



**Public statement by ARTICLE 19,
on behalf of ARTICLE 19, Adil Soz, and PEN International
at the UPR Info Pre-Session on Kazakhstan, to be delivered on 6 October 2014**

1. Introduction

Ladies and gentlemen, ARTICLE 19, Adil Soz and PEN International welcome the opportunity to address you with regards to the Universal Periodic Review of Kazakhstan.

The statement addresses the following issues:

1. Criminal defamation; and
2. Incitement to social hatred

2. Criminal defamation

2.1 Follow-up to the first review

At the first UPR in 2010, Kazakhstan received 16 and accepted 15 recommendations regarding freedom of expression.

Eight of the recommendations concerned the decriminalization of defamation and insult, as recommended by Australia; Canada; the Czech Republic; Finland; Spain; the Netherlands; the United Kingdom; and the United States.

2.2 New developments since the first review

Despite commitments made during the first UPR, it is clear that Kazakhstan does not intend to decriminalize defamation and insult provisions. On the contrary, the number of criminal provisions for insult and defamation has been increasing each year.

In 2010, Kazakhstan introduced a new article to the Criminal Code – Article 317-1 – of “public insult of the First President, the Leader of the Nation”.

In 2011, after having been chair of OSCE the year before, Kazakhstan took a step toward decriminalization by introducing “administrative prejudice”, which allows criminal offences of low and medium gravity, including defamation, to be heard in an administrative court, if committed for the first time within one year. However, changes to the Code of Administrative Offence, which are necessary for the law to be practically applied, were never adopted. Therefore, this small positive step forward to improving Kazakhstan’s defamation provisions was incomplete and insufficient and made no practical difference to the free expression environment.

After a two year review process, a new Criminal Code was signed into law by the President, in June 2014. The new Criminal Code maintains provisions on insult and defamation and introduces a new article criminalizing “knowingly disseminating false information”, which can lead to a prison sentence of up to ten years.

The new Criminal Code will come into force in January 2015 and contains 8 articles on insult and defamation. Article 130 concerns 'defamation' and provides for a prison sentence of up to three years and Article 131 concerns 'insult'. There are also specific provisions to 'protect' the First President, the current President, parliamentarians, public officials, participants in court proceedings, and members of the judiciary under Articles 373, 375, 376, 378, 410, 411. Sanctions include fines, correctional labour, restrictions on free movement (which includes a prohibition on visiting places of public amusement, leaving your house after 9pm, or leaving the city without police consent) and finally, a prison sentence up to five years.

In the meantime, the courts of Kazakhstan continue to prosecute journalists and human rights defenders (HRDs) on criminal charges of insult and defamation which ARTICLE 19, Adil Soz and PEN International find it contrary to international standards of free expression.

An example of such prosecutions which negatively affect free expression in Kazakhstan is the case of Musagali Duambekov.

On 13 May 2014, politician and social activist, Musagali Duambekov, was sentenced to one year of "restriction of freedom" for defamation in the media. Duambekov had been asked to provide legal support by Alibek Iskakov, who was hoping to bring a labour case to court against a brick-making factory. During the legal proceedings, Duambekov had collected information which he later used for in an article entitled "*Sprut*" ("Octopus") in which he accused Bakhyt Mukashev and Salamat Mukashev, relatives of the factory owner, of corruption and violent assaults and blackmail. They filed a private complaint and accused Duambekov of disseminating "knowingly false information" about them.

The court found that the information contained in Duambekov's article was false. Furthermore, the verdict stated that since Duambekov had represented Iskakov in civil proceedings, he felt "adverse feelings" in relation to the management of the factory. It was stated that these "adverse feelings" were a motive for publishing the articles.

The verdict has a chilling effect on free expression. We consider the Duambekov's sentence to be vastly disproportionate to the alleged defamation and an excessive restriction of free speech. The publication of such allegations of corruption and violent assaults should lead to a proper investigation into the alleged crimes by the authorities. Authors and publishers who act as whistleblowers in such cases should be recognised accordingly.

The Criminal Code requires that all elements of crime should be established, including the intent of the speaker (who is disseminating defamatory information which was known to be false before dissemination) to prove the guilt, this is frequently dismissed by judges deliver verdicts without sufficient evidence of the intent of the speaker.

We find that prosecutions, such as the example provided, restrict free speech and have a chilling effect of journalistic endeavours and the legitimate activities of civil society.

3. Incitement to social hatred

3.1 Follow-up to the first review

No recommendations were made during the previous UPR with regards to the application of criminal provisions on incitement to hatred. However, the provision was used to target opposition media following the lethal repression of protests in Zhanaozen in 2011. ARTICLE 19, Adil Soz and PEN International consider the targeting of the media contrary to

international standards of free expression and representative of a crack down on social protest and civic space.

3.2 New developments since the last review

We note deep concern over the misuse of legislation on ‘incitement of social hatred’. In the aftermath of the excessive and lethal force used by security forces to disperse the crowds in protests in Zhanaozen on 16 December 2011, resulting in the deaths of at least 15 people and more than 100 being seriously injured, the authorities initiated criminal proceedings against over 40 oil workers, activists, and journalists. Among the charges brought against them was Article 164 of the Criminal Code: ‘incitement of social hatred’. This provision does not comply with international free expression standards and should have been removed in the recent reform of the Criminal Code.

The new Criminal Code maintains the provision on incitement to hatred, including social hatred and provides for a prison term of up to 20 years.

As a result of the Zhanaozen protests, eight newspapers, 23 internet resources recognized as “a single media” under the name ‘Respublika’, the Internet TV channels K+ and Stan TV, and newspaper *Vzglyad* were closed down in 2012, on charges of extremism and incitement to social hatred. The orders of the Almaty district courts were based on the recent sentencing of Vladimir Kozlov, a political activist found guilty of incitement to social hatred and for calling for the violent overthrow of “the constitutional order”. It was deemed that he has used these media outlets to disseminate information that was considered an attempt to cause civil unrest.

After the judgement, the media outlets were charged with inciting social hatred. As it had been already ‘established’ that they had incited social hatred through the Kozlov judgement, the Almaty district courts issued closure orders following ‘pro-forma’ and unfair hearings. Neither the owners or representatives of the publications were a party in the initial court case against Kozlov, therefore they did not have the right to represent themselves or appeal the verdict. Additionally, lawsuits were filed against the media titles rather than specifying a legal entity or person, in contrary to Kazakhstan law.

During the court proceedings, the prosecution failed to name or provide an independent review of the material that was later found by the court to incite social hatred, promote extremism and contain signs of extremism.

In April this year, another media outlet, the newspaper *Assandi Times*, was also closed down for being part of the ‘single media Respublika’. However, the *Assandi Times* was neither referred to in the verdict of the court on the Kozlov case, nor published any articles around the Zhanaozen protests in 2011. We find the judicial order for the newspaper to close to be a direct affront on free expression and further evidence on the excessive restrictions placed on media in Kazakhstan.

The Criminal Code of Kazakhstan contains vague and overly broad references to ‘social groups’ and ‘classes’. Article 20, paragraph 2, of ICCPR does not recognise “social group” or “class” as characteristics requiring specific protection by States. Protected characteristics should be considered in light of the right to non-discrimination as provided under Article 2, paragraph 1 and Article 26 of the ICCPR and the criteria for differentiation should be objectively justified and reasonable. Belonging to a social group or class is not necessarily an objectively justifiable and reasonable criterion. Unlike nationality, disability or ethnic origin, for example, “social group” and “class” are vague categories.

The vague definitions of protected groups and harsh sanctions under incitement to hatred legislation are frequently imposed without any consideration of the principle of proportionality. The law and its implementation stifle discussion on issues of public importance such as social justice, corruption and accountability.

4. Recommendations

ARTICLE 19, Adil Soz and PEN International call on states to insist on the decriminalization of defamation and insult. Criminal defamation and criminal insult have a chilling effect on freedom of expression. Furthermore, any harm caused by defamation and insult can be adequately addressed through civil law which is less restrictive and better equipped to remedy the injury to the victim's reputation by compensation in terms of damages.

We call on States to insist on the decriminalization of criminal provisions providing special protections to the reputations of public officials. The Criminal Code should not provide any special protection for public officials. International standards recognise that such officials should tolerate more, rather than less, public criticism. The Criminal Code does not provide the defence of public interest by those who have acted reasonably in the public interest and have taken whatever steps were reasonably possible to check their facts.

We call on States to insist on reform of the provision on incitement to hatred in the Criminal Code to comply with Article 20 (2) of the ICCPR. The terms "social hatred" and "class hatred" should be removed from Article 174 of the Criminal Code in compliance with Article 20, paragraph 2, of the ICCPR.

5. Conclusion

I will now close by thanking you on behalf of ARTICLE 19, Adil Soz and PEN International, for your attention.

For any further information, we have a short briefing with our full list of recommendations, as well as our submissions available. We are available for the rest of the day should you wish to discuss any of our recommendations further.

Thank you.