. Put otherwise, even states that have reformed their political systems have found it challenging to modernize their police forces and fundamentally change the relationship between police force and society.<sup>11</sup>

Kazakhstan is an excellent example of this conundrum. Reports by human rights defenders indicate that law enforcement institutions in Kazakhstan have yet to meaningfully transform their approach to society into one where they understand their purpose to be to protect and serve the population. Throughout the period of independence, there have been continued reports of relatively widespread police brutality, most commonly through the use of violence to force criminal suspects into a confession,

as well as the use of violence against inmates in penitentiary facilities. As the UN Committee Against Torture's expert noted in 2014, these practices went beyond being isolated instances, suggesting that the law enforcement institutions continued to harbor many officers that perpetuated the Soviet mentality of law enforcement.<sup>12</sup> The Kazakh Ombudsman's office continues to receive about one hundred complaints alleging torture or ill treatment per year, and non-government organizations focusing on the matter report receiving double that number.

Kazakhstan has long sought to reform the Ministry of Interior and address the problem of police brutality. Many of the reforms have been inconclusive, however. For example, in a move that was a forerunner among post-Soviet states, the penitentiary system was transferred to the Ministry of Justice in 2002, but nine years later returned to the Ministry of Internal Affairs. In 2016, authorities created a local police force answerable to local governors and elected assemblies, thus opening the way for a greater input of local communities into the priorities of policing. This reform was terminated in 2018, however, indicating the level of challenges in the process of systemic change to law enforcement.<sup>13</sup>

By contrast, there were more positive strides in efforts to end police brutality. The government announced a zero-tolerance policy to torture in 2012, and created a National Preventative Measure Against Torture in 2013 involving civil society

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<sup>10</sup> Louise I. Shelley, "The Soviet Militiia: Agents of Political and Social Control," *Policing and Society*, vol. 1 no. 1, 1990.

<sup>11</sup> Erica Marat, *The Politics of Police Reform: Society against the State in Post-Soviet Countries*, Oxford: Oxford University Press, 2018.

<sup>12</sup> UNOHCHR, "Committee against Torture considers the report of Kazakhstan," November 18, 2014.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15309&LangID=E>

<sup>13</sup> Dimash Alzhanov, "Is It Possible to Reform the Kazakh Police in the Near Future?" Central Asian Bureau for Analytical Reporting, February 4, 2019. (<https://cabar.asia/en/is-it-possible-to-reform-the-kazakh-police-in-the-near-future>)



representatives. In parallel, changes were made to the law to sharpen punishment for law enforcement officers convicted of brutality. The problem is that so few are convicted: while the number of officials convicted of brutality has indeed increased gradually, there has continued to be a certain level of impunity, as many investigations into allegations of brutality are closed because of alleged lack of evidence. Moreover, national legislation allows the prosecution of those making allegations of ill-treatment under a law prohibiting the publication of false information, something that has been used by officials accused of misdeeds.<sup>14</sup>

It thus appears that the top leadership of Kazakhstan has displayed a clear intention to change the culture within law enforcement and the Ministry of Interior, but has thus far faced considerable challenges in the implementation of such changes. Indeed, while the legislation has been brought largely in conformity with international standards, the problem continues to be that this legislation is not sufficiently mirrored in practice. This situation is paralleled in most post-Soviet states; indeed, the most successful case of police reform is the one in Georgia, where the government essentially dismantled the police force completely and built a new force from scratch. Even in Georgia, however, continued violence in the penitentiary system was so

severe that a scandal involving leaked videos of penitentiary abuse contributed to the downfall of the Saakashvili government in the 2012 election. Even following the reforms, researchers concluded that “a real break with Soviet-style institutional structures has yet to take place.”<sup>15</sup>

Upon taking office, President Tokayev addressed the issue of police reform head-on in his first State of the Nation speech in September 2019. The President announced that a most pressing task would be what he called a “full-fledged reform” of the law enforcement system. He noted the significant problem of the police force’s image in society, observing that its effectiveness depends on its reputation in society. More explicitly, he promised that “the image of the police, as a power tool of the state, will gradually become a thing of the past; it will become a body providing services to citizens to ensure their safety.”<sup>16</sup> The President’s speech was short on details on how this transformation was to take place; but he now made clear that this issue was a top priority for the country’s leadership. Already that August, President Tokayev publicly commented on a case of alleged ill-treatment caught on camera, announcing he had ordered a full investigation that led to the detention of several prison officials.<sup>17</sup> This marked the first time the Head of State commented on a case of alleged mistreatment.

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<sup>14</sup> Andrey Grishin, “Torture in Kazakhstan: Beyond Some Cases,” *Central Asian Bureau for Analytical Reporting*, March 1, 2012. (<https://cabar.asia/en/torture-in-kazakhstan-beyond-some-cases>)

<sup>15</sup> Lili di Puppo, “Police reform in Georgia Cracks in an anti-corruption success story,” *Chr. Michelsen Institute*, 2010. (<https://open.cmi.no/cmi-xmlui/bitstream/handle/11250/2474643/Police%20reform%20in%20Georgia.%20Cracks%20in%20an%20anti-corruption%20success%20story?sequence=1>)

<sup>16</sup> President of Kazakhstan Kassym-Jomart Tokayev’s State of the Nation Address, September 2, 2019. ([https://www.akorda.kz/en/addresses/addresses\\_of\\_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-2-2019](https://www.akorda.kz/en/addresses/addresses_of_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-2-2019))

<sup>17</sup> Chris Rickleton, “Kazakhstan: Tokayev remarks on torture may signal new policy direction,” *Eurasianet*, August 1, 2019. (<https://eurasianet.org/kazakhstan-tokayev-remarks-on-torture-may-signal-new-policy-direction>)

In his second State of the Nation address of September 2020, President Tokayev took matters further, and made a scathingly critical analysis of the state of affairs in law enforcement. He noted that “reforms are absolutely necessary” in law enforcement, and that the “inertia of the past” results in a situation where an “accusatory bias” remains in law enforcement, leading to innocent people being “drawn into the orbit of criminal prosecution.” President Tokayev also observed that Kazakhstan had announced the transition to a service model of the police, but that “so far the work has led to only fragmentary results.”<sup>18</sup>

The President now announced more details in his plan to reform law enforcement, mentioning the OECD countries as the benchmark against which Kazakhstan’s law enforcement should be molded. This means reform at the level of the judicial system writ large: ensuring that “the court must be adversarial and the judge free from prosecution,” and that prosecutors and defense attorneys be on an equal footing. Further, the President announced the need to restructure the Interior Ministry and “freeing it from non-core functions.” He also laid out a three-tiered model entailing a “clear division of powers” between police, prosecutors, and judges,” something that would constitute a sharp break from the Soviet practice. In this model, police identify crimes and collect evidence; prosecutors independently assess the evidence collected while halting any violation of citizens’ rights; and courts issue final verdicts, while considering complaints against

the actions of authorities. In President Tokayev’s words, “this approach will strengthen the system of checks and balances and create effective filters at every stage.”

If implemented, the plan announced by President Tokayev would fundamentally change the nature of Kazakhstan’s law enforcement in line with international best practices. But there should be no illusion: the implementation of this ambitious agenda will require continued and consistent high-level attention, significant investment of resources, and the development of a qualitatively new personnel force within the police, prosecutors’ office, and the courts. This is a herculean task that will not be easily or rapidly completed.

### Women’s Rights

As Kazakhstan’s society has developed, issues that were previously largely kept under wraps are now coming to the fore. One key issue that has parked itself on the forefront of the public agenda is women’s rights, and particularly the situation concerning domestic violence. Surveys show that almost one in five Kazakh women have experienced physical or sexual abuse from their partner, with almost five percent having experienced it in the past year.<sup>19</sup> A United Nations study estimated that 400

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<sup>18</sup> President of Kazakhstan Kassym-Jomart Tokayev’s State of the Nation Address, September 1, 2020. ([https://www.akorda.kz/en/addresses/addresses\\_of\\_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-1-2020](https://www.akorda.kz/en/addresses/addresses_of_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-1-2020))

<sup>19</sup> Ministry of Economy of Kazakhstan, Statistical Committee, “Sample Survey on Violence against Women in Kazakhstan,” 2017. ([https://kazakhstan.unfpa.org/sites/default/files/pub-pdf/Kazakhstan%20VAW%20report\\_final%2031-10-2017.pdf](https://kazakhstan.unfpa.org/sites/default/files/pub-pdf/Kazakhstan%20VAW%20report_final%2031-10-2017.pdf))

women are killed by their partners on a yearly basis.<sup>20</sup>

Kazakh authorities have long expressed their awareness of the problem, and adopted a law on the prevention of domestic violence in 2009. The law did not criminalize domestic violence, and instead focused on the provision of short-term restrictive orders and access to shelters.<sup>21</sup> Still, thus far efforts to combat the problem appear to have yielded only limited results. A key issue for the government has been whether a separate legal provision is needed to domestic violence; another is to what extent the criminal justice system should be employed to address the problems, compared to preventive measures and alternative methods such as mediation.

In 2017, domestic violence was made an administrative offense. The logic behind this counter-intuitive move was to seek to strengthen preventive work and facilitate the bringing of perpetrators to justice. Authorities argued that women were often unwilling to bring criminal cases, as doing so might result in their husbands being jailed, something that could deprive the family of its main income. Moreover, in a criminal case, the task of securing evidence and witness testimony fell to women themselves, whereas in an administrative case the responsibility would rest with the police. The move was an indication that the government of Kazakhstan emphasized efforts to maintain the family unit

and to seek reconciliation between an abuser and a victim rather than adopt a punitive approach.

Human rights advocates soon argued that this move was not successful, and the UN's Committee on the Elimination of Discrimination Against Women criticized it. In particular, in a 2019 report, it drew attention to the common police practice of dissuading a victim from formally registering a complaint, and instead urging them to seek reconciliation with an abusive partner. It also observed the lack of training of law enforcement and the judicial system more broadly regarding domestic abuse, and the absence of a victim-centered approach to the problem. Furthermore, it identified a weakness in the law, namely the fact that abusers without another place to live were exempted from the eviction orders imposed on perpetrators.<sup>22</sup>

It should be noted that the same UN report praised Kazakhstan for adopting a gender-responsive budgeting plan, for equalizing the retirement age for women and men, for developing an action plan to combat trafficking in persons, and for several state programs intended to promote the position of women in the economy and society. Still, by the onset of the pandemic, it appeared clear that the government had not been able to find effective means to tackle the persistent problem of domestic violence. The issue then gained further attention during the pandemic, as lockdowns forced people inside and contributed to a visible increase in

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<sup>20</sup> Aery Duisenova, "In Kazakhstan, women march for their rights - and against violence," *Open Democracy*, March 9, 2020. (<https://www.opendemocracy.net/en/odr/kazakhstan-women-march-their-rights-and-against-violence/>)

<sup>21</sup> "Kazakhstan: Little Help for Domestic Violence Survivors," *Human Rights Watch*, October 17, 2019.

(<https://www.hrw.org/news/2019/10/17/kazakhstan-little-help-domestic-violence-survivors>)

<sup>22</sup> Committee on the Elimination of Discrimination against Women, "Concluding observations on the fifth periodic report of Kazakhstan," November 12, 2019.

instances of domestic violence.<sup>23</sup> This in turn led to a growth in demonstrations led by women's groups to demand government action, including a well-attended demonstration in Almaty in March 2020.<sup>24</sup> Demonstrators in particular drew attention to changes that led to the issuing of a warning rather than a fine to many domestic abusers.

President Tokayev addressed the issue already in his State of the Nation address in September 2019, noting that the state needed to "urgently tighten the penalties for sexual violence, pedophilia, drug trafficking, human trafficking, domestic violence against women and other grave crimes against the individual." The same year, Kazakhstan's delegation to a UN regional review meeting announced its intention to join the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention. By April 2020, Kazakhstan was along with Tunisia the first non-member state of the Council of Europe to be invited to accede to the convention.<sup>25</sup>

By summer 2020, Minister for Social Development Aida Balayeva stated that domestic violence cases had risen by over twenty percent during the pandemic. Law Enforcement responded by launching a

nationwide campaign called "No to Domestic Violence."<sup>26</sup> In early 2021, President Tokayev addressed the Council on Public Trust, citing these growing statistics of domestic violence. He ordered, among other, the refurbishing of the special units of the Ministry of Internal Affairs tasked with protecting women and children from domestic abuse, created in 1999, but whose personnel force had been slashed.<sup>27</sup>

As this analysis shows, the government of Kazakhstan has long sought to deal with the problem of domestic abuse, along with launching efforts to improve the economic and social conditions for women. This commitment is visible in part in the attention the Head of State has given to the issue in the past two years, as well as in the efforts by other senior figures to address the matter. This includes prominent coverage in official media: for example, in March 2021 the *Astana Times* published both an editorial by UN Secretary-General Antonio Guterres entitled "A Crisis with a Woman's Face," as well as another by Deputy Foreign Minister Yerzhan Ashikbayev focused on Kazakhstan's efforts to advance women's economic opportunities.<sup>28</sup>

<sup>23</sup> Assem Almukhanbetkyzy and Kristi Eaton "Under COVID-19, Domestic Violence Intensifies in Kazakhstan," *Diplomat*, July 24, 2020. (<https://thediplomat.com/2020/07/under-covid-19-domestic-violence-intensifies-in-kazakhstan/>)

<sup>24</sup> Aery Duisenova, "In Kazakhstan, women march for their rights - and against violence," *Open Democracy*, March 9, 2020. (<https://www.opendemocracy.net/en/odr/kazakhstan-women-march-their-rights-and-against-violence/>)

<sup>25</sup> UN Women, "Press Release: Kazakhstan moves closer to strengthening its laws and policies to combat violence against women," December 23, 2020.

(<https://eca.unwomen.org/en/news/stories/2020/12/press-release-kazakhstan-moves-closer-to-strengthening-its-laws-and-policies>)

<sup>26</sup> Almukhanbetkyzy and Eaton, "Under COVID-19, Domestic Violence Intensifies in Kazakhstan."

<sup>27</sup> "Domestic violence against women still a burning issue – Head of State," Kazinform, February 25, 2021. ([https://www.inform.kz/en/domestic-violence-against-women-still-a-burning-issue-head-of-state\\_a3757627](https://www.inform.kz/en/domestic-violence-against-women-still-a-burning-issue-head-of-state_a3757627))

<sup>28</sup> Antonio Guterres, "A Crisis with a Woman's Face", *Astana Times*, March 4, 2021; Yerzhan Ashikbayev, "Strengthening Women's Economic Opportunities: Achievements and Challenges," *Astana Times*, March 30, 2021.

In spite of these efforts, Kazakhstan has found the problem of domestic abuse a serious challenge to deal with – indeed, one that may have worsened during the pandemic. What has become abundantly clear is that addressing domestic violence will require fundamental reforms to law enforcement and the judicial system as a whole. This will take time; in the meantime, it is clear that Kazakh society is changing, with women now forcefully demanding that the state protect their safety. The state, at least at the higher levels, appears to be listening. At lower levels, however, the rate of change is much slower, and it will take both time and a continued forceful implementation of the messages from the central authorities for attitudes and approaches to change.

### **Freedom of Assembly**

For a country espousing Kazakhstan's model of development, the issue of Freedom of Assembly is more sensitive than the issue of police brutality or women's rights. The reason is simple: addressing police brutality and women's rights does not in any way undermine the stability of the governing system – in fact, doing so actually strengthens the system of government by producing greater legitimacy among the population. As for Freedom of Assembly, it is a double-edged sword. On one hand, the government recognizes the need to allow some outlet for the frustrations of the population to be expressed. Furthermore, even from the government's perspective, public assembly can serve as a pressure valve, an avenue for citizens to vent their frustrations, in turn providing the government a better understanding of the public mood. But it also recognizes the danger inherent in uncontrolled

expressions of public sentiments. After all, every overthrow of a government in the post-Soviet space has started with popular demonstrations, and the leadership of Kazakhstan has no intention to experience a similar fate. No government wants to be overthrown; but the leadership of Kazakhstan also genuinely believes in a model of development that is gradual and evolutionary, rather than radical and revolutionary. Added to this is the government's care to maintain relations among the ethnic groups in the population, as it has consistently sought to prevent the mobilization of ethnic nationalist forces either among the indigenous population or among minority groups.

The difficult balance for Kazakhstan's leadership, thus, is how to design a system that allows for popular expressions of discontent without risking a situation that threatens the security of the government and the state.

Kazakhstan's constitution guarantees the right of assembly; but simultaneously provides for the government's ability to restrict this right on the basis of state security, public order, and the protection of the rights of other persons. While there was considerable use of the freedom of assembly during the early years of independence, the government from the late 1990s onward began taking a more restrictive approach. Under this approach, the government took a very restrictive stance to granting permits for demonstrations, and clamped down relatively hard on unauthorized demonstrations. The situation was best described in 2015 by UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kai, who found that freedom of assembly was "treated as a privilege, or a favor, rather than a right." While praising Kazakhstani officialdom for restraint in

dealing with the few assemblies that had taken place, he observed that in conversations with officials, “the emphasis was on the restrictions to the rights rather than the rights themselves.”<sup>29</sup>

In the same vein, a study by Kazakh human rights activists found that from 1995 to 2010, the government had only authorized political opposition assemblies in areas distant from city centers or government buildings, thus minimizing the public impact of such assemblies.<sup>30</sup> Unauthorized demonstrations frequently led to police detention of demonstrators, and charging them with a variety of offenses such as hooliganism. The presidential election of 2019 was no exception: the government blamed public demonstrations on the controversial exiled politician and businessman Mukhtar Ablyazov, who is being sought for embezzlement and murder charges in several countries, and is the subject of a U.S. RICO investigation. While it is unclear to what degree these demonstrations were indeed led by the exiled Ablyazov, several hundred demonstrators were detained following these protests.<sup>31</sup>

Kazakhstan has in fact been the scene of a large number of popular protests over the past several years. The Oxus society for Central Asian Affairs in

a recent study recorded over 500 incidents of protest in Kazakhstan from January 2018 to August 2020. While many of these were related to the presidential election, a significant number was related to welfare provision and women’s rights; other leading sources of protests included Covid-19 restrictions and opposition to Chinese investments in the country.<sup>32</sup> The Oxus Society’s report also noted that the Kazakh government’s response was “constructive” in one third of the cases, while it involved violence in 30 percent of them. This period, however, coincided with the first presidential election in which First President Nursultan Nazarbayev did not run, an event that the government considered of critical importance for the stability of the country.

The developments during this period proved an indication that a dissonance had emerged between the government of Kazakhstan and its population: the government largely maintained a restrictive approach to popular assembly inherited from the Soviet era, while the population of Kazakhstan now exhibited a much greater tendency to make its voice heard on a considerable variety of issues. Nor should this be surprising: the connection between a growing middle class and demands for greater political participation has been made since the time of Aristotle.<sup>33</sup> The fact that Kazakhstan’s economic

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<sup>29</sup> “Statement by The United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of His Visit to the Republic of Kazakhstan,” January 27, 2015. (<http://freeassembly.net/news/statement-kazakhstan/>)

<sup>30</sup> Kazakhstan International Bureau for Human Rights and the Law, “Freedom of Peaceful Assembly in Kazakhstan: Authorization Denied,” December 2010. ([https://www.ndi.org/sites/default/files/Freedom\\_of\\_Assembly\\_KAZ\\_121310.pdf](https://www.ndi.org/sites/default/files/Freedom_of_Assembly_KAZ_121310.pdf))

<sup>31</sup> Catherine Putz, “Protests in Kazakhstan Demonstrate Democratic Dismay,” *Diplomat*, May 3, 2019; Putz,

“Kazakhstan’s Presidential Election: Protests, Arrests, and a Presidency for Tokayev,” *Diplomat*, June 10, 2019.

<sup>32</sup> Bradley Jardine, et. al., “Mapping Patterns of Dissent in Eurasia: Introducing the Central Asia Protest Tracker,” Oxus Society for Central Asian Affairs, October 2020. (<https://oxussociety.org/wp-content/uploads/2020/10/2020-09-28-mapping-patterns-of-dissent-in-eurasia.pdf>)

<sup>33</sup> See eg. Ronald M. Glassman, *The Middle Class and Democracy in Socio-Historical Perspective*, Leiden: Brill, 1995; Ergun Özbudun, “The Role of the Middle Class in the Emergence and Consolidation of a Democratic Civil Society,” *Ankara*

development has been so successful almost guaranteed that the new urban middle class would begin to express its demands both on specific issues, as well as more generally toward greater political voice.<sup>34</sup>

In his first major speech to the nation, President Tokayev acknowledged this reality. Recalling that the constitution provides for freedom of assembly, he emphasized that peaceful protests “should be embraced and given approval for them to be carried out in the manner prescribed by law, to allocate special places for this. And not in the outskirts of cities.”<sup>35</sup> But in keeping with the commitment to caution and gradualism, President Tokayev made sure to mention that the state would not countenance “any calls for unconstitutional and hooligan actions.”

Building on this, President Tokayev in December 2019 used the newly created forum of the National Council of Public Trust to emphasize the importance of accepting the validity of a diversity of opinions. Noting that “we are overcoming the fear of alternative opinion,” he launched the concept of “different opinions – one nation”, and affirmed that “alternative opinions and public debate do not lead to stagnation, but, on the contrary, are some of the main requirements for development.” Flowing from this, he announced a legislative reform

through which peaceful rallies would no longer require permission, but only a notification to relevant authorities. He even went so far as to state that a “culture of rallies” should be cultivated among the people, and that rallies “are not only a right, but a responsibility.”<sup>36</sup>

When the actual law was adopted in May 2020, it did include provisions along the line of President Tokayev’s speech. But a closer reading of the law suggests that legislators were not prepared to go quite that far. While the law does shift the principle from one of permission to one of notification, the details are more complicated. Local executive bodies continue to have a right to reject notifications of peaceful rallies, leading critics of the government to argue that little, in fact, had changed. Furthermore, the new law continues to stipulate “a specialized place for organizing and conducting peaceful assemblies,” established by local authorities. This in turn continues to make it hard for protests to take place in locations that ensure they will reach their target audience. There continues to be an extensive list of grounds for which a protest can be denied. Critics noted that the law was passed in a rushed manner in the middle of a Covid-induced state of emergency, and questioned the speed, as well as process, through which the new law was adopted.<sup>37</sup>

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*Law Review*, vol. 2 no. 2, 2005, pp. 95-107. (<http://dergiler.ankara.edu.tr/dergiler/64/1539/16877.pdf>)

<sup>34</sup> John C. K. Daly, *Kazakhstan’s Emerging Middle Class*, Washington: Central Asia-Caucasus Institute & Silk Road Studies Program, Silk Road Paper, March 2008. (<https://www.silkroadstudies.org/publications/silkroad-papers-and-monographs/item/13136>)

<sup>35</sup> President of Kazakhstan Kassym-Jomart Tokayev’s State of the Nation Address, September 2, 2019.

<sup>36</sup> Assel Satubaldina, “Kazakh President announces major political reforms package,” *Astana Times*, December 21, 2019. (<https://astanatimes.com/2019/12/kazakh-president-announces-major-political-reforms-package/>)

<sup>37</sup> Laura Mills, “Kazakhstan Draft Law Would Undermine Freedom of Assembly,” *Human Rights Watch*, March 31, 2020. (<https://www.hrw.org/news/2020/03/31/kazakhstan-draft-law-would-undermine-freedom-assembly>)

Still, the new law constitutes limited positive change, as it reduced by half the time period within which a notification has to be submitted. The presumption in favor of allowing rallies is strengthened by the stipulation that a lack of response by local authorities within three days presumes that a rally can go ahead.<sup>38</sup>

The May 2020 law, thus, constitutes limited positive change. It is potentially important in that it may contribute to changing the philosophy of the state from one where it actively approves or rejects requests for peaceful assembly to one where it receives notification thereof. What remains to be seen is whether the state's approach in practice will change. Clearly, as has been seen during the pandemic, Western states also have numerous ways through which they can regulate and stop peaceful assembly when they feel the need to do so. The point is that they normally have not utilized this possibility. In Kazakhstan, similarly, the question is whether the government will follow the spirit or the letter of the law. Will there be an actual change in the authorities' attitude toward notifications of peaceful assembly? If the government systematically makes use of the many stipulations that allows it to prevent a demonstration from being held, they can do so while still following the letter of the law, and very little will have changed – particularly as demonstrations must still take place at a location assigned by authorities. If, by contrast, the government begins to follow the spirit of the law and the norm becomes not to intervene with the holding of peaceful assembly, that would constitute

meaningful change. If the past year is any indication, the government has appeared more tolerant of public gatherings.

Because the pandemic continues to provide a legitimate cause for Kazakh authorities, like their Western counterparts, to limit the occurrence of demonstrations, it is too early to tell whether Kazakhstan has embarked on truly meaningful change. But even if it does, the change will be only piecemeal, as the ability for demonstrators to make their voice heard when and where it matters most will remain limited. It is difficult to escape the conclusion that under the conditions of uncertainty during the pandemic, Kazakhs authorities did not go quite as far in their actual legislative reforms as President Tokayev indicated in his announcement of reforms in December 2019.

### Freedom of Expression and Media

If freedom of assembly is a sensitive question for the political leadership, freedom of expression and media are no less delicate. Studies of Kazakh media freedom have produced a clear picture: while much of the media is privately held, *de facto* the prominent media outlets in the country are controlled by the government or loyal to it, and more often than not held by government-affiliated business entities. Oppositional journalists and bloggers have frequently been targeted with prosecution, with authorities in particular using charges of libel and defamation to silence their critics. It should be noted

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<sup>38</sup> Aiyim Saurambayeva, "Benefits and Drawbacks of the New Law on Protests in Kazakhstan," *Central Asia Bureau for Analytical Reporting*, July 10, 2020.

(<https://cabar.asia/en/benefits-and-drawbacks-of-the-new-law-on-protests-in-kazakhstan>)



that such campaigns are frequently directed by the individual officials or individuals criticized by independent journalists or bloggers, rather than state institutions themselves. However, the judicial system appears to provide very limited protection for the rights of journalists, while placing a high premium on the right of powerful individuals not to be insulted. As a result, Kazakhstan's score on media freedom indices is relatively poor. Reporters without borders notes a glacial-speed improvement from 160<sup>th</sup> place to 157<sup>th</sup> from 2013 to the present.

An additional issue is internet freedom. The internet provides countless new opportunities for independent journalists to produce and publish material; but governments also regulate the internet in ways that limit the ability of independent media to reach their target audiences. Kazakhstani authorities have made use of such restrictions, for example by restricting internet access during opposition protests. In addition, a variety of websites are inaccessible as a result of court order or administrative decisions. In sum, Kazakhstan is considered "not free" in Freedom House's Freedom on the Net ranking. Its score is better than Russia and Uzbekistan and three times higher than last-place China, and ranks just below Turkey and Azerbaijan.<sup>39</sup> Thus, while Kazakhstan does not deviate from the situation across the region, there is considerable room for improvement.

This appears to be a view that President Tokayev shares. The very concept of the "Listening State" requires that there be someone the state listens to, thus presupposing a greater freedom of expression

in society. Tokayev's emphasis on accepting a diversity of opinions also presupposes the communication of such opinions through media and on the internet, thus requiring a shift in the state's approach to the freedom of expression.

While the President's reforms in the political field have focused on ways to encourage the gradual development and empowerment of political opposition in the parliament, he did also take steps to address egregious problems concerning freedom of expression. Key to this was article 130 of the penal code, which covers defamation – an article frequently used to target oppositional journalists. After some deliberation, President Tokayev in December 2020 announced his decision in favor of decriminalization of defamation. While article 130 was removed from the penal code, defamation remains an administrative offense. This means that the levels of punishment for defamation have been drastically reduced, but not removed.

Similarly, article 174 of the penal code, which criminalizes the fomenting of hatred on a variety of grounds, has frequently been used to silence figures that, to an outside observer, may not appear to be engaging in any visible fomenting. As one veteran observer of the region puts it, "listing those who have been detained and incarcerated on this charge, one could get the impression Article 174 is being used as a tool to remove inconvenient individuals."<sup>40</sup> Indeed, individuals convicted under this article included opposition politicians, members of fringe religious movements, as well as both ethnic Kazakh and Russian nationalists. The most obvious

<sup>39</sup> Freedom House, Freedom on the Net, at <https://freedomhouse.org/countries/freedom-net/scores?sort=asc&order=Total%20Score%20and%20Status>.

<sup>40</sup> Bruce Pannier, "The Victims of Kazakhstan's Article 174," *RFE/RL*, February 2, 2016. (<https://www.rferl.org/a/qishloq-ovozi-kazakhstan-article-174/27527738.html>)

problem with the article was the vague nature of its wording, which left the determination of what would constitute fomenting largely to prosecutors. Following President Tokayev's instruction to "humanize" the article, its wording was clarified to refer to "incitement" rather than the looser concept of "fomenting." In addition, the penalties associated with article 174 were reduced considerably.<sup>41</sup>

As is the case for the May 2020 law on freedom of assembly, the real question may lie not with the changes to the letter of the law, but to whether authorities and courts adopt a shift in their treatment of cases involving the freedom of expression. Presumably, many individuals convicted of "fomenting" hatred could be convicted of "inciting" hatred if prosecutors press the case and judges comply. As such, the success of these reforms will depend on how the law is implemented, and whether any reduction will be visible in the practice of resorting to accusations of defamation or incitement. It should be noted that "insult" has not been decriminalized. As such, those seeking to silence journalists have now begun resorting to this charge instead. For example, a journalist in the small southern city of Sarvagash who made it his business to investigate allegations of local corruption was convicted by a district court of insulting a local education official.<sup>42</sup>

The case of this individual, subsequently released on appeal, is instructive: it suggests that the problem concerning freedom of expression and media frequently stems from local conditions and

animosities. While there are obviously cases that involve central officials, it is clear that the resolve of leaders at the central level to change laws that have been misused for the prosecution of critical voices will only succeed when the judicial system as a whole is reformed. As long as local courts will look favorably on cases like this one, small-town officials seeking to settle a score will always be able to find some provision in the law to use against their critics. The task, therefore, is much larger than changing individual articles of the criminal code: it is to shift the mentality of the entire judicial system from one that instinctively protects officials from citizens to one that protects citizens from officials. This is by necessity a difficult task that will take many years and require the constant attention of the central leadership. As reforms efforts elsewhere have shown, such change only begins to take place when top leaders make it absolutely clear to officials at all levels that the rules of the game have changed.

### Freedom of Religion

The area of religious freedom is at once the most contradictory and controversial of the areas covered in this brief study. On one hand, Kazakhstan takes pride in its religious tolerance, and makes the promotion of a "dialogue among civilizations" an important part of its foreign policy. It is one of few states in the Muslim world that is committed to secular laws, courts and education, and thus, does not

<sup>41</sup> Kazakhstan Council on International Relations, "Reforms in Kazakhstan: From Intentions to Actions – New Course of President of the Republic of Kazakhstan Kassym-Jomart Tokayev", Nur-Sultan, 2021.

<sup>42</sup> Committee to Protect Journalists, "Kazakhstan decriminalizes defamation, but maintains detentions, criminal

penalties for speech offenses," July 8, 2020. (<https://cpj.org/2020/07/kazakhstan-decriminalizes-defamation-but-maintains-detentions-criminal-penalties-for-speech-offenses/>)

impose a particular religious code of behavior on its population.<sup>43</sup> On the other hand, Kazakhstan is routinely criticized for its restrictions on individual religious freedom, so much so that the U.S. Commission on International Religious Freedom recommends the placement of the country on the State Department's "watch list" on the basis of the government's "alleged perpetration or toleration of severe abuses."<sup>44</sup> This situation reveals deep distinctions in the prevailing understanding of religious freedom in Kazakhstan and the West.

Kazakhstan's model of secular governance does not feature an American-style policy of neutrality toward religious communities. Instead, the government took upon itself to regulate religion, thus gravitating toward a model drawing on the French and Turkish experience that seeks to protect the state and society from religious oppression. While this Kazakh model is frequently mistaken for a legacy of Soviet atheism, it is considerably more complicated than that: while it is clear that the Soviet legacy has played a part in its formation, it also draws on the secular nationalism of the pre-Soviet era, while being informed also by the pre-Erdogan Turkish model of state secularism.

Going one step further, however, the Kazakhstani model differentiates between traditional and non-traditional religious communities. Government policies explicitly endorse the traditional religious communities and institutions that suffered greatly during the Soviet period, and seeks to allow them

to restore their position in society. Meanwhile, the state is hostile to the spread of non-traditional religious influences. Thus, while Kazakhstan does not privilege one particular religion, it does promote traditional religions at the expense of foreign and novel interpretations in a way that diverges decidedly from the understanding of the first amendment to the U.S. Constitution.

Over time, Kazakhstan adopted increasing restrictions in the religious field, and new measures were passed following terrorist incidents in 2011 and 2016. A 2011 law prohibited foreigners from registering religious organizations, required the registration of places of worship, and prohibited the holding of religious services in private homes – a practice common to more secretive religious groups. The law also forced religious communities to re-register with the state and required a minimum number of adult members for registration at the local, provincial, and national level. The law also restricted the dissemination of religious literature, requiring approval by the State's Agency for Religious Affairs.

Following terrorist incidents in 2016, the government created a Ministry for Religious Affairs to protect secularism and moderate religious traditions. In particular, it was tasked with focusing on the development of the country's youth. Further amendments to the law in 2018 restricted minors' rights to attend religious services, and tightened restrictions on foreign religious education. Meanwhile,

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<sup>43</sup> This section builds on the work published in Svante E. Cornell, S. Frederick Starr, and Julian Tucker, *Religion and the Secular State in Kazakhstan*, Washington: Central Asia-Caucasus Institute & Silk Road Studies Program, Silk Road Paper, April 2018. (<http://silkroadstudies.org/publications/silkroad-papers-and-monographs/item/13288>)

<sup>44</sup> "USCIRF Releases 2021 Annual Report with Recommendations for U.S. Policy," April 21, 2021. (<https://www.uscifr.gov/news-room/releases-state-ments/uscirf-releases-2021-annual-report-recommendations-us-policy>)

Kazakhstan's National Security Committee has taken the lead in fighting extremism. In particular, it monitors, infiltrates, and prosecutes alleged extremists with considerable zeal. According to its own accounts, the organization has successfully intervened to prevent over 60 terrorist attacks in the country in the past five years. More controversially, it has also infiltrated and prosecuted groups engaged in non-violent religious practices. These are typically prosecuted under the prohibition of fomenting hatred, or under a provision in Kazakhstan's criminal code that prohibits propagandizing the superiority of one religion over another.

Events in the past decade led Kazakhstani authorities to conclude that they had underestimated the threat posed by extremist religious groups. Revisions to laws and policies have led to state intervention against individuals and communities that authorities deem extremist or non-traditional. This is one reason for the Western criticism directed against Kazakhstan. However, another reason behind this criticism is a more philosophical disagreement: Western advocates support full religious freedom and state neutrality toward religion, accepting only intervention against groups engaging in or inciting violence. Kazakhstan's authorities, by contrast, operate on the basis of a fundamentally different principle: that it is the duty of the state to regulate religious affairs to ensure the revival of traditional religious communities, and to ensure stability and harmony in society.

It is instructive that religion is not an issue that has been in focus for President Tokayev's reforms, at

least thus far. The main area of reforms that is of relevance for religious freedom is the clarification of article 174 of the criminal code, mentioned above. That article was frequently used to prosecute religious minority representatives for "fomenting hatred" by engaging in religious proselytizing, and has in particular been used against Jehova's Witnesses alongside alien Islamist groups. Indeed, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, following a visit to Kazakhstan in 2019 concluded that the broad formulation of the concepts of "extremism", "inciting social or class hatred" and "religious hatred or enmity" in national law are used to unduly restrict freedoms of religion, expression, assembly and association.<sup>45</sup> While it remains to be seen whether the changes to the law will reduce the use of this article to target religious minorities, it appears fairly clear that Kazakh authorities do not see the religious sphere as one requiring urgent reform.

Kazakhstan's model is by no means perfect. If it was, the country's leaders would not feel the need to make so many adjustments to it. There is justified criticism that the state's policies have erred on the side of excessive restrictions. Meanwhile, Western criticism of Kazakhstan's policies also misses the mark because it rejects the very premise of Kazakhstan's policies – to safeguard the secular state and the recovery of traditional religious communities following communism. Because of this, much of Western criticism falls on deaf ears in Kazakhstan and has little influence in the country. A more

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<sup>45</sup> UN Human Rights Council, "Visit to Kazakhstan : report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while

Countering Terrorism," January 22, 2020. [https://digitallibrary.un.org/record/3852204/files/A\\_HRC\\_43\\_46\\_Add-1-ES.pdf](https://digitallibrary.un.org/record/3852204/files/A_HRC_43_46_Add-1-ES.pdf)

fruitful approach would be to accept the premises of the Kazakh model, and rather than take an antagonistic approach, work with Kazakh authorities to improve the country's policies in the religious field. This could, over time, help Kazakhstan develop a model of relevance to Muslim-majority societies elsewhere.

### The Way Forward

The analysis of the five categories above lends itself to several conclusions. First, there are significant differences between the five areas covered. Second, the improvement of the human rights situation in the country will require wholesale reform of the law enforcement and judicial system. Third, the central authorities in Kazakhstan are increasingly transparent about the issues in the country, and appear committed to tackling them in a gradual manner.

A first conclusion is that the five categories can be divided into three groups. The government appears content with the situation concerning religious freedom, and at present the main reform relevant for that sector is the reduction of scope under which individuals can be prosecuted for incitement of hatred. The main contrast lies between the areas of law enforcement abuse and women's rights, on one hand, and freedoms of assembly, expression and media, on the other. The first category – law enforcement abuse and women's rights – concerns issues where the government has issued a strong commitment at the central level to address the problem head-on. The problem here is not one of political will, but of *how* the situation can be ameliorated, particularly as the relevant state institutions – chiefly in law enforcement and the judiciary –

continue to be plagued by the Soviet legacy and by institutional cultures that do not seem to align with the vision expressed by President Tokayev.

By contrast, in the areas of freedom of assembly, expression, and media, the government is very much walking a tightrope. It realizes the need for greater avenues for political speech, and in any case an understanding has come to prevail that it is no longer possible to simply suppress such demands, or to placate them with the windfall of oil and gas revenues. But on the other hand, the government is committed to opening up the political sphere only gradually and cautiously, and will not accept any moves that risk a scenario leading to upheavals such as those in the color revolutions or the "Arab spring." The question here will be whether it will be successful in stimulating the type of constructive engagement with civil society that it seeks; or whether the new openings will lead to more radical expressions that the government will find itself obliged to curtail. Most likely, the future will hold a bit of both. In the longer term, the question is whether the government will be able to move in lockstep with the national mood, and open the political system in a way that aligns with the growing demands of political voice that are being expressed in society. President Tokayev has placed a bet on the government's ability to engage with this changing society, and if this bet succeeds, Kazakhstan's future will be bright. Of course, there are likely to be both steps forward and backward; but it is quite likely that the country will be able to replicate the South Korean model of development. The biggest challenge may in fact be external: will Kazakhstan's authoritarian superpower neighbors be willing to witness a gradual liberalization of the country, or will they see it as a threat? Russia has made clear it

is hostile to any democratization on its doorstep, and China would be wary of any liberalization that would see growing criticism of its policies in Xinjiang, something that would be certain to develop if and when Kazakhstan liberalizes.

A second conclusion is that the improvement of the human rights situation in Kazakhstan across these five sectors will not be accomplished simply by tinkering with individual laws. Meaningful improvement will require a long series of individual adjustments which, added together, eventually constitute fundamental change and transformation. This will over time mean the full implementation of the fundamental changes foreseen in President Tokayev's vision. That in turn, requires deep-seated change of the way the law enforcement, judicial system, and local authorities in Kazakhstan function and approach their task. President Tokayev appears well aware of this; but the task ahead is one of monumental size, and can only be accomplished if there is continued strong determination on the part of the central government, and constructive assistance from Kazakhstan's international partners.

Finally, a third conclusion is that a very important change has taken place in Kazakhstan. The country's government previously sought to postpone reckoning with the human rights issues in the country, prioritizing economic development instead. That is no longer the case, and the government now recognizes with considerable transparency the issues that it needs to deal with. President Tokayev's speeches have included scathing criticism of the country's bureaucracy, and recognized the need for a complete change to the mentality of the state – indeed, a fundamental transformation of the relationship of the state to society. President Tokayev's vision is a bold and courageous one. Whether his bold bet will succeed remains to be seen.

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