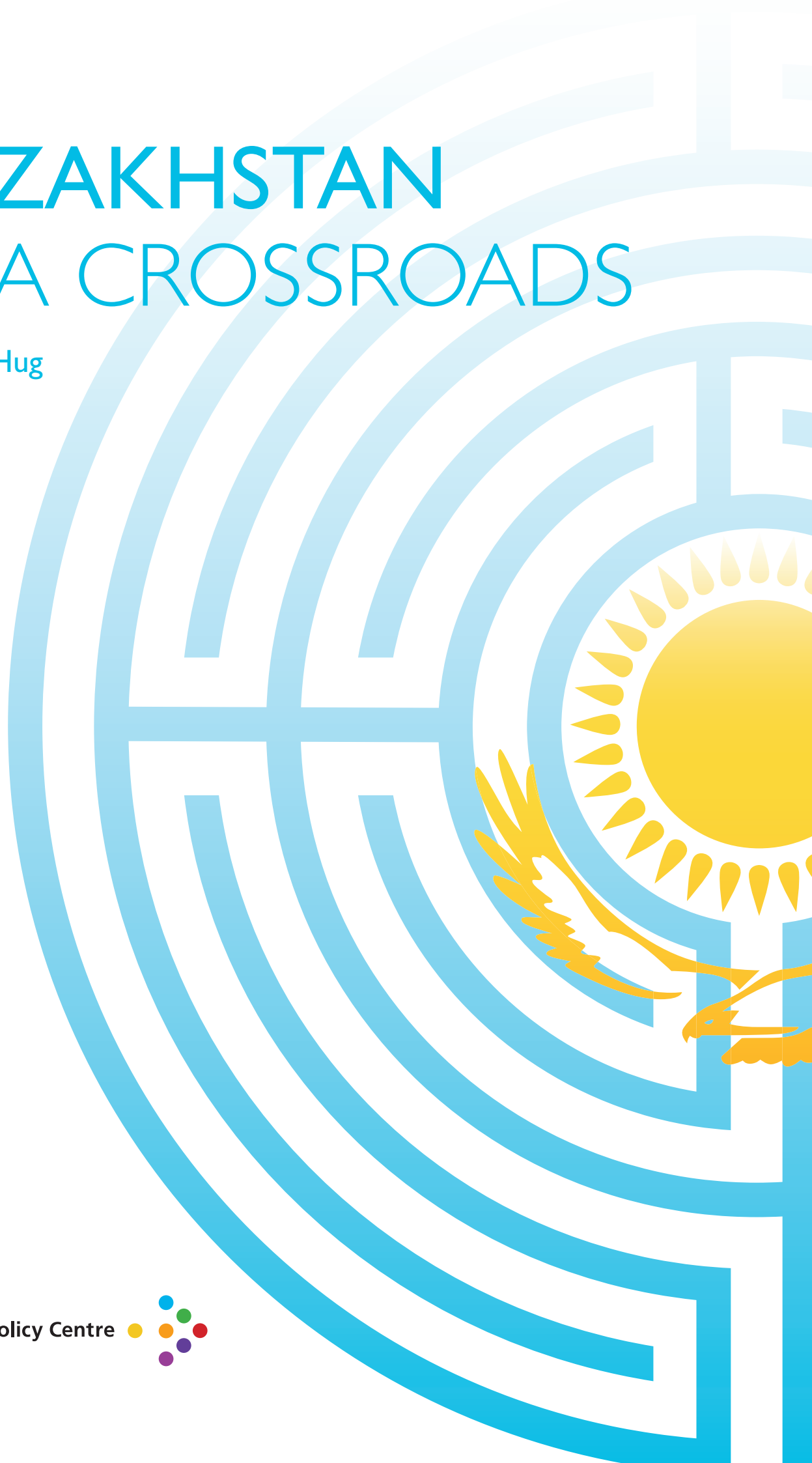


# KAZAKHSTAN AT A CROSSROADS

By Adam Hug



# **Kazakhstan at a Crossroads**

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The report is dedicated to Yevgeny Zhovtis, who the author was fortunate to meet with in the summer of 2009 before the tragic events, his trial and imprisonment that so clearly highlight the need for further reform in Kazakhstan.

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## **Executive Summary**

2010 was a landmark year for Kazakhstan and for the Organization for Security and Co-operation in Europe (OSCE). It was the first time a Central Asian nation took the leadership role of a major international political organisation, but Kazakhstan was also the first non-democracy to become the OSCE's Chairman-in-Office. The combination of the OSCE Chairmanship, the UN Universal Periodic Review of Kazakhstan and a number of other events put the country centre stage in a way it had not experienced since its emergence as an independent state at the collapse of the Soviet Union. It is testament to the sophistication of the regime that it navigated this period in a way that maximised its prestige both internally and in most cases externally, while keeping public criticism limited to a few NGOs, researchers and academics.

This publication, based on three previous Kazakhstan at a Crossroads reports, gives an overview of Kazakhstan's political situation, economic development and international relations. It highlights restrictions on political activity that have helped lead to a one party parliament, restrictions on media freedom that overtly and covertly shut out dissenting voices, the presence of significant corruption amongst sections of the political elite which is being responded to in a way that suggests motives that may be politicised.

Kazakhstan at a Crossroads makes the case that despite Kazakhstan's economic progress and relative stability there remain serious human rights and governance problems that should give the international community pause before granting it any further opportunities for international leadership. Any future deeper economic or political engagement with Kazakhstan needs to be conditional on clear improvements in human rights and non-compliance should lead to real penalties, rather than have transgressions brushed under the carpet as they were with the OSCE Chairmanship.

## Kazakhstan today

For most of the general public in the West (and, it has to be said, for much of the policy making elite) post-Soviet Central Asia is a bit of a mystery, where the suffix 'stan' usually is synonymous with blank incomprehension. Perhaps the only times when Kazakhstan has penetrated the wider public consciousness are around the occasional international football match, revelations about Prince Andrew's social life and the fuss around the release of *Borat* in 2006. Nevertheless Kazakhstan has not escaped the notice of some western policy makers, investors and prospectors, blessed as it is with significant oil and gas reserves.

Sitting on the north eastern shore of the Caspian, the largest and most prosperous of the five states of Central Asia, Kazakhstan is bordered by Russia to the North, China to the East with Uzbekistan, Kyrgyzstan and Turkmenistan to the South. Its geography makes it both a prize in the power games of its larger neighbours and a regional power in its own right. Holding the reins of power for over 20 years, Nursultan Nazarbayev is one of the great survivors of Soviet politics and one of only three leaders who managed the transition to independence to remain in post. He has done so, more successfully than any of his fellow leaders, by managing to deliver relatively high levels of growth and avoiding the pitfalls of sectarian strife seen in Tajikistan that had the potential to split the country apart. He has achieved this while eschewing the insularism of Islam Karimov's regime in Uzbekistan or the all-encompassing personality cult pursued under Saparmurat 'Turkmenbashi' Niyazov<sup>1</sup> in Turkmenistan until 2006, or by adopting the thugishness of either. Through a combination of patronage and political management of the elite, he has positioned himself into the role of father of his new nation.

According to polling conducted in May 2009 by Baltic Surveys Ltd and Gallup<sup>2</sup> in the midst of serious economic upheaval, President Nazarbayev still had an approval rating of 84%, a significant fall from 92% the previous August. More recent polling from April 2010<sup>3</sup> did not include the question on President Nazarbayev's approval but still showed 77% of the population believed the country was headed in the right direction. Kazakhstan is pretty much seen as 'the best of a bad bunch', a regional title for which it competes with tiny Kyrgyzstan.

However, simply being a less abhorrent regime than Uzbekistan can no longer be good enough for a country that seeks to be not only a regional leader but a player on the world stage, given its Chairmanship of the OSCE in 2010 and current leadership of the Organisation of Islamic Congress. Nazarbayev's relative success has been built on a platform of smart authoritarianism, not boiling his opponents<sup>4</sup> but using the levers of power to more subtly suppress dissent. With no opposition groups in Parliament, censorship and self-censorship in the press, limited civil society activity, with corruption and co-option keeping internal rivals in check, the state of the country was accurately described by Human Rights Watch as an "Atmosphere of Quiet Repression".

## How did we get here?

Nursultan Nazarbaev has played a major role in Kazakh politics since the late 1970s when he served as second secretary on the Karaganda Regional Committee. In 1984 when aged only 44, a youth in Soviet political terms, he became Chairman of Kazakhstan's Council of Ministers, the second most important political post in the Republic<sup>5</sup>. Tapping into the tide of reform across the Soviet Union, he spent the next

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1 His successor Gurbanguly Berdimukhamedov has dismantled some elements of this cult and made some very limited reforms.

2 Joanna Lillis, July 09, Kazakhstan: Despite Downturn, Nazarbayev's Numbers Stay Up, <http://www.eurasianet.org/departments/insightb/articles/eav071709a.shtml> (last accessed March 30th 2011)

3 Kazakhstan International Opinion Poll <http://www.iri.org/sites/default/files/2010%20May%2019%20Survey%20of%20Kazakhstan%20Public%20Opinion,%20April%2013,%202010%20--%20English%20version.pdf>

4 The case of Khusnuddin Olimov in Uzbekistan <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm> (last accessed March 30th 2011)

5 Sally Cummings, Kazakhstan An uneasy relationship-power and authority in the Nazarbaev regime, in Cummings (ed), Power and Change in Central Asia, 2002, p.66

two years engaged in a political battle with Kazakhstan's old guard leader First Secretary Dinmukhamed Kunaev. Nazarbaev repeatedly criticised the leader's unwillingness to reform and matters came to a head at the 16<sup>th</sup> session of the Kazakhstan Communist Party Congress where Nazarbaev denounced Kunaev's brother, causing the First Secretary to call on Gorbachev to sack the upstart young Chairman and Nazarbaev's supporters to call for him to be promoted to lead the republic<sup>6</sup>. Gorbachev refused both demands but instead replaced Kunaev with a non Kazakh politician Gennadii Kolbin<sup>7</sup>, sparking the Jeltoqsan riots in Alma-Ata (now Almaty). While Kolbin would stay in post for a further three years while real political power flowed to Nazarbaev, who finally took the reigns as First Secretary in 1989 before converting his post as Chairman of the Supreme Soviet in 1990 to a Parliament-appointed Presidency, and then standing unopposed in a national election for the post in December 1991.

The initial period of liberal-democratic reform, was marked by 'considerable parliamentary activism, freedom of the press and political pluralism'.<sup>8</sup> Nazarbayev's first term of office was extended by a referendum in 1995 with a contested election taking place in 1999, where he gained 79% of the vote, comfortably beating Communist Party candidate Serikbolsyn Abdildin. In his subsequent re-election in 2005 against a field of 5 (including several friendly candidates), he won 91% of the vote. Any outstanding constitutional challenges were addressed in 2007 when the Majilis passed amendments removing term limits for the 'first President' enabling Nazarbayev to stand for office again as many times as he wishes and is capable. No election in Kazakhstan has ever met international requirements for fairness or national requirements for fairness or transparency, with the 2005 Presidential election being described as flawed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).<sup>9</sup>

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6 It is probably worth noting that any politician in Nazarbaev's Kazakhstan today who attempted to copy his tactics, attacking the leader and his family, would be unlikely to remain in post for long.

7 There is some debate about whether Kolbin was Russian, an ethnic Chuvash or a Chuvash who defined himself as Russian. To some extent this is moot as the perception was that he was an outsider and not an ethnic Kazakh.

8 Bhavna Dave, *Kazakhstan: Ethnicity, Language and Power*, 2007, p102, Routledge

9 Human Rights Watch, *An Atmosphere of Quiet Repression*, December 2008 <http://www.hrw.org/en/reports/2008/12/01/atmosphere-quiet-repression-0> (last accessed March 30th 2011)

## Human rights in Kazakhstan

At the November 2007 Madrid OSCE Ministerial, Foreign Minister Dr Mahrat Tazhin made a number of commitments in return for being offered the chairmanship, henceforth known as the Madrid commitments, on issues including reform of criminal liability for libel, developing media self-regulation, liberalizing the registration procedures for media outlets, adopting ODIHR recommendations on elections and political party registration, strengthening local government in Kazakhstan and enhance co-operation with civil society. Tazhin described the chairmanship as *“a powerful catalyst of the reform process and an additional confirmation of the rightly chosen path of further liberalization and openness. We believe that a positive decision on our bid will have a multiplicative effect for the comprehensive modernization of our country and the region in its entirety.”*<sup>10</sup>

Few international observers would agree that the radical transformation envisaged by the Minister has been achieved, with early efforts described as *“the bare minimum that they could get away with”*<sup>11</sup>. Assessing the Kazakh governments efforts prior to assuming the Chairmanship, Human Rights Watch (HRW) argued that the Kazakh government had shown *“a disappointing lack of commitment to meaningful improvements in human rights”* and that its ratification of both the International Covenant on Civil and Political Rights (ICCPR) and Optional Protocol on the Convention against Torture, had not been matched by real change on the ground<sup>12</sup>. Sadly, the picture did not significantly improve with bad laws passed on internet use, attempted on religious freedom and the worrying mistreatment of human rights defenders and journalists.

Kazakhstan does not perform well in the global rankings of human rights agencies. The initial data from Freedom House’s annual Freedom in the world survey 2011<sup>13</sup>, continues to give Kazakhstan a score of 6 for Political Rights and 5 for Civil Liberties, a ranking that in the previous 2010 full survey ranked it alongside fellow post-Soviets Russia, Tajikistan, Azerbaijan and Kyrgyzstan and other nations including Egypt and Yemen<sup>14</sup> whose problems have developed into open revolt. In their 2010 Freedom of the Press survey Kazakhstan ranks joint 169<sup>th</sup> in the world, joint with Tajikistan and Ethiopia<sup>15</sup>. The Bertelsman Transformation Index, that gives it an adequate score for its economic progress of 32 out of 125 developing and transition countries places it a less than impressive 84<sup>th</sup> for its Democratic Development<sup>16</sup>.

## Nur Otan or nothing

*“A wonderful opportunity to adopt all the laws needed to speed up our country’s economic and political modernization.”*<sup>17</sup>

President Nazarbayev accentuated the positives as the 2007 parliamentary elections saw the end of Parliamentary opposition to his Nur Otan Party. However in truth Parliamentary opposition in Kazakhstan has always been negligible. The sole opposition representative in the 2004 Majilis, Alikhan Baimenov of the Ak Zhol party, had split with his party to support the President, while other parties in the Parliament

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10 Address of H.E. Dr. Marat Tazhin, Minister of Foreign Affairs of the Republic of Kazakhstan, at the OSCE Ministerial Meeting, November 2007 <http://en.government.kz/documents/publication/page09> (accessed November 2010)

11 From a discussion with a diplomat from an OSCE member state (August 2009)

12 Human Rights Watch, An Atmosphere of Quiet Repression, Ibid.

13 Freedom House: Freedom in the World 2011, The Authoritarian Challenge to Democracy-Selected Data from Freedom House’s Annual Survey of Political Freedoms and Civil Liberties, January 2011, [http://www.freedomhouse.org/images/File/fiw/FIW\\_2011\\_Booklet.pdf](http://www.freedomhouse.org/images/File/fiw/FIW_2011_Booklet.pdf) (last accessed March 30th 2011)

14 Freedom House Combined Average Ratings- Independent Countries

[http://www.freedomhouse.org/uploads/fiw10/CombinedAverageRatings\(IndependentCountries\)FIW2010.pdf](http://www.freedomhouse.org/uploads/fiw10/CombinedAverageRatings(IndependentCountries)FIW2010.pdf) (last accessed March 30th 2011)

15 Freedom House, Freedom of the Press 2010 Global Rankings, 2010

<http://www.freedomhouse.org/template.cfm?page=560&year=2010> (last accessed March 30th 2011)

16 Bertelsmann Transformation Index, 2008 [http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten\\_BTI\\_2008/CIS/Kazakhstan.pdf](http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI_2008/CIS/Kazakhstan.pdf) (last accessed March 30th 2011)

17 Joanna Lillis, “Kazakhstan: President Argues that One-Party Parliament Can Be Engine of Modernization,” Eurasianet.org, September 13, 2007, <http://www.eurasianet.org/departments/insight/articles/eav091307.shtml> (via HRW ibid)



had traditionally been parties that united in support of the President. The facade of multi-party competition was put aside in 2006 when the President's daughter Dariga Nazarbaeva merged her Asar party with her father's Otan party<sup>18</sup> to form Nur Otan (translated as Shining Fatherland and a riff on the President's name) that went on to win 88% of the vote in the 2007 Parliamentary Elections. While thresholds on popular vote percentages in proportional elections are not uncommon, 7% is certainly at the upper end of the range and no party was able to reach that point.

There are numerous systemic reasons why the Kazakh opposition struggles to break through many of which will become apparent later in the paper but one of the greatest hurdles they face is to actually become registered as a political party. Until 2009 to become a registered political party required 50,000 registered supporters willing to provide signatures and proof of address with at least 700 in each of the 16 regions (14 Oblasts + 2 special cities Almaty and Astana) of the country. If it is unable to do so the co-ordinating committee is required to disband and for further attempts the process must start again from scratch. To put this into context when extrapolated by country size comparable figures for the UK would be 200,000 and 2,800 respectively.

In the face of international pressure the Kazakh Government has made some piecemeal reforms to the process by passing a new law 'On Political Parties' that reduces the number of supporters required nationally by 10,000 to 40,000 and regionally by 100 from 700 to 600, still a long way from being in anyway internationally credible or appropriate and much higher than the previous requirement of 3,000 supporters that was in place prior to 2002. Encouragingly "the discovery of invalid member signatures cannot serve as grounds for delaying a party's registration if sufficient valid signatures are provided"<sup>19</sup>. However it created further hurdles around the registration of the organising committee that have been already pressed into action to restrict the activities of Alga as explained below. The new requirements mean that the organising committee must register with the government giving details of its core members then announce its existence to the press within one month, hold a conference of 1000 people within two months and register all 40,000 supporters within 6 months or else the committee is dissolved and the process has to begin again.

Perhaps the most high profile victim of these restrictions has been the liberally oriented Alga (Forward) Party, founded in part by remnants of the Democratic Choice Party of Kazakhstan, dissolved by the government in 2005, that has remained in legal limbo for 5 years. Alga's initial registration had been rejected in February 2006 due to challenges to the registrations of a small number of its supporters and accusations that "the authorities had pressured "state budget-dependent members [budzhetniki, in Russian]"—persons such as students, pensioners, residents of state-managed dormitories, and public servants—to resign from the party"<sup>20</sup>. It resubmitted its application in November 2006 and has been waiting for a response ever since, with no mechanism to expedite the process as there is no legally prescribed period in which the application has to be addressed.

In May 2009 Vladimir Kozlov the head of Alga's organising committee was fined by an Almaty court for leading an unregistered organisation, while the registration of the Alga DCK National Public Association was revoked after one and a half years of legally registered operation, as its name was deemed to partially duplicate the name of the 'Democratic Choice of Kazakhstan' party<sup>21</sup>.

The new law also creates a mechanism that ensures at least a two party parliament by, in the event of only one party passing the 7% threshold, redistributing seats to the second largest party, although

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18 EurasiaNet, *Kazakhstan: Election results harden opposition*, 27 September 2004, available at: <http://www.unhcr.org/refworld/docid/46c58efd3c.html> (last accessed March 30th 2011)

19 Freedom House OSCE Monitor, *The OSCE Chairmanship and Kazakhstan: Reform Commitments Remain Unfulfilled* [http://oscemonitor.freedomhouse.org/sites/default/files/The\\_OSCE\\_Chairmanship\\_and\\_Kazakhstan\\_FINAL.pdf](http://oscemonitor.freedomhouse.org/sites/default/files/The_OSCE_Chairmanship_and_Kazakhstan_FINAL.pdf) (last accessed March 30th 2011)

20 Human Rights Watch, *An Atmosphere of Quiet Repression*, Ibid.

21 Freedom House OSCE Monitor Update: *The Alga Party*, June 2009 [http://oscemonitor.freedomhouse.org/sites/default/files/200906\\_Update\\_-\\_Alga\\_0.pdf](http://oscemonitor.freedomhouse.org/sites/default/files/200906_Update_-_Alga_0.pdf) (last accessed March 30th 2011)

concern exists that a vehicle friendly to the President's party could be created or one of the other pro-presidential parties artificially strengthened to take advantage of this situation. Nevertheless, two longstanding opposition parties, Azat (formerly Naghyz AK Zhol, a more stridently oppositional branch from the split in AK Zhol) and the National Social Democratic Party (NSDP) joined forces in October 2009 to give themselves a fighting chance of making the cut. The imaginatively titled NSDP-Azat party under the joint leadership of previous leaders Bulat Abilov and Jarmakhan Tuyakbay, claims a membership of 400,000 people<sup>22</sup> but was unable to reach the 7% threshold when they previously formed a tactical alliance at the 2007 election. The parties will use the NSDP's existing registration to get around the stringent restrictions on party registration.

### **Leader of the nation and Elections 2011**

For the last two years members of President Nazarbayev's Nur Otan party have been engaged in a much publicised 'kite flying' exercise over the possibility of removing the pesky need for Nazabayev to face the electorate ever again. This culminated in a massive petition drive (believed to be up to 5.15 million signatures<sup>23</sup>) calling for a referendum on scrapping the 2012 and 2016 Presidential elections. This move came after the Majilis' had already created the role of 'leader of the nation' for Nazarbayev, enabling him to circumvent constitutional term limits due to his special status as the first President. Theories about possible motives ranged from the cunning (providing an opportunity to reject the proposition to please international observers), the myopically paternalistic (an attempt to prevent instability in a competition to succeed him) and the despotic (an attempt to fix his position until death fearing the risk of a real electoral challenge).

This somewhat bizarre rigmarole came to an end in January 2011 when Nazarbayev publically rejected the referendum and instead instigated moves to bring the Presidential elections forward to April 3<sup>rd</sup> 2011. The decision was welcomed by Western governments with UK Minister of State for Europe David Lidington MP describing the decision as 'an important reaffirmation of Kazakhstan's commitment to a democratic course.'<sup>24</sup>

While the withdrawal of a formal plan for a near-permanent Presidency is to be welcomed, it is a bit of a stretch however to portray Nazarbayev's decision as a victory for democracy, rather a predictably cunning orchestration of domestic and international opinion. Following many months of Nur Otan politicians musing publically about the benefits of such a measure, the collection and submission of the petition,<sup>25</sup> where many noted the influence of the President's party (despite attempts to 'astroturf' the initiative, giving a façade of grassroots instigation), the Majilis (comprised entirely of members of the President's party) passed legislation to scrap the elections. This legislation was then promptly vetoed by the President, but undeterred the Majilis overturned their boss' veto, who in desperation<sup>26</sup> turned to the constitutional court who duly ruled that unfortunately such a measure was unconstitutional. Speaking after the court decision the President outlined his dilemma: *'On one hand, I cannot reject the nationwide initiative of the overwhelming majority of voters. However, on the other hand, as president and guarantor of the constitution, I cannot create a precedent which will set incorrect reference points for the next generations of politicians'*.<sup>27</sup> To cut this Gordian knot and he called for early elections. It was an issue that could have been closed down far earlier if so desired by President and seems likely that it served a dual

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22 IWPR'S REPORTING CENTRAL ASIA, No. 592, October 20, 2009, Uniting Kazakhstan's Opposition, Sanat Urnaliev in Almaty

23 Joanna Lillis, Kazakhstan: Nazarbayev Calls for Snap Presidential Poll, EurasiaNet, January 2011, <http://www.eurasianet.org/node/62804> (accessed February 15<sup>th</sup> 2011)

24 UK Foreign Office, Minister for Europe welcomes announcement of elections in Kazakhstan <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=542736582>

25 The stratospheric sign-up rate of Kazakhstan's willing to give away their democratic rights is unlikely to be solely due to the (genuinely) high level of support for Nazarbayev but also that to overtly refuse to sign the petition would be impolitic (although probably not in most cases outright dangerous).

26 The President's response brings to mind of Parliament's in the British tradition where the speaker, having just orchestrated their election to the post, feign opposition to their installation in the post and have to be dragged to their seat.

27 Joanna Lillis, Kazakhstan: Nazarbayev Calls for Snap Presidential Poll, EurasiaNet, January 2011, <http://www.eurasianet.org/node/62804> (accessed February 15<sup>th</sup> 2011)

purpose both reasserting the Nazarbayev's political dominance and providing an opportunity to assert democratic credentials to the international community. In fact moving the Presidential elections forward made it much harder for Kazakhstan's weak, marginalised and restricted opposition to build up much momentum for an alternative candidate in only 2 months, and as a result real opposition groups have either sat out the campaign in wait for the Parliamentary elections or called for a boycott of the poll.

Irrespective of the real motives behind the saga, it draws attention to the lack of any real succession planning or desire to open up the political space to genuine competition. There is no natural successor who has clearly emerged from within Nazarbayev's inner circle. Despite the wealth and influence of his daughters, they are not seen as successors in their own right. The dynastic option is however being kept alive through Timur Kulibayev<sup>28</sup>, Dinara's husband, after the bizarre departure of his eccentric son-in law Rahat Aliev, now claiming asylum in Austria, that accentuated divisions with the previously most politically active daughter, former Kazakh Pop Idol<sup>29</sup> judge Dariga. Other mooted options include Kayrat Kelimbetov, Kulibayev's boss at Samruk-Kazyna; Mayor of Astana Imangali Tasmagambetov; and Mayor of Almaty Akhmetzhan Yesimov,<sup>30</sup> but it is difficult for outsiders to penetrate the workings of the inner circle and assess who is up and who is down in the President's personal affections.

As this report is published immediately prior to the April 3<sup>rd</sup> election, the formal result is not yet known. However, this author will go out on a limb to predict a crushing victory for the incumbent. Nazarbayev's three competitors<sup>31</sup> are comprised of: Mels Yeleusizov, a single issue environmental campaigner, who gained 0.28% of the vote in the 2005 Presidential election; Patriot's party leader, Gani Kasmayov, who also stood in 1999 and whose party won only 44,000 votes across the country in the most recent Parliamentary elections; and Communist People's Party candidate Zhambul Akhmetbekov. None of the candidates ranged against the incumbent would fit within the category of opposition candidate, as the OSCE have noted that they, 'by their own admission, want the incumbent to win'<sup>32</sup>. While Yeleusizov has been a long standing critic of governance in Kazakhstan (see below), Akhmetbekov's party is sympathetic to the status quo but wants to expand and Kasmayov listed President Nazarbayev as one of the people who most inspired him and publically angled for the currently non-existent post of Vice President<sup>33</sup>.

Despite the lack of a real contest, according to the OSCE interim report, the media has done a reasonable job of providing equitable coverage of candidates, indeed as the candidate most likely to come last, Mels Yeleusizov, received significantly more coverage on Kazakhstan TV and Khabar news broadcasts than Nazarbayev. This somewhat deliberate display of fairness between unmatched candidates is somewhat undermined by the fact that the President was given additional coverage in his official capacity, conducting tours of the regions as President rather than as a candidate for election, something that would be off limits due to campaign restrictions in most democracies. Similarly, the President's Nur Otan party has received the lion's share of coverage during the election, perhaps unsurprising given its total dominance of the Majilis. It must be noted that discussion of the campaign outside the news bulletins is not allowed except when paid for by one of the candidates, a measure that restricts the ability of journalists to provide debate and analysis of the candidates and the issues that outsiders would expect

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28 Someone who has hit the headlines in the UK recently due to his relationship with Prince Andrew, purchasing one of HRH's houses.

29 Dariga was one of the judges in the second series of Kazakhstan's adaptation of the Pop Idol/American Idol format Super Star KZ. She is apparently an avid opera singer.

30 Joanna Lillis, Kazakhstan: Presidential Election Prompts Speculation About Political Future, Eurasianet, March 2011

<http://www.eurasianet.org/node/63097> (accessed March 30th 2011)

31 Farangis Najibullah, Radio Free Europe/ Radio Liberty

Kazakhstan's Election Campaign That Wasn't [http://www.rferl.org/content/kazakhstan\\_election\\_feature/3537108.html](http://www.rferl.org/content/kazakhstan_election_feature/3537108.html) (accessed March 30th 2011)

32 OSCE/ODIHR Election Observation Mission Republic of Kazakhstan, Early Presidential Election 2011 Interim Report No.2 (15-21 March 2011) (accessed March 31<sup>st</sup> 2011)

33 Hugh Raiser Kazakhstan's Faux Opposition Candidate Snubs Press, Eurasianet, March 2011 <http://www.eurasianet.org/node/63099> (accessed March 30th 2011)

during an election campaign. Access to some websites has been restricted with Radio Free Europe's websites blocked for around a fortnight following the announcement of the election<sup>34</sup>.

### Libel and media freedom

Journalists in Kazakhstan face a challenging time navigating a world in which some of the features of media freedom exist, including a privately owned television station and a range of independent newspapers, but widespread self-censorship is expected and enforced through a mixture of legal and extra-legal pressure on journalists and media outlets. Paris-based watchdog Reporters Sans Frontiers' 2010 Press Freedom rankings show that Kazakhstan has fallen below such luminaries as Somalia, Saudi Arabia and Mubarak era Egypt to 162 in the world.<sup>35</sup>

The libel system is one of the main weapons of choice to deal with those who would criticise the regime and its allies. As a UK based organisation, the FPC is aware of the significant shortcomings in British libel laws, but the ruthlessness with which the system is used to silence dissent would make even the most insidious of Old Bailey libel tourists blush.

For example in 2009 the Taszhargan newspaper, its owner Dat-X media and editor Almas Kusherbayev faced increasing pressure from a series of court cases stemming from publishing the comments of green activist and presidential candidate Mels Yeleusizov who said Kazakhstan had *"a unicameral parliament<sup>36</sup>, which lacked bright and publically important individuals willing to care about state interests, consists of toadies, trimmers and businessmen who use parliament only to promote their interests, protect their businesses, stay informed and from time to time make everyone believe that they protect their interests"*.<sup>37</sup> Strong stuff but certainly not beyond the bounds of criticism of politicians the world over. However, outraged MP Romin Madinov claimed that the article insulted his 'honor and dignity' and was duly awarded three million Tenge in damages. Following an appeal in February 2009, incredibly the fine was increased tenfold to 30 million Tenge (£121,855) with a series of escalating criminal cases for Dat-X media owner Yermurat Bapi for non-payment. Taszhargan had been previously subject to harassment of its journalists and had its office shot at by unknown gunmen in March 2008<sup>38</sup> and has had to close following the impact of the case.

Similarly, opposition weekly newspaper Respublika-Delovoye Obozreniye<sup>39</sup> has faced increasing pressure following a libel case where it is alleged that an article sparked a mass withdrawal of deposits of 6.7 billion Tenge (£27.2 million), from the troubled BTA bank that was receiving a state bailout, something that would have been akin to Northern Rock suing BBC Correspondent Robert Peston for publicising details of its financial difficulties. The case originally awarded the bank over £250,000 in 'moral damages'. According to the OSCE, 'the article in question covered the state's involvement in the rescuing of BTA bank. It offered a platform for public discussion on the future of the bank'. ODIHR's Representative on Freedom of the Media, Miklos Haraszi, described the case as "openly hostile towards the free press and is once again a pretext to target the independent media in Kazakhstan. This is an evident attempt to remove one of the few remaining critical voices in Kazakhstan. The level of intolerance toward the free flow of information and opinion is troubling in light of Kazakhstan's forthcoming OSCE Chairmanship in 2010."<sup>40</sup> After copies of Respublika were seized in September 2009 and printing shut down, the

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34 Radio Free Europe/ Radio Liberty Press Release, On Eve of Election of Election Campaign, RfE's websites blocked in Kazakhstan, [http://www.rferl.org/content/press-release\\_rfe\\_websites\\_blocked\\_kazakhstan/2326174.html](http://www.rferl.org/content/press-release_rfe_websites_blocked_kazakhstan/2326174.html) (accessed March 30th 2011)

35 Reporters Sans Frontiers, 2010, [http://en.rsf.org/spip.php?page=classement&id\\_rubrique=1034](http://en.rsf.org/spip.php?page=classement&id_rubrique=1034) (accessed February 15<sup>th</sup> 2011)

36 It should be noted that Kazakhstan has a bi-cameral system, although the Senate is a weaker body, composed as it is by a mix of Presidential appointments and those chosen by local and provincial officials. This may have been the point he was making.

37 Freedom House, June 2009, Update: Media Freedom in Kazakhstan Attack on the Newspaper Taszhargan

[http://oscemonitor.freedomhouse.org/sites/default/files/200906\\_Update\\_-\\_Taszhargan.pdf](http://oscemonitor.freedomhouse.org/sites/default/files/200906_Update_-_Taszhargan.pdf)

38 Human Rights Watch, An Atmosphere of Quiet Repression, *ibid*

39 It should be noted that members of the publication's sponsor, the Civil Activity Fund are involved with Respublika. They had no editorial input into the production of this report.

40 OSCE media freedom representative protests over authorities' actions against one of Kazakhstan's few independent newspapers, September 2009, <http://www.osce.org/item/39644.html> (accessed November 2009)

journalists attempted to put out a new title, Moya Respublika, against the backdrop of an increasing crackdown at the printing press from the full range of law enforcement officials, from tax inspectors to the KNB (the former KGB), which led to arrests of typographers and impounding of computers and copies of the paper. Journalists were reduced to photocopying the paper to enable distribution.<sup>41</sup> Throughout its various incarnations, the Respublika offices have had a series of attacks, often from sources unknown.

However, attempts to use the legal system to silence political debate goes beyond punitive damages in spurious or vindictive civil cases to include the notorious capacity to bring criminal cases for libel, alongside more straightforward legal and constitutional bars on political debate. According to Freedom House, fourteen criminal cases were brought against journalists and media outlets in 2009. It should be noted that although the UK only technically removed criminal libel laws from the statute book in 2009<sup>42</sup>, very few prosecutions had been made in recent decades<sup>43</sup> with most journalists and law makers unaware of its continued existence, making comparisons with Kazakhstan's frequently used provisions spurious at best. In addition, some 70 civil complaints have been filed against journalists, 29 of them by government officials. Three media outlets have been suspended or closed.<sup>44</sup>

The threat of criminal libel includes up to six months imprisonment, a penalty that has not been directly imposed in recent years but remains a threat to encourage compliance with the will of the authorities. Encouragingly, international pressure on this issue is beginning to have an effect with Kazakhstan's National Human Rights Commission recommending to the Majilis to call for its repeal<sup>45</sup>. It remains to be seen if once the country is under less international scrutiny, whether concrete action is taken to resolve this matter.

Despite the debate about the use of the libel laws, it is actually the use of other laws to restrict discussion of contentious political issues that have seen some of the most severe punishments. Ramazan Esergepov, chief editor of the newspaper Alma-Ata Info has had a three year sentence and a two year publishing ban upheld at appeal for revealing state secrets in an article entitled 'Who Rules the Country'<sup>46</sup> that discussed collusion between a leading Kazakh businessman and the KNB at a closed trial. Esergepov was unable to dismiss his defence attorney who continued to represent him in court despite having been disowned by the defendant.<sup>47</sup>

Kazis Toguzbaev, a reporter for the independent newspaper Azat (Freedom), was given a two-year suspended sentence in January 2007 for "insulting the honor and dignity"<sup>48</sup> of President Nazarbaev in two articles he published on the website Kub in April and May 2006. In April 2008 a district court in Almaty revoked the verdict and expunged the conviction from Toguzbaev's record. The judge's ruling stated that Toguzbaev had "demonstrated by his behaviour that he was reformed"<sup>49</sup> after he had been threatened that any further criticism would see the suspended sentence become a custodial one. The crime of insulting honour and dignity of the President has not only been applied to journalists. As far back as 1998 Madel Ismailov, leader of the opposition Workers' Movement was sentenced to one year in prison for comments made a political rally.<sup>50</sup>

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41 Reporters Sans Frontiers, September 2009, <http://www.rsf.org/Daily-singled-out-in-new-attack-on.html> (accessed November 2009)

42 Frances Gibb, The Times, 'Arcane' laws of sedition and criminal libel scrapped, July 2009  
<http://business.timesonline.co.uk/tol/business/law/columnists/article6714824.ece> (accessed 18th December 2010)

43 Those cases that were brought had been primarily private prosecutions.

44 Freedom House, Freedom House Condemns Conviction of Kazakhstani Journalist, August 2009,  
<http://www.freedomhouse.org/template.cfm?page=70&release=1058> (accessed November 2009)

45 Finchchannel, Human Rights in Kazakhstan: A Work in Progress Makes Progress, [http://www.finchchannel.com/Main\\_News/Op-Ed/75943\\_Human\\_Rights\\_in\\_Kazakhstan%3A\\_A\\_Work\\_in\\_Progress\\_Makes\\_Progress/](http://www.finchchannel.com/Main_News/Op-Ed/75943_Human_Rights_in_Kazakhstan%3A_A_Work_in_Progress_Makes_Progress/) (accessed November 2009)

46 Freedom House Condemns Conviction of Kazakhstani Journalist *ibid*

47 Reporters Sans Frontiers, September 2009, <http://www.rsf.org/Newspaper-editor-s-three-year-jail.html> (accessed November 2009)

48 Article 46.1 of the Kazakhstan Constitution states that 'The President of the Republic of Kazakhstan, his honour and dignity shall be inviolable.' [http://www.kazakhstan.orexca.com/kazakhstan\\_constitution.shtml#3](http://www.kazakhstan.orexca.com/kazakhstan_constitution.shtml#3) (accessed November 2009)

49 Human Rights Watch, An Atmosphere of Quiet Repression, December 2008

[http://www.hrw.org/sites/default/files/reports/kazakhstan1208web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kazakhstan1208web_0.pdf) (last accessed March 30th 2011)

50 Amnesty International, April 1998, Imprisonment of opposition leader politically motivated,  
<http://www.amnesty.org/en/library/asset/EUR57/005/1998/en/60109ebe-dac4-11dd-80bc-797022e51902/eur570051998en.html>

While legal pressure on journalists, editors and publishers is the official face of attempts to limit debate, there have been consistent reports of threats, harassment and unexplained attacks on people and property against those challenging the official line in the media. Human Rights Watch identified four cases in early 2009: Artem Miusov of *Taszhargan*; Ermek Boltay, editor of Radio Free Europe/Radio Liberty's Kazakh Service Website; Aziz Myrzabaev of Shymkent television channel Otyrar; and Bakhytzhhan Nurpeisov from *Public Opinion*,<sup>51</sup> where there was significant cause to suggest foul play.

The recent measures taken to assert government control over the internet, including bringing all internet sites under the banner term "internet resources" and placing them under the same restrictions faced by other forms of media in Kazakhstan, have been subject to heavy international criticism. The package of measures was signed into law in July 2009 by President Nazabayev and according to Human Rights Watch it "broadens banned media content to cover political matters, including the use of the media in order to interfere with election campaigns; to obtain certain election results; and to campaign when it is not allowed; to force someone to participate, or desist from participating in a strike; and to violate the law on conducting peaceful assemblies."<sup>52</sup> Websites that have been blocked in recent times have included Radio Free Europe/Radio Liberty and the Russian-owned blog platform LiveJournal, home to Rahat Aliev's blog.

### **The use of unrelated criminal proceedings against human rights activists and opposition figures**

The sentencing of Evgeniy Zhovtis on September 3<sup>rd</sup> 2009 to 4 years imprisonment for involvement in a fatal car accident came as a hammer blow to the fledgling NGO community in Kazakhstan. Zhovtis is the founding director of Kazakhstan's best known human rights organisation, the Kazakhstan International Bureau for Human Rights, a former chair of the board of Soros Foundation Kazakhstan and a current board member of Open Society Institute's Central Eurasia Project<sup>53</sup>. As perhaps Kazakhstan's most high profile NGO figure and someone who was playing a major role in encouraging international scrutiny of the forthcoming OSCE chairmanship, it is of deep concern that he has been subject to what international observers have assessed as a highly politicised and flawed trial.

The central issue in the case against Zhovtis is not disputed by any party; that on July 26<sup>th</sup> 2009 while returning from a fishing trip his car struck and tragically killed a drunken young man, Kanat Moldabayev, who was walking in the middle of the highway. What is at issue is the police conduct of the case and procedural irregularities at the trial. Following the incident, Human Rights Watch and others pointed out that Zhovtis and his lawyer were not notified for 2 weeks that his status had been changed from that of a witness to a suspect, something that should have taken place immediately<sup>54</sup>. In the weeks leading up to the trial rumours were circulated that he had been drinking, something shown to be false by the two blood alcohol tests. The family of the victim had reconciled with Zhovtis, something that his legal team argue should have led to the prosecution not bringing criminal charges initially and should have reduced his sentence after this was demonstrated in court at the later appeal.

International human rights observers were scathing about the conduct of the initial trial, including the refusal to allow independent experts to be called on behalf of the defence and the drafting of a multi-page verdict after less than 25 minutes deliberation. Following the initial trial, Human Rights Watch's Central Asia researcher Andrea Berg publically stated that "The judge's unwillingness to consider important evidence from Zhovtis's lawyer made it clear that this was really a choreographed political trial. The verdict is a terrible blow for everyone promoting human rights in Kazakhstan."<sup>55</sup>

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51 Human Rights Watch, May 2009, Human Rights in Kazakhstan: Seven Months before the OSCE Chairmanship [http://www.hrw.org/node/83329#\\_ftn29](http://www.hrw.org/node/83329#_ftn29) (accessed February 16<sup>th</sup> 2011)

52 Human Rights Watch *Kazakhstan: Rescind New Media Restrictions*, July 2009 <http://www.hrw.org/en/news/2009/07/14/kazakhstan-rescind-new-media-restrictions> (last accessed 30 March 2011)

53 It should also be noted that the author met with Zhovtis shortly before his arrest

54 Human Rights Watch, September 2009, *Kazakhstan: Review Rights Defender's Harsh Sentence*,

<http://www.hrw.org/en/news/2009/09/03/kazakhstan-review-rights-defender-s-harsh-sentence> (accessed November 2009)

55 Human Rights Watch *Review Right's Defender's Harsh Sentence* Ibid.

Looking at things objectively, it made little sense from a public relations perspective for the Kazakh government to use this case to 'deal with' Zhovtis in advance of the OSCE Chairmanship, as his status as a cause celebre clearly outweighed the ability he would have had to be a nuisance to the regime over the next year. However, setting the case as a marker sent a clear signal to other opposition figures that they were all potentially vulnerable if they were seen to be undermining the success of the Chairmanship. At time of writing Zhovtis remains in prison.

Prior to the Zhovtis case, perhaps the most controversial was the imprisonment of leading campaigning journalist Sergei Duvanov in 2002 on the troubling charge of rape of a 14 year old girl. The arrest, made a day before he was due in the US to speak at a series of major think tanks, came two months after he was on the receiving end of a severe beating by three unknown assailants. Speaking almost a month before the trial was due to take place, President Nazarbayev claimed that Duvanov's guilt had already been established in a press conference in Brussels.<sup>56</sup> Reporters Sans Frontiers believed the trial to be politically motivated while Human Rights Watch believed that Duvanov was "denied his right to due process during the police investigation and his right to a fair trial".<sup>57</sup> He was released early on the grounds of good behaviour but the impact of the case has clearly impacted on his ability to continue his work.

### Minority rights and religious freedom

Kazakhstan was alone among the Soviet Union's republics in having no clear ethnic majority. The last Soviet era census in 1989 put the population mix at 39.5% Kazakh, 37.7% Russian, 5.4% Ukrainian, 5.8% Russified German and 1.1% BeloRussian<sup>58</sup> so the number of Kazakhs was clearly smaller than the overall Slavic population who were also highly integrated into the Soviet power structures. Following the collapse of the Soviet Union, when ethnic tensions flared with tragic consequences across the Caucasus in Nagorno Karabakh, Chechnya, Abkhazia and South Ossetia, Kazakhstan's fragmented ethnic mix made it a prime target for ethnic strife. The Nazarbayev government can take considerable credit for managing to balance two potentially competing desires: ethnic stability and Kazakhification, building a distinct Kazakh identity for the state and increasing ethnic Kazakh presence in the economic, cultural and political elite<sup>59</sup>. However, Bhavna Dave suggests the risk of ethnic separatism may have been overplayed and the mechanisms used to ensure stability were through a mix of outmigration, coercion and bureaucratic unwillingness to aggressively push language policy.

By 1999, the balance of the communities had shifted to 53% Kazakh and 30% Russian after a significant exodus of, around 2 million Russian speakers during the early years of independence. Though by 2008 the out-migration of Russians was continuing but at a reduced rate, slowed in part by the boom years. The increased birth rate amongst Kazakhs drove an overall increase in the population from 14.95 million to 15.57 million and increased the proportion of Kazakhs to almost 60%, at least according to the official figures.<sup>60</sup> The official statistics also show a small rise in the number of ethnic Uzbeks from 369,800 (2.47%) to 450,855 (2.90%) making them now the largest officially recognised ethnic group. However, it is widely understood that this figure is a major under representation of the number of Uzbeks living in the country as they form the core of a population of migrant workers who came in the boom years, some estimates have put the figure for this as high as around 1.5 million.

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56 Reporters Sans Frontiers, January 2003, Opposition journalist accused of rape is jailed for three and a half years [http://www.rsf.org/spip.php?page=article&id\\_article=4797](http://www.rsf.org/spip.php?page=article&id_article=4797) (accessed November 2009)

57 Human Rights Watch, November 2009, <http://www.hrw.org/en/news/2003/02/13/letter-president-nazarbaev> (accessed November 2009)

58 Sally Cummings, Kazakhstan, *ibid*

59 Like so many other newly independent states following the collapse of the USSR ethnic Russians were over represented in many of the major institutions.

60 Republic of Kazakhstan Statistics Agency (2008). [online] *Demographic Yearbook of Kazakhstan, 2007*. Astana, 2008. Accessed at: [http://www.stat.kz/publishing/Documents/%D0%A1%D1%82%D0%B0%D1%82\\_%D1%81%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA%D0%B8/%D0%94%D0%B5%D0%BC%D0%BE%D0%B3%D1%80%D0%B0%D1%84%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9%20%D0%B5%D0%B6%D0%B5%D0%B3%D0%BE%D0%B4%D0%BD%D0%B8%D0%BA.pdf](http://www.stat.kz/publishing/Documents/%D0%A1%D1%82%D0%B0%D1%82_%D1%81%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA%D0%B8/%D0%94%D0%B5%D0%BC%D0%BE%D0%B3%D1%80%D0%B0%D1%84%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9%20%D0%B5%D0%B6%D0%B5%D0%B3%D0%BE%D0%B4%D0%BD%D0%B8%D0%BA.pdf) (accessed November 2009)

Defining what it is to be a Kazakh is a difficult task with the roots of Kazakh history provided by the Kazakh Khanate, a mid-fifteenth century offshoot of the Mongol White Hord,<sup>61</sup> that survived in various forms until its breakup in the early eighteenth century and its gradual incorporation into the Tzarist empire in the eighteenth and nineteenth century. Again, at the collapse of the Tzarist empire in 1917, as in so many imperial satellites, an ethnic nationalist movement the Alash Orda briefly flowered with an attempt at self government before being wiped out by the Red Army in 1920. After this second loss of independence the dramatic demographic changes, the traumas of the Stalinist purges, forced collectivisation (settlement) and great hunger killing, followed up by the Khrushchev-era Virgin Lands policy left Kazakh identity confused and the people a minority in their own land, filled with exiled groups from the Caucasus and elsewhere.

It is easy to understand some of the major challenges involved in building a new Kazakh identity given this history and it is important to keep this in mind when examining Kazakhstan's highly complex and in some ways contradictory approach to issues of faith. On the one hand, Kazakhstan can rightly have pride in itself for having avoided significant divisions between its major religions given the nation's tangled ethnic mix. Despite being a lifelong Soviet era atheist, Nazarbayev sees the value in religion as a building block of the developing Kazakh identity. However, the state has yet to shake the Soviet-era desire to supervise and control the spiritual life of its citizens; a desire that is reinforced in part by genuine concern over the potential for religious extremism but also a fear that alien ideas could undermine efforts to forge Kazakh identity and a fear of their potential to develop as alternative centres of power.

While still under Communist control, Nazarbayev removed authority for Kazakhstan's Muslims from the Tashkent based Spiritual Administration of the Muslims of Central Asia and Kazakhstan (SADUM) to create his own Supreme Muftiate or Spiritual Administration of Kazakhstan's Muslims with Absattar Bagisbayevich Derbisali the current supreme mufti. The Russian Orthodox Church has a supervisory role for Kazakhstan's Christian population. Nazarbayev's policy towards religion is based around a desire to maintain control over the power of religion as a social force through the state and at the same time use it as one of the building blocks of the developing Kazakh identity.

Kazakhstan has put significant effort into building an international reputation as a meeting point for the world's major religions. The flagship project to this end is the Congress of World and Traditional Religions<sup>62</sup> that meets every three years, bringing together senior figures from many of the world's largest faith communities. There has been some development of the congress and its wider organisation from a directly controlled event where faith leaders met to talk at (rather than to) each other about the importance of dialogue, to a place where limited discussions can take place, according to a representative of the one of the major faiths in attendance. However, he agreed that there was little interest from the organisers, or representatives from some other faiths, to address one of Kazakhstan's major problems – its treatment of minority religions, particularly those who actively proselytise such as Jehovah's Witnesses, Hari Krishna devotees and Baptists.

Nazarbaev, speaking to a meeting of Nur Otan in January 2008 made his position on religious freedom very clear, stating 'it is necessary to cut the activities of illegal religious movements in Kazakhstan. Currently, tens of thousands of missionary organisations are working in Kazakhstan. We do not know their goals and tasks and we should not tolerate such arbitrariness. Religion is separate from the state but it does not mean that Kazakhstan should become a dumping ground for various religious movements.'<sup>63</sup>

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61 Martha Brill Olcott, *The Kazakhs*, 1995, Hoover Press, <http://books.google.co.uk/books?id=0QArAz9qVY4C&lpg=PA3&ots=Crqoz8afca&dq=kazakh%20khanate&pg=PA179#v=onepage&q=kazakh%20khanate&f=false> (accessed November 2009)

62 Congress of World and Traditional Religions <http://www.religions-congress.org> (accessed November 2009)

63 Human Rights Watch 'An Atmosphere..' *ibid*



Forum 18, a Norway based NGO with a focus on religious freedom in the former Soviet Union, released a major Religious Freedom Survey in September 2009 that catalogued a range of violations of freedom of religion including: "attacks on religious freedom by officials ranging from President Nursultan Nazarbaev down to local officials; literature censorship; state-sponsored encouragement of religious intolerance; legal restrictions on freedom of religion or belief; raids, interrogations, threats and fines affecting both registered and unregistered religious communities and individuals; unfair trials; the jailing of a few particularly disfavoured religious believers; restrictions on the social and charitable work of religious communities; close police and KNB secret police surveillance of religious communities; and attempts to deprive religious communities of their property".<sup>64</sup>

The State Programme of Patriotic Education of Citizens of Kazakhstan for 2006-08 describes the importance for the state of the 'struggle with the activation of the activity of non-traditional religious associations', listing Hare Krishna and Jehovah's Witnesses, in a similar manner to 'extremist organisations like Hizb-ut-Tahrir'. Similarly, in September 2009, the Justice Ministry claimed the Jehovah's Witness magazines Watchtower and Awake tried to create 'preconditions for the development of conflicts on inter-confessional grounds, for the aggravation of the religious and social-political situation in the society, [and] presents a potential threat for the security of the state'.<sup>65</sup>

The most aggressive attempt to restrict the freedoms of minority religious organisations was the attempted revision of the Kazakh law on religions that was passed by the Majilis in the autumn of 2008. The draft law would have tightened restrictions on religious organisations and missionary activity, particularly for those who have not passed through the bureaucratic registration process. Registration would be required not only for organisations but of missionaries and for religious texts to be approved by the authorities. The law would have restricted the ability for unregistered groups to use facilities that were open to the public, obtaining materials for religious services or collecting contributions.<sup>66</sup> The law was passed to Nazarbayev for signature in January 2009 who instead passed it to the Constitutional Court who ruled its central tenets were incompatible with the religious freedom commitments in the Kazakh Constitution. Despite this display of Kazakhstan's constitutional safeguards there remains real concern amongst both Kazakhstan's human rights and minority religious communities that the law may be brought back, in part or in its entirety now that the OSCE Chairmanship is over, something hinted at in the Kazakh National Human Rights Action Plan<sup>67</sup>.

Currently in Kazakh law there remain articles in the Administrative Code that punish 'leading, participating in or financing an unregistered religious community or social organisation'(374-1) and 'violating the Law on Religion (including by leaders who reject state registration) by communities whose activity "contradicts their aims and tasks" or which is not listed in their state-approved statutes, and by individuals who conduct "missionary activity" without a special licence from the state.'<sup>68</sup> Proposed reform of the Code seems to transpose most of the current restrictions, reducing one fine from 100 times to 50-80 times the minimum monthly wage and removing as offences both 'violating the rules for conducting religious events outside the place of location of the religious association' and 'organising and conducting by servants of cult and members of religious associations of children's and youth meetings and groups not connected with the conducting of the cult.'<sup>69</sup>

Kazakh laws on religion contain themes similar to the restrictions on political parties including high membership thresholds, excessive bureaucracy and loosely defined processes for achieving official

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64 Forum 18, KAZAKHSTAN: Religious freedom survey, September 2009, [http://www.forum18.org/Archive.php?article\\_id=1352&pdf=Y](http://www.forum18.org/Archive.php?article_id=1352&pdf=Y) (accessed November 2009)

65 Forum 18, KAZAKHSTAN: Religious freedom survey Ibid

66 Freedom House, New Highly Discriminatory and Restrictive Law on Freedom of Religion and Religious Organizations in the Republic of Kazakhstan, January 2009 <http://www.freedomhouse.org/uploads/KazakhstanReligionLawAnalysis.pdf> (accessed November 2009)

67 Forum 18, KAZAKHSTAN: Restrictive laws recycled, October 2009, [http://www.forum18.org/Archive.php?article\\_id=1360](http://www.forum18.org/Archive.php?article_id=1360) (accessed November 2009)

68 Forum 18, Kazakhstan: Restrictive laws recycled, Ibid

69 Forum 18, Kazakhstan: Religious freedom survey, Ibid

registration. While certain forms of registration, analogous to UK charity law, may be appropriate for larger organisations that hold significant financial resources on behalf of their adherents, the measures both attempted and already in Kazakh statute, go far beyond measures to protect believers into a clear attempt to restrict freedom of conscience.

While it is possible to understand the need for room to develop a Kazakh identity this cannot excuse the repression of religious groups that do not pose any threat to national security<sup>70</sup>. The post-Soviet desire for stability and the Soviet era goal to control religious activity combine in a way that puts Kazakhstan in breach of a whole host of international obligations. Breaches include the OSCE's own 1975 Helsinki Principle Seven that calls for states to 'recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience',<sup>71</sup> not to mention the International Convention on Civil and Political Rights that Kazakhstan signed in 2006 and Kazakhstan's constitutional commitment to freedom of conscience. It further demonstrates the failure to grasp that international human rights mechanisms, once adopted, make real commitments that need to be met in practice rather than act as window dressing, a failure in which it has to be said, Kazakhstan is far from alone.

Until greater respect for legitimate minority religions is achieved, it seems inappropriate that senior representatives of major world faiths engage uncritically in the Congress of World and Traditional Religions. Faith communities need to work together both to make clear to Kazakhstan that its crackdown on minority religions is incompatible with the broader message of tolerance that it, and most major world faiths, currently espouse and to offer advice and guidance on how to reform its religious institutions to make them more compatible with religious pluralism.

### **Civil society development**

Operating across a large, sparsely populated country and in the political environment previously highlighted of long standing regime dominance, limited media access and restrictions on free assembly, Kazakhstan's civil society has had to work hard to get its voice heard. Furthermore, regimes across Central Asia have become wary of international donor and NGO activity and support for the development of domestic NGOs in the wake of the 'colour' revolutions in Georgia, Ukraine and Kyrgyzstan, with governments further tightening 'their control over opposition groups, civil society and the media'<sup>72</sup>, a trend likely to be exacerbated by recent events across North Africa. The extent of direct donor engagement in Kazakhstan is also limited by its designation as a middle income country, reducing the funding available to peruse development aims that in turn can help build civil society, as a result of its energy and mineral wealth, which has in turn been used to purchase political patronage and quell opposition.

Prof Charles Zeigler from the University of Louisville Kentucky has been analysing Central Asian civil society for a number of years<sup>73</sup> and makes a fairly depressing assessment of its strength. 'Civil society was strongest in those countries where the party-state systems had proved unable to completely dominate social space—Poland, Hungary, and Czechoslovakia. Further eastward, in Central Asia and Russia, the atomization of society was closer to absolute. When these systems finally liberalized, civic action tended to be more mass-oriented and sporadic, with civic groups often consisting of no more than an activist leader and a few friends.'

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70 There are further issues regarding the treatment of independent Muslim groups that raise questions about the extent of radicalisation in Kazakhstan that will be addressed in the final pamphlet

71 Conference on Security and Co-operation in Europe Final Act, 1975 [http://www.osce.org/documents/mcs/1975/08/4044\\_en.pdf](http://www.osce.org/documents/mcs/1975/08/4044_en.pdf) (accessed November 2009)

72 European Community Regional Strategy Paper for Assistance to Central Asia for the period 2007-2013: [http://ec.europa.eu/external\\_relations/central\\_asia/rsp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/central_asia/rsp/07_13_en.pdf) (accessed November 2009)

73 Charles Zeigler, "Civil Society, Political Stability, and State Power in Central Asia: Cooperation and Contestation," *Democratization*, Vol. 17, Issue 5 (2010).

Zeigler argues that across Central Asia there are cultural tendencies to avoid action seen as potentially destabilising, stating that 'post-communist publics are as wary of political activities not regulated by the state, as they are of excessive state control over society. Spontaneous participation has the potential to degenerate into large-scale disorder, creating uncertainties and threatening hard-won gains'. He found Kazakhstanis sceptical about the result of the colour revolutions and sees the status of and attitudes towards civil society in Kazakhstan as much more analogous to civil society in Russia than its equivalents in Eastern Europe, albeit better than in other Central Asian states.

'Few truly independent organizations have regular access to the country's decision-makers; a privileged position is reserved for NGOs connected to or led by elites with kin or friendship ties to government officials, or those linked to Nur-Otan.'<sup>74</sup> Of the 5000 + NGOs registered, Zeigler argues only 800 are active, and of course many of these are the 'GONGOs' outlined previously. However, others argue that independent NGOs are making progress as shown by the coordination of some civil society groups in response to the OSCE Chairmanship.

### **The OSCE Summit**

During Kazakhstan's chairmanship of the OSCE its focus has clearly been to maximise the status provided by the role to strengthen the prestige of the country and the political elite to its domestic audience with a secondary priority of positive international publicity. These goals have largely been achieved and President Nazarbayev's persistence ultimately delivered both the first OSCE summit for 11 years and a declaration at its conclusion.

Despite the protestations of activists President Nazarbayev achieved the main objective of his country's Presidency of the OSCE: hosting in Astana an OSCE Summit for the first time this millennium. It is difficult for outsiders to grasp the extent to which the OSCE Summit (and the Chairmanship more broadly) was used inside Kazakhstan to promote both the success of the regime, and it has to be said, boost national pride. The author has seen milk cartons and rice packets emblazoned with statements celebrating the December 2010 summit, along with the creation of a celebratory 1000 Tenge banknote,<sup>75</sup> something that would provoke a mixture of ridicule and bemusement in many past chairmanships.

The chairmanship has been moderately successful in terms of achieving the limited security promotion goals it set for itself (though not on Nagorno Karabakh), and despite the Kazakhstan government's own shortcomings on human rights, it should be noted that they resisted Russian-led attempts to use the summit to neuter the work of ODIHR and other OSCE human rights-related work. Nevertheless, to this author at least, the propaganda boost provided to the regime would seem to have outweighed the non-descript strategic agreements.<sup>76</sup>

While key several heads of state did attend the Astana summit, Merkel and Medvedev amongst the most high profile, the Summit had to make do with Hilary Clinton rather than Barak Obama and Francois Fillon rather than Sarkozy. David Cameron's absence was in part due to England's abortive World Cup bid rather than an overt attempt to wrap Kazakhstan over the knuckles. The presence of David Lidington, Minister for Europe rather than William Hague was to be welcomed, prioritising detailed knowledge of the brief rather than giving the cache of the Foreign Secretary's higher profile, while the delegation was led by Deputy Prime Minister Nick Clegg deputising for Cameron.

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74 Zeigler Ibid

75 Hybrid Banknotes <http://hybridbanknotes.blogspot.com/2010/01/kazakhstan-2010-commemorative.html> (accessed 14th February 2011)

76 The Pipeline, The OSCE Summit 2010: Drawing Conclusions <http://thepipeline.pbn.ru/2010/12/03/the-osce-summit-2010-drawing-conclusions/> (accessed 14<sup>th</sup> February 2011)

## Kazakhstan's Economy:

### After the crash

Although the country is making a swifter exit from recession than some analysts had feared, the long boom years in Astana have come to a close. More so than any other country in Central Asia, Kazakhstan took full advantage of the opportunities provided by the extended period of international economic expansion and high commodity prices to drive its transition to capitalism. Gleaming skyscrapers and glass monuments to Kazakhstan's new found prosperity (with nicknames including the lighter, the ashtray, Titanic, the Kursk, the Syringe, Seven Barrels, the Egg, the Elevator and Chupa Chups) rose at breakneck speed across the once quiet backwater town of Tselinograd, designated by President Nazarbayev as the country's new capital in 1994, replacing Almaty in 1998. The city is a personal monument to the President's approach to rebuilding Kazakhstan and he has so far resisted the attempts of grateful lawmakers to rename the city Nursultan in his honour<sup>77</sup>. However, while the government's major projects continued to steadily rise, like its counterparts in the US and UK, Kazakhstan's construction (and banking) boom came to an abrupt end. The impact of the crisis caused significant economic hardship for many Kazakhstanis, including a new middle class believed to account for around a quarter of the population<sup>78</sup>. It has encouraged a tendency for the government to take a more active role in the economy, with implications for international investors.

### Kazakhstan's economic transformation

Whatever criticisms this paper and others in this series may level at its government, Kazakhstan's economic performance since independence has been impressive, certainly by the standards of its CIS comrades. After a challenging first decade of independence when both GDP and the population fell, the boom of the last decade has driven the GNI per capita position from \$1260 to \$6140 in 2008<sup>79</sup>. Similarly, inflation has stabilised after a 1994 peak of 1546% following the replacement of the Rouble by the Tenge, settling at a range in the mid-teens for most of the decade following the 1998 financial crisis, before falling to 7% in 2009<sup>80</sup>.

It will not come as a huge shock to those unfamiliar with Kazakhstan that natural resources have acted as the lynchpin of the country's push to prosperity. However, although the economy is largely resource driven, making up over, 73% of exports, Kazakhstan is lucky to not only be blessed with the world's 11<sup>th</sup> largest oil reserves (30 billion barrels)<sup>81</sup> and 14<sup>th</sup> largest gas reserves (2.407 trillion cubic metres),<sup>82</sup> but with a diverse range of other commodities including significant deposits of iron ore, manganese, chromite, lead, zinc, copper, titanium, bauxite, gold, silver and uranium.

Kazakhstan's three major oil and gas fields are:

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77 Nazarbayev's ability to turn down honours pressed on him by his loyal parliamentarians appears akin to Julius Caesar's public rejection of the crown.

78 Zeigler *ibid*. He also argued 'the great majority of the new middle class in Kazakhstan seems more preoccupied with maintaining stability and preserving its newly affluent lifestyle, than with challenging the authoritarian political system'. This seems like an accurate assessment of public attitudes but any failure to deliver on the prosperity end of the argument may change the dynamics of middle class opinion.

79 World Bank GNI Per Capita, Atlas Method

<http://www.worldbank.org.kz/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KAZAKHSTANEXTN/0,,contentMDK:20212143~menuPK:361895~pagePK:1497618~piPK:217854~theSitePK:361869,00.html> (Accessed February 24<sup>th</sup>, 2010)

80 Kazkommertsbank (2009, October) Kazakhstan Financial Review,

[http://en.kkb.kz/attach/KazakhstanInBrief/Kaz\\_Fin\\_Review%20Oct%2009.pdf](http://en.kkb.kz/attach/KazakhstanInBrief/Kaz_Fin_Review%20Oct%2009.pdf) (accessed 23<sup>rd</sup> December, 2009)

81 CIA World Factbook, Country Comparison: Oil Reserves, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2178rank.html> (accessed August 16th 2010)

82 *Ibid* CIA Country Comparison: Natural Gas Proven Reserves

- **Tengiz**<sup>83</sup> with recoverable reserves of 6 to 9 billion barrels of oil (developed by the Tengizchevroil consortium who comprise Chevron (50% stake), ExxonMobil (25%), KazMunayGas (20%) and Russian-UK LukArco)
- **Karachaganak** with 8 billion barrels (1.3 km<sup>3</sup>) and 1,350 km<sup>3</sup> of natural gas<sup>84</sup> (Karachaganak Petroleum Operating B. V. Comprising the BG Group (32.5%), Eni (32.5%), Chevron (20%) and LUKOIL (15%))
- **Kashagan**<sup>85</sup> with 9 to 11 billion barrels (Agip KCO comprising ENI, KazMunayGaz, Total, Shell, Exxon all holding a 16.81% share, Conoco Phillips 8.4% and INPEX 7.55%)

The consortia developing these fields are under mounting political pressure to increase the Kazakh involvement discussed later in this paper, usually through state-owned KazMunaygas who are also expanding their international presence through investments in other post-Soviet states.

Kazakhstan's government has managed the proceeds of its oil wealth through a sovereign wealth fund founded in 2000, known as the Samruk-Kazyna (National Welfare Fund), in an attempt to reduce the impact of commodity price fluctuations on core revenue streams and to prevent rapid currency appreciation, the so-called 'Dutch disease'. By 2009 the Fund stood at \$27.5 billion.<sup>86</sup> This arrangement is a significant improvement on previous practice, whereby significant hydrocarbon revenues were held in undisclosed offshore accounts beyond any parliamentary or public scrutiny. The argument was put forward by the government that this secrecy actually encouraged financial discipline as, by not knowing the full extent of the available reserves, the risk of irresponsible spending was reduced. Unsurprisingly, this previous arrangement raised significant concerns about the opportunities for corruption amongst those who were aware of the accounts, the President and other officials close to him. The World Bank notes that the government of Kazakhstan was forced to admit that it was holding \$1.4 billion from oil deals made in 1996 in a Swiss Bank account controlled by the President. The government argued that almost \$900 million was used to pay budget deficits and pension fund shortfalls during the Russian and Asian financial crisis and that the balance was added to the National Fund in 2001, although the details remain sketchy.<sup>87</sup>

The Samruk-Kazyna currently sits at the mid-point of the Sovereign Wealth Fund Institute's transparency rankings, scoring 6 out of 10 (were 8 is deemed an acceptable level of transparency). However, as Freedom House point out, even under the new arrangements, 'the Parliament has no authority to investigate an audit of oil funds or to determine how and under what conditions the funds are to be used'<sup>88</sup>. The fund has helped finance the government's economic stimulus packages with \$10 billion allocated from the fund in 2008 for the banking bailout, small and medium sized enterprises (SME), lending and support for the construction industry, with an additional \$4 billion added to the stimulus in 2009.<sup>89</sup>

## Foreign investment

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83 Tengizchevroil, [http://www.tengizchevroil.com/home\\_en/](http://www.tengizchevroil.com/home_en/) (accessed 16<sup>th</sup> August 2010)

84 Karachaganak Petroleum Operating B. V. <http://www.kpo.kz/cgi-bin/index.cgi> (accessed March 17<sup>th</sup>, 2010)

85 AGIP KCO, <http://www.agipkco.com/wps/wcm/connect/agip+kco/AgipKCO+EN/Home/> (accessed March 17<sup>th</sup> 2010)

86 Silk Road Intelligencer, 'Kazakhstan's oil fund decreases by 20 percent since beginning of 2009'

<http://silkroadintelligencer.com/2009/04/08/kazakhstans-oil-fund-decreases-by-20-percent-since-beginning-of-2009/> (accessed March 25<sup>th</sup> 2010)

87 World Bank, March 2004, Petroleum Revenue Management Workshop, age 88-89, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/08/26/000112742\\_20040826095443/Rendered/PDF/296760Petroleum1ue0ESMAP0tech0no1051.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/08/26/000112742_20040826095443/Rendered/PDF/296760Petroleum1ue0ESMAP0tech0no1051.pdf) (accessed August 16<sup>th</sup> 2010)

88 Dr Bhavna Dave, Freedom House 2008 Country Report Kazakhstan, Freedom House

<http://www.freedomhouse.org/template.cfm?page=47&nit=477&year=2008> (accessed August 16<sup>th</sup> 2010)

89 Silk Road Intelligencer, Kazakhstan's oil fund decreases by 20 percent since beginning of 2009, April 2009,

<http://silkroadintelligencer.com/2009/04/08/kazakhstans-oil-fund-decreases-by-20-percent-since-beginning-of-2009/> (accessed August 16<sup>th</sup> 2010)

Since the collapse of the USSR, Kazakhstan has been Central Asia's primary recipient of foreign direct investment (FDI) with over \$10.25 billion received in 2007<sup>90</sup> and more than \$50 billion since 1991, around 80% of total investment in the region. Investment initially focused on the commodities sectors but some diversification took place in the 2000s with increased international investment in the finance and construction industries.<sup>91</sup> The Government has ambitious, if perhaps overly broad, plans to increase FDI flows into 237 'priority activity' investment categories including agriculture, light industry, petro-chemical industry, machine-building, the electric power sector, tourism, transport and transshipping.<sup>92</sup>

During the last eleven years, Kazakhstan joined the international mainstream as it achieved recognition as a market economy by the EU in 2000 and US in 2002, while the international ratings agencies including Moody's, Fitch and Standard & Poor's began to give it investment ratings during 2002-04<sup>93</sup>.

Historically, FDI has flowed in from the West to supplement previous Russian links, but in recent years China has played a bigger role. While Kazakhstan remains keen to continue FDI flows, particularly in light of the economic downturn, recent economic policy has shown an attempt to strengthen the position of domestic firms at the expense of international investors. As discussed later on, this is in part an attempt to provide redress for what some Kazakhstanis see as unequal deals struck at a point of economic weakness in the 1990s.

Kazakhstan operates a foreign investors forum, called the Kazakhstan Foreign Investors' Council<sup>94</sup> that brings together 26 of the leading international investors with stakes in the extractive and other sectors (including the EBRD, ENI, ExxonMobil, BG & LUKOIL) in a formal discussion arrangement with the Government of Kazakhstan represented by members including the President, Prime Minister, Ministers with economic portfolios and the head of the Central Bank. It operates a number of standing working groups on tax, image enhancement, operations, legal issues, tax and oil & gas. The council also facilitates conferences and seminars. However, there have been concerns raised by British investors that the forum lacks the required teeth to provide a suitable platform for discussing controversial matters.

### **Impact of the crisis**

Kazakhstan's economy combined the two interlinked ingredients of economic havoc the world over: bubbles in the property and financial sectors, underpinned by a reliance on commodities (whose rebounding prices have since helped lift it back on its feet). The financial sector has expanded dramatically since the late 90s with banks such as Bank TuranAlem (BTA) and Alliance holding ambitions to become major regional players. This expansion was backed by foreign credit, both from international financial institutions and the private sector that in turn provided capital for the Kazakh construction booms, as well as consumer and SME loans. By the time the global party ended, Kazakhstani banks and other financial institutions had racked up over \$40 billion in foreign denominated loans<sup>95</sup> whose risk premiums went through the roof, creating a massive problem for institutions trying to refinance at crippling rates<sup>96</sup>. As with so many countries, the state intervened to prop up the banking sector, using the state oil fund Samruk-Kazyna to take major stakes in a range of key financial institutions including the controversial takeover of BTA, discussed in greater detail later.

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90 UNCTAD, World Investment Report 2008, [http://www.unctad.org/sections/dite\\_dir/docs/wir08\\_fs\\_kz\\_en.pdf](http://www.unctad.org/sections/dite_dir/docs/wir08_fs_kz_en.pdf) (accessed August 16th 2010)

91 Reuters, Kazakhstan urges foreign investors to help economy, June 2009, via UNESCAP <http://www.unescap.org/tid/tisnet/daily/daily120609.pdf> (accessed March 17th 2010)

92 Foreign Investors Council, Priority Sectors to Invest In <http://www.fic.kz/content.asp?parent=6&lng=en&mid=27> (accessed August 16th 2010)

93 Foreign Investors Council, Investment climate in Kazakhstan <http://www.fic.kz/content.asp?parent=6&lng=en&mid=26> (accessed March 29th 2010)

94 Foreign Investors' Council, Ibid

95 Silk Road Intelligencer, Kazakhstan's Banking Crisis- What went wrong, October 2007, <http://silkroadintelligencer.com/2007/10/11/kazakhstans-banking-crisis-what-went-wrong/> (accessed August 16th 2010)

96 Alima Bissenova, Construction Boom and Banking Crisis in Kazakhstan, Central Asia-Caucasus Analyst, June 2009, <http://www.cacianalyst.org/?q=node/5117> (accessed March 29th 2010)

The crisis in the banking sector was inextricably linked to the property market collapse. The boom years irrevocably changed the nature of the housing market in Kazakhstan, as former state-owned housing was sold into the private sector and the shackles were taken off construction. Property speculation exploded for the new middle class who wished to take advantage of a housing market where housing prices rose 25 fold between 1997 and 2007. When credit dried up, the market crashed, with many ordinary people exposed as the result of failed share-holding participation agreements (dolevoe uchastie)<sup>97</sup> in housing projects being developed by construction companies that went bankrupt.

In February 2009, the National Bank of Kazakhstan gave up its attempts to prop up the value of the Tenge that were threatening to burn through Kazakhstan's foreign reserves and the currency devalued by around 25%.<sup>98</sup> KPMG argued that Kazakhstan's ability to maintain an exchange rate of 150 Tenge to the Dollar into the medium term will rely on a strengthening of the global economy that would lift Kazakhstan's economic performance. As of February 2011, the Tenge was trading at just over 146 to the US Dollar (235 to the Pound and 198 to the Euro). So far however, the Kazakh government has been able to weather the storm overall with resurgent commodity prices helping to raise official growth forecasts to 4% for 2010, up from previous estimates of 1.5-2%.<sup>99</sup>

### **The shifting landscape for international investors**

Western investors taking the plunge in the 'Wild East' that opened up when the Wall came down were taking a considerable risk for the possibility of significant rewards. As discussed in the first paper in this series, early 90s Kazakhstan looked a likely candidate for the bitter neighbour vs. neighbour ethnic conflict that became so widespread in the Caucasus and the Balkans during that time. It also goes without saying that the legal and business environment being cobbled together for the new country was rudimentary at best, causing a significant reliance on the personal standing of President Nazarbayev and his credentials as a late Soviet period reformer, as a guarantor that Kazakhstan would honour its commitments to investors. With great risk came great reward as access to major oil and gas fields were sold off to international consortia, while Almaty bars and hotels filled with a motley array of hydrocarbon executives, prospectors and chancers akin to 1890s Texas or across the Caspian in Baku in the earlier 1900s or 1990s.

Almost two decades on from independence, Kazakhstan has made it to middle income status and, as in Russia, its public and politicians bridle at the idea their assets were sold off on the cheap. This sense of injustice is manifesting itself as a growing resource nationalism that is guiding Kazakhstan's government policy. By late 2007 and early 2008, the Kazakh government decided to end the creation of new production sharing agreements in the extractive sector and undertake a review of taxation in the energy and mining industries.<sup>100</sup>

The Government of Kazakhstan's firm new approach to international investors is perhaps most clearly demonstrated by its response to slow progress on the development of the Kashagan field (several years behind schedule due to technical difficulties with doubled costs) by the AGIP KCO consortium. In 2007, the Kazakh government passed a law giving it the power, under certain circumstances, to break existing oil contracts.<sup>101</sup> After years of wrangling, the initial production sharing agreement for Kashagan was amended and a new operating company, the North Caspian Operating Company (NCOC), took over the

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97 Ibid

98 KPMG, Investment in Kazakhstan, July 2009, <http://www.kpmg.kz/index.shtml/en/library/investment/index.html> (accessed August 16th 2010)

99 Silk Road Intelligencer, Kazakhstan to Raise 2010 GDP Growth Estimate-Minister, June 2010, <http://silkroadintelligencer.com/2010/06/24/kazakhstan-to-raise-2010-gdp-growth-estimate-minister/> (accessed August 16th 2010)

100 Radio Free Europe/ Radio Liberty, Newline, February 2008 <http://www.rferl.org/content/Article/1144057.html> (accessed December 2010)

101 Natalia Antelava, Threat to investors in Kazakhstan, BBC, January 2007 <http://news.bbc.co.uk/1/hi/business/7015361.stm> (accessed 16th August 2010)

operation of the field from AGIP KCO, while KazMunaiGaz increased its stake from 8.3% to 16.81%, reaching parity with the initial lead investors ENI, ExxonMobil, Shell and Total.<sup>102</sup> This new arrangement stripped operating responsibility from ENI (the parent company of AGIP), with an agreement made between Shell and KazMunaiGaz to share production operations through a joint venture known as North Caspian Production Operations Company (NCPOC)<sup>103</sup>.

Foreign investors have been further irked by the way in which some see Kazakhstan's environmental and labour laws being selectively enforced against foreign-owned corporations. Tengis-Chevron has faced successful legal challenges<sup>104</sup>, both to its employment practices (after a court found that its dismissal of 1500 local hires over eight years for minor infractions in labour regulation amounted to discrimination against Kazakh workers), and to its environmental record over dangerous methods used for sulphur storage. President of the American Chamber of Commerce, Kenneth Mack, vocalised some investors' concerns, accusing the Kazakh government of using its laws 'selectively and in a manipulative way' and that 'we have witnessed top managers of large and reputable foreign companies that comply with the law having to leave the country not to be arrested,' in cases that have quickly led to criminal prosecution due to a low threshold between administrative (civil) and criminal cases.<sup>105</sup>

International worries over Kazakhstan's approach have been dismissed by the Kazakh government<sup>106</sup>, but there have been some public signs that western investor behaviour has encouraged Kazakhstan to look elsewhere for funding. For example, in December 2009, the Governor of Kazakhstan's Central Bank fired a shot across the bows of British investors, accusing them of being fair weather friends, stating that Kazakhstan would be increasingly looking to the Middle and Far East for future fundraising rather than London.<sup>107</sup>

However it is important to note, despite rule of law failings, the recent economic troubles and the Kazakh government's increasing resource nationalism outlined here, there remain significant opportunities for international investors and some visible improvements in the last few years. The World Bank's 'Doing Business' rankings show some of the areas where practical reforms have led to improvements, including: easing the process for getting construction permits; eliminating the requirement to pay for new electrical connections; reducing time limits for building permits; abolishing the requirements to register at local tax offices; lowering the cost of topographic surveys; and reducing social and corporate income tax. As a result, Kazakhstan has improved in their rankings from 80<sup>th</sup> place in 2008<sup>108</sup> to 63<sup>rd</sup> in 2010.

### **Tackling corruption in Kazakhstan**

Corruption is a major problem in Kazakhstan, as elsewhere in the former Soviet Union, from the mundane petty bribery of the traffic police to accusations of grand larceny by senior officials. According to Transparency International's 2010 Corruption Perceptions Index<sup>109</sup>, Kazakhstan ranks 105<sup>th</sup> in the

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102 Upstream Online, Change of Guard at Kashagan Helm, January 2009, <http://www.upstreamonline.com/live/article170381.ece> (accessed 16th August 2010)

103 Silk Road Intelligencer, Kazmunai Gas partners up with Shell on Kashagan production <http://silkroadintelligencer.com/2010/07/26/kazmunai-gas-partners-up-with-shell-on-kashagan-production/> (accessed 16<sup>th</sup> August 2010)

104 Farkhad Sharip, Kazakh Court Decision Against Chevron Carries Political Implications, Jamestown Foundation, October 2007, [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=33119](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=33119) (accessed 16<sup>th</sup> August 2010)

105 Silk Road Intelligencer, AmCham voices concerns over corruption and investment climate in Kazakhstan, July 2007, <http://silkroadintelligencer.com/2009/07/17/amcham-voices-concerns-over-corruption-and-investment-climate-in-kazakhstan/> (accessed August 16<sup>th</sup> 2010)

106 Natalia Antelava, Threat to investors in Kazakhstan, BBC, January 2007 <http://news.bbc.co.uk/1/hi/business/7015361.stm> (accessed 16th August 2010)

107 Reuters, Kazakhstan to pull London fundraising, December 2009, <http://uk.reuters.com/article/idUKTRE5B51J820091206> (accessed 16th August 2010)

108 Doing Business, Kazakhstan, <http://www.doingbusiness.org/ExploreEconomies/?economyid=100> (accessed 16<sup>th</sup> August 2010)

109 Transparency International. Corruption Perceptions Index, October 2010 [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results) (accessed February 16th 2011)



world, alongside Argentina, Moldova, Senegal and Benin, up 40 places in the ranking from 2008<sup>110</sup>. The improvement is attributed to, amongst other things, Kazakhstan's accession to the United Nations Convention against Corruption in June 2008 and President Nazarbayev's announcement of a major new anti-corruption drive, described as his 'ten slashing punches', that built on his 2006-2010 anti-corruption strategy. According to Bertelsmann, in 2009 new anti-corruption policies 'promised pay rises of 25% for public servants, a 60% rise for local court judges and an almost 300% boost in salaries for traffic police' but they argued that 'however, in overall terms, corruption remains rampant'.<sup>111</sup>

The Agency of the Republic of Kazakhstan on Fighting with Economic and Corruption Crimes, otherwise known as the Financial Police, are responsible for investigating corruption in Kazakhstan and bringing cases to the Prosecutor General. As with so many agencies in Kazakhstan, it is answerable to the President, a measure that while in theory boosts its authority in a hierarchical society, also significantly limits its independence and credibility. There are also accusations that it has been involved in political turf wars and is itself suffering from significant corruption amongst its officers,<sup>112</sup> a major deficit in the state's ability to provide a consistent, comprehensive and politically neutral response to the challenge of corruption.

So, while there has been considerable legislative activity and new hotlines encouraging citizens to 'shop' crooked officials in exchange for rewards, there remains a considerable gap between legislation and enforcement. While modest progress has been made in reducing everyday corruption at lower levels of the bureaucracy, higher up the picture is uneven.<sup>113</sup> Some analysts see the crackdown as an attempt to be seen to take action to provide a distraction from the wider economic crisis, rather than addressing the fundamental problems.<sup>114</sup> Indeed, where there have been high profile cases put against senior figures, it has often proved controversial, with the implementation of the crackdown being perceived to be both partial and politicised.

From a UK perspective, any discussion of political corruption in Kazakhstan can only be taken in light of the Westminster MPs expenses scandal. However, to create a direct equivalence between the 'flipping' and fiddling of Westminster legislators and the nature of corruption allegations against politicians in Kazakhstan, as some observers have done in earshot of this author, is to make a false equation between problems of a vastly different scale. While the UK scandal may have undermined Westminster's previous self-perception as a shining beacon of propriety, the figures on the table in the Kazakhstan context dwarf even the most egregious accusations facing British parliamentarians. And the problem starts at the top.

### 'Kazakhgate'

President Nazarbayev's public exhortations against the evils of corruption are somewhat undermined by the fact that he was the first head of state to be accused of violating the 1977 US Foreign Corrupt Practices Act for a scandal known variously and dramatically, as 'Kazakhgate' or the Giffen affair<sup>115</sup>. The scandal broke in 2003 when a US national, James Giffen, carrying a Kazakhstani diplomatic passport, was arrested at JFK airport in New York. Giffen stood accused of funnelling at least \$78 million to secret bank accounts including those believed potentially to belong to former Prime Minister Nurlan Balgimbaev (KO-

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110 Transparency International, 2008 Corruptions Perceptions Index 2008, [http://www.transparency.org/news\\_room/in\\_focus/2008/cpi2008/cpi\\_2008\\_table](http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table) (accessed 16th August 2010)

111 Bertelsmann Stiftung, BTI 2010 Kazakhstan Country Report, <http://www.bertelsmann-transformation-index.de/155.0.html?L=1> (accessed August 16<sup>th</sup> 2010)

112 Trustlaw, Anti Corruption Profile- Kazakhstan, <http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=0efc7a55-251f-441d-916d-37a5ccc986c2> (accessed 16<sup>th</sup> August 2010)

113 Kazakhstan is far from alone in suffering from this disparity.

114 Rayhan Demytrie, Officials fall to Kazakh corruption drive, BBC, July 2009, <http://news.bbc.co.uk/1/hi/8153982.stm> (accessed 16th August 2010)

115 Bertelsmann Stiftung, BTI 2010 Kazakhstan Country Report, <http://www.bertelsmann-transformation-index.de/155.0.html?L=1> (accessed August 16<sup>th</sup> 2010)

1) and President Nazarbayev (KO-2)<sup>116</sup>. The case became the longest running of its kind in US history as lawyers wrangled over the defence's request for access to classified documentation that Giffen claimed showed he was in fact a CIA asset and they were aware of the transactions he was undertaking. During the 1990s Giffen attained a position of considerable influence within senior Kazakh government circles, allegedly acting as a linkman between Western energy companies and the Kazakh government on deals including the development of Tengis. Earlier in proceedings, Kazakhstan had attempted to use sovereign immunity to prevent a federal grand jury from reviewing documents pertaining to the case. The case was finally brought to an end in August 2010 when, in what Steve LeVine from Foreign Policy Magazine described as a 'stunning turn of events', the charges were 'effectively dismissed' when Giffen's firm pleaded guilty to giving two snowmobiles<sup>117</sup> to an unnamed official and the other charges were dropped, giving some credence to the defence's claims of CIA complicity<sup>118</sup>.

## EITI

One step that could provide some reassurance that the problems are being taken seriously would be finally complying with the Extractive Industries Transparency Initiative (EITI) process, it began in 2005. Kazakhstan is far from alone in having some problems in meeting the requirements of the EITI validation process, with deadlines repeatedly missed. Although now designated with a new status 'close to compliant', it is now being threatened with having to start the process again unless it takes remedial action by 12 June 2011. Kazakhstan has faced issues concerned with showing that *all* companies are reporting *all* their payments and revenues as required under the scheme<sup>119</sup>. According to EITI themselves, their process has been hampered by a fragmentation in the civil society response to the process, with a breakdown from a common negotiating position through the *Oil Revenues-Under Public Oversight* coalition into three groups with differing priorities<sup>120</sup>.

## Examining the recent anti-corruption drive

The pattern of arrests do suggest that the battles within Kazakhstan's elite between different clans and rival centres of power, all jockeying for position in preparation for the post-Nazarbayev era, is determining in part which politicians, officials and businesspeople are being hit by the crackdown.

Two former cabinet ministers and their junior ministerial colleagues are facing significant corruption probes. Former Kazakh Prime Minister Danial Akhmetov was forced to step down as defence minister in June 2009<sup>121</sup>, following a major corruption investigation into the activities of his deputy, Khazimurat Mayermanov, who was arrested earlier that April on suspicion of accepting bribes and misappropriation relating to \$82 million of deals with Israeli arms manufacturers.<sup>122</sup> Their former ministerial colleagues,

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116 David Glovin, Kazakhstan President Nazarbayev Accepted Bribes U.S. Alleges, Bloomberg, April 2004, [http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a\\_8QW26uoX\\_I&refer=home](http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a_8QW26uoX_I&refer=home) (Accessed 12<sup>th</sup> August 2010)

117 Radio Free Europe/Radio Liberty, After Seven Years, 'Kazakhgate' Scandal Ends With Minor Indictment, August 2010, [http://www.rferl.org/content/After\\_Seven\\_Years\\_Kazakhgate\\_Scandal\\_Ends\\_With\\_Minor\\_Indictment\\_/2123800.html](http://www.rferl.org/content/After_Seven_Years_Kazakhgate_Scandal_Ends_With_Minor_Indictment_/2123800.html) (accessed 16<sup>th</sup> August 2010)

118 Steve LeVine's own account of the trial conclusion states that the bribes in question were speedboats. SteveLeVine, James Giffen's trial ends: A slap on the wrist, and the triumph of American Putinism, Foreign Policy, August 2010, [http://oilandglory.foreignpolicy.com/posts/2010/08/06/james\\_giffens\\_trial\\_ends\\_a\\_slap\\_on\\_the\\_wrist\\_and\\_the\\_triumph\\_of\\_american\\_putinism](http://oilandglory.foreignpolicy.com/posts/2010/08/06/james_giffens_trial_ends_a_slap_on_the_wrist_and_the_triumph_of_american_putinism) (accessed August 16<sup>th</sup> 2010)

119 EITI <http://eiti.org/Kazakhstan> (accessed February 14<sup>th</sup> 2011) and from correspondence with officials at EITI. Further to this paragraph despite the UK being the founder and major backer of the scheme it has not gone through the process itself, something that may help develop trust in the process.

120 The picture of infighting amongst Civil Society groups tallies with what the author has been hearing from other sources and the issue will be addressed in the final Kazakhstan at a Crossroads compilation report

121 Ferghana. Ru, Kazakhstan: Danial Akhmetov is relieved from the position of Defense Minister <http://enews.ferghana.ru/news.php?id=1248> (accessed 16<sup>th</sup> August 2010)

122 Yossi Melman, Kazakh Minister arrested in Israeli Arms Sale, Haaretz, April 2009, <http://www.haaretz.com/print-edition/news/kazakh-minister-arrested-in-israeli-arms-sales-bribe-case-1.274065> (accessed 16<sup>th</sup> August 2010)

Environmental Protection Minister Nurlan Iskakov and his deputies Alzhan Braliyev and Zeynulla Sarsenbayev were charged in March 2009 with involvement in the embezzlement of over \$70 million.<sup>123</sup>

### **Surprise in the business community**

The arrest, subsequent conviction and sentencing to 14 years hard labour for corruption and embezzlement of state-owned nuclear company Kazatomprom boss Mukhtar Dzhakishev shocked many in Kazakhstan's business community. Dzhakishev was seen as one of Kazakhstan's more successful business leaders who had transformed Kazatomprom from a struggling company into the world's largest Uranium producer, while also cultivating a clean-cut reputation amongst the business elite. He was convicted of having manipulated the sale price of a 30% stake in a joint venture to Canadian firm Uranium One, with prosecutors stating the stake was sold for only \$104,000 despite the mining firm arguing it cost \$75 million. In the wake of his arrest and in a highly unusual move, 22 leading Kazakh businessmen, including a former finance minister and the head of Nur Otan's media outlet, wrote an open letter expressing their support for Dzhakishev, arguing that the case was deterring investors and calling for transparency in the investigation.<sup>124</sup> Following the conviction, opposition politicians have alleged political interference and suggested that the prosecution may have been linked to Dzhakishev's support in securing a pardon for Mukhtar Ablayzov in 2003, who is now in exile facing corruption allegations of his own (about more of which below)<sup>125</sup>.

In a similar development, Zhaksybek Kulekeyev, a former government economy and education minister and head of Kazakhstan Temir Zholy, the state railway company, was charged with taking a \$100,000 bribe from a firm tendering a contract.<sup>126</sup> As with Dzhakishev, he had a comparatively clean reputation prior to his arrest and the bribery case against him collapsed. Kulekeyev was however sentenced to three years imprisonment for 'abuse of office', leading to accusations of political score settling.<sup>127</sup> However, the two most controversial figures of recent years faced with allegations of corruption, Ablayzov and Rahat Aliev, remain beyond the reach of Kazakhstan's government, claiming political asylum in Europe.

### **Political intrigue and Kazakhstan's banking sector: The BTA Bank & Nurbank**

In the 2008-9 global financial crisis that saw market-friendly governments across the world being forced to take-over banks to prevent their collapse, the Government of Kazakhstan's intervention in its financial sector shouldn't have raised many eyebrows, particularly given its property slump and a falling oil price. However, the takeover of Kazakhstan's leading private bank, Bank Turan Alem (BTA) has been shrouded in controversy with accusations of political score settling against BTA's head, Mukhtar Ablayzov<sup>128</sup>.

Mukhtar Ablayzov's career in Kazakhstan's public life has been something of a rollercoaster: a businessman turned Government minister in the late 1990s; founder of Kazakhstan's first serious non-communist opposition group (the liberal elite-led Democratic Choice of Kazakhstan) in the first years of the new millennium; jailed amid international controversy in 2002<sup>129</sup>; pardoned in 2003 followed by time in Moscow; a return to Kazakhstan to lead an aggressive expansion of BTA in 2005; and finally an escape

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123 Madi Asanov, Former Kazakh government minister arrested for corruption, Central Asia Online. April 2009, [http://centralasiaonline.com/cocoon/caii/xhtml/en\\_GB/features/caii/features/2009/04/02/feature-01](http://centralasiaonline.com/cocoon/caii/xhtml/en_GB/features/caii/features/2009/04/02/feature-01) (accessed 16th August 2010)

124 Joanna Lillis, Kazakhstan: Business Climate Grows Gloomy Amid Arbitrary Arrest Controversy, Eurasianet, March 2010, <http://www.eurasianet.org/departments/civilsociety/articles/eav031710.shtml> (accessed 16th August 2010)

125 Joanna Lillis, Kazakhstan: Ex-Nuclear Boss Sentenced Amid Claims of Political Reprisals, Eurasianet.org, March 2010, <http://www.eurasianet.org/departments/civilsociety/articles/eav031710.shtml> (accessed August 16th 2010)

126 Economist, Kazakhstan: Going off the Rails [http://www.economist.com/displayStory.cfm?Story\\_ID=E1\\_TTDJSRG](http://www.economist.com/displayStory.cfm?Story_ID=E1_TTDJSRG) (accessed 16<sup>th</sup> August 2010)

127 Joanna Lillis, Kazakhstan: Astana Achieves Slow Progress in Tackling Corruption, Eurasianet.org, January 2009, <http://www.eurasianet.org/departments/insightb/articles/eav012609.shtml> (accessed 16<sup>th</sup> August 2010)

128 It is worth noting that as part of a separate project, albeit on a similar topic, the FPC platformed Mukhtar Ablayzov in a Westminster seminar on 'Doing Business in Kazakhstan' in June 2010

129 Marie Struthers, One Voice Less in Kazakhstan, Institute for War and Peace Reporting, May 2005, <http://iwpr.net/report-news/one-voice-less-kazakhstan> (accessed August 16<sup>th</sup> 2010)

into international exile in 2009 following the government takeover of BTA and subsequent charges of corruption.

Following Abljazov's return from Russia to head up BTA, the bank undertook a rapid expansion, with the stated goal of becoming the largest independent financial institution in the CIS, successfully raising finance on the global markets when the crisis struck. After weathering the initial stages of the banking crisis, BTA found itself unable to meet government requirements on the level of reserves and was taken over by Kazakhstan's sovereign wealth fund Samruk-Kazyna<sup>130</sup>. Former CEO Roman Solodchenko argued in an interview with this author that the Kazakh government undertook several actions that deliberately brought about the collapse of the bank. Solodchenko stated that his team was able to repay over \$1.4 billion in debt and trade finance obligations in December 2008 and January 2009 but argues that three actions of the Kazakhstan government led to its demise: firstly government proposals split BTA in two, hiving off its Kazakh subsidiary JSC Temirbank, thereby removing assets that would trigger a default on the requirements of its internationally-held debt. Once these proposals became public it reduced market confidence in the bank; a reduction in interbank lending by the National Bank of Kazakhstan in January; and finally it is alleged that on Thursday 29 January 2009, the government told BTA to raise its capital adequacy ratio to 24.9% by Sunday 1<sup>st</sup> February 2009 that triggered a compulsory share issue and their purchase by Samruk-Kazyna. In the wake of the takeover, corruption charges were brought against the former executive team, leading a flight into exile, mostly to London.

Abljazov and Solodchenko argue that figures in the government used the financial crisis to remove BTA as a potential power base for a previous opponent of the regime, while the new management team accuse their predecessors of irresponsible deals and alleged lending to companies in tax havens that could be linked to Abljazov himself, the heart of current corruption allegations against him.<sup>131</sup> Abljazov retorted with corruption allegations of his own<sup>132</sup> against Timur Kulibayev, Nazarbayev's son-in-law, a political and financial power player<sup>133</sup> who also serves as deputy head of BTA's new owners.

In an interesting coda to the case, as Gillian Tett noted in the Financial Times, following BTA's takeover by the government, Morgan Stanley appeared to actively engineer BTA into default by demanding the repayment of loans that the bank was at the time able to service but not pay off. The FT reported that Morgan was believed to have Credit Default Swaps to the value of or exceeding its loans to the bank, thereby benefiting from a default that would otherwise lose them and other creditors money.<sup>134</sup>

Back in 2007 there were even more bizarre goings on at Nurbank that provided the setting for the denouement of the political career of Rakhat Aliyev, the then husband of Nazarbayev's eldest and most politically active daughter Dariga Nazarbayeva. Aliyev was accused (and eventually convicted in absentia) of a number of crimes including the case that triggered his downfall, the kidnapping of former executives of Nurbank<sup>135</sup> in which he and his family were shareholders<sup>136</sup>. On the same theme, Aliyev has accused the KNB (the agency of which he was previously Deputy Director) of sending agents to kidnap him and former KNB chief Alnur Musaev<sup>137</sup> from exile in Vienna where he has been granted asylum on the grounds that he would not receive a fair trial back home. Aliyev's increasingly eccentric missives from

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130 Annette Bohr, Kazakhstan: End of the Banking Boom, Chatham House, May 2009,

[http://www.chathamhouse.org.uk/research/russia\\_eurasia/papers/view/-/id/746/](http://www.chathamhouse.org.uk/research/russia_eurasia/papers/view/-/id/746/) (accessed July 26<sup>th</sup> 2010)

131 Landon Thomas Jnr, Kazakh Bank Lost Billions in Western Investments, New York Times

[http://www.nytimes.com/2009/11/28/business/global/28kazakh.html?\\_r=1&ref=kazakhstan](http://www.nytimes.com/2009/11/28/business/global/28kazakh.html?_r=1&ref=kazakhstan) (accessed 16<sup>th</sup> August 2010)

132 Joanna Lillis, Kazakhstan: Fallen Tycoons Still rankle ruling elite, Joanna Lillis, Eurasianet, March 2010,

<http://www.eurasianet.org/departments/insight/articles/eav031110a.shtml> (accessed July 26<sup>th</sup> 2010)

133 See paper 1 in this series for further information

134 Gillian Tett, Insight: Kazakh bank falls foul of CDS, FT, April 2009, <http://www.ft.com/cms/s/0/fa0428ee-35a7-11de-a997-00144feabdc0.html> (accessed January 18<sup>th</sup> 2010)

135 Joanna Lillis, Kazakhstan: Political Reshuffle Involves President's Son-in-Law, Eurasianet, February 2007,

<http://www.eurasianet.org/departments/insight/articles/eav020907.shtml> (accessed August 16<sup>th</sup> 2010)

136, His divorced wife and their son sold their holdings in May 2010 according to Isabel Gorst, Kazakhstan: the family sells out at Nurbank ,FT, May 2010, <http://blogs.ft.com/beyond-brics/2010/05/26/kazakhstan-the-family-sells-out-at-nurbank/> (accessed 16<sup>th</sup> August 2010)

137 Radio Free Europe/ Radio Liberty, Alleged Kazakh KNB Agents To Stand Trial In Austria, August 2009,

[http://www.rferl.org/content/Alleged\\_Kazakh\\_KNB\\_Agents\\_To\\_Stand\\_Trial\\_In\\_Austria/1802870.html](http://www.rferl.org/content/Alleged_Kazakh_KNB_Agents_To_Stand_Trial_In_Austria/1802870.html) (accessed 16<sup>th</sup> August 2010)

exile have included a tell-all book, *The God Father in-Law*, that makes corruption allegations against Nazarbayev and other regime officials, while arguing that he was the victim of political infighting<sup>138</sup>.

This publication does not seek to pass detailed judgement on the validity of the corruptions levelled against any of the previously mentioned, something inappropriate to do without resources and legal knowledge beyond this author's possession. However it does seem that *who* is accused (and/or prosecuted/convicted) is determined by factors beyond the straightforward legal process, tied up in the inter-factional manoeuvrings within Kazakhstan's elite. To outside eyes it seems that corruption allegations are a stock-in-trade in Kazakh political activity. Rumours also exist of conflicts between the KNB and the Financial Police<sup>139</sup>, with both providing vehicles for levelling corruption allegations against rivals.

### Media and telecoms regulation

There remain concerns about the near monopoly position of state-dominated Internet Service Providers (ISPs) Kazakhtelecom and Nursat in controlling access to sites, both in terms of assisting filtering and a lack of competition that keeps prices higher than they otherwise might be.

The World Economic Forum's Global Information Technology Report 2009-10 provides a useful assessment of Kazakhstan's telecoms provision.<sup>140</sup> While achieving a middle ranking of 68 out of 133 countries surveyed,<sup>141</sup> in some respects impressive given the scale of the geographical barriers to providing access, the report highlights two main areas of weakness. Firstly, the sector suffers from the same governance failings explained previously in this and the previous report; Kazakhstan scores poorly on freedom of the press (110<sup>th</sup>), property rights (103<sup>rd</sup>) and judicial independence (97<sup>th</sup>). Secondly, there are some more prosaic (and non-political) problems around lack of competition in the sector (101<sup>th</sup> & 104<sup>th</sup> on different measures) and, perhaps related to this, the cost of connecting both residents and businesses to telephone and web (111<sup>th</sup>).

As mentioned previously, in June 2009, new legislation changed the legal position of websites, blogs and chatrooms to that of an 'internet resource', creating legal equivalence with off-line media outlets and thereby subjecting them to the same restrictions on content<sup>142</sup>. While there may be some sense in harmonising certain media regulations across different platforms, this move simply transplants inappropriate restrictions on freedom of expression from the traditional media to the full raft of online forums and furthermore creates a false equation between public chatroom comments and journalism. The regulations also formalise the right to block foreign websites that are seen to breach Kazakhstan's national legislation, for example by discussing issues that would breach Kazakh censorship laws, by court injunction at the request of the Attorney General.<sup>143</sup> Prior to the legislation being passed, Radio Free Europe/ Radio Liberty's Kazakh-language site had been blocked, a move that restricted access to its Kyrgyz, Tajik and Uzbek services due to Kaztelecom's position as Central Asia's main ISP<sup>144</sup>. According to Rachid

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138 He argues that he was ostracised for promoting reform. Whether or not this is true it seems likely that his positioning as a potential successor to Nazarbayev ruffled some feathers.

139 Axis Information and Analysis, Eurasian Secret Services Daily Report, October 2009, <http://www.axisglobe.com/article.asp?article=1924> (accessed August 16<sup>th</sup> 2010)

140 World Economic Forum, The Global Information Technology Report 2009–2010 <http://www.weforum.org/documents/GITR10/index.html> (accessed August 16<sup>th</sup> 2010)

141 Kazakhstan scores particularly well on contract enforcement and level of telephone connection

142 Trend News, Kazakh parliament equates all Internet-resources with media, June 2009, <http://en.trend.az/news/important/actual/1493250.html> (accessed 16<sup>th</sup> August 2010)

143 Adilsoz, Comparative table of the draft Law of the Republic of Kazakhstan 'On making amendments and addenda to some legislative acts of the Republic of Kazakhstan on issues of information and communication networks' December 2008, <http://www.adilsoz.kz/site.php?lan=russian&id=858> (accessed January 26<sup>th</sup> 2010)

144 Media Network, RFE/RL says Kazakhstan blocking its websites, May 2008, <http://blogs.rnw.nl/medianetwork/rferl-says-kazakhstan-blocking-its-websites> (accessed 16<sup>th</sup> August 2010)

Nougmanov, the authorities had long maintained a blacklist of 'destructive websites' to be filtered by ISPs.<sup>145</sup>

The legislation puts onerous user information-gathering requirements on service providers. They are required to share information with the authorities<sup>146</sup> that not only invades privacy but constitutes a heavy and expensive bureaucratic burden. Providers are required to store information for two years about subscribers: phone numbers, identification codes, e-mail addresses, postal addresses, passport details, personal tax identification numbers, legal details (details of the certificate of state registration, statistical card and VAT registration certificates), billing information and information about services provided to subscribers, the addresses of subscribers in the data network and addresses to access internet resources in the data network, internet resource identifiers, protocols, data network<sup>147</sup>. Article 15 of the same law requires ISPs to provide the authorities 'with organisational and technical capabilities of the operational-search measures of all networks, access and transmission of proprietary information about the subscribers and take measures to prevent the disclosure of methods of conducting these activities'.<sup>148</sup>

On the economic challenges raised by the WEF report, Nougmanov's contribution to the OSCE's Governing the Internet Report highlights some of the prohibitive costs for Kazakhstan's internet users. In 2007 a basic internet package would cost €30 a month, over 10% of the average monthly income, while an unlimited package would cost 28% of a monthly salary (€82).<sup>149</sup> There has been some reduction in costs since then, with a limited 256 Kbit/s package available from Kazakhtelecom for £8.24 per month<sup>150</sup> (€9.80), with a £39 set up cost. However it is clear that cost and the low quality of connections available are major causes (alongside inaccessibility of rural communities due to Kazakhstan's vast geography) of the low penetration of internet access (by the end of 2006 only 4% of Kazakhstanis were active internet users, mostly using internet cafes and university access<sup>151</sup> and in summer 2009 the vast majority of citizens 89% still saw television stations as their primary source of information about politics<sup>152</sup>).

As an approach that may help improve access to information on all fronts, there is an important opportunity for the international community to assist Kazakhstan improve its telecoms regulation and to explore the liberalisation of the market (and reduce the bureaucratic burdens on providers) to create a greater diversity of suppliers of internet services. Liberalisation could potentially have the dual benefits of reducing costs to residents and businesses (also encouraging improvements in bandwidth), while simultaneously creating a small, though sadly surmountable, barrier to *informal* attempts by the state to block access to websites through influencing the operational decisions of Kazakhtelecom<sup>153</sup>. The UK's OFCOM and BEREC (Body of European Regulators for Electronic Communications), the new EU-wide forum for regulators, could play a role in providing advice and technical support on telecoms liberalisation to the Kazakh government and Anti-Monopoly Agency as part of their international outreach work.

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145 Rachid Nougmanov in Christian Möller and Arnaud Amouroux ed. Governing the Internet, OSCE, July 2007 [http://www.osce.org/publications/rfm/2007/07/25667\\_918\\_en.pdf](http://www.osce.org/publications/rfm/2007/07/25667_918_en.pdf) (accessed 16th August 2010)

146 Law No. 567-II of the Republic of Kazakhstan on Telecommunications, dated July 5, 2004.

147 Xenia Bondal, in Respublica.Ru via Profit.kz, November 2009, <http://www.profit.kz/articles/001054/> (accessed January 26<sup>th</sup> 2010, in Russian)

148 Draft Law of the Republic of Kazakhstan "On making amendments and addenda to some legislative acts of the Republic of Kazakhstan on issues of information and communication networks" <http://www.medialawca.org/book/export/html/1356> (accessed January 26<sup>th</sup> 2010, in Russian)

149 Rachid Nougmanov in Christian Möller and Arnaud Amouroux ed. Governing the Internet, OSCE, July 2007 [http://www.osce.org/publications/rfm/2007/07/25667\\_918\\_en.pdf](http://www.osce.org/publications/rfm/2007/07/25667_918_en.pdf) (accessed 16th August 2010)

150 KazakhTelecom, <http://www.telecom.kz/index.php?uin=1241591898&actn=home&lang=eng> (accessed Feb 14<sup>th</sup> 2011)

151 Rachid Nougmanov in Governing the Internet, OSCE, 2007, [http://www.osce.org/publications/rfm/2007/07/25667\\_918\\_en.pdf](http://www.osce.org/publications/rfm/2007/07/25667_918_en.pdf)

152 Joanna Lillis, KAZAKHSTAN: DESPITE DOWNTURN, *ibid*

153 Such a move clearly would not change access to sites officially barred but create a further hurdle for informal blocking.

## Kazakhstan on the world stage

Kazakhstan's international profile has never been so high. The OSCE Chairmanship has been the high point for the country in terms of diplomatic prestige, and has been supported by a major public relations push with glossy feature articles showcasing the transformation of Astana and the great strides taken in recent decades. Despite this publication's criticism of Kazakhstan's governance it does not seek to belittle or discard the progress that has been made. What is clear however, is that some of the soft focus coverage of Kazakhstan's achievements can obscure the real challenges facing the country.

As the *Kazakhstan at a Crossroads* series has progressed, it has become clear that perhaps the only Kazakhstan cliché used more frequently than the ubiquitous Borat reference<sup>154</sup> is that of a new 'Great Game'. While it is certainly true that there are many competitors for influence in Kazakhstan, it is not merely an area of the map for great powers to carve up as they see fit, but is a relatively skilful actor that has balanced different international interests to serve both the national interest and those of the ruling elite. It is a strategy deployed to varying degrees of success by Kazakhstan's neighbours but none with the same level of skill. This publication concentrates on a few of Kazakhstan's major relationships - with the EU, Russia and China - and how it seeks to manage the competition for access to its natural resources and markets<sup>155</sup>.

## Kazakhstan and Europe

Although a small portion of Kazakhstan's territory lies west of the Ural river in continental Europe, and with a Soviet history that had oriented the country in that direction, Kazakhstan lies beyond the reach of the EU's neighbourhood policy and Eastern Partnership, falling instead under its less well developed Central Asia strategy. Nevertheless the EU is Kazakhstan's largest export market with 39.4% of total Kazakhstani exports destined for European markets while EU products made up around 25.5% of overall imports in 2009<sup>156</sup>, in third place behind Russia and China.

The formal end of EU-Kazakhstan relations are based around the 1999 Partnership and Cooperation agreement that has been buttressed by Memoranda of Understandings on Energy in 2003 and Transport in 2006. The EU describes its priorities as being the 'promotion of the on-going reform process at political, economic, judiciary and social level, infrastructure building and cooperation in the energy sector'<sup>157</sup>.

The EU's 2007 Central Asia strategy states in glowing terms Kazakhstan has clearly taken the lead in terms of political, economic and social reforms and that its economic weight places it as 'a role model' for the other countries to follow.<sup>158</sup> While it rightly mentions 'several positive developments' in Kazakhstan such as the 2006 ratification of the UN Covenant on Civil and Political Rights, it does not mention the many problems outlined earlier in this series. Furthermore, it implies that Kazakhstan (and Kyrgyzstan) are to be considered electoral democracies as it states 'the countries range along the spectrum of authoritarian regimes to electoral democracies, but are still far from being liberal democracies based on the rule of law and respect for human rights', having previously noted Kazakhstan as the region's star performer. While Kazakhstan is indeed probably the best of a frankly uninspiring bunch (trading some freedom for stability when compared to Kyrgyzstan), describing it as a role model is deeply misplaced in relation to political reform. Implying that Kazakhstan is an 'electoral democracy' is a major error, as while it does conduct elections, it does not meet several of the conditions set out by Freedom House to qualify for that epithet. It does not have 'a competitive, multiparty political system', 'significant public access of major political

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154 A convention that this report has already caved into at the beginning

155 For reasons of brevity the report does not address in any detail US engagement or Central Asian interregional collaboration.

156 European Directorate General Trade [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113406.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113406.pdf) (Accessed 23<sup>rd</sup> December 2010)

157 European External Action Service, Kazakhstan, [http://www.eeas.europa.eu/kazakhstan/index\\_en.htm](http://www.eeas.europa.eu/kazakhstan/index_en.htm) (Accessed 28th October 2010)

158 European Community Regional Strategy Paper for Assistance to Central Asia for the period 2007-2013 [http://eeas.europa.eu/central\\_asia/rsp/07\\_13\\_en.pdf](http://eeas.europa.eu/central_asia/rsp/07_13_en.pdf) (accessed 28th October 2010)

parties to the electorate through the media and through generally open political campaigning' and has certain failings on ballot security and voter fraud.<sup>159</sup> Despite its somewhat rose-tinted overview the strategy contains several important initiatives from drugs to border control, as well as a host of the EU-Rule of Law initiative in Central Asia, led by France and Germany and the Human Rights dialogue process, that has been welcomed by NGOs but could do with being more in depth and with clearer follow-up mechanisms.

The Joint Progress Report on the Implementation of the EU Central Asia Strategy in June 2010 made the welcome acknowledgement that Human Rights, Rule of Law and Democracy was one of the four key areas where efforts need to be 'reinforced'<sup>160</sup>. It's refreshingly frank analysis is that progress has been slow and more needs to be done; however it does not make suggestions beyond deepening the human rights dialogue and rule of law initiative processes. It appears that, so far the role of EU Special Representative for Central Asia, currently Pierre Morel, will be retained despite the cull taking place of some of his less fortunate colleagues (including, bizarrely, the EUSR for the South Caucasus).

### **Reform to the PCA**

Talks are due to get underway in 2011, once the Commission receives sign-off from the Council, about upgrading the current Partnership and Cooperation Agreement (PCA) into an enhanced agreement. The process aims to update the agreement to reflect Kazakhstan's improved economic performance, the recent memorandum of understanding on Energy and cooperation in Justice & Home Affairs. While such an agreement would be seen as important for its symbolic value as a statement about EU confidence in Kazakhstan's performance and regional role, the EU hopes to make progress on a number of areas including statistics, judicial reform and the Bologna process of higher education cooperation.

This 'enhanced agreement' will not be as comprehensive as the Association Agreements being negotiated with the EU's partners in the South Caucasus and others covered by the European Neighbourhood Policy. While such reticence may be currently justified on grounds of Kazakhstan's human rights and other governance problems (albeit such concerns do not appear to be precluding talks with some other states) it should not be kept off the table for strategic or geographical reasons. The potential 'carrot' of a future EU-Kazakhstan Association agreement needs to be put on the table even though neither party may want or be able to make progress on this in the short to medium term. Even when able to work cohesively at EU level, European leverage in Kazakhstan remains limited, particularly as there is not even the most remote possibility of membership being on the table. Nevertheless, it should look to use all the tools available to incentivise progress on governance, provided it is clearly tied to compliance, something conspicuously absent from the granting of the OSCE Chairmanship and given Kazakhstan's failure to fully comply with the human rights commitments made in Madrid. Therefore, where possible, with the impact of the recent customs union and lack of progress towards WTO membership explained later, bilaterally agreed trade incentives should also be considered as part of a conditional package to encourage reform.

While the original PCA contains a short statement in favour of 'respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy...'<sup>161</sup> it doesn't contain any specific articles relating to human rights, democracy or governance in areas beyond broadly defined economic cooperation (includes environmental and cultural cooperation). Any new agreement must have far more detailed commitments on human rights and be supported by clearing benchmarks and monitoring, so that progress towards the goals can be measured. The negotiation

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159 Freedom House, Freedom in the World Methodology,

[http://www.freedomhouse.org/template.cfm?page=351&ana\\_page=363&year=2010](http://www.freedomhouse.org/template.cfm?page=351&ana_page=363&year=2010) (accessed 28<sup>th</sup> October 2010)

160 Joint Progress Report by the Council and the European Commission to the European Council on the implementation of the EU Central Asia Strategy <http://register.consilium.europa.eu/pdf/en/10/st11/st11402.en10.pdf> (accessed 28<sup>th</sup> October 2010)

161 The European Union and the Republic of Kazakhstan Partnership and Cooperation Agreement, 1998, p5, [http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc\\_116738.pdf](http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc_116738.pdf) (accessed October 28<sup>th</sup>)



process for the enhanced agreement should be used to extract concessions in these areas before a deal is agreed. In Soviet times the formulation was Kazakhstan *and* Central Asia<sup>162</sup>, providing a historical basis for any future decoupling from the more challenging neighbouring regimes that the EU may wish to pursue.

### **Kazakhstan and the UK**

As for Britain, London has become one of the go-to destinations for Kazakhstanis looking for exile, for an opportunity to learn or to shop alongside well-heeled former compatriots from throughout the former Soviet Union. The UK is the second most popular destination for Kazakhstani students using the successful Bolashak scholarship scheme, and the overall number of students studying in Britain topped 1,200 in 2008. As home to many of the extractive industry players competing for contracts in Kazakhstan, the UK has an important bridging role to play to Kazakhstan, despite Germany and France being the official leads in the wider region. Furthermore, Cathy Ashton's position coordinating the EU's approach to the region, despite the change of UK government, gives London a greater stake in the future direction of policy.

### **Council of Europe**

Kazakhstan's bid for observer status to the Council of Europe (CoE) was rejected in 2009 on the grounds that it did not meet the organisation's human rights standards, offering instead a Partnership for Democracy that offers engagement and assistance to meet specific commitments prior to being offered full observer status. Given that the CoE is primarily a human rights monitoring body, the decision to reject is understandable, although the decision to apply suggests a lack of understanding on Kazakhstan's behalf about the nature of the organisation and the commitments required by engagement with it, a criticism that can be applied to its engagement in other international organisations.

### **Kazakhstan and Russia**

The early years of Kazakhstan's independence were marked by the clear desire to achieve economic and political autonomy from Moscow, and the relationship weathered some stormy waters. For example, the fraught transfer from the Rouble to the Tenge in 1993, which took place in the wake of the withdrawal of Soviet-era currency and freeing of prices, was triggered by Russian demands that Kazakhstan hand over its gold reserves, even after Kazakhstan had offered extremely high levels of economic cooperation to continue as part of the Rouble zone<sup>163</sup>. The fledgling Kazakhstani government was also extremely fearful that Kazakhstan's northern provinces, then with an ethnic Russian majority, might be absorbed into Russia<sup>164</sup>. Indeed, the initial Kazakhification of Kazakhstani society that helped fuel emigration led to a sense of grievance amongst Kazakhstan's Russian minority that helped fuel calls in Russia from Russian nationalists including Vladimir Zhirinovskiy, born in Kazakhstan, for its reabsorption into Mother Russia. It is little wonder then that Kazakhstan developed the most sophisticated of all the multi-vector foreign policies adopted in Central Asia. However, state-to-state relations weathered this transition and Russia pipeline infrastructure remained a major export route for Kazakhstan's hydrocarbons. Over recent years, Russia and Kazakhstan have moved to strengthen their relationship on a more equal basis than in any previous period.

The Russia-Kazakhstan relationship is moderated through a large number of post-Soviet institutions and newer multilateral arrangements. Both countries are members of the Soviet successor coordinating body, the Commonwealth of Independent States (CIS) and its partner organisation the Collective Security Treaty Organisation (CSTO), which acts as a shadow to NATO. Security cooperation has included an anti-

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162 Bhavna Dave, *Kazakhstan, Ethnicity, language and power*, 2007, Routledge

163 Martha Brill Olcott, *Kazakhstan: Unfulfilled Promise?* Brookings Institution, Feb 2002, P133

164 Sally Cummings, in Sally Cummings (ed) *Oil, Transition and Security in Central Asia*, 2003 Routledge Curzon *Advances in Central Asian Studies* (9780415310901), p28

terrorist centre in Almaty and joint military exercises. Further Russia-Kazakhstan security cooperation is handled through the Shanghai Cooperation Organisation (SCO), incorporating China as discussed below. Although involving Russia, the SCO is predominantly Chinese-led, therefore managing the overlapping roles of the SCO and CSTO will be a growing challenge for both Russia and Kazakhstan, where the latter is keen to involve China but prevent partnership becoming over reliance.

### **Eurasian Economic Community, Customs Union and WTO membership**

In the economic sphere, collaboration has centred around long-running attempts to create a customs union that would encompass Russia, Kazakhstan and Belarus, amongst others. After initial attempts were made in the mid 90s, the Eurasian Economic Community (EurAsEC) was formed in 2002, additionally incorporating Kyrgyzstan, Tajikistan and from 2005-2008, Uzbekistan. A breakthrough was finally achieved in July 2010 when Russia, Kazakhstan and Belarus signed into force a unified customs code and confirmed progress towards creating a single economic space by 2010. This move has been seen to have a security dimension as large as an economic impact as it underscores the strengthened cooperation between Astana and Moscow, and placing a check on Beijing's ambitions in the region. The move places a large bump in Kazakhstan's already rocky road towards WTO membership that began back in 1996. Despite public utterances of continued support for WTO membership, behind closed doors scepticism is rife that any progress will now be made in the near future.

### **Kazakhstan's relationship with China by Dr Feng Zhang<sup>165</sup>**

Kazakhstan is far from alone in viewing increased Chinese diplomatic and economic engagement with a mix of optimism and trepidation. However, the 1,533km<sup>166</sup> land border between the two countries and the population disparity (particularly in terms of density) create some specific opportunities and sensitivities. FPC Research Associate and former China Programme manager Dr Feng Zhang outlines some of the key elements of the relationship below:

Driven by their largely complementary economic and security interests, Kazakhstan's relationship with China has developed steadily and smoothly since the country gained independence in 1991. With their formal diplomatic relationship established in January 1992, the two countries have exchanged several high-level visits by their respective heads of state. A treaty of good neighbourliness, friendship and cooperation was signed in 2002. During Chinese President Hu Jintao's visit to Kazakhstan in July 2005, the relationship was elevated to the level of "strategic partnership," indicating the growing importance of Kazakhstan in China's overall diplomatic strategy. Economically, the total volume of bilateral trade between China and Kazakhstan reached almost \$14 billion in 2007, 36 times that of 1992 when the two countries first established diplomatic contact. China is now Kazakhstan's second largest trading partner, accounting for 17 percent of its total trade; meanwhile Kazakhstan has become China's second largest trading partner from the Commonwealth of Independent States (CIS) after Russia.<sup>167</sup> Geo-strategically, China and Kazakhstan are both members of the Shanghai Cooperation Organization (SCO), an institution of growing strategic and economic importance in Central Asia.

This section will analyse the steady development of the Sino-Kazakh relationship in the post-Cold War period, focusing in particular on their economic ties, driven by energy cooperation, and security ties instituted through the SCO. Both Chinese and Kazakh perspectives will be taken into account when analysing the major determinants of their relationship. Finally, the role of the SCO for both China and Kazakhstan's diplomatic and strategic aims in Central Asia will be briefly discussed.

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<sup>165</sup> Dr Feng Zhang is an FPC Research Associate and was the formerly the FPC's China Programme Manager. This section has been edited by the report author Adam Hug

<sup>166</sup> CIA World Factbook, Land Boundaries <https://www.cia.gov/library/publications/the-world-factbook/fields/2096.html> (Accessed August 2009)

<sup>167</sup> Zhang Yangzhi and Zheng Guofu, "An Empirical Research on Sino-Kazakh Economic Cooperation," *The Markets of Russia, Central Asia and East Europe*, 2009, Vol. 1, pp. 20-24.

Sharing a long border of 1,533 kilometres, China and Kazakhstan are each bound to find the other important to external relations in one way or another. As a major country in a strategically important region, Kazakh policy directly affects Central Asian politics. This region is a meeting point for diverse ethnicities and religions, and is a breeding ground for radical Islamism and terrorism. How Kazakhstan deals with these political, religious and security problems is of major concern to China and other Central Asian countries. Since its independence, and especially after 9/11, which initiated American military presence in Central Asia, Kazakhstan has largely followed a policy of "great power balance," seeking to enhance its overall interests in its relationships with Russia, the US, China, and other neighbouring countries.

Kazakhstan actively promotes a good relationship with China for three main reasons. First, a stable relationship with China is a prerequisite to its own border security. Second, the expanding Chinese economy is a major attraction, and Kazakhstan hopes to promote trade with China and attract Chinese investment in its own development. The Kazakh government has prioritised energy as its main economic drive, which has found a ready and enthusiastic reception on the Chinese side now that China has become the second largest oil importer in the world. And third, China's political and economic development provides a somewhat unique development model that Kazakhstan could exploit. If China's vicinity and growing power can be a source of concern, its economic success achieved with tight social and economic control makes it an interesting model for leaders previously belonging to the Soviet apparatus. In any case, China could prove useful for Kazakhstan's own economic restructuring and reform.

On the Chinese side, the relationship with Kazakhstan is important for at least three reasons. First, with border agreements reached with Russia and the other Central Asian republics, China's security environment in the northeast and northwest is in its best condition in two hundred years, providing an essential external environment for its national project of "Developing the West" (*Xibu da kaifa*). Good relations with Kazakhstan might also prove a useful counterpoint against American political and military infiltration into Central Asia. Second, Kazakhstan can also be an important economic partner, especially in energy cooperation. Third, the spread of radical Islamism, pan-Turkic nationalism and terrorism is a major concern for China, especially in light of growing ethnic tensions in China's northwestern Xinjiang province. Kazakhstan has a major role to play in containing these forces, and China is placing Kazakhstan in its international strategy in terms of its importance as a secular force against religious extremism, as well as its importance for China's energy supply.<sup>168</sup>

China and Kazakhstan thus have much common interest and little overt competition or conflict. Shortly following Kazakhstan's independence, the two countries indicated a desire to pursue stable relations. A border agreement was signed in 1994 during the then Chinese Premier Li Peng's visit to Kazakhstan, thus effectively removing the biggest obstacle in their relationship. With a joint declaration of Sino-Kazakh strategic partnership signed in 2005, the relationship has entered into a new stage, with both sides recognizing the importance of the other in their respective political and economic development.

The most noteworthy aspect of this relationship is perhaps their energy cooperation. Kazakhstan has significant oil and gas reserves and abundant mineral resources. It currently ranks in the top 10 countries in oil and gas reserves. The oil sector currently accounts for nearly 30% of gross domestic product and 57 % total annual export revenues.<sup>169</sup> China, on the other hand, has surpassed Japan to become the world's second largest oil importer in 2004. Between 2010 and 2020, China will have to rely on the world market for 43-55% of its oil consumption, accounting for more than 8% of the total world oil demand. At present, China's major oil importers are all located in the Middle East and Africa, regions that are unstable and

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168 Kang Zemin, "China's Strategic Partnership with Kazakhstan," in Zheng Yunling, ed., *China and Its Neighbors: Making New Partnership* (Beijing: Social Sciences Academic Press, 2008), pp. 347-60.

169 Mark J. Kaiser and Allen G. Pulsipher, "A Review of the Oil and Gas Sector in Kazakhstan," *Energy Policy* 35 (2007), 1300-14.

often conflict-prone. In addition to political risks, there are also transportation risks, as Chinese oil imports has to go through the Red Sea, the Indian Ocean, the Malacca Strait and the South China Sea.<sup>170</sup>

To enhance the security and reliability of its oil supply, the Chinese government is currently pursuing an oil market diversification strategy in an attempt to reduce its dependence on volatile regions such as the Middle East. By virtue of its proximity and its vast reserves, Kazakhstan figures prominently in China's overall energy strategy. After a decade of cooperation, Kazakhstan has already become China's most important energy partner in Central Asia. In 1997, Beijing's state-owned China National Petroleum Corporation (CNPC) first acquired shares and development rights to 60% of Kazakhstan's Atyubinks oil field, and then outbid its American rival Amoco for the country's largest oil field at Uzen. Recently, CNPC has also acquired PetroKazakhstan's operations at Kumpol and its interest in the Shymkent refinery in a \$4.2 billion buyout and is now the second largest producer in the country. An oil pipeline linking Central Kazakhstan and Western China was completed in 2005.

There is a high level of complementarity between the Chinese economy and the Kazakh economy. China needs Kazakhstan's energy and related products, while Kazakhstan needs China's light industrial products, foodstuffs and home appliances. But the two countries also share important security concerns, and this was initially how the Shanghai Cooperation Organization (SCO) came into being. The origin of the SCO dates from the early 1990s when the aim was to set up a framework to facilitate the settlement of border issues between China and the Central Asian republics with the involvement of Russia. However, as cooperation within this framework grew, the scope of its agenda and ambitions were expanded: firstly, into the Shanghai Five mechanism, comprising China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan; and in 2001 into the Shanghai Cooperation Organization, comprising Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The focus of the SCO now covers security, economic, cultural and humanitarian collaboration between its members<sup>171</sup>.

Significantly, the formation of the SCO marked the first time that China became a member of a formal regional grouping that is not exclusively economic in orientation, and China took the lead and an active role in creating and shaping this multilateral organisation. China is particularly concerned with the "three evils" of separatism, fundamentalism and terrorism that have major political and security implications for its ethnically diverse western provinces of Xinjiang and Tibet. In the context of fighting against the "three evils," China hopes that the SCO will bolster the territorial integrity, economic revival and secular nature of the poverty-stricken, politically authoritarian and ethnically diverse regimes in Central Asia that are struggling to curb rising sentiments of Pan-Turkic nationalism, Islamic extremism and terrorism in the region.

China pays particular attention to how Central Asians see the struggle for Xinjiang independence by its dominant Turkic-speaking Muslim Uighur nationality, for Central Asia is host to an Uighur diaspora estimated at about half a million, with 300,000 in Kazakhstan and 50,000 in Kyrgyzstan. A peaceful and stable Central Asia would not only make China's western borders more secure against men, weapons, funds and propaganda materials crossing into Xinjiang in aid of the separatists' cause for an independent state, it would also open doors for China's domestic economic "Developing the West" strategy by promoting trade and investment between Central Asia and western China.

In short, the principal purpose of the SCO for China is to skew the political preferences of Central Asian governments towards friendship with China by means of economic development and security cooperation. Furthermore, for a country that shares a long 3,300 kilometre border with three Central Asian republics that are in many places mountainous and difficult to patrol, China's major concern for the

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170 Zhang Junmin, "Studies on the Multivariate Safety Benefit of Oil Cooperation between China and Kazakhstan," *Journal of Shihezi University (Philosophy and Social Science)*, Vol. 22, No. 1 (Feb. 2008), pp. 45-68.

171 For example In 2003 Kazakhstan hosted the first phase of SCO joint military exercises followed by the second on in China. In early 2006, the SCO formed an "energy working group" for the joint development of energy resources and regional oil and gas pipelines.

region is to ensure its stability, so as to better guarantee the security and interests of its own troubled western frontiers.<sup>172</sup>

Kazakhstan shares China's concern about the "three evils," as it also confronts the problem of religious fundamentalism and terrorism. It thus perceives its membership as a guarantee of protection from the gains and activities of Islamic radical groups. But importantly, it also expects to derive real economic benefits from relations with China and from the SCO more generally. The Central Asian states feel that agreements signed with the SCO framework so far do not fully reflect their needs with regard to economic collaboration. Kazakhstan, Kyrgyzstan and Tajikistan want more in the way of trade and investment facilitation than China has been willing to agree to so far; they consider the scope of multilateral economic collaboration that China has been discussing to be too limited. It is certainly the case that interactions with the SCO are still largely confined to the political and security spheres, with economic collaboration lagging far behind.<sup>173</sup>

The challenge for Kazakhstan-China relations is to develop economic and political ties in such a way that maximises the potential financial benefits for Kazakhstan without its larger partner dominating it economically and politically, upsetting the diplomatic balance and distorting its economy. Over the longer-term, some Kazakhstani human rights activists fear<sup>174</sup> that Chinese investment and influence without political strings attached will crowd out Western voices that may at times raise concerns beyond the economic portfolio. However, others caution that demographic concerns between populous and resource hungry China and sparsely populated Kazakhstan would lead to Kazakhstan's political elite moving to retain the balanced pattern of influence they have maintained until now. Recent International Republican Institute polling suggests that 81% of Kazakhstanis<sup>175</sup> would oppose a possible leasing of agricultural land to China, highlighting these concerns.

### Turkey and the Islamic world

Into the maelstrom of Soviet collapse and the struggle to create new national identities for Central Asian states existing independently for the first time came a big idea, pan-Turkism. Promoted vigorously by Turkish foundations and religious institutions, it was an appeal not only to the ties of language and a half-imagined past of Turkic tribes on the steppes from Mongolia to the Bosphorus, but also to facilitating a 're-awakening' of Islamic identity suppressed under the Soviet era<sup>176</sup>.

Although this entrepreneurial pan-Turkism floundered, at a state-to-state level, dialogue has grown slowly over the last two decades. After summits of the heads of State of Turkic Speaking Countries dating back to 1992, Kazakhstan joined yet another new regional body in September 2010, the Cooperation Council of Turkic-speaking countries (CCTC)<sup>177</sup>, a proposal initiated by Nazerbayev in 2006. It forms part of a gently growing bilateral relationship between Ankara and Astana, in part due to Turkey's more assertive (though not confrontational) and eastward looking foreign policy under Turkish Foreign Minister Davutoglu.

Despite the failure of Islamic 'revivalists' to achieve much headway in Kazakhstan, the country's Muslim identity has provided it with a further outlet to develop a global leadership role, showcasing the

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172 Chien-peng Chung, "The Shanghai Co-operation Organization: China's Changing Influence in Central Asia," *The China Quarterly*, 2004.

173 Hsiu-Ling Wu and Chien-Hsun Chen (2004), "The Prospects for Regional Economic Integration between China and the Five Central Asian Countries," *Europe-Asia Studies*, 56: 7, 1059-1080, at p. 1078. This concludes Dr Zhang's contribution.

174 In private conversations with the author

175 IRI, April 2010, Kazakhstan International Opinion Poll

<http://www.iri.org/sites/default/files/2010%20May%2019%20Survey%20of%20Kazakhstan%20Public%20Opinion,%20April%2013,%202010%20--%20English%20version.pdf> (accessed February 16<sup>th</sup> 2011)

176 In fact unlike the historically settled communities elsewhere in Central Asia Islam wasn't an overwhelmingly important aspect of nomadic Kazakh life. Indeed, according to Bhavna Dave both the Tzarists and early period Soviet partially encouraged the spread of Islam to help facilitate settlement of these communities.

177 Trend.Az Cooperation Council of Turkic-speaking countries established in Istanbul  
<http://en.trend.az/regions/met/turkey/1751756.html> (accessed December 10<sup>th</sup> )

successes of its approach to Islam both through its Congress of World Religions, and attempts to play the honest broker in a number of conflicts involving other Islamic countries. After its 2010 leadership role in the European sphere through the OSCE Chairmanship, 2011 provides President Nazarbaev with an opportunity to boost his credentials as a friend of religion as Kazakhstan holds the Chairmanship of the Organisation of Islamic conference. Initial signs show that Kazakhstan wishes to use its position to play a bridging role, suggesting holding seminars across Eastern Europe.

## Conclusion

Charles Zeigler summed up Kazakhstan pretty well when he wrote: ‘The state in Kazakhstan is not democratic, nor is it as repressive as the regimes in Uzbekistan and Turkmenistan. It is most accurately described as a hegemonic electoral authoritarian regime, where elections are a façade, parliamentary opposition is marginalized and has no chance of winning, and the dominant party controls most or all of the seats in the legislature.’<sup>178</sup> The executive wins elections by unrealistically large vote totals, and then claims an unassailable mandate. This type of regime permits some space for civil society, but also seeks to channel social energies into actions supportive of the government and ruling party.’<sup>179</sup>

Kazakhstan is a sophisticated semi-authoritarian system committed to genuine promotion of national development while maintaining political dominance through subtle use of coercive and bureaucratic means and flow of ‘rents’ to close family, clan and associates, the management of which are a key factor in political control of the elite. In some respects, despite Kazakh ministerial denials, there are distinct parallels between Kazakhstan and its former colonial power, Russia. The two countries’ autocratic leaderships maintain a genuine level of popularity amongst their publics through a mixture of relative success and skulduggery.

During this project, the Ambassador of Kazakhstan to the United Kingdom has repeatedly described democracy as a tool ‘to enhance social welfare’, a view shared by other senior Kazakh officials in the presence of this author. It displays a, perhaps deliberately, narrow and instrumental understanding of a concept at whose heart is the principle that the right to govern is only given by freely informed consent.

Whatever the relative merits of Kazakhstan’s current system of governance, immortality is not a characteristic Nazarbayev is known to possess. With no clear successor from within the system and no means to legitimately contest the succession in a way that would have the confidence of all parties, Kazakhstan’s stability rests on both the health and longevity of its current President. Untimely death, or worse incapacitation, prior to resolving this issue could pose significant challenges. Kazakhstan lacks the level of systemic rigidity and overt coercion displayed in Turkmenistan that facilitated the transition from brutal lunatic Turkmenbashi with his dentist<sup>180</sup>, atop a rigid command and control system. Any successor will lack Nazarbayev’s stature and may struggle to manage patronage amongst the competing clan networks rather than merely servicing their own. This is not to suggest that the system would not be able to adapt, as other authoritarian regimes have been able to, but it certainly may provide the opportunity of friction.

Kazakhstan will continue to make its own way in the world, avoiding capture by any one competing power. The fundamental challenge for the West, and the EU in particular, is to retain a seat at the table from which they must politely but persistently advocate the cause of long-term political reform in addition to their own economic and strategic interests. This must be managed delicately to take advantage of the fast closing time window when Western technological comparative advantage and the Europe facing Soviet legacy gives it a foothold, from which to promote governance reform and a long-term goal of encouraging a move from Nazarbayev’s semi-enlightened Sultanism to a political system based upon informed consent. Russia and China do not have any such qualms provided that Kazakhstan remains stable, posing a significant challenge to the EU and UK to provide the right mix of carrots and sticks to support this goal and to campaigners and decision-makers to ensure these concerns are not knocked further down the agenda.

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178 The term hegemonic electoral authoritarian regime is from Larry Diamond, “Thinking about Hybrid Regimes.” *Journal of Democracy* 13 (April 2002): 21-35. via Zeigler

179 Charles Zeigler, “Civil Society, Political Stability, and State Power in Central Asia: Cooperation and Contestation,” *Democratization*, Vol. 17, Issue 5 (2010).

180 The author is aware he is somewhat traducing Gurbanguly Berdymukhamedov’s career prior to assuming the Presidency. After heading the dentistry unit at the Ministry of Health he served as Health Minister and Deputy Prime Minister. It is unclear how regularly he checked his predecessor’s teeth after assuming these ministerial roles.

Kazakhstan's continued desire to join further international cooperation bodies to add to its current acronym-fest will provide some future opportunities for leverage, but also highlights Astana's tendency not to appreciate the full implications of membership of such organisations. The international community has of course missed the biggest opportunity for the foreseeable future to use Kazakhstan's OSCE Chairmanship to leverage significant reform of this system. In future, the UK, EU and other international actors must take greater care in their dealings with Kazakhstan to prevent the current regime receiving further unwarranted prestige without the record of political reform to back it up. Kazakhstan does value how it is perceived in the West and its strategic alternatives are not ideal, but this does not mean that it is not capable of further developing its alternative alliances to restrict Western influence.

Kazakhstan is understandably not at the top of Baroness Ashton's in-tray but while it sits just on the wrong side of the Caspian for the current formulation of the EU's Eastern Partnership area, its growing influence both in the region and beyond, means that EU needs to develop a clearer strategy for engaging with Astana beyond hunting for hydrocarbons. It must contain a consistent and persistent message on human rights and governance reform and use what limited levers it has to push for real change. It should be noted that as Kazakhstan is not currently a member of the WTO and is a member of the new customs union with Russia and Belarus, the EU's ability to offer trade incentives is limited even if there was the political will. For example, at present the 'Deep and Comprehensive Free Trade Agreements' (DCFTAs) being proposed to other EU partners in the Caucasus would not be possible here.

Kazakhstan wants and expects not to be lumped in with its less successful Central Asian neighbours. Therefore, to adapt Stan Lee, with greater power (and prestige) must come greater responsibility, so it is entirely appropriate to hold Kazakhstan to a higher standard.

So, what practical measures can be brought to bear to help improve Kazakhstan's broader political and economic governance? Listed below are measures that may bring some assistance. However, to get to the heart of some of the problems identified in this paper, there needs to be a far deeper reform of the relationship between the government judiciary and state agencies and that would involve greater transparency in decision-making and a fundamental shift in power within Kazakhstan.



## **Recommendations for Kazakhstan**

- Engage in real rather than cosmetic reform of the party registration requirement by lowering the number of supporters needed to form a political party closer to the original 3,000 (or lower) and remove the rigid six month period for completion of the application process
- End to the threat of criminal libel and encourage reform of civil libel, including the criteria of what constitutes a libellous statement
- Remove the 'insulting the honour and dignity' protections in the constitution that restrict freedom of speech, including legitimate criticism of the President and institutions
- End the harassment of the free press and fully investigate extra-judicial attacks against them
- Make a sustained effort to establish rule of law by improving compliance with processes laid out in Kazakhstan's law and Constitution along with its international obligations
- If Kazakhstan wants to receive credit for religious tolerance, it needs to reform the way it treats religious minorities by liberalising or scrapping the registration requirements that restrict the most basic acts of independent worship
- Further liberalise the telecommunications industry. Ofcom, BEREC and telecoms regulators in other EU member states (particularly France and Germany) should help support reform with the aims of reducing prices and encouraging a degree of independence between providers and the government
- Strengthen reform of Kazakhstan's anti-corruption bodies, including tackling corruption within the watchdog itself, with international support from UK SFO or OLAF at a European level
- Enhance Parliamentary scrutiny of the activities of anti-corruption agencies. While certainly not a panacea given the current one-party Majilis, but ensuring that agencies are publically held to account by Parliament would provide an important method of diversifying and enhancing the scrutiny of their activities.
- Finally become fully compliant with the Extractive Industries Transparency Initiative (EITI)

## **Recommendations for the international community**

- Consider Kazakhstan as part of the long-term development of the EU's Eastern Partnership. While membership is unlikely ever to be on the cards, involvement in the Partnership could have real benefits for underpinning EU engagement with Kazakhstan
- Hold out the long-term possibility of an EU-Kazakhstan Association agreement if substantial progress is made in key areas and explore creative ways to provide trade incentives
- Any enhanced trade deal that may be possible under WTO rules should be conditional on performance against clearly defined and monitored human rights benchmarks
- Look to expand and deepen EU-Kazakhstan human rights dialogue with greater civil society involvement and a clearer link between progress in this area and the provision of wider support and progress on the enhanced PCA
- Further support civil society development, both in those challenging areas of political or media reform but also more broadly in non-confrontational areas in order to help foster an atmosphere of civic participation
- If standards of media freedom continue to deteriorate in Kazakhstan, there may be a case for reviving some online elements of the BBC World Service Kazakh provision (closed in 2005) once the BBC takes over funding from the Foreign Office in 2014
- Follow the strategy employed by the Council of Europe and avoid granting Kazakhstan leadership of international bodies or membership of organisations with a political dimension until clear progress has been made
- Explore easing visa restrictions in a controlled manner. In common with most post-Soviet states a solution needs to be found that makes it easier for Kazakhtanis to gain short-term access to EU member states whilst retaining and strengthening protections against abuse
- MPs and Parliamentary institutions engaging with members of the Majilis should engage in a robust manner about the role of parties and the ability to participate in the political process

2010 was a landmark year for Kazakhstan and for the Organization for Security and Co-operation in Europe (OSCE). It was the first time a Central Asian nation held the leadership role of a major international organisation, but Kazakhstan was also the first non-democracy to hold the OSCE's Chairmanship.

**Kazakhstan at a Crossroads**, based on three previous Foreign Policy Centre reports, gives a clear overview of Kazakhstan's political and economic challenges, along with an assessment of its developing role in the world. After the OSCE's missed opportunity it argues that if Kazakhstan wants to further develop a regional and global leadership role, the international community must insist that President Nazarbayev makes significant political reforms to improve its human rights and governance.

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