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Kazakhstan

Country Reports on Human Rights Practices - 2005

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The Republic of Kazakhstan, with a population of approximately 15 million, has a multiparty parliamentary system dominated by President Nazarbayev's Otan Party. President Nazarbayev was re-elected for a third 7-year term on December 4; observers criticized that election as falling short of a number of international standards. The constitution concentrates power in the presidency, permitting the president to control regional and local governments and to exercise significant influence over the legislature and judiciary, as well as changes or amendments to the constitution require presidential consent. The civilian authorities generally maintained effective control of the security forces, although members of the security forces committed human rights abuses.

The government's human rights record remained poor. Legislation enacted during the year seriously eroded legal protections for human rights and expanded the powers of the executive branch to regulate and control civil society. In particular the extremism law passed in February, election law amendments added in April, and national security amendments enacted in July encroached on political rights, freedom of the press, freedom of religion, and other human rights. The following human rights problems were reported:

- severe limits on citizens' rights to change their government
- instances of military hazing that led to deaths
- abuse and mistreatment of detainees and prisoners
- unhealthy prison conditions
- corruption in law enforcement, the judiciary, and the legal system
- arbitrary arrest and detention, particularly of government opponents
- government infringement of citizens' privacy rights
- selective use of civil and criminal libel cases to punish political opponents
- self-censorship in the media
- harassment of opposition newspapers
- limited freedom of association and assembly
- narrowing of legal protections for freedom of religion
- discrimination and violence against women, including domestic violence
- discrimination against persons with disabilities
- trafficking in persons
- restricted workers' rights, poor workplace safety in heavy industries, and child labor in agricultural areas

The government made significant improvements in combating trafficking in persons and decreasing incidents of hazing and abuse in the military. The Ministry of Justice (MOJ) led an interagency working group on trafficking in persons that drafted a comprehensive set of legislative amendments that was pending full parliamentary and presidential approval at year's end. The Ministry of Defense, in cooperation with international partners, initiated a series of reforms to its non-commissioned officer (NCO) system that resulted in an increase in professional responsibility and training for NCOs, who now earn their rank by merit in areas including protection of the rights of the conscripts in their command.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed any politically motivated killings, although a few conscripts died as a result of military hazing and mistreatment.

Military hazing was a serious problem that not only led to deaths as a result of mistreatment but also resulted in a few conscripts committing suicide (see section 1.c.). The government investigated allegations of conscript hazing and prosecuted soldiers who engaged in this abuse.

The government took steps to address the patterns that contributed to soldier abuse through its reform of the NCO corps and transition towards an all-volunteer military. Previously, non-commissioned ranks were bestowed upon soldiers based on seniority rather than merit. Reforms placed additional responsibility on NCOs, who are expected to identify and to prevent abuse of conscripts, and provided for

additional NCO training, including human rights awareness. Currently, 70 percent of enlisted soldiers were volunteers, compared with 10 percent in 2000.

On April 9, conscript Samat Kapezov received hazing injuries that led to his death. At year's end authorities were investigating reports that an older conscript, Abylair Ospanov, was directly responsible for the abuse, and that the unit's command was culpable for inattention to this abuse.

The chief military procurator's office registered 164 incidents of hazing and 26 suicides within the military during the year. In comparison the government reported close to 100 suicides among conscripts in 2003.

On May 5, a Pavlodar military court convicted a soldier of hazing and sentenced him to two years in jail. The unnamed soldier had engaged in systemic abuse of other conscripts in his detachment that led to the November 2004 suicide of fellow conscript Madiyar Argyzbekov. Senior members of the detachment received minor disciplinary penalties for failure to prevent or to detect this hazing.

In August 2004 eight soldiers were convicted of causing the February 2004 hazing-related suicide of conscript Yerbolat Brimzhanov. One soldier was sentenced to a year in prison; the other seven received sentences ranging from 5 to 10 years in prison.

In September 2003 an older fellow soldier was convicted and received 10 years imprisonment in the 2003 hazing case of Daniyar Nagaybayev.

On November 12, former government official Zaman Nurkadilov died in his home as the result of three gunshot wounds. The official government investigation determined the cause of death to be suicide. Several opposition leaders and family members questioned the official conclusion and criticized the authorities for not investigating thoroughly.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, but police and prison officials at times tortured, beat, and otherwise abused detainees, often to obtain confessions. In its Human Rights Commission's annual report, the government acknowledged that torture and other illegal methods of investigation were still used by some law enforcement officers. Human rights and international legal observers noted investigative and procuratorial practices that overemphasized a defendant's confession of guilt over collecting other types of evidence in building a criminal case against a defendant.

The government reported authorities filed 47 criminal cases against law enforcement officers for physical abuse during the year. 11 detainee deaths, including 6 suicides, were registered during the year at 222 pretrial detention facilities. The ombudsman's office reported 169 citizen complaints during the first half of the year, a substantial number of which were allegations of abuse by law enforcement.

On January 10, Mangistau police arrested Nurzhan Zheksemaliev and Zhenisbek Rakhmamedov on theft charges. Human rights observers received reports that the young men were beaten during interrogation.

In July, two policemen in Petropavlosk received four-year suspended prison sentences for the September 2004 beating of Viktor Deviatkin. Police came to Deviatkin's house seeking Deviatkin's son, who was not at home. When Deviatkin refused to admit the officers, the police broke in, dragged Deviatkin out of the house, and took him to the police station, where he was beaten for hours before he was released.

In July the media reported the case of Kazbek Ramazanov, a teacher arrested in 2000 for suspected murder in the disappearance of his mentally disabled female student. While in police custody, Ramazanov confessed under torture to the killing. The missing student was eventually discovered alive, and Ramazanov was exonerated. Ramazanov filed a complaint against his abusers, who were convicted during the year.

No charges had been brought by year's end and none were expected in the 2003 case of a district deputy procurator and two other men who brutally beat a 14-year-old girl at a cafe. According to the victim's parents, the district deputy procurator exerted pressure on witnesses in the case, discouraging them from testifying.

There were unconfirmed reports that some women detained by law enforcement officers were subjected to coercive sexual advances or rape.

A few army personnel continued to subject conscripts to physical and verbal abuse, despite NCO corps reforms that addressed patterns that led to conscript hazing. There were reports of hazing-related deaths and suicide that in some cases led to investigations and eventual convictions of service members (see section 1.a.). In addition to implementing new human rights training and responsibilities for NCOs, the government continued a training program for military personnel at all levels on social and legal issues, which included mandatory anti-hazing training.

Prison and Detention Center Conditions

Prison conditions remained harsh and facilities did not meet international health standards. Mistreatment occurred in pretrial detention facilities and in prisons. The government took some steps to address systemic patterns that encouraged prisoner abuse; however, no prison officials were prosecuted for abuses during the year. In December 2004 a system of penitentiary-oversight commissions to review human rights conditions was established by statute; these panels were registered as independent nongovernmental organizations (NGOs). The commissions included experts from within the government and from NGOs and academia. Working with outside experts, the government introduced a network of prison psychologists to assist prisoners and prison personnel to reduce stresses contributing to patterns of abuse. In addition a Council for Public Oversight, established in March 2004, conducted internal investigations on abuse allegations and reported directly to the minister of justice. NGOs and international observers reported that incidents of abuse declined following the mid-year return to the MOJ of several well-regarded administrators involved in earlier successful penal reform efforts. The government also brought in new MOJ leadership with a mandate to enact reforms to bring the penal system up to internationally recognized standards. Although the government made some efforts to upgrade and build new facilities, buildings at many prisons remained outdated and hygiene conditions were substandard.

The government conducted 18 criminal investigations of penitentiary officials for corruption crimes and forwarded 13 cases to courts, of which 5 cases resulted in 6 convictions.

In January human rights defenders and opposition party DCK reported authorities at Shiderty settlement prison colony arbitrarily punished Galymzhan Zhakiyanov and denied him necessary medical treatment.

The government reported 43 inmate suicides during the year. Incidents of self-mutilation by inmates to protest prison conditions continued. In general, the government did not take action in response to self-inflicted injuries by prisoners.

Although the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) and international organizations regularly visited men's, women's, and juveniles' facilities during the year, they reported that their requests to visit were sometimes denied without clearly articulated reasons, a complaint echoed by other human rights observers and journalists, especially regarding politically sensitive cases. In one case, settlement colony officials refused to permit a prisoner to meet with a foreign diplomat, in contravention of the law. Local human rights NGOs reported that authorities generally denied them access to pretrial detention facilities.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, but they remained problems.

Role of the Police and Security Apparatus

The Ministry of Internal Affairs (MVD) supervises the national police force, which has primary responsibility for internal security. The financial police have administrative and criminal investigative powers. The MVD and Financial Police Agency report to the prime minister. The Committee for National Security (KNB) plays a law enforcement role in border security, internal security, and antiterrorism efforts, and oversees the external intelligence service, Barlau. The chairman of the KNB reports directly to the president.

According to corruption surveys, public perception of police effectiveness was low, and corruption among law enforcement officers was high. Police were poorly paid and widely believed to be corrupt. The government received 2,196 allegations of corruption and abuse during the year through hot lines set up by the MVD to receive complaints about police. Of these, 1,092 incidents were investigated, and the MVD confirmed 976 violations. As a result of investigations, 497 policemen were fired and 890 received disciplinary action (see section 3).

Representatives from the MVD, the KNB, the procurator general, and parliament served on a special commission established in August 2004 to investigate complaints against law enforcement agencies (see sections 1.c. and 3). By October 2004 the special commission had investigated 34 complaints and punished officials in 12 cases. The other 22 complaints were determined to be unfounded. Although the ombudsman's office does not keep separate statistics, the ombudsman estimated that nearly half the complaints involved police corruption or abuse.

The MVD also cooperated with NGOs to provide human rights training seminars for police at the local level. Additionally, the government cooperated with international organizations to provide limited law enforcement training aimed at decreasing abuse by emphasizing investigative skill development.

Arrest and Detention

The law provides that courts or procurators must sanction arrests and detentions, and the government generally respected this provision in practice. Warrants were required for arrest. Procurators have the power to authorize arrest and pretrial detention as well as investigative actions such as searches and seizures. The law allows police to hold a detainee for 72 hours before bringing charges. Human rights observers alleged that authorities often exceeded this limit in practice.

A bail system exists but was not widely used, and many individuals remained in pretrial detention until their trial.

Persons detained, arrested, or accused of committing a crime have the right to the assistance of a defense lawyer from the moment of detention, arrest, or accusation; however, police were not required under the law or in practice to inform detainees that they had the right to an attorney. Human rights observers alleged that law enforcement officials either dissuaded detainees from seeing an attorney or gathered evidence through preliminary questioning before the person's attorney arrived and the formal interrogation began. The law states that the government must provide an attorney for an indigent suspect or defendant when the suspect is a minor, has physical or mental disabilities, or

is facing serious criminal charges.

The government arrested and detained a few government opponents and critics, sometimes for minor infractions of the law such as unsanctioned assembly, and selectively prosecuted political opponents (see sections 1.e., 2.a., and 2.b.). However, there were no allegations of prolonged detention for political offenses.

On October 12, authorities arrested opposition activist Tolen Tokhtasynov of For a Just Kazakhstan for organizing an illegal rally, which Tokhtasynov characterized as a meeting of party members. The next day, Tokhtasynov was found guilty and fined \$376 (50 thousand tenge) by an administrative court.

Police reportedly detained foreigners without official charges, sometimes mistreating them.

e. Denial of Fair Public Trial

The law does not adequately provide for an independent judiciary. The executive branch limited judicial independence. Procurators enjoyed a quasi-judicial role and were permitted to suspend court decisions.

There are three levels in the court system: district, oblast (regional), and the supreme court. District courts are the court of first instance in nearly all criminal cases. Regional courts hear cases involving more serious crimes, including those that carry the death penalty, and may handle cases in rural areas with no local courts. District court decisions may be appealed to the regional courts, and regional court decisions may be appealed to the supreme court. There are also military courts.

The constitutional council rules on election and referendum challenges, interprets the constitution, and determines the constitutionality of laws adopted by parliament. Citizens have no right of direct appeal to the constitutional council.

Corruption was evident at every stage and level of the judicial process. Although judges were among the most highly paid government employees, lawyers and human rights monitors alleged that judges, procurators, and other officials solicited bribes in exchange for favorable rulings in the majority of criminal cases (see section 3).

The presidentially appointed High Judicial Council recommends nominees for the supreme court to the president, who in turn recommends them to the senate for approval. The council makes recommendations to the president for regional (oblast) level judges, but these appointments are made directly by the president. Lower-level court judges are appointed by the president upon the recommendation of the MOJ and the Qualification Collegium. Judges are appointed for life.

Trial Procedures

The law allows for trial by jury, but jury trials were not implemented in practice. At year's end a draft law setting up a jury trial system was approved by parliament and awaited presidential approval. Trials were public, except in instances that could compromise state secrets, or to protect the private life or personal family concerns of a citizen. However, there were several reports during the year of journalists being denied access to open court hearings. Defendants in criminal cases have the right to counsel and to a government-provided attorney if they cannot afford one. Under the criminal procedure code, defendants must be represented by an attorney when the defendant: is a minor, has mental or physical disabilities, does not speak the language of the court, or faces 10 or more years' imprisonment. In practice defense attorneys reportedly participated in only half of all criminal cases, in part because the government did not have sufficient funds to pay them. The law also provides defendants the right to be present at their trials, to be heard in court, and to call witnesses for the defense. Defendants enjoy a presumption of innocence, are protected from self-incrimination, and have the right to appeal a decision to a higher court. These rights were generally exercised in practice; however, there were reports of individual cases of infringement. Lack of due process was a problem, particularly in politically motivated trials and in cases where improper political or financial influence was alleged.

The opposition party Democratic Choice of Kazakhstan (DCK) was liquidated by court order following a trial that lacked due process. The court issued a ruling on the merits of the case without resolving an outstanding legal question on jurisdiction. During the hearing, DCK was not allowed to call expert witnesses to testify, more than half of the questions DCK raised during cross examination of prosecution expert witnesses were overruled, and all but one of DCK's motions were denied.

On December 14, the Ekibastuz city court confirmed the recommendation of prison colony authorities that former governor and DCK leader Galymzhan Zhakiyanov be granted conditional early release. On December 21, a special procurator contested the ruling on the grounds that Zhakiyanov had violated prison rules, also noting that the judge had not set any conditions on Zhakiyanov's release. At year's end the court had not ruled on the protest motion. Zhakiyanov, convicted of abuse of power and corruption charges in 2002 following a trial that international observers maintained was politically motivated and lacked due process, was being held in a minimum security settlement colony. Zhakiyanov's supporters claimed that he was subject to heightened scrutiny by settlement colony officials and denied medical attention. Although Zhakiyanov was permitted some visits from family and international human rights observers, the government often refused permission for such visits without legal basis. In contravention of the criminal procedure code, which specifies that there are no limits on visits to settlement colony inmates, colony officials insisted that Zhakiyanov conduct all his meetings inside prison facilities where they could be monitored, and permission from the MOJ was required for visitors to enter the colony. Permission was at times refused to international human rights observers and foreign diplomats.

Military courts had jurisdiction over civilian criminal defendants who were alleged to be connected to military personnel undergoing a criminal trial.

Political Prisoners

There were no confirmed reports of political prisoners; however, there were reports of individuals imprisoned following politically-motivated criminal prosecutions based on nonpolitical offenses.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions; however, the government at times infringed on these rights.

The law provides procurators with extensive authority to limit citizens' constitutional rights. The KNB, MVD, financial police, and other agencies, with the concurrence of the procurator general's office, may infringe on the secrecy of private communications and financial records, as well as on the inviolability of the home. Courts may hear an appeal on procurators' decisions, but cannot issue an immediate injunction to cease the infringement. The criminal procedure code allows wiretapping and recording of communications for investigative purposes without a procurator's warrant only in urgent cases; amendments enacted during the year extend wiretap authority to include monitoring of e-mail and all forms of electronic communication.

Government opponents and their family members continued to report that the government monitored their movements and telephone calls on occasion. Opposition movement For a Just Kazakhstan (FJK) filed suit against the police alleging that on November 29, a police officer illegally videotaped people entering and leaving FJK offices in Almaty. The suit was dismissed on the grounds that the officer had not been acting pursuant to official orders but rather on her own initiative.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press; however, the government used a variety of means, including criminal and administrative charges, to control the media and limit freedom of expression. Judicial actions against journalists and media outlets, including civil and criminal libel suits filed by government officials, contributed to self-censorship. The ability of opposition newspapers to disseminate information worsened as a number of print-runs were seized by authorities prior to distribution and printing houses refused printing services on several occasions. On three occasions, opposition media outlets were denied registration on the basis that the proposed names had been registered previously or were too similar to copyrighted names.

The government limited individuals' ability to criticize the country's leadership, and regional leaders attempted to limit local media outlets' criticism of them. The law provides for the protection of the dignity of the president, and the law prohibits insulting the president and other senior officials. These provisions narrowed the scope of political speech related to the December 4 presidential election, in which Nazarbayev was a candidate for re-election.

The government continued to characterize the distribution of pamphlets by Hizb ut-Tahrir (HT) members as incitement for political and terrorist purposes, beyond the bounds of constitutionally-protected free speech. During the year police arrested 22 people for disseminating HT materials.

International observers considered that the level of media bias surrounding the presidential elections was similar to the strong pro-administration bias surrounding the September 2004 Mazhilis elections. The election law stipulates that media must provide equal coverage of all parties and candidates during the official campaign season.

On several occasions prior to the December 4 presidential elections, law enforcement seized opposition newspapers. Media content bias in favor of the incumbent candidate was widespread; however, state media outlets generally met their legal obligations to provide free airtime to candidates, and the Central Election Commission (CEC) responded to opposition and independent candidate complaints.

According to government statistics, 23 percent of the 2,110 media outlets were government-owned. Many broadcast media considered to be independent, including the larger outlets, were owned by holding companies believed to be controlled by members of the president's family and close circle of friends. There were 1,021 privately owned newspapers and 429 privately owned magazines. Of the 1,325 registered newspapers distributed nationally, the government directly ran one Russian-language newspaper and one Kazakh-language newspaper. Many privately owned newspapers received government subsidies. The government controlled nearly all broadcast transmission facilities. There were 144 television and 40 radio stations. Media observers believed that six of the seven nationwide television broadcasters were wholly or partly owned by the government; one was nominally independent. Regional governments owned several frequencies; independent broadcasters arranged to use the majority of these.

All media were required to register with the Ministry of Culture, Information and Sports, although Web sites were exempted from this requirement. In practice, media outlets known to be associated with opposition political parties or movements were frequently refused registration, although opposition newspapers managed to continue publishing during the year, in a few cases with a significant hiatus.

The law limits the rebroadcast of foreign-produced programming to 20 percent of a station's total airtime. This provision burdened smaller, less-developed regional television stations that lacked resources to develop their own programs, although no media outlets were sanctioned under this provision.

On an August 24 call-in show, President Nazarbayev urged citizens not to read opposition newspapers. Nazarbayev has stated publicly that

certain media restrictions were necessary because of the lack of professionalism of the country's press corps.

Harassment of and violence against journalists remained problems. Press advocacy NGO Adil Soz reported 706 incidents of harassment and violence against journalists during the first 11 months of the year.

In April Irina Petrusheva, editor-in-chief of opposition newspaper *Respublika: Delovoye Obozreniye*, was detained on tax evasion charges for two days by Russian authorities pursuant to a warrant issued by the Kazakhstani government. After wide media coverage of the incident, Petrusheva was released after a Moscow procurator determined she was detained improperly.

On August 27, an assistant editor-in-chief of regional independent weekly newspaper *Altyn Gasyr* was beaten seriously by four unknown assailants in a village in Atyrau region. On September 13, four unknown assailants attacked Azamat Dospanov, also affiliated with *Altyn Gasyr*, causing serious head trauma. At year's end, the attackers had not been identified and no charges had been filed in either case.

On September 7, Viktor Rogalev, an employee of the administration of the lower house of parliament, confronted a reporter from independent weekly *Vremya* while she attempted to interview members of parliament (MPs). Rogalev allegedly grabbed the reporter's hand and dragged her to the exit, threatening to withdraw her accreditation.

Independent journalist and human rights advocate Sergey Duvanov resumed work during the year after his August 2004 release on parole from imprisonment relating to an allegedly politically motivated charge (see section 3).

On October 10, Kaziz Toguzbayev of opposition weekly *Azat* was arrested while covering a conference of the opposition movement People's Party Alga; he was sentenced to five days' detention for participating in an unauthorized march. He was denied visitors.

On October 19, Saya Issa of *Svoboda Slova*, Olesya Gassanova and Almas Nurdos of *Stan.kz*, Ruslan Sapabekov of *Zhuma-Times*, and Eldess Myrzakhmetov of *Soz-Respublika* were arrested in Almaty on the same day that print runs of *Svoboda Slova* were seized by authorities. During their brief detention, they were denied access to legal representation.

On November 6, unknown assailants vandalized the office of *Region Plus* newspaper in Kapchagay. The paper's staff believed the attack to be a response to its reporting. The incident was under investigation at year's end.

During the September 2004 Mazhilis elections, members of a local election commission assaulted newspaper correspondents Tamara Sukhomlinova and Gulzhanat Isabayeva. Sukhomlinova was questioned by police in March pursuant to a complaint filed on the reporters' behalf in September 2004, but she reported no resolution to the case by year's end.

In December 2004, Kanat Kalzhanov was sentenced to 3½ years in prison for causing the July 2004 death, due to vehicular negligence, of Askhat Sharipzhanov, a correspondent for the opposition online news organization Navigator, who was struck and killed crossing an Almaty street. Journalists, human rights advocates, and opposition figures considered the circumstances of the case suspicious and questioned the law enforcement determination that the death was accidental.

Journalists covering organized crime and corruption reported harassment and intimidation, by both government officials and private actors, directed at them as a result of their reporting.

At year's end no criminal charges had been filed and none were expected related to the August 2004 vandalism of the Taraz independent weekly newspaper, *Yuzhnyy Ekspres*.

The law enables the government to restrict media content under amendments that prohibit undermining state security or advocating class, social, race, national, or religious superiority, or cruelty and violence. Owners, editors, distributors, and journalists may be held civilly and criminally responsible for content, regardless of the source of information, unless it came from an official source. The government used this provision to limit freedom of the press. New legislation prohibits publication of any statement that promotes or glorifies "extremism," a term which international legal experts considered unduly vague.

During the year almost all media outlets willing to criticize the president directly were subjected to intimidation, often in the form of law enforcement actions or civil suits. While these events continued to cast a chilling effect on all media outlets, criticism of government policies continued to be reported during the year.

The state secrets law makes it a criminal offense to release any information about the health, finances, or private life of the president, as well as economic information about the country such as the volumes of national mineral reserves and the amount of government debt owed to foreign creditors. Media outlets generally practiced self-censorship regarding information on the president and his family to avoid possible legal problems.

The government continued to confiscate newspapers that reported on a 2003 scandal involving a foreign investigation into possible illicit payments, allegedly from foreign companies to senior government officials, including President Nazarbayev. Local media outlets, when they did report on the case, informally dubbed it "Kazakhgate." On October 21, in a closed trial, the court fined *Zhuma Times: Data Nedelye* for its article "Kazakhgate: History of One Crime."

Criminal libel suits could be initiated by private parties on behalf of the government, and an individual filing such a suit would be able to file a civil suit as well, based upon the same allegations. Officials used the law's restrictive libel and defamation provisions to constrain media

outlets from publishing unflattering information. Both the criminal and civil codes contain articles establishing broad libel liability. The fact that owners, editors, distributors, publishing houses, and journalists were held responsible for the content of information conveyed and had the burden of proving its veracity, regardless of its source, promoted self-censorship at each level. At times fines for libel were exorbitant and bankrupted small media outlets.

In February DCK newspaper *Soz* was fined and, in effect, shut down due to a September 2004 article on the KNB. *Soz* later briefly reappeared as an insert to *Respublika* but continued to encounter problems printing even after payment of all damages to the KNB.

On June 13, opposition leader and former minister of information Altynbek Sarsenbaiuly was charged with defaming the Khabar media firm after he claimed it was owned by Dariga Nazarbayeva, daughter of the president and leader of the Asar Party. He was found guilty and fined \$7,518 (one million KZT).

On May 4, the government closed opposition newspaper *Respublika: Delovoye Obozreniye* because the newspaper reprinted an interview with Russian Duma vice speaker Vladimir Zhirinovskiy who expressed his inflammatory views of Kazakhstan. This marked the fifth time that a media outlet operated by this group of editors and reporters had been closed by the government. In July 2004 an Almaty district court ordered weekly newspaper *Assandi Times*, the predecessor of *Respublika: Delovoye Obozreniye*, to pay \$384,615 (50 million KZT) for defaming the presidential administration. The judgment forced the *Assandi Times* into insolvency. The paper later appeared as *Syet'.kz* and *Pyatoye Izmereniye* and was published as *Pravo. Ekonomika. Politika. Kultura.* at year's end.

On October 19, police seized 50 thousand copies of independent newspaper *Svoboda Slova* for "damaging the honor of the president" after the paper printed a critical editorial quoting from the president's press conference with foreign journalists.

On October 27, the president's daughter, MP Dariga Nazarbayeva publicly threatened court action against any reporter or media outlet that slandered her father, their family, or the country's reputation.

In late 2004 *Vremya* reporter Grigoriy Melnikov was found guilty of defaming Berik Bilyalov, the former head of a regional criminal investigation division, and was fined \$225 (30 thousand KZT). Melnikov had claimed Bilyalov had tried to set him up for arrest in retaliation for negative reporting. Although a Melnikov countersuit against Bilyakov was dismissed, Bilyalov was demoted in rank. A second libel case by Bilyalov against Melnikov was ongoing at year's end. A separate 2004 libel case by another law enforcement officer against Melnikov was dropped by the plaintiff.

The government included revisions to the media law in the July package of national security amendments, including one measure prohibiting foreigners from holding editorial positions in mass media outlets.

The government continued to influence most printing and distribution facilities and to subsidize periodicals, including many that supposedly were independent. In addition many publishing houses were government-owned. Some journalists alleged that the KNB or tax police threatened publishing houses if they printed opposition media; concern over criminal or civil proceedings influenced publishing houses.

On September 26, private printing company facility *Vremya*, whose majority shareholder is the independent weekly *Vremya*, cancelled its publishing contracts with seven newspapers—*Epokha*, *Svoboda Slova*, *Zhuma-Times*, *Apta.kz*, *Azat*, *Pravda*, and *Soz* without public explanation. The newspapers' editors claimed *Vremya* had been pressured to cancel the contracts. Editors of the newspapers reported other printers also refused printing services, although *Daur* publishing house picked up five of the papers after the editors staged a protest.

On October 20, police surrounded the *Daur* press and then seized the entire *Zhuma-Times: Data Nedelye* print run. Local media advocacy NGO *Adil Soz* reported 60 registered cases of impounded opposition newspapers. Observers reported numerous incidents of print seizures and interruptions to newspaper distribution during October; the police generally instigated the confiscations, although in one incident four armed men in civilian dress held up individuals distributing *Zhuma-Times: Data Nedelye*, *Epokha*, and *FJK* campaign pamphlets. Also confiscated were print runs of *Pravda*, *Apta.kz*, and *Svoboda Slova*.

The law defines Web sites based in the country as media outlets. During the year the content of Web sites was subject to libel lawsuits and criminal charges. Independent Web media reported that the government periodically blocked clients of the two largest Internet providers, Kaztelecom and Nursat, from direct access to several opposition Web sites, including *Evrasia*, *Navigator*, and *Kub*, although access was still available through anonymous proxy servers.

On October 13, the Kazakh Network Information Center that manages local domain names cancelled *Navi.kz*, due to purported copyright violations, forcing the opposition Web site to change its address to *navikz.net*. On October 14, an Almaty court then banned all usage of *Navigator* and *Navi* as domain names in both the Cyrillic and Roman alphabets; the Web site had originated as *Navigator.kz*. At year's end, the site was operating under *Mizinov.net* on a proxy server.

The government generally did not restrict academic freedom, though academics, like journalists, could not violate certain restrictions, such as criticizing the president and his family.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides for limited freedom of assembly; however, there were significant restrictions on this right in practice and police used force

to disrupt peaceful demonstrations. The law defines as a threat to national security unsanctioned gatherings, public meetings, marches, demonstrations, illegal picketing, and strikes that upset social and political stability.

An April amendment to the elections law prohibits any election-related demonstrations from the period following an election until the CEC publishes the results. The February Extremism Law prohibits "extremism" during rallies and demonstrations; "extremism" was ill-defined in the legislation.

Under the law, organizations must apply to the local authorities for a permit to hold a demonstration or public meeting at least 10 days in advance, or the activity is considered illegal. Opposition and human rights monitors complained that complicated procedures and the 10-day notification period made it difficult for groups to organize public meetings and demonstrations, and reported that local authorities turned down most applications for demonstrations. Organizers of unsanctioned gatherings, including political party gatherings, frequently were detained briefly and fined (see section 3). Opposition parties at times chose to hold unsanctioned rallies and, as a result, members were penalized.

On January 19, activists from opposition parties Ak Zhol, the Communist Party of Kazakhstan (CPK), and DCK were denied permission by local authorities to hold a rally in Almaty to "support the fight against extremism and terrorism."

A March request by the Ak Zhol party to hold a freedom of speech rally in Almaty was denied by local authorities for administrative reasons.

In August special forces attempted to block approximately 100 residents of Almaty from marching in an unsanctioned but reportedly peaceful march to the *akim's* (mayor's) office to protest the city's eminent domain seizures of private homes and allegations of insufficient compensation for landowners; police reportedly beat several participants and detained 15 individuals for their participation in the march.

On October 10, Kaziz Toguzbayev of opposition weekly *Azat* was arrested while covering a conference of opposition movement People's Party Alga and sentenced to five days' detention for participation in an unauthorized march (see section 2.a.).

Freedom of Association

The law provides for limited freedom of association; however, there were significant restrictions on this right in practice. Any public organization set up by citizens, including religious groups, must be registered with the MOJ, and its branches in every region in which the organization conducts activities. Participation in unregistered public organizations may result in administrative or criminal liability, such as fines, dissolution, probation, or imprisonment. The prohibition on unregistered organizations often provided a pretext for authorities to interfere with the activities of organizations. Membership organizations, including religious groups, must have 10 members to register at the local level and must have branches in over half of the regions for national registration. Political parties and labor unions were considered membership organizations but had additional specific registration requirements. The law requires parties to have 50 thousand members, including one thousand in each region, and prohibits parties established on an ethnic, gender, or religious basis (see section 3).

Amendments to the law on political parties put new limitations on political party formation (see section 3). In August the constitutional council found unconstitutional proposed NGO legislation that would have created onerous re-registration and reporting requirements for NGOs and placed limits on foreign funding (see section 4).

The law prohibits members of the armed forces, employees of national security and law enforcement organizations, and judges from participating in trade unions or political parties.

During the year organizations were charged a fee to register as new organizations. Many organizations had to hire lawyers or other consultants to expedite registration through the bureaucracy, which increased the registration cost considerably.

Although initial feedback on the simplified registration process introduced in September 2004 was positive, amendments during the year to registration requirements for political, religious, and other legal organizations resulted in increased reports of registration delays and denials for administrative reasons.

On October 4, police raided the office of youth group Kahar on suspicion of antigovernment activities and accepting illicit foreign financing. There were no arrests or property seizures after a three hour search by police.

The February extremism law criminalizes membership in certain prohibited organizations. At year's end, Islamist political organization HT was the only organization banned under this law. Several members of HT were convicted on charges including extremism and terrorism during the year. Although it maintained that it was committed to nonviolence, HT promoted hate and praised acts of terrorism. The party's virulently anti-Semitic and anti-Western literature called for the overthrow of secular governments, including those in Central Asia, to be replaced with a worldwide Islamic government called the caliphate.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this in practice; however, local officials attempted on occasion to limit the practice of some nontraditional religions. Higher-level officials or courts often intervened to correct such attempts. In July the government enacted amendments to the religion law that restricted legal protections of religious freedom. The amendments clarified that religious groups are required to register with the government and in the individual regions in which they have congregations. Missionaries must register annually. The population was generally wary of nontraditional religions, particularly in rural areas; however, there were few reports that this resulted in governmental or societal persecution.

The law defines the country as a secular state. The government invited the leaders of the two largest religions, Islam and Russian Orthodoxy, to participate jointly in some state events. Leaders of other faiths have at times also participated in some government events. Religious organizations must register to receive legal status in order to act as a legal entity to buy or rent real property, hire employees, or engage in other legal transactions.

Members of the Council of Churches of Evangelical Christians and Baptists reported that they were harassed by law enforcement for not being registered. The council has a policy of not seeking or accepting registration in former Soviet countries (for religious reasons). During the year, as in previous years, the government did not enforce court orders for congregations affiliated with the council to register or pay fines.

In May a court in Zaisan reportedly fined Baptist leader Igor Isakov \$129.50 (17,478 tenge) for refusing to register his congregation. In late 2004 Aleksei Buka, of Karaganda oblast, was fined \$47.65 (6,433 tenge) for belonging to an unregistered religious group; his case was overturned on appeal in March.

Although the Spiritual Association of Muslims of Kazakhstan (SAMK), a coalition of mosques and clergy, is nominally independent and has no official status, there were reports that the government attempted to coerce independent mosques and Muslim clergy to affiliate with the group. SAMK withdrew a lawsuit against a rival group, the Union of Muslims of Kazakhstan, related to criticism of SAMK's leader, the chief mufti of the country.

Jehovah's Witnesses members were generally able to freely practice their religion without interference; however, they reported isolated problems with local officials. Although local Jehovah's Witnesses groups are formally registered at the national level and in 12 regions, the Jehovah's Witnesses Religious Center has attempted unsuccessfully to register in Atyrau Oblast since 2001. On August 5, the Jehovah's Witnesses Religious Center submitted the latest in a series of registration applications. The application was returned based on an alleged discrepancy between the Russian and Kazakh versions of the group's charter. The center claimed that officials in Almaty and other localities sometimes blocked the group from renting stadiums or other large public or private sites for religious meetings.

While the group reported that local authorities ceased what it perceived as a pattern of harassing administrative inspections of its commune, the Hare Krishna movement continued to be subject to lawsuits regarding the title to land used by the community. Although two court cases related to this land were resolved favorably early in the year, the Karasai district *akimat*, or mayor's office, filed two new lawsuits in April and May, seeking to nullify the Hare Krishnas' 1999 land purchase and confiscate all 106 acres. Notwithstanding an apparent lack of legal standing on the part of the *akimat*, and the expiration of the three-year statute of limitations for suits over real property transactions, the Hare Krishna community lost two court hearings during the summer. At year's end the supreme court was considering the Hare Krishnas' appeal in the case. The Hare Krishnas believed that the lawsuits regarding their land were motivated by an attempt to expropriate valuable real estate and not by an intent to suppress religious expression.

Observers believed that security officials informally monitored some religious activity, particularly Muslim imams' sermons; however there were no reports that any monitoring manifested in interference or harassment.

Amendments to the religion law mandated annual registration for missionaries. Missionaries must also be sponsored by a registered religious organization. Pursuant to the registration process, missionaries must submit to the MOJ copies of all materials to be used in proselytizing. Foreign missionaries reported an increase in the number of visa refusals during the year.

Societal Abuses and Discrimination

The Jewish community, estimated at below 1 percent of the population, has synagogues in several larger cities, including Almaty, Astana, and Pavlodar. There were no reports of anti-Semitic acts apart from the distribution of anti-Semitic literature by banned extremist Islamist political organization HT. Rabbis in Almaty reported generally positive relations with other religious communities in the country.

The government made efforts to promote religious tolerance in its ranks. In April 2004 the Ministry of Internal Affairs invited the country's chief rabbi to give seminars to its police officers on sensitivity to religious minorities. Human rights training provided to law enforcement officers by NGOs in cooperation with the government included information on religious rights under the law.

For a more detailed discussion, see the [2005 International Religious Freedom Report](#).

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, but there were some regulatory restrictions in practice. Citizens and foreigners in the country for more than five days were required to register with the migration police. Registration in most of the country generally was routine; nonetheless, some foreign citizens reported that local authorities regularly requested bribes before completing registration. Persons who were suspects in criminal investigations were often required to sign statements that they would not leave their place of residence. Individuals were detained routinely for identity checks without suspicion of a criminal offense (see section 1.d.).

Although the government did not require exit visas for temporary travel of citizens, certain instances in which exit from the country could be denied remained, including for travelers subject to pending criminal or civil legal proceedings, unserved prison sentences, or compulsory military duty. Travelers who presented false documentation during the exit process could be denied exit, and travel by active-duty military was controlled. The law on national security requires that persons who had access to state secrets obtain permission from their employing government agency for temporary exit from the country.

The law prohibits forced exile, and the government did not employ it.

The law provides for the right to emigrate and the right to repatriate, and the government generally respected these rights in practice. An exception is the law on national security, which prohibits persons who had access to state secrets from taking up permanent residence abroad for five years after leaving government service. A permanent exit visa was required for emigration; obtaining this visa required criminal checks, credit checks, and letters from any dependents expressing no objection to exit visa issuance.

Foreigners were required to obtain prior permission to travel to some border areas with China and cities in close proximity to military installations. The government continued to declare certain areas closed to foreigners due to their proximity to military bases and the space launch center at Baikonur--foreigners could however visit these areas with prior permission from the MVD.

It was government policy to encourage and assist all ethnic Kazakhs living outside the country to return. The government accorded special immigration treatment to ethnic Kazakhs and their families who fled during Stalin's era and wished to return. These returnees were in principle entitled to citizenship and many other privileges. Other persons, including ethnic Kazakhs who were not considered refugees from the Stalin era, had to apply for permission to return. Each region had a quota for returnees; apart from Almaty and the southern regions bordering Uzbekistan, these quotas went unfilled.

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, but the government has not established a system for providing protection to refugees. The absence of legislation to fully implement the convention left many aspects of refugee status unclear, such as whether refugees have a right to work. In practice the government usually provided some protection against *refoulement*, the return of persons to a country where they feared persecution. In November, however, nine refugees were forcibly returned to Uzbekistan under circumstances neither the Uzbek nor Kazakhstani governments have publicly clarified, including four with UN High Commissioner for Refugees (UNHCR) asylum seeker documents. The government granted refugee status, but not asylum.

The government generally registered asylum seekers and determined their status, in consultation with the UNHCR. Only the president can grant political asylum, and he did not do so during the year. In some cases, asylum seekers and refugees were allowed to stay in the country while the UNHCR found third countries that would accept them. Although the government did register refugees already present in the country, it did not accept any refugees for resettlement. The government also provided temporary protection to individuals, including some Afghan refugees who may not qualify as refugees under the 1951 convention and the 1967 protocol.

The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers. The government usually allowed the UNHCR access to detained foreigners to determine if they qualified for refugee status. The government was generally tolerant in its treatment of local refugee populations, except for a few citizens from former Soviet republics. The government often did not allow refugees without passports or those who had entered the country illegally to register.

The Agency for Migration continued to work with the UNHCR and a local NGO, Kazakhstan Refugee Legal Support, in reviewing refugee claims. Consistent with the Minsk Convention on Migration within the Commonwealth of Independent States, the government did not recognize Chechens as refugees. The government, in cooperation with the UNHCR and Chechen organizations, did grant indefinite but temporary legal resident status to Chechens until they could return home to safe conditions. Even though there was a temporary registration procedure for Chechens, reports persisted that Chechens did not have the same access to registration as others, and often resorted to paying bribes to local officials to obtain registration.

In July the government allowed UNHCR to arrange resettlement to a third country for Lutfullo Shamsuddinov, a human rights observer who fled to the country in May from neighboring Uzbekistan following the violent suppression of protests in Andijon.

In November nine Uzbek citizens who were living in the southern part of the country were forcibly returned to Uzbekistan. Relatives of these men claimed that they had left Uzbekistan fearing persecution for religious affiliation with a particular mosque. Four of them had ongoing applications with UNHCR for determination of refugee status and resettlement. At year's end the families did not have confirmation of the welfare and whereabouts of these men.

The government had an agreement with China not to tolerate the presence of ethnic separatists from one country on the territory of the other. Human rights monitors remained concerned with the impact of this agreement on Uighurs from China in the country, although there were no reports of Uighurs forcibly returned to China during the year. The government did not consider any asylum claims by Uighurs.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides for a democratic government with universal suffrage for those over 18 years of age; in practice the government severely limited the right of citizens to change their government.

The constitution concentrates power in the presidency, granting the president considerable control over the legislature, judiciary, and local government. The president appoints and dismisses most high level government officials, including the prime minister, the cabinet, the procurator general, the KNB chief, and the chairman and members of the CEC, who oversee presidential and parliamentary elections. The parliament has never failed to confirm a presidential nomination. Modifying or amending the constitution effectively requires the president's consent.

New legislation further weakened the independence of civil institutions.

Elections and Political Participation

On December 4, the country held its presidential election; although there were improvements, the election fell short of international standards for free and fair elections in many areas.

The Organization for Security and Cooperation in Europe's (OSCE's) preliminary statement noted several areas of improvement over the conduct of the previous presidential election. Five candidates, including the incumbent, one independent, and two from the opposition, were registered for the election. The CEC acted with increased transparency, meeting in open sessions and taking actions to correct voting-process deficiencies noted in prior elections. The first presidential candidate debate was broadcast live to a wide audience, though incumbent Nursultan Nazarbayev did not participate. Notwithstanding widespread media content bias in favor of the incumbent candidate, state media outlets generally met their legal obligations to provide free airtime to candidates, and the CEC responded to opposition and independent candidate complaints of denial of media access. Most lower-level election commission members were adequately trained and equipped to conduct voting; however, opposition parties were underrepresented in the makeup of these commissions.

Despite these improvements, the OSCE determined that the December 4 presidential elections fell short of a number of international standards. The OSCE noted serious limitations on political speech that prohibited certain criticism of the president, and unequal access to the media for opposition and independent candidates. The OSCE also highlighted restrictions on holding outdoor meetings, inadequate venues, and insufficient access to advertising space that restricted candidates' ability to campaign freely; and there were frequent reports of pre-election period opposition campaign events being disrupted by organized protests that at times reportedly escalated to violence. The OSCE preliminary statement noted apparent improvements to the e-voting system since its 2004 introduction, but criticized the lack of a mechanism to verify or to audit election results.

Several legal changes during the year limited the ability of opponents to campaign freely against incumbent Nursultan Nazarbayev.

In April parliament passed election law amendments that restricted freedom of assembly and freedom of association, prohibiting election-related demonstrations and rallies during the period following elections until the CEC publishes election results (see section 2.b.). Another amendment restricts political blocs, which are required to have a coordinating council that operates under a formal written agreement between the parties; the coordinating council is required to keep written minutes of its decisions. July amendments to the political parties law require a minimum attendance of one thousand delegates from every region of the country at a party's founding congress and prohibit political party names that resemble the names of liquidated political parties. The government enforced both provisions during the year—in an attempt by members of disbanded party DCK to register as Alga, DCK!, and at its founding conference as new party Alga.

On August 19, indirect elections were held for 16 Senate seats, which were selected by the vote of local-level legislatures (*maslikhats*). Senator Zauresh Battalova, the last openly-opposition MP, was denied registration to run for re-election on administrative grounds. In September 2004 direct elections were held for all seats in the lower house of parliament. In its assessment, the OSCE elections observer mission determined that although elections reflected improvements over previous parliamentary elections, the process fell short of international standards and a number of aspects of the 2004 new election law were not implemented in an effective and impartial manner. Some domestic monitors found the election violations to be worse than in previous parliamentary elections, citing violations of electoral legislation and abuse of voter lists, multiple voting, vote count problems, and interference of local authorities. However, other domestic groups found that irregularities did not appear to alter election results.

For both the December presidential and 2004 lower house parliamentary elections, international and local elections observers reported that media bias in favor of pro-administration parties was most evident in the largest television networks. The Nazarbayev family reportedly owned either significant or controlling shares in these networks, granting the high percentage of television news coverage to pro-presidential parties. During presidential elections, legal restrictions on criticizing or insulting the dignity of the president prevented other candidates from a full discussion of their opponent's record (see section 2.a.). In several cases, newspapers were fined for violating these provisions during the pre-election period.

The media environment during the pre-election period heavily favored the incumbent candidate, and opposition media were harassed because of their campaign coverage. Print runs of *Svoboda Slova* and *Zhuma Times: Data Nedelye* were seized on several occasions, reportedly by law enforcement (see section 2.a).

In August four district *akims* (roughly equivalent to a county executive level position) were chosen by local, directly-elected legislatures. Previously *akims* at all levels were elected by either the president or a higher level *akim*.

Individuals and registered parties could declare their candidacy and stand for election if they met certain criteria. Candidates for presidency, for example, were required to provide financial statements, submit to a Kazakh-language test, and provide a petition with 85 thousand signatures. Independent candidates could run for office.

Political parties must register members' personal information, including date and place of birth, address, and place of employment. This requirement discouraged many citizens from joining political parties. There were credible allegations that persons entering government service were pressured to join the pro-presidential Otan party.

During the year 11 political parties were registered, including opposition parties Ak Zhol and the CPK. The government denied attempts to register opposition parties Alga and True Ak Zhol. In addition, two blocs were registered for the presidential election: the People's Coalition for Kazakhstan (PCK), which supported Nazarbayev for re-election; and FJK, an opposition bloc including members of Alga, True Ak Zhol,

and the CPK.

The government restricted the functioning of the political opposition. In January opposition party DCK was judicially disbanded on the basis of a 2004 statement calling for civil disobedience in protest of the 2004 lower house parliamentary elections; the government characterized that statement as undermining the security of the state and propagating social hatred. The government denied attempts to register opposition parties Alga and True Ak Zhol; however, opposition bloc FJK was registered on August 2.

In separate incidents in Ust Kamenogorsk on April 9 and in Shymkent on May 2, FJK members were physically attacked by unknown assailants during rallies. Opposition leaders alleged that government officials instigated the attacks. The president publicly called for investigations. On August 8, the Shymkent city court issued a one year suspended jail sentence to local resident Arman Dzhumageldiyev for his role in the attacks. At year's end, no other arrests were reported in either incident.

On October 12, authorities arrested and detained Tolen Tokhtasynov of FJK for allegedly organizing an unsanctioned rally (see section 1.d.). Several other leaders of FJK were fined by an Almaty court for their participation in the same rally.

On November 11, four members of FJK leader Tuyakbay's campaign team were detained after showing a film the police had prohibited, saying it defamed the president. Gulzhan Yergaliyeva, Tatyana Chernyak, T. Aletova, and A. Masymkhodjayeva were taken into custody, their video equipment and tapes were seized, and authorities filed administrative charges against them.

There were 2 women in the 39-seat Senate and 8 women in the 77-member lower house of parliament. There were four women in the cabinet—the ministers of justice, education and science, environmental protection, and labor and social protection. Traditional attitudes sometimes hindered women from holding high office or playing active parts in political life (see section 5), although there were no legal restrictions on the participation of women and minorities in politics. There were non-Kazakhs in the senate, and ethnic minorities were represented in the lower house of parliament. There was one non-Kazakh cabinet member and a non-Kazakh deputy prime minister.

Government Corruption and Transparency

Corruption remained a serious problem; it was especially prevalent among various law enforcement agencies, local government administrations, and the judiciary. The government took some measures to address it and acknowledged pervasive police corruption, reporting that 497 police were fired for corruption during the year (see section 1.d.). Opposition leaders accused the presidential administration of rampant corruption.

The law mandates the government, public associations, officials, and media outlets to provide citizens with information that affects their rights and interests; in practice citizens' requests for information, were not fulfilled in a timely manner.

Although parliament continued to become more open by publishing several draft laws, some parliamentary debates, and occasionally, its voting record, many parliamentary activities remained outside public view. During the year parliamentary discussion of controversial pieces of legislation was closed to the public and the media.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated effectively, with relative freedom to investigate and publish their findings on human rights cases; however, the government restricted certain activities of most domestic and international human rights NGOs. International human rights groups reported that the government continued to control the work of NGOs that worked on sensitive issues, and noted harassment including police visits, arbitrary tax investigations, and surveillance of NGOs offices and personnel.

The KIBHR, the Almaty Helsinki Commission, the Republican Network of Independent Monitors, the Confederation of NGOs, and Adil Soz were the most active local human rights NGOs. Employees of local NGOs often were subjected to government harassment and intimidation. In mid-August the Almaty headquarters of KIBHR was burglarized. KIBHR reported that computers containing financial and client case data were stolen, while newer electronic equipment and other valuables were left. The police opened an investigation into the burglary. At year's end, no arrests had been made and none were expected.

In March authorities launched an investigation of 33 NGOs that received grants from foreign governments; this was done pursuant to a formal request by MP Yerasyly Abylkasimov, who alleged that the NGOs were financing the political opposition. Active investigations continued for several months and hampered the work of some of these NGOs, including those working on democracy issues. Investigators found no evidence of improper political activity by the NGOs.

On August 23, the constitutional council determined that a package of controversial NGO legislation passed by parliament was unconstitutional. The draft had been initiated by several MPs to restrict the activities of both local and international NGOs. On September 12, President Nazarbayev stated that he had "no objection" to the constitutional court's decision, effectively extinguishing the legislation; however, he issued a stern warning against "foreign intervention" through NGOs disrupting national security and bringing instability.

More than in previous years, the government used tax, immigration and other administrative investigations to question international and local NGOs operating in the country on their activities; NGOs perceived these actions as an attempt to intimidate and to restrict their activities in the country. In March a Russian political specialist working for the Almaty office of an international NGO was detained by migration police on dubious immigration charges. Following protests by diplomatic missions, the individual was released and he returned to Russia.

In general the government did not prevent international NGOs and multilateral institutions dealing with human rights from visiting the country

and meeting with local human rights groups as well as with government officials. However, in one case, a Bishkek-based representative of the AFL-CIO Solidarity Center was denied entry at the border despite having a valid visa, following previous working visits to the country. Observers believed that entry was denied based on law enforcement reciprocity with Russia, from which the representative had been expelled after working there for several years.

The Presidential Commission on Human Rights, a 15-member consultative and advisory body that includes members from the public, coordinates government responses to human rights concerns rather than investigating individual complaints from citizens, which are handled by the human rights ombudsman. The commission also monitors fulfillment of international human rights conventions.

The human rights ombudsman investigates complaints by citizens of violations of their rights by state agencies, although the ombudsman is not authorized to investigate complaints concerning the president, parliament, government, constitutional council, procurator general, CEC, or courts. The ombudsman's office also has the authority to appeal to parliament to resolve citizens' complaints, to cooperate with international human rights organizations and NGOs, and to participate in court proceedings where a violation of human rights is at issue.

During the year the ombudsman regularly briefed the press and issued regular reports discussing complaints investigated. The ombudsman received 5,159 complaints during the year; of the 609 cases investigated, the ombudsman's office reported a restoration of rights in 222 cases. Many of the complaints concerned court rulings over which the ombudsman had no jurisdiction. The ombudsman reported that many complaints could not be resolved because the office acted only in an advisory capacity. Some NGOs believed that the ombudsman was influenced by the government and downplayed cases.

On May 23, the National Commission on Issues of Democratization and Civil Society, issued a report analyzing 1,500 complaints of human rights violations and containing human rights recommendations for state agencies. The bulk of the complaints concerned court judgments, law enforcement actions, and violation of citizens' rights during inspections and investigations.

The commission, established in November 2004 by presidential decree, reports directly to the president, with the secretary of the security council as chairman. The commission met regularly to address issues such as decentralization, judicial reforms, civil society development, and increased empowerment of parliament. Leaders of all registered political parties were asked to participate, but opposition party leaders declined. Some NGOs and political parties questioned the need for the commission and proposed instead that existing mechanisms, such as the ombudsman's office, be strengthened and given more independence from the government.

Domestic human rights observers noted that while government human rights investigators did some creditable work, the ombudsman's office and the human rights commission were limited in their ability to stop human rights abuses or punish those who were believed to have perpetrated them. Several human rights figures criticized the proliferation of government commissions that nominally address human rights issues, none of which has independent authority to initiate criminal prosecutions of human rights abuses or corruption.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, or social status; however, the government did not enforce this effectively. Violence against women, trafficking in persons, and discrimination against persons with disabilities, homosexuals, and non-ethnic Kazakhs in government were problems.

Women

Violence against women, including domestic violence, was a problem. There is no specific domestic violence law, but such violence can be addressed under assault and battery provisions of the criminal code. The maximum sentence for spousal assault and battery is 10 years in prison, the same as for any beating.

Police reviewed over 20 thousand domestic violence complaints and opened 1,973 criminal investigations during the year. An additional 10,528 of the complaints resulted in administrative punishment, including fines.

In 2003 the National Commission on Women and Family Affairs reported that 64 percent of women had been victims of violent crime. According to official statistics released during the year, almost half of all women living in rural areas suffered from domestic violence. Law enforcement officials' reluctance to investigate domestic violence was a problem; the same report estimated that police declined to investigate one-third of domestic violence complaints, considering them to be family matters. Police intervened only when they believed that the abuse was life threatening. Police indicated that victims of domestic violence often asked only for officers to talk with their spouses. When victims did decide to press charges for domestic violence or spousal rape, police sometimes tried to persuade them not to pursue a case. When domestic violence cases came to trial, the charge was most often for light battery, for which domestic abusers were sentenced to incarceration at a minimum security labor colony and a minimum of 120 to 180 hours of work. Sentences for more serious cases of battery, including spousal battery, ranged from 3 months' to 3 years' imprisonment; the maximum sentence for aggravated battery was 10 years' imprisonment.

The punishment for rape, including spousal rape, ranges from 3 to 15 years' imprisonment. The government reported that it opened 1,534 criminal rape cases during the year, leading to prosecutions of 1,094 suspects. Under the law, procurators cannot initiate a rape case, absent aggravating circumstances such as gang rape, unless the victim files a complaint. Once a complaint is filed, the criminal investigation cannot be dismissed if the rape victim recants or refuses to cooperate further with the investigation. This provision is intended to protect victims from coercion. There were anecdotal reports of police and judicial reluctance to act on rape and spousal rape cases.

Prostitution is not prohibited by law, although forced prostitution, prostitution connected to organized crime, and acts facilitating prostitution,

such as operating a brothel or prostitution ring, are illegal. During the year, the government reported 305 criminal cases for prostitution-related crimes. Prostitution was a serious problem. NGOs reported that criminal prostitution rings often included local law enforcement officials.

Trafficking in women remained a problem (see section 5, Trafficking).

Sexual harassment remained a problem. The law prohibits only some forms of sexual harassment, and legal and gender-issue experts regarded the legislation as inadequate to address the problem. There were reports of incidents of harassment, but in no instance was the victim protected under the law nor were there reports of any cases prosecuted.

Women enjoyed the same rights as men, including under family law, property law, and in the judicial system. Traditional cultural practices sometimes limited their role in society and in owning and managing businesses or property. Women were underrepresented in senior positions in state enterprises and overrepresented in low-paying and some menial jobs. According to government statistics for 2004, women's salaries were averaged 61.8 percent those of men. Women had unrestricted access to higher education.

Children

The government was committed to children's rights, though budget limitations and other priorities severely limited the government's effectiveness in dealing with child welfare. Multiple government agencies had responsibilities for protecting children's rights. By law, all children can appeal to government agencies for the protection of their rights and interests. After age 14, minors have the right to file petitions related to their interests directly with a court.

Education is mandatory through age 16, or the ninth grade; elementary schooling generally begins at age 6. Primary and secondary education was both free and universal. The law provides for equal access to education by both boys and girls. According to Ministry of Education figures, enrollment for the year was estimated at over 98 percent of school-aged children.

The law provides for access to public education for refugee and illegal migrant children. In some cases, these children were denied access to schools or their parents did not attempt to enroll them out of fear of discovery and deportation.

The law provides for medical care to be provided for all children, irrespective of gender, and care was provided in practice.

There were reports of child abuse, although there was no societal pattern of such abuse. During the year the Ministry of Internal Affairs removed 1,416 children from abusive homes and permanently terminated custody rights of abusive parents in 172 cases.

Child marriage was illegal, and the government enforced the prohibition in practice; the government, NGOs, and human rights observers reported the minimum age requirement was generally observed. The law specifies the minimum age for marriage for men and women to be 18 years. However, the marriage registration agency, upon petition of the couple, their parents, or trustees, can allow a marriage of an individual no younger than 16.

Trafficking in girls was a problem (see section 5, Trafficking).

Child labor was a problem (see section 6.d.).

The government has temporary detention shelters for homeless minors until they can be returned to their parents or more permanently placed.

Trafficking in Persons

The law prohibits trafficking in persons, but it remained a problem. There was no evidence of a pattern of official complicity in trafficking, although corruption amongst law enforcement officials was widespread.

Although no one provision of the law specifically prohibits trafficking in persons, several articles of the criminal code cover several forms of human trafficking. The law criminalizes the recruitment of any person for sexual or other exploitation and also includes all forms of trafficking. Trafficking for exploitation is punishable by a maximum two-year prison term; if a minor is involved, the maximum penalty increases to five years' imprisonment, and if the exploited person is transferred abroad, the maximum penalty is eight years' imprisonment. The purchase or sale of a minor is a crime, punishable by up to 10 years in prison.

Compared with previous years, international experts reported a decrease in the number of cases of citizens being trafficked abroad for sexual or labor exploitation and an increase in labor trafficking into and within the country. Experts believed the economic growth of the country, especially in relation to its neighbors, contributed directly to both trends.

During the year an interagency working group on trafficking in persons met regularly and drafted a comprehensive set of amendments to the criminal and administrative codes to specifically address legislative gaps in the fight against trafficking in persons. Among the provisions were amendments that would facilitate criminal trafficking prosecutions. The amendments were drafted in consultation with NGOs and international organizations. At year's end the amendments were pending parliamentary approval.

Prosecutions for trafficking were rare, despite the fact that the Law Enforcement Coordination Council (under the leadership of the procurator

general) provides detailed guidelines to law enforcement and procurators nationwide on how to investigate trafficking and related crimes under particular sections of the criminal code. Despite an increase in investigations, convictions were also rare, due to inadequacies in criminal statutes; to prove a case of trafficking for sexual exploitation, the procurator had to show that the victim was unaware that she would be working as a prostitute. Procurators more effectively used articles of the criminal code such as those concerning illegal prostitution and kidnapping to charge suspects whose activities may have included trafficking.

The MOJ reported that seven criminal investigations related to trafficking in persons were initiated during the first seven months of the year. In 2004 the government investigated 27 cases; of these, courts prosecuted 14 cases and convicted 12 traffickers. However, only five of the traffickers convicted in 2004 actually served prison time, the rest received suspended sentences. Several arrests and investigations were reported in the press.

The justice ministry coordinated all of the government's antitrafficking activities. During the year the interagency working group led by the justice minister and including the internal affairs minister, KNB chairman, prosecutor general, foreign minister, education minister, and a representative of the Presidential Commission on Women and Family, developed a second biannual National Plan to combat trafficking, covering 2006 to 2008.

The government sought cooperation with authorities in both destination countries where its citizens were trafficked and in source countries of victims brought into the country. Embassies abroad assisted victims of trafficking; in 2004, the Ministry of Foreign Affairs assisted in the repatriation of 36 citizens, up from 24 in 2003.

The country was a source, transit, and destination country for victims of trafficking. Internal trafficking was also a problem. No reliable statistics were available on the number of victims each year, but NGOs estimated there were several thousand. Many NGOs reported an increase in identification of victims over the past year, which may be attributed to greater awareness of the problem. The International Organization for Migration (IOM) estimated that thousands of citizens were trafficked per year, with an increase in the number of foreigners trafficked into the country for labor exploitation. Individuals were trafficked to the United Arab Emirates (UAE), Turkey, Israel, South Korea, Greece, Cyprus, Russia, Syria, and Western Europe. They were trafficked from the Kyrgyz Republic, Uzbekistan, Tajikistan, and South Asia.

Traffickers targeted young women in their teens and 20s for sexual exploitation. According to NGOs, most women were recruited with promises of good jobs or marriage abroad. Travel, employment, and marriage agencies often recruited victims through advertisements promising lucrative jobs abroad. Offers to participate in international beauty contests also were used. Previously trafficked women reportedly recruited new victims personally. Many trafficking victims appeared to be aware or at least to suspect that they were going to work as prostitutes, but did not expect to work in slave-like conditions. Most trafficked persons traveled to their destinations on forged passports obtained abroad, most often from Russia or the Kyrgyz Republic.

Adolescents raised in orphanages, regardless of gender, and residents of rural and economically disadvantaged areas were particularly vulnerable to being trafficked. The country's relative prosperity otherwise served as a factor against citizens being trafficked through seeking employment abroad. During the year an orphanage director in the southern part of the country was caught attempting to traffic teenage girls to the UAE. The highly publicized case remained ongoing at year's end.

Men and women were trafficked to the country for labor exploitation; some evidence also suggested children were trafficked from Uzbekistan for agriculture and domestic labor. Officials often did not discriminate between illegal labor migrants and victims of trafficking (see section 6.c.). There were credible reports of organized criminal trafficking rings bringing construction laborers to Astana. Employers and trafficking accomplices usually held trafficked workers' passports during their stay in the country. Victims reported traffickers used debt bondage, violence, or threats of violence to compel them to work.

NGOs suspected organized crime was probably involved in all forms of trafficking.

There was no evidence of a pattern of official complicity with trafficking, although corruption of law enforcement officials, including migration and border officials, was widespread and contributed to trafficking. In some instances airport border guards may have taken bribes to facilitate travel of trafficked women. During the year the government investigated two higher-level officials who allegedly aided trafficking rings; however, neither official received a prison sentence. An NGO providing assistance to the victim of a 2004 case in Taraz reported receiving anonymous death threats related to the case from associates of the defendant, who was connected with the local government.

Trafficking victims from other countries were often fined and deported if they entered the country illegally. There are no special legal provisions to treat foreign victims of trafficking differently from illegal migrants, and identification of foreign trafficking victims was less likely in cases of labor trafficking. However, NGOs working with foreign trafficking victims reported government cooperation in providing administrative support for repatriation of identified trafficking victims.

In November officials in the regions near Shymkent reportedly rounded up hundreds of illegal workers and returned them to Uzbekistan. No trafficking investigations resulted from interviews with the detainees, despite officials' public statements that the Uzbeks were working under slavelike conditions, characteristic of labor trafficking.

The government provided limited material assistance and physical protection to trafficked women who returned to the country in very narrow circumstances. NGOs ran crisis support centers that provided legal and material assistance and counseling, under memoranda of understanding with the government. In some cases the government provided NGOs with reduced rate leases and other support.

The IOM, in conjunction with 19 NGOs across the country, continued an information campaign on the dangers of trafficking and maintained victim hot lines. The MOJ maintained separate national hotlines for trafficking victims to report crimes and to receive information. The

government provided special training for law enforcement and other government officials to improve their abilities to recognize, investigate, and prosecute instances of trafficking

The procurator general's office enforced mandatory licensing for tourist agencies and conducted inspections throughout the year to uncover agencies involved in trafficking.

During the year the government encouraged media to publish and report on antitrafficking efforts. The government continued airing a series of public service announcements (PSAs) provided by international organizations in both Russian and Kazakh. Public and private media were required to air these PSAs.

The education ministry reported that curriculum of all high schools and colleges included trafficking awareness segments. According to the Ministry of Education, most universities had information and analysis centers that dealt with trafficking awareness issues, among other topics.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities in employment, education, access to healthcare, and in the provision of other state services. However, there were reports that discrimination in those areas was a problem. The law mandates access to buildings for persons with disabilities, though the government did not enforce it.

Mentally ill and mentally handicapped citizens could be committed to state-run institutions, without their consent or judicial review. In practice, however, persons were generally committed at a young age by their families. Institutions were poorly managed and inadequately funded. Orphanages for children with physical and mental disabilities were reported to be overcrowded and unsanitary, with insufficient staff to adequately care for children's needs. National NGO KIBHR observed that the government provided almost no care for persons with mental disabilities due to a lack of funds. In March the ombudsman issued a report on the status of persons with disabilities that stated the government failed to meet international standards and to enforce legislation.

National/Racial/Ethnic Minorities

The government continued to discriminate in favor of ethnic Kazakhs in senior government employment (see section 3).

Kazakh is the official state language, although organizations and bodies of local self-administration may officially use Russian on an equal basis with Kazakh. Most ethnic Russians believed that Russian should be designated as a second state language. The language law was intended to strengthen the use of Kazakh without infringing on the rights of citizens to use other languages. In reality the government had insufficient funding available to make Kazakh-language education universal.

Other Societal Abuses and Discrimination

Although there were no press reports or official statistics on sexual orientation discrimination, there were reports of such discrimination. Representatives of international organizations reported social attitudes towards marginalized groups, including homosexuals, impeded these groups' willingness to come forward and consequently their access to HIV/AIDS programs.

The law prohibits discrimination against persons with HIV and AIDS; however, observers report that cultural stigmas against drug users and other at-risk groups continue to affect general access to information, services, treatment and care.

Section 6 Worker Rights

a. The Right of Association

The law provides for the right to organize and form unions freely. In practice the government restricted the exercise of this right, with the result that most workers were not able to join or form trade unions of their choice. The government exercised considerable influence over organized labor and favored state-affiliated unions over independent unions. The largest trade union association, the Federation of Trade Unions, successor to formerly state-sponsored Soviet era labor organizations, remains affiliated with the government in practice. At least one-third of the workforce was unionized.

To obtain legal status, a trade union had to apply for registration with the MOJ. The registration procedure followed largely that of other membership organizations (see section 2.b.).

The law prohibits the operation of foreign unions and prohibits the financing of unions by foreign legal entities and citizens, foreign states, and international organizations.

Workers are protected by law against antiunion discrimination, but in practice there were violations of this right. Members of a few trade unions have been dismissed, transferred to lower paying or lower status jobs, threatened, and intimidated. Union leaders reported that some workers who were ostensibly fired for other reasons were actually fired in retaliation for union activity. There were no court cases filed on this basis during the year.

b. The Right to Organize and Bargain Collectively

The law protects the rights of unions to conduct their activities without interference. In actuality there were reports of government pressure on labor negotiators in tripartite negotiations. The law permits collective bargaining and collective agreements; unions and associations engaged in collective bargaining in practice. Collective bargaining agreements were allowed as long as they did not reduce protections afforded to workers in individual contracts or under law. Union associations gave widely varying estimates of the percentage of member unions that had negotiated collective bargaining agreements.

Union demands unacceptable to management could be presented to a tripartite commission, composed of the government, employer associations, and labor union representatives. The tripartite commission is responsible for developing and signing annual agreements governing approximately 80 aspects of labor relations. The labor law provides for an individual contract between employers and each employee.

The law provides for the right to strike, but exercising this right is subject to numerous legal limitations; the government maintained a list of enterprises providing essential services where strikes were not permitted. A few unions and individual workers exercised the right to strike during the year, primarily to protest unsafe working conditions and nonpayment of wages and to recover back wages. According to the law, workers may strike only if a labor dispute has not been resolved through existing compulsory arbitration procedures. Striking workers must give a mandatory 15-day advance notice to employers. December 2004 amendments to the labor code removed the explicit right of employers to break a union and fire employees because they had participated in an illegal strike.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children, except at the sentence of the court or in conditions of a state of emergency or martial law, but there were reports that such practices occurred (see section 5).

In August the migration police deported up to 700 citizens of Uzbekistan and Kyrgyzstan who had been doing agricultural labor under what a government official described as "slave-like" conditions (see section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

The government effectively implemented the law and policies to protect children from exploitation in the workplace. The minimum age for employment is 16 years; children between 14 and 16 years can only work with parental permission, performing light work that does not interfere with their health or education.

Child labor was used routinely in agricultural areas, especially during harvest season, but abuse of child labor generally was not a problem. The Ministry of Labor is responsible for enforcement of child labor laws and for administrative offenses punishable by fines; the MVD is responsible for investigating criminal offenses. In 2004 the Ministry of Labor reported five criminal cases involving child labor in 2004.

Trafficking in children was a problem (see section 5).

e. Acceptable Conditions of Work

The national monthly minimum wage of \$ 69.17 (9,200 KZT) did not provide a decent standard of living for a worker and family; however, it was common for working class families to have more than one wage earner and most workers earned above minimum wage in urban areas. As of November, the average monthly wage was \$274.40 (36,495 tenge). The monthly minimum wage was slightly above the minimum subsistence wage of \$40.53 (5,390 KZT).

The law stipulates the normal workweek should not exceed 40 hours and limits heavy manual labor or hazardous work to no more than 36 hours a week. The law requires that overtime not exceed 2 hours in a calendar day or 1 hour a day for heavy manual labor, and requires overtime to be paid at a rate of no less than 1½ times normal wages for hours over the normal workweek. Overtime is prohibited for work in hazardous conditions. The law provides that labor agreements may stipulate the length of working time, vacation days, holidays, and paid annual leave for each worker.

The Ministry of Labor enforced minimum wages, work hour restrictions, and limits on overtime established under the Labor Law. Ministry labor inspectors conducted random inspections of employers to enforce all laws and regulations under their purview. In spite of these random inspections, labor advocates reported that some employers regularly violated these laws.

The law provides for the right to safe and hygienic working conditions. In reality working and safety conditions in the industrial, agricultural, and construction sectors were often substandard. Workers in factories usually did not have protective clothing, such as goggles and hard hats, and worked in conditions of poor visibility and ventilation.

Management largely ignored regulations concerning occupational health and safety, which were not well enforced by the Ministry of Labor. In August the ministry reported a staff of over 400 inspectors. Although the frequency of inspections remained insufficient to provide fully for occupational health and safety, the number of fines, penalties, and warnings to employers increased. For the first half of the year, the Ministry of Labor reported 1,497 workers injured on the job; 153 of injuries were fatal. The construction industry produced the highest number

of occupational casualties, followed by the mining and metallurgy industry. In the first half of the year, 103 workers were injured at construction sites in Astana alone; 12 of these individuals died as a result of their injuries. Starting on July 1, some employers were required to carry mandatory insurance for their employees.

The law requires employers to suspend work that could endanger the life or health of workers and to warn workers about any harmful and dangerous work conditions and about the possibility of any occupational disease. Although the law does not specifically grant the right of workers to remove themselves from situations that endanger their health or safety without jeopardy to their employment, this right was considered to be implied by general legal provisions on worker safety, and workers' inability to refuse to work under unsafe work conditions was not a problem in practice. The chairman of the constitutional council reported 115,234 violations of labor legislation in 2003.

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