



THINK BEFORE YOU POST

CLOSING DOWN SOCIAL MEDIA SPACE IN KAZAKHSTAN

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1. EXECUTIVE SUMMARY

Long subjected to severe restriction, the rights to freedom of expression and peaceful assembly came under renewed attack in Kazakhstan in 2015 and 2016. In spite of the country's international commitments and protections included in its Constitution and in other laws, there are very few spaces in Kazakhstan where those who wish to do so can voice criticism of the authorities and of government policies. Independent media has been all but stifled in the last five years, and heavy-handed constraints on peaceful assemblies are in place.

One space where people in Kazakhstan have been able to speak out relatively freely is the internet, and social media sites in particular. Internet use and social media use are high in the country: over 55% of people have access to the internet at home, and around a fifth of the country's population are regular users of social media sites.¹ However, the relative freedom of expression that people in Kazakhstan have enjoyed on the internet is now under threat

Social media sites such as Facebook and VKontakte,² along with messaging services such as WhatsApp, and video-sharing sites such as YouTube and Periscope,³ have become important spaces where people in Kazakhstan have felt that they can freely express their ideas and opinions. Importantly, in the absence of access to most other mass communications channels, particularly broadcast and print media, these sites have become spaces where human rights defenders have been able to post information and raise awareness about human rights abuses and violations. In 2016, human rights defenders and other activists also used social media sites and instant messaging services as tools to organize peaceful protests against unpopular changes to the Land Code.

In response, the authorities are now working to "close down" social media as a space where people in Kazakhstan can exercise their right to express critical opinions, and where they can seek and receive a wider range of information from different sources. This has involved using long-standing as well as newly adopted legislative powers to shut down or block access to individual online resources, temporarily or permanently. In addition, as explored in this briefing, in 2015 and 2016, authorities in Kazakhstan used administrative and criminal sanctions against people for peacefully exercising their right to freedom of expression online on a larger scale than in previous years. These included: the use of administrative sanctions against people who used social media to share information on planned peaceful assemblies and demonstrations which were not sanctioned by the authorities; the misuse of the criminal justice system to prosecute those who use social media to express criticism of state policies and to organize demonstrations, including the criminal prosecution and imprisonment of human rights defenders⁴ and prisoners of conscience **Maks Bokaev** and **Talgat Ayan**; and the permanent closing down of independent media outlets in response to their use of social media to publish content.

¹ Internet Live Stats, "Kazakhstan", <http://www.internetlivestats.com/internet-users/kazakhstan/> (accessed 14 November 2016) (Internet Live Stats, "Kazakhstan"); Tengri News, "Сколько людей "сидят" в соцсетях в Казахстане" ["How many people are on social media sites in Kazakhstan"], 8 February 2016, <https://tengrinews.kz/internet/skolko-lyudey-sidyat-v-sotssetyah-v-kazahstane-288639/> (accessed 14 November 2016) (Tengri News, "Сколько людей "сидят" в соцсетях в Казахстане" ["How many people are on social media sites in Kazakhstan"])).

² VKontakte (vk.com) is a Russian-language social media network, with 380 million users as of October 2016, according to the network's official site: https://vk.com/page-47200925_44240810 (accessed 2 November 2016).

³ Periscope (www.periscope.tv) is an online platform for sharing videos in real time.

⁴ In line with the UN Declaration on Human Rights Defenders, Amnesty International considers a person who acts to defend and/or promote human rights at the local, national, regional or international levels, provided that they do not use or advocate hatred, discrimination, or violence, deny the universality of human rights, or act in a way that undermines the rights of others. Amnesty International considers Maksim Bokaev and Talgat Ayan to be human rights defenders as a result of their actions to uphold their right to freedom of expression and peaceful assembly, and to encourage others to exercise their right to peaceful assembly. See UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, UN General Assembly, New York, 1999.

While criminal and administrative sanctions have so far only been used against a small number of people, their use is having a wider “chilling effect” on freedom of expression in Kazakhstan. Activists who spoke to Amnesty International said that they believed more and more people are feeling that they have to “self-censor” what they write on social media, for fear of coming to the attention of the authorities. This includes human rights defenders, activists, and others who want to raise awareness and prompt discussion of human rights issues in Kazakhstan.

Kazakhstan must act on its commitments under international law and under the Constitution to uphold the rights to freedom of expression and peaceful assembly. It is time to stop using the Administrative and Criminal Legal Codes to silence those critics who speak out, both online and offline.

2. THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY: LEGAL FRAMEWORK

INTERNATIONAL LAW

The right to freedom of expression, which includes the right to seek, receive and impart information, is recognised under Article 19 of the International Convention for Civil and Political Rights (ICCPR), which Kazakhstan ratified in 2006.⁵ In June 2016, the UN Human Rights Council adopted a resolution on “The promotion, protection and enjoyment of human rights on the Internet”, which affirms that people have the same right to freedom of expression online as they do offline, and condemns states’ “measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law”.⁶ In a report published in 2011, the Special Rapporteur stated that “the framework of international human rights law, in particular the provisions relating to the right to freedom of expression, continues to remain relevant and applicable to the Internet”.⁷

Under Article 19.3 of ICCPR, the right to freedom of expression may be subject to certain restrictions, but only if these are provided by law and are necessary and proportionate for the purpose of protecting a legitimate interest. ‘Legitimate interests’ are defined as the respect of the rights or reputations of others, and the protection of national security or of public order (*ordre public*), or of public health or morals. Any restrictions on freedom of expression on the internet must also comply with these criteria.⁸

States are also required to prohibit the “advocacy of hatred” that constitutes incitement to discrimination, hostility or violence (also commonly known as “hate speech”). This includes in relation to materials disseminated through the internet. Under Article 20.2 of the ICCPR, states have an obligation to prohibit

⁵ For more on states’ duties to uphold the right to freedom of expression under the ICCPR, see: Human Rights Committee, “General comment No. 34, Article 19: Freedoms of opinion and expression”, CCPR/C/GC/34, United Nations Human Rights Committee, Geneva, 2011 (Human Rights Committee, “General comment No.34”).

⁶ Human Rights Council, “The promotion, protection and enjoyment of human rights on the Internet”, A/HRC/32/L.20, Human Rights Council, 33rd session, New York, p.4.

⁷ UN General Assembly, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, A/66/290, UN General Assembly, New York, 2011, p.6 (UN General Assembly, “Report of the Special Rapporteur”, A/66/290).

⁸ Restrictions must also be in line with the legitimate grounds for restriction specified in Article 19 of the ICCPR, that is: i. respect for the rights or reputation of others; or, ii. the protection of national security or of public order, or of public health or morals. See: UN General Assembly, “Report of the Special Rapporteur”, A/66/290, pp.6-7

people from making statements that express “national, racial or religious hatred” and incite people to “discrimination, hostility or violence”. These prohibitions must be explained clearly in law, and they must be formulated in a precise way. They must be applied in a way that does not unduly limit the right to freedom of expression. In addition, any legal limits restricting freedom of expression must be precise and clear enough for a person to be able to regulate their own behaviour so as not to break the law.⁹

The ICCPR also guarantees the right to freedom of peaceful assembly (Article 21) and requires states to respect, protect and fulfil this right without discrimination of any kind. Under the ICCPR, restrictions to this right must be clearly established in law. Restrictions must be necessary and proportionate, and be in place in order to fulfil a legitimate aim: national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization and people wishing to assemble peacefully should not be required to obtain permission from the authorities before they can do so.¹⁰ Indeed, states have a positive duty to facilitate and protect the right to peaceful assembly in law and in practice, to enable people to exercise this right by holding assemblies, as a general rule, in locations where the target audience of the assembly will be able to see and hear them.¹¹

NATIONAL LAW

The rights to freedom of expression, including the right to seek, receive and impart information, are also protected under Article 20 of the Constitution of the Republic of Kazakhstan.¹² These rights are further regulated in the laws “On mass media”¹³ and “On access to information”.¹⁴ The law “On mass media” states that all websites are treated as media outlets. However, a letter from the Ministry of Information and Communication issued in July 2016 clarified that only websites belonging to registered media organisations are legally defined as media outlets.¹⁵

Despite these protections, freedom of expression is heavily restricted in Kazakhstan, both in law and in practice. As discussed in this briefing, the authorities use a wide range of different methods to unduly restrict the right to freedom of expression, limit people’s access to information, and encourage a climate of self-censorship. For instance, Amnesty International has documented how the authorities act frequently to silence or close down independent voices in the media, under charges that range from petty violations of rules governing registration and licensing, to charges of endangering national security.¹⁶

In addition, the authorities have relied on criminal prosecutions to repress free speech. Article 174 of the Criminal Code prohibits the incitement of “discord” on social, national, racial, clan or religious grounds or on grounds of birth, with sentences of up to ten years’ imprisonment. While Article 174 appears to protect individuals against discriminatory behaviour or speech, including advocacy of hatred, the term “discord” is not defined in a precise way, resulting in a broad and vaguely worded law. Rather than being used to protect marginalized groups and individuals from discrimination, Article 174 has most commonly been used to silence dissenting voices who have disseminated materials or encouraged discussions critical of the authorities. This was the case with the prosecution and conviction of **Maks Bokaev** and **Talgat Ayan** discussed below, who were prosecuted under Article 174, as well as under other charges.

⁹ Human Rights Committee, “General comment No.34”, p.6. See also: UN General Assembly, “Report of the Special Rapporteur”, A/66/290.

¹⁰ Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, 2nd edition, OSCE, Vienna, 2010, p.15 (OSCE, *Guidelines on Freedom of Peaceful Assembly*).

¹¹ Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, Human Rights Council, New York, 2016, p.7.

¹² Parliament of the Republic of Kazakhstan, *Constitution of the Republic of Kazakhstan*, available at: <http://www.parlam.kz/en/constitution>

¹³ Закон Республики Казахстан от 23 июля 1999 года №451-І “О средствах массовой информации” (с изменениями и дополнениями по состоянию на 29.03.2016 г.) [Law of the Republic of Kazakhstan of 23 July 1999 No. 451-І “On mass media” (with amendments and additions as of 06.04.2016)], http://online.zakon.kz/Document/?doc_id=1013966 (accessed 14 November 2016).

¹⁴ Закон Республики Казахстан от 16 ноября 2015 года №401-Ү “О доступе к информации» (с изменениями и дополнениями от 06.04.2016 г.) [Law of the Republic of Kazakhstan of 16 November 2015 No. 401-Ү “On access to information” (with amendments and additions as of 06.04.2016)], http://online.zakon.kz/document/?doc_id=39415981#pos=1;-307 (accessed 14 November 2016).

¹⁵ Письмо Министерства информации и коммуникаций Республики Казахстан от 15 июля 2016 года №03-14/Зт-л-73 [Letter from the Ministry of Information and Communication of the Republic of Kazakhstan of 15 July 2016 No. 03-14/Зт-л-73], http://online.zakon.kz/Document/?doc_id=36894958#pos=5;-287 (accessed 14 November 2016).

¹⁶ See: Amnesty International, “Kazakhstan: submission to the United Nations Human Rights Committee”, EUR 57/4122/2016, Amnesty International, London, 2016, <https://www.amnesty.org/en/documents/eur57/4122/2016/en/>; and Article 19, “Central Asia: Legalised harassment of journalists must stop”, Article 19, London, 8 September 2015, <https://www.article19.org/resources.php/resource/38096/en/central-asia-legalised-harassment-of-journalists-must-stop> (accessed 14 November 2016).

As discussed above, any legal limits restricting freedom of expression on the grounds of protecting others from discrimination and hostility must be precise and clear enough for a person to be able to regulate their own behaviour so as not to break the law.¹⁷ Article 174 of the Criminal Code of Kazakhstan does not meet these criteria because it is so broadly worded, and is applied in such an indiscriminate manner.

In May 2014, another piece of legislation was introduced into the Criminal Code that has also been used by the Kazakhstani authorities to stifle dissent. Article 274 of the Criminal Code makes “dissemination of information known to be false” a criminal offence. This includes material disseminated over the internet. Indeed, the use of communication networks is an aggravating factor, leading to higher sentencing. A person convicted under Article 274 can face up to ten years imprisonment.

Article 274 has particular implications for journalists, several of whom have faced prosecution under this article. Alongside the criminalisation of defamation in Kazakhstan and in the context of widespread violations of the right to a fair trial, the threat of prosecution under Article 274 makes journalists wary of reporting on sensitive issues, in particular if they are unable to verify every single fact of a case. In addition, the line between fact and opinion can be blurred: a ban on false news can easily become a ban on opinions not favoured by the authorities.¹⁸ As the Special Rapporteur on the right to promotion and protection of the right to freedom of opinion and expression stated in 2000, “In the case of offences such as ... publishing or broadcasting “false” or “alarmist” information, prison terms are both reprehensible and out of proportion to the harm suffered by the victim. In all such cases, imprisonment as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights”.¹⁹

Article 274 has not just been used against journalists; it has also been used against human rights defenders and other activists, including **Maks Bokaev** and **Talgat Ayan** and others featured in this briefing.

People in Kazakhstan also face restrictions on the type of information that they can access through the internet. Amendments to the Communications Law adopted in 2014 gave the Office of the Prosecutor General, on its own authority and without a court order, the power to compel internet providers to block access to internet content deemed to be “extremist” or a security threat. These powers have been used by the authorities to block access to Kazakhstan-based and international news sites, temporarily or permanently.²⁰ Further changes to the Law on Communications that came into force in 2016 require internet users to download and install a “national security certificate”, without which they are unable to access internet traffic that is transmitted over the HTTPS protocol. Once installed, it allows the authorities to scan communications sent over the HTTPS protocol, and block access to individual webpages if these pages contain content that is judged to be illegal.²¹

The Constitution also protects the right of citizens to “peacefully and without arms assemble, hold meetings, rallies and demonstrations, street processions and pickets” (Article 32). Despite this protection, it is very difficult for people in Kazakhstan to exercise their right to peaceful assembly. Anyone wishing to hold any kind of street protest (including “one-person” pickets) needs to obtain permission from the local authorities.²² Permission is often refused, or only given to hold the event in another, non-central, location.

The Criminal and Administrative Codes provide sanctions of deprivation of liberty for breaching the laws on holding assemblies (up to 15 days’ detention under the Administrative Code and up to 75 days under the Criminal Code), including for organizing or participating in an illegal demonstration (Article 488 of the Administrative Offences Code and Articles 155 and 400 of the Criminal Code). Article 400 of the Criminal Code forbids providing “assistance” to “illegal” assemblies, including by “means of communication”, which the Special Rapporteur on the rights to freedom of peaceful assembly and association has interpreted as

¹⁷ Human Rights Committee, “General comment No.34”, p.6. See also: UN General Assembly, “Report of the Special Rapporteur”, A/66/290.

¹⁸ See: Article 19, “False news”, <https://www.article19.org/pages/en/falsenews>.
Html (accessed 2 December 2016).

¹⁹ Economic and Social Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36”, E/CN.4/2000/63, UN Economic and Social Council, Geneva, 2000, p.52.

²⁰ This included, in 2014, blocking access on the Radio Free Europe / Radio Liberty website and the Kyrgyzstani news site kloop.kg to certain content relating to the presence of Kazakhstani citizens in territory in Syria held by the armed group calling itself Islamic State. Freedom House, *Freedom on the Net 2015: Kazakhstan*, <https://freedomhouse.org/report/freedom-net/2015/kazakhstan> (accessed 9 November 2016) (Freedom House, *Freedom on the Net 2015: Kazakhstan*)

²¹ N. Shapovalova, “Security Certificate of the Republic of Kazakhstan: the State will be able to control the encrypted Internet traffic of users”, *Dentons*, 30 December 2015, <http://www.dentons.com/en/insights/alerts/2015/december/30/security-certificate-of-the-republic-of-kazakhstan> (accessed 1 December 2016).

²² The authorities insist that this is not a process of obtaining “permission”; instead it is a process to coordinate with the authorities in regard to a person’s intent to hold a demonstration.

designed to prevent activists from using social media and other communication tools to organize.²³ Indeed, in the case of **Maks Bokaev** and **Talgat Ayan**, the use of social media to “organize” protests was treated as an aggravating factor under Article 400.

²³ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan, A/HRC/29/25/Add.2*, Human Rights Council, New York, p.12.

3. INTERNET AND SOCIAL MEDIA USE IN KAZAKHSTAN

Kazakhstan has the highest level of internet use in Central Asia,²⁴ reflecting Kazakhstan's greater wealth and more developed communications infrastructure in comparison to its neighbours. Estimated figures for July 2016 indicate that 55.8% of the population in Kazakhstan have access to the internet, defined as having internet access in their home (Wi-Fi and / or via a mobile phone).²⁵ A study conducted in winter 2015-16 found that 3.3 million people of Kazakhstan's population of 16 million were active users of social media sites, including VKontakte, Instagram, Odnoklassniki,²⁶ and Facebook, representing around a fifth of the population.²⁷ Most people who use social media in Kazakhstan do so to communicate with friends. However, human rights defenders, independent journalists, and other activists also use these sites as important portals for sharing information and ideas with new audiences, whom they might not otherwise reach.

The government of Kazakhstan has identified the development of an "information society" as a key priority for the country, and has taken some steps towards providing state services online.²⁸ In the 2016 UN E-Government Development Index (which measures the extent to which states make effective and efficient use of information communication technologies [ICTs] to deliver government services), Kazakhstan was ranked 33rd, ahead of all other CIS countries.²⁹ Some officials are using the internet and social media as tools for improving the standard of state services. For instance, the mayor of Almaty, Baurzhan Baybek, gained praise from residents of the city for increasing the accountability and openness of the city's government, including through the use of social media to respond to public problems and complaints.³⁰

At the same time, and in contradiction to these attempts to present Kazakhstan as an "information society", authorities have placed undue restrictions in law and practice on access to online information sources. As a response to these various restrictions, many users access internet content via virtual private networks

²⁴ 'Central Asia' is considered to be Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. See: Internet Lives Stats, "Internet Users by Country (2016)", <http://www.internetlivesstats.com/internet-users-by-country/> (accessed 14 November 2016).

²⁵ Internet Live Stats, "Kazakhstan". The confirmed figure for 2014 was 54.9%. International Telecommunications Union (ITU), "Percentage of Individuals using the Internet 2000-2014", available at: www.itu.int/en/ITU-D/Statistics/Documents/statistics/2015/Individuals_Internet_2000-2014.xls (accessed 9 November 2016).

²⁶ Odnoklassniki (odnoklassniki.ru) is a Russian-language social media network with 51million users as of January 2015:

http://rusargument.ru/11453_auditoriya_polzovatelej_seti_odnoklassniki_vyrosla_do_51 mln_chelovek_slava_krik (accessed 2 November 2016)

²⁷ Tengri News, "Сколько людей "сидят" в соцсетях в Казахстане" ["How many people are on social media sites in Kazakhstan"].

²⁸ A.P. Beklemishev, "Kazakhstan", *Global Information Society Watch 2009: Access to Online Global Information and Knowledge*, APC and HIVOS, Melville and The Hague, 2009, p.144.

²⁹ UN E-Government Knowledge DataBase, Compare Countries, <https://publicadministration.un.org/egovkb/en-us/Data/Compare-Countries> (accessed 13 December 2016).

³⁰ L. Anceschi, "The end of the Nazarbayev dream", *Open Democracy*, 16 November 2015, <https://www.opendemocracy.net/luca-anceschi/end-of-nazarbayev-dream> (accessed 26 November 2015).

(VPNs),³¹ in order to evade surveillance or to access content that has been temporarily or permanently blocked, and protect themselves from further attention from the authorities.³²

³¹ Virtual Private Network (VPN) is a technology used to create a secure, encrypted, network connection between computers over an untrusted public network (such as the internet).

³² Freedom House, *Freedom on the Net 2015: Kazakhstan*.

4. ADMINISTRATIVE DETENTION FOR POSTS ON SOCIAL MEDIA: PREVENTING A DEMONSTRATION

Throughout late April and early May 2016, peaceful demonstrations took place in towns and cities across Kazakhstan: the first protest was held in Atyrau in western Kazakhstan on 24 April, and they then spread across the country.

People were protesting against proposed changes to the Land Code. These changes would have allowed unused, state-owned agricultural land to be privatized and sold off to Kazakhstani citizens, or leased to foreign citizens for up to 25 years; they were due to come into force on 1 July 2016.³³ The changes were deeply unpopular, as they provoked fears that they would result in the eventual sale of land to foreign investors. Many people who were not otherwise politically active or critical of government policies took part in demonstrations, which took place without permission from local authorities, as required under Kazakhstani law.

The “Land protests” were widely discussed online, and many people used social media posts to state their intention to participate in protests and voice their criticisms of the proposed changes.

In response to the outcry over the “land issue”, President Nursultan Nazarbaev issued a moratorium on the proposed changes to the Land Code on 6 May,³⁴ and also ordered the establishment of a Commission to discuss the criticisms raised against the proposed changes and develop alternative suggestions.³⁵ President Nazarbaev also warned, however, that if the protests continued, Kazakhstan risked descending into conflict similar to that going on in eastern Ukraine. He argued that this conflict was caused by a lack of national unity.³⁶

Nevertheless, the protests continued. Activists put in requests with local authorities for permission to hold further demonstrations on 21 May in towns across Kazakhstan, including Astana, the capital, and Almaty,

³³ International Crisis Group, “Kazakhstan’s Protests Postponed – But for How Long?”, 12 May 2016, blog.crisisgroup.org/europe-central-asia/kazakhstan/2016/05/12/kazakhstans-protests-postponed-but-for-how-long/ (accessed 13 May 2016).

³⁴ Presidential Decree №48 of 6 May 2016. The moratorium is in place until 31 December 2016.

³⁵ J. Lillis, “Kazakhstan: Land Issue Fueling Social Discontent”, Eurasianet, 24 May 2016, <http://www.eurasianet.org/print/78901> (accessed 1 June 2016).

³⁶ Radio Free Europe / Radio Liberty, “Nazarbaev Warns Of Ukraine Style Turmoil As Kazakh Land Protests Spread”, 1 May 2016, <http://www.rferl.org/articleprintview/27709970.html> (accessed 3 May 2016) (J. Lillis, “Kazakhstan: Land Issue Fueling Social Discontent”).

the largest city. In every town, the authorities refused permission.³⁷ However, many people were still committed to protesting peacefully on 21 May, and made statements to that effect on their social media pages. For instance, human rights defenders **Maks Bokaev** and **Talgat Ayan**, who had put in requests with the local authorities in Atyrau, western Kazakhstan, to hold a peaceful demonstration on 24 April (permission was refused but the rally went ahead anyway), put in a subsequent request to hold a demonstration in Atyrau on 21 May. The authorities also refused this second request, but **Maks Bokaev** and **Talgat Ayan** continued to write posts on social media to encourage people to gather on 21 May in Atyrau.³⁸

The authorities took extensive measures to ensure that the protests planned for 21 May did not take place. Between 16 and 20 May, at least 34 people were arrested under Article 488 of the Administrative Offences Code³⁹ (“Breach of the legislation of the Republic of Kazakhstan on the procedure for organizing and holding peaceful meetings, rallies, marches, pickets and demonstrations”), and given 10-15 days’ administrative detention. This included Maks Bokaev, Talgat Ayan, and Bakhytzhan Toregozhina, human rights defender and the president of Ar.Rukh.Khak NGO. People were arrested in Almaty, Astana, Talgar, Atyrau, Uralsk, Semei, Kokshetau, and Shymkent. In many cases, people were detained at night and were held in detention following hurried hearings before administrative courts. One lawyer representing several of the people arrested stated that she had been stopped from entering the court room where the charges against her clients were being heard. Another lawyer reported that he was not given adequate time and facilities to read the charges against his clients and to represent them effectively.⁴⁰

Bakhytzhan Toregozhina recounted her experience of being placed in administrative detention:

I heard the doorbell to my flat ring. I opened the door and saw two uniformed police officers and one man in civilian clothing, who had a video camera. They said that someone had reported me to the police and because of that I had to go with them to the police station to clarify the matter, and that it would not take long. They told me to hurry. I didn’t even change my clothes.

I asked the police for a lawyer, but they ignored my request. At around 22:00 I was taken to the Special Interdistrict Administrative Court of Almaty. It was only when I got to court and asked again that they provided me with a lawyer, but she was a state-appointed lawyer. I asked to see my lawyer as well, but she wasn’t admitted to the court room. The state-appointed lawyer had no idea what was going on, as she had no time to familiarise herself with the case.

The whole trial lasted less than five minutes. After that I was immediately taken to the special centre for administrative detainees. I was not shown the court decision, either then or later.⁴¹

In most cases, all that the people arrested had done was use social media to state their intention to participate in the protests planned for 21 May, to provide information about the protests, or voice their support for them. In **Bakhytzhan Toregozhina**’s case, the Facebook post that prompted her detention was one where she had posted a photo of herself in a new baseball cap with the caption: “No to the sale of land!”. The post made no reference to the planned protest on 21 May. **Bakhytzhan Toregozhina** had made earlier posts on the “land issue”, and these were also used in court against her. The administrative charges against them, however, were that they had been involved in participating or organizing unsanctioned demonstrations and were in breach of Article 488 of the Administrative Offences Code. **Bakhytzhan Toregozhina** told Amnesty International that she did not expect to be detained for her posts on social media: while she supported the idea of demonstrating about the land issue, she had been out of the country during the earlier protests, and had not been involved in organizing the demonstrations on 21 May. As **Bakhytzhan Toregozhina** said, “There was nothing in those posts, because I knew all along that I had to be careful, as [the authorities] always link me with any unsanctioned meetings that are happening”.

The arrest and detention of these 34 people for their posts on Facebook and other social media sites were clearly designed to suppress information about the planned demonstrations on 21 May, in an effort to prevent them from going ahead, and to frighten people off from going out onto the streets.⁴² On 21 May

³⁷ J. Lillis, “Kazakhstan: Land Issue Fueling Social Discontent”.

³⁸ Amnesty International does not consider Maks Bokaev and Talgat Ayan’s repeated calls for people to attend rallies on 21 May to be an infringement of the law, because no-one should need to obtain permission in order to organize or take part in a peaceful protest. See: OSCE, *Guidelines on Freedom of Peaceful Assembly*, p.15.

³⁹ Prosecutions under the Administrative Offences Code do not result in a criminal record.

⁴⁰ See Amnesty International, “Kazakhstan: Detained for stating intention to attend a rally”, EUR 57/4067/2016, Amnesty International, London, <https://www.amnesty.org/en/documents/eur57/4067/2016/en/>.

⁴¹ Interviewed in Almaty on 28 November 2016.

⁴² This is not the first time that authorities in Kazakhstan have used “preventative detention” to stop a protest from going ahead, although this appears to be the first time that would-be protestors have been placed in administrative detention for an extended period. In January

itself, police blocked access to main squares and thoroughfares in Astana, Almaty, and other towns and cities.⁴³ People who did try and gather to protest peacefully were rounded up by police and held at police stations for several hours, where they had their fingerprints taken, and had to sign statements to the effect that they had participated in an unsanctioned meeting. Between 300 and 500 people were detained in Almaty,⁴⁴ with smaller numbers detained in other towns.⁴⁵ Fifty-five journalists, who were covering the protests, were also detained.⁴⁶ In addition, people reported having difficulties accessing Facebook and Google, while access to YouTube and Periscope were temporarily blocked, presumably to stop people from sharing information and uploading videos of the demonstrations or the police response.⁴⁷ Radio Azzatyq (Radio Free Europe / Radio Liberty's Kazakhstani service) was also blocked temporarily.⁴⁸

In the days leading up to 21 May and on the day itself, the authorities in Kazakhstan persecuted and punished those who had exercised their right to freedom of expression by posting statements about the planned demonstrations on social media, and acted to limit the rights of other people in Kazakhstan to seek and receive information. The posts that they had made on social media were used as evidence of their involvement in organizing "unsanctioned" demonstrations, and used against them in the administrative courts. These actions have sent a message that public protest – whether on the streets or on the internet – is not tolerated by the authorities.

2015, journalists were arrested on their way to a protest in Almaty in support of banned media outlet *Adam Bol*; they were taken to local police stations to "acquaint them with the law", and released shortly after.

⁴³ For further information on the crackdown on the "land protests", see Amnesty International, "Kazakhstan: A dark day for freedom of expression and peaceful assembly", EUR 57/4141/2016, Amnesty International, London, <https://www.amnesty.org/en/documents/eur57/4141/2016/en/>.

⁴⁴ These estimates are based on monitoring carried out by human rights defenders on 21 May. Some monitors estimated that in fact, as many as 1000 people were detained that day in Almaty. See: Coalition for the Right to Peaceful Assembly in Kazakhstan, "Widespread Human Rights Abuse amid Attempts to Hold Peaceful Protests", 15 June 2016, http://www.nhc.no/no/vart_arbeid/uttalelser/Widespread+Human+Rights+Abuse+amid+Attempts+to+Hold+Peaceful+Protests.b7C_wlZOW8_ips (accessed 30 January 2017).

⁴⁵ People were detained in Astana, Karaganda, Uralsk, Aktyubinsk, Atyrau, Kostanai, and Pavlodar. A. Grishin, "Битва за землю" ["The battle for the land"], Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR), 23 May 2016, http://bureau.kz/novosti/sobstvennaya_informaciya/bitva_za_zemlyu (accessed 23 May 2016) (A. Grishin, "Битва за землю" ["The battle for the land"]).

⁴⁶ Adil Soz, "21 мая было задержано 55 журналистов" ["On 21 May 55 journalists were detained"], 26 May 2016, <http://www.adilsoz.kz/news/show/id/2047> (accessed 1 June 2016).

⁴⁷ A. Grishin, "Битва за землю" ["The battle for the land"].

⁴⁸ Radio Free Europe / Radio Liberty, "Kazakh Journalists, Activists Detained And Websites Blocked", 21 May 2016, <http://www.rferl.org/articleprintview/27748591.html> (accessed 23 May 2016). This appears to have been an attempt to stop people from accessing reports from the service's network of regional correspondents.

5. CRIMINAL PROSECUTION OF PEACEFUL DISSENT ON THE INTERNET

The right to freedom of expression, including the right to seek, receive and impart information, is protected under the Constitution and other laws in Kazakhstan, and is part of Kazakhstan's obligations under international law. Nevertheless, in 2015 and 2016, authorities in Kazakhstan made extensive use of two articles in the Criminal Code to silence dissent and independent voices: "inciting social, national, clan, racial, class, or religious discord" (Article 174) and "dissemination of information known to be false" (Article 274). This has been most notable in the case of human rights defenders and prisoners of conscience **Maks Bokaev** and **Talgat Ayan**.

PROSECUTION OF MAKS BOKAEV AND TALGAT AYAN: TIMELINE

14 April 2016: Maks Bokaev applies to the city authorities in Atyrau City, western Kazakhstan, for permission to hold a rally in Isatai-Makhambet Square, in central Atyrau, on 24 April.

18 April 2016: At a meeting with the city authorities, Talgat Ayan is told that permission to hold the rally has been refused, on the grounds that Isatai-Makhambet Square is not on the city's list of "approved places" for demonstrations.

14 - 19 April 2016: Maks Bokaev and Talgat Ayan make a series of posts on Facebook and in a WhatsApp group, encouraging people to attend the demonstration on 24 April.

24 April 2016: Demonstration goes ahead in Isatai-Makhambet Square in Atyrau City. This is the first demonstration on the "Land issue", and proceeds peacefully. Around 1000 people take part.

Late April – early May 2016: Peaceful protests spread to other cities across Kazakhstan.

6 May 2016: Maks Bokaev and Talgat Ayan approach the authorities for permission to hold a rally and a concert in Isatai-Makhambet Square on 21 May.

13 May 2016: Permission is refused to hold the rally and concert on 21 May, once again on the grounds that Isatai-Makhambet Square is not on the city's list of "approved places" for demonstrations.

17 May 2016: Maks Bokaev and Talgat Ayan are among 34 people detained under Article 488 of the Administrative Code ("Breach of the legislation of the Republic of Kazakhstan on the procedure for organizing and holding peaceful meetings, rallies, marches, pickets and demonstrations") and sentenced to 15 days' administrative detention.

21 May 2016: whilst serving their administrative detention Maks Bokaev and Talgat Ayan are charged under the Criminal Code for: “propaganda and public calls to seize or retain power, as well as seizure or retention of power or violent change of the constitutional order of the Republic of Kazakhstan” (Article 179 of the Criminal Code – this charge is subsequently dropped); “inciting social, national, clan, racial, class, or religious discord” (Article 174), “dissemination of information known to be false” (Article 274) and organizing unsanctioned meetings and demonstrations (Article 400). They are transferred from the administrative detention centre to pre-trial detention.

12 October 2016: the trial of Maks Bokaev and Talgat Ayan begins in Atyrau City Court no.2. The trial does not meet international fair trials standards.⁴⁹

18 October 2016: Maks Bokaev is taken ill in the court room and an ambulance is called. Maks Bokaev’s health has deteriorated since he was placed in pre-trial detention, as he has not received access to the treatment that he needs for chronic hepatitis C.

28 November 2016: Maks Bokaev and Talgat Ayan are found guilty under Articles 174, 274 and 400 of the Criminal Code, and sentenced to five years in prison. They appeal their sentences.

20 January 2017: the Atyrau Regional Court upholds the decision to sentence Maks Bokaev and Talgat Ayan to five years in prison.

The charges⁵⁰ against **Maks Bokaev** and **Talgat Ayan** in part relate to their participation in the “unauthorized” rally that took place in Atyrau City on 24 April 2016. The bulk of the charges, however, relate to posts made by the two on their personal Facebook pages and on a Facebook group that they ran, and to group messages sent through the encrypted messaging service WhatsApp.⁵¹

These include charges that they:

- posted knowingly “false information” on Facebook about the proposed changes to the Land Code and about meetings with local officials to discuss their requests to hold a rally on 24 April;
- used messages on WhatsApp and posts on Facebook to encourage others to take part in the rallies on 24 April and 21 May (when they had already received official refusal from the local authorities to hold the rallies on both occasions);
- used Facebook posts to criticize the political and socio-economic situation in Kazakhstan and the actions of the authorities (whom the court categorised as a specific social group termed “power” [*vlast*] in need of protection under Article 174 of the Criminal Code, preventing social “discord”); and
- posted videos recorded during the “unauthorized” rally on 24 April on social media sites.

The charge sheet states that these actions, combined with the two men’s persistent attempts to secure permission to hold the rallies on 24 April and on 21 May (permission that was not granted on both occasions on the arbitrary grounds that the square where they wanted to hold the rallies was not “approved” for demonstrations), amounted to a campaign to “destabilize the socio-political environment” and “destroy social order and security”.⁵²

Amnesty International considers that **Maks Bokaev** and **Talgat Ayan** are prisoners of conscience, prosecuted solely for peacefully exercising their rights to freedom of expression and peaceful assembly. Their convictions should be overturned and they should be immediately and unconditionally released.

The case of **Maks Bokaev** and **Talgat Ayan** is not the first example of the authorities linking social media use with the charge of “inciting social, national, clan, racial, class, or religious discord” (Article 174). At the beginning of 2016, **Yermek Narymbaev** and **Serikzhan Mambetalin** were sentenced to three and two years’ imprisonment respectively (reduced to shorter sentences on appeal) for posting extracts from an unpublished book deemed to denigrate the Kazakh people on their Facebook pages; both had previously

⁴⁹ Violations of the right to fair trial included: trial monitors had limited access to the court room, and Maks Bokaev’s and Talgat Ayan’s lawyers were not given access to some of the information contained in the prosecutor’s case against them or did not have enough time to analyse case materials. For more information, see: Amnesty International, “Kazakhstan: Presumed guilty before trial: prosecution of peaceful protesters Maks Bokaev and Talgat Ayan”, EUR 57/5116/2016, London, Amnesty International.

⁵⁰ The full charges against Maks Bokaev and Talgat Ayan are contained in the “Обвинительный Акт” (charge sheet) of 25 September 2016, held on file.

⁵¹ The messaging service WhatsApp introduced end-to-end encryption in April 2016. WhatsApp Blog, “End-to-end encryption”, 5 April 2016, <https://blog.whatsapp.com/10000618/endtoendencryption> (accessed 13 December 2016); WhatsApp FAQ, “End-to-end encryption”, <https://www.whatsapp.com/faq/en/general/28030015> (accessed 13 December 2016).

⁵² “Обвинительный Акт” (charge sheet) of 25 September 2016, p.9.

been vocal critics of President Nazarbaev.⁵³ **Saken Baikenov**, a member of the “Antigeptil” group of activists (who are campaigning against the launch of Russian Proton-M rocket carriers from the Baikonur Cosmodrome in Kazakhstan, which use highly corrosive heptyl fuel), was sentenced to two years of “restricted liberty” for posts on Facebook.⁵⁴ **Tatiana Shevtsova-Valova** received a four-year suspended sentence for posts on Facebook supporting the idea of the incorporation of Kazakhstan into the Russian Federation, and using what was perceived by the authorities to be a derogatory term to refer to ethnic Kazakhs.⁵⁵ All were convicted under Article 174 of the Criminal Code.

Authorities have also made use of Article 274 of the Criminal Code – “dissemination of information known to be false” – in other cases to stifle criticism and dissenting voices on social media, again violating the rights to freedom of expression and to seek, receive, and impart information. **Elena Semyonova**, a member of Kazakhstan’s National Preventative Mechanism (NPM⁵⁶) and of the Public Monitoring Commission (PMC⁵⁷) for her region faced criminal investigation in late 2015 under Article 274, after she posted information on social media about cases of ill-treatment that she had encountered during her visits to a prison. While Elena Semyonova was not prosecuted in the end, the criminal investigation sent a worrying message to other members of the NPM and of local PMCs that members of these bodies could face prosecution for using social media to inform the public about cases of torture and other ill-treatment that they encounter.

⁵³ Joanna Lillis, “Kazakhstan: Authorities Jail Two More Activists”, Eurasianet, 22 January 2016, <http://www.eurasianet.org/print/76946> (accessed 28 January 2016).

⁵⁴ R. Botaiuly, “Обвиняемого в «разжигании розни» в Facebook’е арестовали” [“Arrested: the man accused of ‘incitement of discord’ on Facebook”], Radio Azzatyq, 10 March 2016, <http://rus.azattyq.org/a/saken-baykenov-arrest-sud-astana/26891156.html> (accessed 21 November 2016); R. Botaiuly, “Сакен Байкенов осужден на два года ограничения свободы” [“Saken Baikenov sentenced to two years’ restricted liberty”], Radio Azzatyq, 13 April 2016, <http://rus.azattyq.org/a/26953332.html> (accessed 21 November 2016).

⁵⁵ New Times, “За разжигание межнациональной розни осуждена алматинка Шевцова-Валова” [“Almaty resident Shevtsova-Valova convicted of incitement of inter-ethnic discord”], 31 March 2015, <http://newtimes.kz/obshchestvo/item/13009-za-razzhiganie-mezhnatsional%C2%AD> (last accessed 27 April 2016).

⁵⁶ The NPM is a body that monitors prison conditions, operating under the umbrella of the National Ombudsman. The NPM monitors conditions in prisons and other places of detention, and in some state-run institutions such as children’s homes, in accordance with the Optional Protocol to the UN Convention Against Torture.

⁵⁷ The PMC is a civil society monitoring mechanism for places of detention.

6. CLOSING DOWN SOCIAL MEDIA AS A SPACE FOR INDEPENDENT JOURNALISM

Since 2012, authorities have closed down dozens of independent media outlets, including news websites operating exclusively online or as the online platforms for print publications. This followed national media coverage of the unrest in Zhanaozen in late 2011,⁵⁸ when police used emergency powers to arrest or detain journalists.⁵⁹ As a result, today there are virtually no independent print or internet media outlets operating in Kazakhstan. All the major television and radio broadcasters are under the control of the state or are owned by members or associates of President Nazarbaev's family.⁶⁰

In November 2012, the Almaty City Prosecutor's Office instigated proceedings to close down eight print media outlets and 23 websites owned by a single media group, as well as one other newspaper and its websites, and two independent internet-based TV channels. The Prosecutor's Office accused them of "extremism", "inciting social discord" and of posing a threat to national security, in relation to their coverage of the Zhanaozen events. These were the majority of the independent media outlets then in operation in Kazakhstan, most of which were subsequently closed down.⁶¹ Among them were the high-profile media outlet *Respublika*, as well as its sister publication *Golos Respubliki*.⁶² Two years later, another independent newspaper, the *Assandi Times* was closed down, on the grounds that it was a sister publication to *Respublika*.⁶³ Since then, journalists who worked on *Respublika* have continued to face threats and

⁵⁸ Police responded with lethal force to demonstrations in the town of Zhanaozen on 16 December 2011 (Kazakhstan's Independence Day). Fourteen people were killed, and hundreds were detained and subject to torture and other ill-treatment. See: Amnesty International, *Old Habits: The Routine Use of Torture and Other Ill-Treatment in Kazakhstan*, EUR 57/001/2013, London, Amnesty International.

⁵⁹ Freedom House, *Freedom in the World 2016: Kazakhstan*, <https://freedomhouse.org/report/freedom-world/2016/kazakhstan> (accessed 9 November 2016) (Freedom House, *Freedom in Word 2016: Kazakhstan*).

⁶⁰ Freedom House, Kazakhstan: Freedom of the Press 2016, <https://freedomhouse.org/report/freedom-press/2016/kazakhstan> (accessed 13 January 2017).

⁶¹ Amnesty International, "Kazakhstan: crackdown on human rights: abuse of power and freedoms curtailed: Amnesty International submission to the UN Universal Periodic Review, October-November 2014", EUR 57/001/2014, Amnesty International, London, p.4. Available at: <https://www.amnesty.org/en/documents/eur57/001/2014/en/> (Amnesty International, "Kazakhstan: crackdown on human rights"); Committee to Protect Journalists, "In Kazakhstan, news outlets face charges of extremism", 28 November 2012, <https://cpj.org/2012/11/in-kazakhstan-news-outlets-face-charges-of-extremism.php> (accessed 21 November 2016) (Committee to Protect Journalists, "In Kazakhstan, news outlets face charges of extremism").

⁶² Committee to Protect Journalists, "In Kazakhstan, news outlets face charges of extremism".

⁶³ Committee to Protect Journalists, "Kazakh authorities shut down another newspaper", 3 April 2014, <https://cpj.org/2014/04/kazakh-authorities-shut-down-another-newspaper.php> (accessed 21 November 2016)

harassment, most recently in December 2015, when police officers in Almaty raided the offices of independent online news outlet Nakanune.kz and the homes of journalists **Guzyal Baidalinova** (who owned the site) and of **Yulia Kozlova**, who wrote for the site. Several journalists working on Nakanune.kz had previously worked on *Respublika*. **Guzyal Baidalinova** was arrested under Article 274 of the Criminal Code for “dissemination of information known to be false”, after the outlet published articles on the activities of the bank Kazkommertsbank, linking it to corruption in the construction industry, and following a libel case brought by Kazkommertsbank against the media outlet earlier in the year.⁶⁴ **Yulia Kozlova** was arrested on drugs charges. While **Yulia Kozlova** was acquitted in February 2016,⁶⁵ in May 2016, **Guzyal Baidalinova** was convicted under Article 274 and sentenced to 1.5 years imprisonment (converted to a suspended sentence on appeal in July).⁶⁶

In other cases, independent media outlets have been shut down for minor infringements, for instance for exceeding official print runs or temporarily suspending publication without informing the authorities.⁶⁷

In an attempt to continue their important journalistic work in the face of official harassment and intimidation, some independent media outlets and their journalists have continued to maintain pages on social media sites when their print publications and / or news portals have been closed down, posting news items and also updates on the cases against them. In this way, social media sites have acted as a vital space for independent journalism in Kazakhstan. As the case of *Adam* newspaper illustrates, though, the authorities are now also moving to close down this space, yet again attempting to cut off important sources of information to internet users and the wider public.

THE CLOSURE OF *ADAM* AND *ADAM BOL* NEWSPAPERS: OFFLINE, ONLINE, OFF LIMITS

The Almaty District Court issued an injunction to shut down permanently the newspaper *Adam Bol* on national security grounds on 20 November 2014, after it published an interview that included statements relating to the ongoing conflict in Ukraine. The injunction was requested by the Almaty City authorities, on the grounds that the article in question amounted to “war agitation” and violated Article 20 of the Constitution. An appeal against the closure of the newspaper was rejected in February 2015, at which point the Almaty City Court ordered that the newspaper should be closed permanently.⁶⁸

Shortly afterwards, the editor of *Adam Bol* began publishing a successor publication, called *Adam*. Almaty city authorities moved swiftly to close down *Adam*. An administrative court in Almaty issued a three-month suspension order on *Adam* on 25 September 2015, on the grounds that *Adam* was registered to publish in Russian and Kazakh, but was only publishing in Russian.⁶⁹

Once this three-month ban was issued, *Adam* continued to publish content on its Facebook page. In response, the Medeu district prosecutor applied again to the court on 8 October on the grounds that *Adam* was violating the ban by publishing journalistic content on its Facebook page: *Adam*'s print, online, and Facebook presences were all one and the same entity, and that the editor-in-chief of *Adam*, Ayan Sharipbaev, should have tried to re-register the media outlet if he wished to continue “publishing” *Adam* via Facebook. *Adam* was closed down permanently by court order, on the grounds that it was illegally continuing to publish content via its Facebook page.⁷⁰

⁶⁴ Freedom House, *Freedom in the World 2016: Kazakhstan*.

⁶⁵ Trotsenko, Pyotr, “Журналистка Юлия Козлова полностью оправдана” [“Journalist Yulia Kozlova fully acquitted”], *Vlast*, 29 February 2016, <https://vlast.kz/novosti/16030-zurnalistka-ulia-kozlova-polnostu-opravdana.html> (last accessed 26 April 2016).

⁶⁶ Radio Azzatyq, “Kazakh Court Suspends Journalist’s Jail Sentence”, 12 July 2016, <http://www.rferl.org/a/kazakhstan-court-suspends-journalist-jail-sentence/27854018.html> (accessed 21 November 2016).

⁶⁷ See: Amnesty International, “Kazakhstan: crackdown on human rights”, p.4.

⁶⁸ Global Freedom of Expression project, “The Case of ADAMBol, Kazakhstan’s Independent Newspaper”, Columbia University, New York, <https://globalfreedomofexpression.columbia.edu/cases/adam-bol/> (accessed 21 November 2016)

⁶⁹ OSCE, “OSCE Representative raises concern about recent media freedom developments in Kazakhstan”, 25 September 2015, <http://www.osce.org/fom/185401> (accessed 21 November 2016); Adil Soz, “Постановление суда о приостановлении журнала ADAM вступило в законную силу” [“The court ruling on the suspension of ADAM journal came into force”], 25 September 2015, <http://www.adilsoz.kz/news/show/id/1859#sthash.6LDkhYXN.dpuf> (accessed 21 November 2016).

⁷⁰ Adil Soz, “«Единое СМИ» журнал ADAM закрыт решением суда по иску прокуратуры” [“‘United Media’ magazine ADAM closed on the decision of the court at the request of the prosecutor”], 22 October 2015, <http://www.adilsoz.kz/news/show/id/1869> (accessed 4 November 2015).

7. SELF-CENSORSHIP

The use of administrative detention and of criminal sanctions for inciting “discord” and spreading “false information” against individuals for speaking out and voicing opposition to government policies on social media is having wider repercussions for the right to freedom of expression in Kazakhstan. It shows that authorities in Kazakhstan regularly monitor communications on social media, including communications believed to be encrypted, creating a “chilling effect” on others who may also wish to express their views and opinions. Social media users are left feeling wary of voicing their opinions online, even when those opinions would not fall into the categories of inciting “discord” or spreading “false information”,⁷¹ or of breaking any other criminal or administrative law.

Since being detained under the Administrative Offences Code, **Bakhytzhana Toregozhina** has been even more careful about what she posts online, as she explained to Amnesty International:

After this case, I began controlling myself even more, because now I know for sure that if there are any more attempts to hold public meetings, the authorities will accuse me of inciting them. This makes me be careful and watchful. Now, before I post something on Facebook, I try to read it with their eyes. Reading a post through their eyes means understanding whether it can be perceived as a call for “anti-public” activities “shattering the stability and peaceful situation”, as they call it.⁷²

As **Bakhytzhana Toregozhina** noted, her detention (and that of the other 33 people detained under the Administrative Offences Code in the lead up to 21 May 2016) has served as a stark warning to others, one factor leading to a “pervasive atmosphere of self-censorship online”.⁷³

Of course, people think twice before posting something on social media. They are afraid to be open on social media. They realise that you can go to prison for 15 days for a post. Or a repost. And people start thinking about whether they really want to take such a risk just for the right to say what they think.⁷⁴

The use of criminal and administrative charges against people who have used social media to express their views also appears to be leading other institutions, such as employers and universities, to encourage self-censorship online among their employees and students. For younger people who are studying or starting out on their working lives, the threat of being expelled from university or dismissed from their job is stopping many from expressing themselves freely on social media.

FARIZA OSPAN: “SELF-CENSORSHIP ON SOCIAL MEDIA ... DEFINITELY EXISTS AND IS SPREADING”⁷⁵

Fariza Ospan is 22 years old and graduated from a university in Almaty in 2016. She is an active user of social media sites such as Facebook, VKontakte, and Instagram. At the end of May 2016, Fariza was dismissed from her job as an in-house blogger for a multinational company specialising in IT distribution, after she made a series of posts on social media sites. She spoke to Amnesty International about her experience:

I don’t know exactly which post was the reason for my being dismissed from my job, because there were a few. I posted an extract from comments by political analyst Dosym Satpaev on the Land Code

⁷¹ Freedom House, *Freedom on the Net 2015: Kazakhstan*.

⁷² Interviewed in Almaty on 28 November 2016.

⁷³ Freedom House, *Freedom on the Net 2015: Kazakhstan*.

⁷⁴ Interviewed in Almaty on 28 November 2016.

⁷⁵ Interview via email, November 2016.

demonstrations on VKontakte, and also a photo on Instagram that I took on 21 May with my own reflections on the issue. The post on Instagram got a lot of negative comments from my followers. As part of the Youth Information Service, where I volunteer, I was supposed to be involved in running a training workshop for young people on human rights on 21 May in Almaty. When rumours started going round that there were going to be demonstrations on 21 May, more and more people who were supposed to take part in the training started dropping out, so I posted about that on Facebook. I posted about how I and others from The Youth Information Service had set off to go to the human rights workshop on 21 May and had seen what was happening on the streets; we were told to go home or there would be trouble. Two days after 21 May, on Facebook, I also posted a comment about a statement made by our Minister for Culture and Sport that had really angered and upset me.

I think it was all these posts, one after the other, that led to my being dismissed.

On 31 May my boss wrote to me to tell me that I was being fired. He said that it wasn't to do with my work, it was to do with my "social-political position and activeness on social media". The company had received what my boss called a "serious complaint" about my "anti-government statements" on Facebook, and they were worried that this would negatively affect the company.

I was really shocked. It would have been better if they had dismissed me because they didn't like my work, than finding out that you don't have the right to express your position.

All my family and friends were surprised and upset by what had happened. My mother was frightened that at the last moment, the university might not give me my diploma. Everyone advised me not to write like that on social media anymore. Next time the consequences could be serious.

Self-censorship on social media among people my age definitely exists and is spreading. Few write about political themes, and only a few write truthfully. Content about political events in the country, about the work of the president, of deputies is subject to self-censorship. No one dares to criticize the actions of the authorities openly. Or not even criticize – just express their point of view, or say what they think.

Fariza Ospan is unusual in that she was willing to speak out about what had happened to her and about self-censorship. Amnesty International attempted to conduct a short poll among social media users in Kazakhstan on the issue of self-censorship, but respondents were unwilling to provide detailed answers to the questions or to be quoted.

8. CONCLUSION

As the cases in this briefing show, in 2015 and 2016, people in Kazakhstan were prosecuted or faced other sanctions for peacefully exercising their rights to freedom of expression and peaceful assembly, including when expressing their views on social media and for using social media to organize and pledge support for peaceful assemblies. The message the authorities are sending seems clear: those who use social media to speak out against the authorities and their actions, to draw attention to human rights abuses, or to organize peaceful protests, will face reprisals. It no longer makes any difference if those statements are made online or offline. In fact, the ease with which authorities can track and record statements made *online*, as well as use this as documented evidence in court, means that today, those who speak out on the internet in Kazakhstan are perhaps *more* at risk of prosecution.

It is time for the authorities in Kazakhstan to act on their commitments under international law and under Kazakhstan's Constitution to uphold the rights to freedom of expression and peaceful assembly. It is time to stop using the Administrative and Criminal Legal Codes to silence those critics who speak out, both online and offline.

9. RECOMMENDATIONS

TO THE AUTHORITIES IN KAZAKHSTAN:

- Immediately and unconditionally release human rights defenders and prisoners of conscience Maks Bokaev and Talgat Ayan, and overturn the charges against them.
- Ensure that the criminal justice system and administrative measures are not misused to target or harass human rights defenders, journalists and others for peacefully exercising their rights to freedom of expression and peaceful assembly.
- Substantially amend Article 174 of the Criminal Code to ensure that such provision aimed at combatting advocacy of hatred and discrimination is precisely drafted in compliance with Article 19(3) of the ICCPR, to ensure that it does not unlawfully restrict freedom of expression.
- Repeal Article 274 of the Criminal Code, which makes it a criminal offence to “[disseminate] information known to be false”.
- Repeal Article 400 of the Criminal Code, which makes it a criminal offence to provide assistance to “illegal” assemblies, including via “means of communication”.
- Respect and protect the right to freedom of expression of all individuals in Kazakhstan, including in online fora such as social media sites.
- Implement fully the recommendations from the Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, (A/HRC/29/25/add.2).
- Implement the UN Human Rights Committee’s recommendations specifically pertaining to freedom of expression (Point 50) of the Concluding Observations on the 2nd periodic report of Kazakhstan (CCPR/C/KAZ/CO/2).
- Implement UPR recommendations to Kazakhstan as related to freedom of peaceful assembly.

TO THE INTERNATIONAL COMMUNITY:

- Include human rights, in particular the obligation to respect, protect and fulfil the rights to freedom of expression and peaceful assembly, on the agenda of all bilateral meetings with the authorities of Kazakhstan and urge the Kazakhstani authorities to bring its laws, policies, and practices into full compliance with its international human rights obligations.
- Ensure that human rights, in particular the rights to freedom of expression and peaceful assembly, are on the agenda in all appropriate multi-lateral meetings involving Kazakhstan and adopt resolutions where appropriate urging the Kazakhstani authorities to bring its laws, policies, and practices into full compliance with its international human rights obligations.

TO THE EU AND ITS MEMBER STATES:

- Ensure that the EU Delegation in Kazakhstan and all EU Member States representations in the country fully implement the EU Guidelines on Human Rights Defenders, including conducting trial monitoring and visiting human rights defenders who have been imprisoned for their human rights activities.

TO OSCE PARTICIPATING STATES:

- Consider invoking the Moscow Mechanism to establish an *ad hoc* mission of independent experts to examine violations of the rights to freedom of expression and peaceful assembly in Kazakhstan.

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THINK BEFORE YOU POST

CLOSING DOWN SOCIAL MEDIA SPACE IN KAZAKHSTAN

The rights to freedom of expression and peaceful assembly came under renewed attack in Kazakhstan in 2015 and 2016, as authorities worked to “close down” social media as a space where people can exercise their right to express critical opinions, seek and receive information, and organize peaceful protest.

Authorities used administrative and criminal sanctions against people who used social media and messaging apps to organize peaceful demonstrations against unpopular legal changes, or to voice their opposition. This included the criminal prosecution of human rights defenders and prisoners of conscience **Maks Bokaev** and **Talgat Ayan**, who have been sentenced to five years’ imprisonment for planning peaceful rallies. Authorities also used legislative powers to shut down or block access to individual online resources, temporarily or permanently.

To date, the authorities have used criminal and administrative sanctions against a small number of social media users. Nevertheless, this is having a wider “chilling effect” on freedom of expression in Kazakhstan, leaving people afraid to speak out online.

Kazakhstan must act on its commitments under international law and under the Constitution to uphold the rights to freedom of expression and peaceful assembly. It is time to stop using the Administrative and Criminal Legal Codes to silence those critics who speak out, both online and offline.