



Kazakhstan at a Crossroads: Human Rights and Democracy

**By
Adam Hug
Policy Director
Foreign Policy Centre**

Published 2nd December 2009



2010 stands as a landmark year in the history of Kazakhstan and for the Organization for Security and Co-operation in Europe (OSCE). It will be the first time a Central Asian nation takes the leadership role of a major international political organisation, but Kazakhstan will also be 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 will put the country under a level of international scrutiny it has not seen since its emergence as an independent state at the collapse of the Soviet Union.¹

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. The occasional international football match and the fuss around the release of *Borat* in 2006 have been the only times when Kazakhstan has penetrated the wider public consciousness. Nevertheless Kazakhstan has not escaped the notice of 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 is bordered by Russia to the North, China to the East and Uzbekistan, Kyrgyzstan, Turkmenistan to the South. Its geography makes it both a prize in the power games of its larger neighbours and regional power in its own right. Holding the reins of power for over 20 years sits Nursultan Nazarbayev, 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 of personality cult pursued under Saparmurat 'Turkmenbashi' Niyazov² in Turkmenistan, 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 Gallup³ in the midst of serious economic upheaval, President Nazarbayev had an approval rating of 84%, a significant fall from 92% the previous August, while 76% thought 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.

1 The paper is supported by the Civil Activity Fund, a Kazakhstan based private fund with the strategic objective of the development of Kazakhstan's Civil Society

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

3 Joanna Lillis, July 09, Kazakhstan: Despite Downturn, Nazarbayev's Numbers Stay Up, <http://www.eurasianet.org/departments/insightb/articles/eav071709a.shtml>



However, simply being less abhorrent a 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 as we move towards its Chairmanship of the OSCE in 2010. Nazarbayev's relative success has been built on a platform of smart authoritarianism, not boiling his opponents⁴ 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-optation 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 Republic⁵. Tapping into the tide of reform across the Soviet Union, he spent the next 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 16th 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 republic⁶. Gorbachev refused both demands but instead replaced Kunaev with a non Kazakh politician Gennadii Kolbin⁷, 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.

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 reelection 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 national requirements for fairness or national requirements for fairness or

4The case of Khusnuddin Olimov in Uzbekistan <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm>

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

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.



transparency with the 2005 Presidential election being described as flawed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).⁸

This year certain Kazakh politicians are engaged in a 'kite flying' exercise over the possibility of removing the pesky need for Nazarbayev to face the electorate ever again. Darkhan Kaletayev, deputy leader of the President's Nur Otan Party that holds all the seats in the Kazakh Majilis, said that 'experts' should look at drawing up legislation that might contain provisions for the lifelong nature of Nazarbayev's presidency.⁹ Theories about the possible motives for the timing of such suggestions range from the cunning (providing an opportunity to reject the proposition to please international observers in the run-up to the OSCE presidency), the pragmatic (creating a vaguer 'leader of the nation' role to allow for semi-retirement), the myopically patriarchal (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 challenge in the wake of a prolonged economic slump). Whatever the motives of such a move they draw 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 and despite the wealth and influence of his daughters they are not seen as successors in their own right. The dynastic option being kept alive through Timur Kulibayev, 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 most politically active daughter, former Kazakh Pop Idol¹⁰ judge Dariga. So as President Nazarbayev prepares to turn 70 next year, with the OSCE Chairmanship, something of a birthday present, the future direction of the country remains unclear but what does seem certain is that at present the Kazakh people will not have much say in where it goes.

Human Rights in Kazakhstan

2010 is a critical year for human rights in Kazakhstan, not only with its Chairmanship of the OSCE, but also its assessment by the UN OCHR's Universal Periodic Review of Human Rights (UPR), and the deadline for its full membership of EITI¹¹. As the international spotlight is turned on Kazakhstan, a historic opportunity is presented to put pressure on the government to really deliver on the numerous human rights commitments it has made, in practice rather than simply on paper.

At the November 2007 Madrid OSCE ministerial Foreign Minister Dr Mahrat Tazhin made a number of commitments in return for being offered the chairmanship,

8 Human Rights Watch, *An Atmosphere of Quiet Repression*, December 2008

<http://www.hrw.org/en/reports/2008/12/01/atmosphere-quiet-repression-0>

9 Joanna Lillis, *Eurasia Net*, September 2009

<http://www.eurasianet.org/departments/insightb/articles/eav092409.shtml>

10 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 an avid opera singer apparently.

11 EITI membership will be discussed in more detail in the second paper in this series



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, strengthen 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 positive decision on our bid will have a multiplicative effect for the comprehensive modernization of our country and the region in its entirety.”¹² Few international observers¹³ would agree this radical transformation envisage by the minister has been achieved, with efforts being described as “the bare minimum that they could get away with”¹⁴. Looking at the Kazakh governments efforts with one year to go 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 ground¹⁵. Sadly if anything 2009 has been more disappointing 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 with Freedom House’s annual country survey 2009, ranking Kazakhstan alongside Afghanistan and Russia with a combined score of 5.5 (Not Free) where Political Rights scored a 6.¹⁶ Its score in the 2009 Freedom of the Press rating score is even less impressive coming in at joint 168th alongside Sudan and neighbours Tajikistan and Azerbaijan¹⁷. 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 84th for its Democratic Development¹⁸. This briefing will look at a number of key areas where the Kazakh human rights processes need to be strengthened.

Nur Otan or nothing

“A wonderful opportunity to adopt all the laws needed to speed up our country’s economic and political modernization.”¹⁹

12 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>

13 From many sources referenced elsewhere in this briefing but also

<http://www.hrw.org/en/news/2008/05/28/human-rights-kazakhstan-madrid-promises-and-beyond>

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

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

16 Freedom House <http://www.freedomhouse.org/template.cfm?page=475&year=2009>

17 http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009_tables.pdf

18 Bertelsmann Transformation Index, 2008 http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI_2008/CIS/Kazakhstan.pdf

19 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)



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 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 party²⁰ 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 this year 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 2800 respectively.

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 a legal limbo for almost 4 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 "statebudget-dependent members [budzhetniki, in Russian]"—persons such as students, pensioners, residents of state-managed dormitories, and public servants—to resign from the party"²¹. 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 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 3000 supporters that was in place prior to 2002. Encouragingly "the discovery of invalid member signatures cannot serve as grounds for delaying a

²⁰EurasiaNet, *Kazakhstan: Election results harden opposition*, 27 September 2004, available at: <http://www.unhcr.org/refworld/docid/46c58efd3c.html>

²¹ Human Rights Watch, *An Atmosphere of Quiet Repression*, Ibid.



party's registration if sufficient valid signatures are provided"²². 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. 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.

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' party²³.

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 concern exists that a vehicle friendly to the Presidents party could be created to exploit such a system. 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 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 people²⁴ 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.

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, Commercial Television of Kazakhstan, 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 2009 Press Freedom rankings show that Kazakhstan has fallen below such luminaries as Zimbabwe to 142 in the world.²⁵

22 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

23 Freedom House OSCE Monitor Update: The Alga Party, June 2009

http://oscemonitor.freedomhouse.org/sites/default/files/200906_Update_-_Alga_0.pdf

24 IWPR'S REPORTING CENTRAL ASIA, No. 592, October 20, 2009, UNITING KAZAKSTAN'S OPPOSITION Sanat Urnaliev in Almaty

25 Reporters Sans Frontiers, 2009, <http://www.rsf.org/en-classement1003-2009.html>



The libel system is the main weapon 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 over the last year the Tazhargan newspaper, its owner Dat-X media and Almas Kusherbayev have faced increasing pressure from a series of court cases stemming from publishing the comments of green activist Mels Yeleusinov who said Kazakhstan had *"a unicameral parliament, 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"*.²⁶ 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 duly was 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. Tazhargan had been previously subject to harassment of its journalists and had its office shot at by unknown gunmen in March 2008²⁷ and has had to close following the impact of the case.

Similarly opposition weekly newspaper Respublika-Delovoye Obozreniye 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. 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 Haraszti, 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."²⁸ After copies of Respublika were seized in September and printing shut down, the 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

26 Freedom House, June 2009, Update: Media Freedom in Kazakhstan Attack on the Newspaper Tazhargan http://oscemonitor.freedomhouse.org/sites/default/files/200906_Update_-_Tazhargan.pdf

27 Human Rights Watch An Atmosphere of Quiet Repression *ibid*

28 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>



the paper to enable distribution.²⁹ Throughout its various incarnations the offices of Respublica have been subject 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 have been brought against journalists and media outlets so far in 2009. 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.³⁰

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. The use of other laws to restrict discussion of contentious political issues have gone further. 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'³¹ 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.³²

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"³³ 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 behavior that he was reformed"³⁴ 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 not only has 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.³⁵

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, unexplained attacks on people and property against those challenging the official line in the media. Human Rights Watch identified four cases in early

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

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

31 Freedom House Condemns Conviction of Kazakhstani Journalist *ibid*

32 Reporters Sans Frontiers, September 2009, <http://www.rsf.org/Newspaper-editor-s-three-year-jail.html>

33 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

34 http://www.hrw.org/sites/default/files/reports/kazakhstan1208web_0.pdf

35 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>



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 Bakhytzhan Nurpeisov from *Public Opinion*³⁶ 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."³⁷ 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.

There remain concerns about the near monopoly position of state dominated Internet Service Providers Kazakhtelecom and Nursat in controlling access to sites both in terms of assisting filtering and high prices restricting access. Unlimited dial-up connection in 2007 cost €82 a month, about 28% of the average monthly income. It was little surprise that by the end of 2006 only 4% of Kazakhs were active internet users, mostly using internet cafes and university access³⁸ and that in summer 2009 the vast majority of Kazakhs 89% still saw television stations as their primary source of information about politics.³⁹

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

The sentencing of Evgeniy Zhovtis on September 3rd 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 Project⁴⁰. 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.

36 http://www.hrw.org/node/83329#_ftn29

37 Kazakhstan: Rescind New Media Restrictions, July 2009 <http://www.hrw.org/en/news/2009/07/14/kazakhstan-rescind-new-media-restrictions>

38 Rachid Nougmanov in *Governing the Internet*, OSCE, 2007, http://www.osce.org/publications/rfm/2007/07/25667_918_en.pdf

39 Joanna Lillis, KAZAKHSTAN: DESPITE DOWNTURN, ibd

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



The central issue in the case against Zhovtis is not disputed by any party; that on July 26th 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 immediately⁴¹. 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 multipage 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."⁴²

At appeal the verdict was upheld and the next step in the process would seem to be a non-mandatory procedural review known as a nadzornaia instantzia by the collegium of the same appeal court, a process that could take up to 2 months. If this fails the only current avenue available would be a presidential pardon something that Zhovtis' supporters do not currently desire as it would be circumventing normal legal process and would place him in a very difficult position if he wanted to continue his human rights work.

Looking at things objectively it makes little sense from a public relations perspective for the Kazakh government to use this case to 'deal with' Zhovtis in advance of the OSCE presidency, as his status as a cause celebre clearly outweighs the ability he would have had to be a nuisance to the regime over the next year. However by setting the case as a marker sends a clear signal to other opposition figures that they are all vulnerable.

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 thinktanks, 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

41 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>

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



Duvanov's guilt had already been established in a press conference in Brussels.⁴³ RSF 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".⁴⁴ 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 work⁴⁵.

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% Ukrainians, 5.8% Russified Germans and 1.1% BeloRussians⁴⁶ so the number of Kazakhs was clearly smaller than the overall Slavic population who were also highly integrated into the Soviet power structures. So following the collapse of the Soviet Union, when ethnic tensions flared with tragic consequences across the Caucasus in Nagorno Karabakh, Chechenia, 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 elite⁴⁷.

By 1999 the balance of the communities had shifted to 53% Kazakh and 30% Russian after significant exodus of Russian (and other Slavs) 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.⁴⁸ 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. Issues regarding the Kazakh-Slav rebalancing, Uzbek migrants and other

43 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

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

45 The full pamphlet will outline several other cases that display similar methods used by the government to restrict critical voices.

46 Sally Cummings, Kazakhstan *ibid*

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

48 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



groups such as the Oralmany (ethnic Kazakhs from Mongolia, China and other countries encouraged to move to Kazakhstan) and Uigurs will be discussed in more detail in the full pamphlet and in future papers.

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,⁴⁹ 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 Krushev-era Virgin lands policy left Kazakh identity confused and the people a minority in their own land.

It is easy understand some of the major challenges involved 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 on 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 Kazakstan'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 Religions⁵⁰ that meets every three years bringing together senior figures from many of the worlds largest faith communities. There

49 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>

50 Congress of World and Traditional Religions <http://www.religions-congress.org>



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.'⁵¹

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"⁵²

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."⁵³

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

51 Human Rights Watch 'An Atmosphere..' ibid

52 Forum 18, KAZAKHSTAN: Religious freedom survey, September 2009, http://www.forum18.org/Archive.php?article_id=1352&pdf=Y

53 Forum 18, KAZAKHSTAN: Religious freedom survey ibid



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.⁵⁴ 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 after the 2010 OSCE Chairmanship, something hinted at in the Kazakh National Human Rights Action Plan⁵⁵.

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."⁵⁶ 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."⁵⁷

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 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 security⁵⁸. 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

54 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>

55 Forum 18, KAZAKHSTAN: Restrictive laws recycled, October 2009, http://www.forum18.org/Archive.php?article_id=1360

56 Forum 18, KAZAKHSTAN: Restrictive laws recycled ibid

57 Forum 18, KAZAKHSTAN: Religious freedom survey ibid

58 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



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'⁵⁹ 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.

Some initial conclusions

This briefing paper does not seek to give detailed recommendations and analysis of what the international community should do influence Kazakhstan to moderate its behaviour, something that will be addressed in the full pamphlet 'Kazakhstan at a Crossroads' to be published in early 2010. However it should be made clear that the UK, EU and other international actors, most notably other members of the OSCE 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 ideal⁶⁰ but that this does not mean that it is not capable of developing its alternative alliances to restrict Western influence. Therefore it would be ill-advised to argue for a policy of fully downgrading contacts until it makes major strides towards democratisation as, unfortunately, the influence and leverage that Western powers can exercise over Astana is limited and what it does have needs to be used effectively, without alienating the Kazakh public.

Kazakhstan will not be at the top of Baroness Ashton's in-tray but while it sits just wrong side of the Caspian for the EU's Eastern Partnership area its involvement in, and leadership of, Eurasian political institutions means that EU needs to develop a clearer strategy for engaging with Astana beyond hunting for hydrocarbons. Our final paper and the pamphlet will address the institutional mechanisms by which the EU hope to exert some influence on Astana, in part by revising the EU Partnership and Cooperation Agreement to an Association Agreement, but at the most basic level the EU must use the OSCE chairmanship as an opportunity to ask some tough questions about why progress has been so limited. Furthermore it can assist member states develop a forensic approach to the UN's UPR process that will explore Kazakhstan's progress across a range of human rights areas.

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

59 CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE FINAL ACT, 1975

http://www.osce.org/documents/mcs/1975/08/4044_en.pdf

60 See the third paper in the FPC series



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.

MPs and Parliamentary institutions engaging with members of the Majilis as part of visits to tie in with the OSCE Chairmanship engage in a robust manner about the role of parties and the ability to participate in the political process, as well as the usual discussion of comparative processes and gestures of friendship.

The challenge then is to use the OSCE Chairmanship, and the UPR, to hold Kazakhstan to account for its failure to live up to its Madrid commitments and make clear that this failure, unless rapidly addressed will restrict its opportunity to receive prestigious events and roles in the future. The main demands that need to be put by the international community to Kazakhstan are clear:

- Engage in real rather than cosmetic reform of the party registration requirement by lowering the number of supporters needed to form a party closer to the original 3000 and remove the rigid six month period for completion.
- Bring an end to the threat of criminal libel and put a cap on civil libel suits while reforming 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 worship.

Politicians and diplomats must find the political will to use the next few months to ask challenging questions of Kazakhstan's Government, as there will be few better opportunities to exert influence. This will also require the ability to come up with creative solutions to help Kazakhstan find the answers, challenge that the FPC hopes this project can assist with.