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REPORT

Kazakhstan: CUNNING DEMOCRACY



NORWEGIAN HELSINKI COMMITTEE



The Norwegian Helsinki Committee

Established in 1977

The Norwegian Helsinki Committee (NHC) is a non-governmental organisation that works to promote respect for human rights, nationally and internationally. Its work is based on the conviction that documentation and active promotion of human rights by civil society is needed for states to secure human rights, at home and in other countries.

NHC bases its work on international human rights instruments adopted by the United Nations, the Council of Europe, the Organisation of Security and Cooperation in Europe (OSCE), including the 1975 Helsinki Final Act.

The main areas of focus for the NHC are the countries of Europe, North America and Central Asia. The NHC works irrespective of ideology or political system in these countries and maintains political neutrality.

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Through monitoring and reporting on problematic human rights situations in specific countries, the NHC sheds light on violations of human rights. The NHC places particular emphasis on civil and political rights, including the fundamental freedoms of expression, belief, association and assembly. On-site research and close co-operation with key civil society actors are our main working methods. The NHC has expertise in election observation and has sent numerous observer missions to elections over the last two decades.

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International processes

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About Freedom House

Freedom House is an independent watchdog organization dedicated to the expansion of freedom around the world.

Today, as more than two billion people live under oppressive rule, Freedom House speaks out against the main threats to democracy and empowers citizens to exercise their fundamental rights. We analyze the challenges to freedom; advocate for greater political and civil liberties; and support frontline activists to defend human rights and promote democratic change. Founded in 1941, Freedom House was the first American organization to champion the advancement of freedom globally.



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INTRODUCTION

Kazakhstan has travelled a long and sometimes difficult road in the years since independence in 1991. From being largely isolated from the world outside the Soviet Union, globalization has taken hold at an increasingly fast pace. Today, numerous international flights bring in still larger numbers of visitors – be they businessmen, tourists or locals returning from studies or work abroad. The internet age is slowly reaching even the most outlying parts of the country, bringing with it new impulses and perspectives to a young population that grew up after the Soviet era.

While the ongoing integration of Central Asia into the global scene involves rapid change on many levels, certain areas are still left behind. It is not unusual for the population to be without electricity and gas during severe winter frosts. Bureaucracy too, retains much of its post-Soviet legacy, as do the attitudes of some government officials and key decision-makers. National economic indicators are not always consistent with the reality of those struggling to get by in the cities and villages dotting Central Asia's vast landscape.

As the economic leader of the Central Asian region and the country most strongly tuned in to the global diplomatic and business communities, Kazakhstan carries a particular responsibility to respect, and indeed to promote, human rights and democratic principles.

However, while working along an ambitious program for planned future achievements both on the domestic and international arena, Kazakhstan has seen several major steps backwards in the area of human rights over the past two years.

Following the tragic events in Zhanaozen in December 2011, when at least 16 strikers were shot and killed by government forces, authorities cracked down on selected opposition leaders such as Vladimir Kozlov of the Alga political party, sentencing him to seven-and-a-half years' imprisonment for his alleged involvement in the strikes. Soon after, the offices of Alga were closed down by authorities, followed by charges of extremism against independent and opposition media outlets, many of which were closed down by court order.

As a result, Kazakhstan is currently economically strong, but suffering a bleak media scene, a lack of real political pluralism and a widespread disillusionment as to Kazakhstan's commitment to human rights.

The following report summarizes some of our current concerns with regards to freedom of expression, freedom of assembly and freedom of religion or belief. It also brings the perspective of one of Kazakhstan's most respected writers on current affairs, Sergey Duvanov, in a special article for the 2013 Human Dimensions Implementation Meeting in Warsaw. Other texts were prepared by Ivar Dale (NHC) and Viktoria Tyuleneva (FH).

CUNNING DEMOCRACY

Officially, the government of Kazakhstan does not recognize its own style of government as authoritarian. Government officials, as well as pro-government political commentators and analysts, categorically exclude the term when describing the current form of governance. Rather, they point to the presence in the country of formal institutions of democracy, and the declaration of certain principles, when attempting to prove the democratic nature of the Kazakhstani state, referring to Kazakhstan as a transitional democracy. By transitional democracy is meant a form of government that places temporary limitations on the rights and freedoms of citizens – an issue which is gradually overcome through the government’s own efforts.

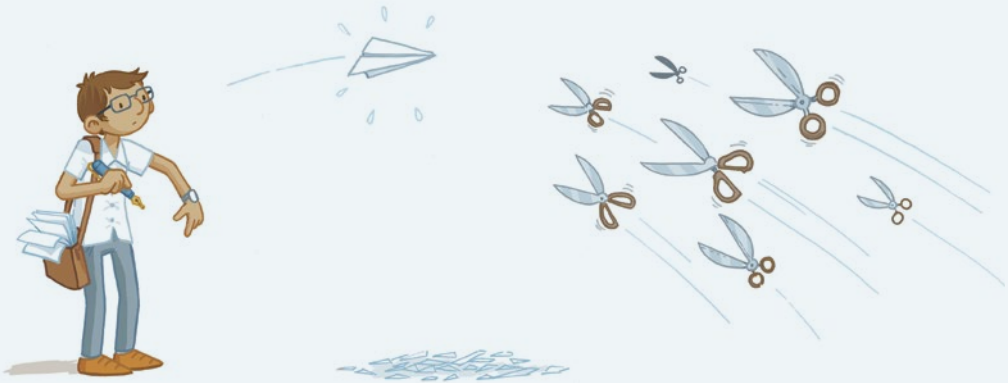
The general message of officials and pro-government commentators is that the establishment of democracy in Kazakhstan is a long-winded process fraught with serious problems, but that the authorities are continuously and successfully solving these problems. On the one hand, the argument is intended to explain the imperfections of legislation in the country, the formality of its democratic institutions, the limitations on the rights and freedoms of citizens and even the problems of the opposition and dissidents. On the other hand, it is intended to demonstrate to all that autocracy is the only way towards democracy.

Kazakhstan does not merely follow and repeat the experience of democratic countries. From the very beginning of the country’s independence, the authorities have sought to please everyone through their foreign policies, in exchange for support and recognition. Later, this has taken the shape of a multi-vector foreign policy.

Establishing a democratic image of Kazakhstan in the eyes of Europe and the US was a pre-requisite to gain support for president Nazarbayev’s many ambitious projects. Kazakhstan’s chairmanship of the OSCE, including the 2010 OSCE Summit in Astana, its hosting the meetings of the Congress of World Religions, Asian Winter Games, EXPO-2017, applications to host the Olympic Games, regular attempts to nominate Nazarbayev for the Nobel Peace Prize and many other initiatives were and continue to be one of the strategic tasks of the Kazakhstani government in realizing the ambitions of its leader, President Nazarbayev.

Obviously, without certain steps taken towards democracy and without the establishment of its formal institutions, ambitious projects designed to magnify the importance of President Nazarbayev would have been far more difficult to realize. However, the model of democracy being developed in Kazakhstan can perhaps be coined a “cunning democracy”, based on the existence of a few democratic institutions which have been

FREEDOM OF EXPRESSION



The Constitution of Kazakhstan states that freedom of speech and creative activities shall be allowed, and that censorship is prohibited¹.

In reality, voices openly critical of government policy are suppressed in Kazakhstan and censorship is widely practiced. The government consistently harasses or shuts down independent media outlets. Libel is a criminal offense, and the criminal code prohibits insulting the president; self-censorship is common.

Until quite recently, many newspaper kiosks in large cities like Almaty would offer a selection of papers including interviews with opposition figures and representatives of civil society. Some of these papers were highly critical of the situation with regards to human rights and political freedoms in Kazakhstan. While Kazakhstani authorities have always placed some amount of pressure on independent media, often confiscating newspapers that bring articles that particularly angered the authorities, things took a sharp turn for the worse in 2012, in the time following the tragedy in Zhanaozen.

Among the most professional newspapers critical of the government in Kazakhstan were Golos Respubliki (Voice of the Republic) and Vzglyad (View). In December 2012 the court banned all versions of these papers and numerous websites that published their content, as well as the Stan TV news website, and the satellite television station K+. In the time since, editors have been creative in trying to keep publishing their papers under different names. Respublika re-appeared several times for short periods

¹ Article 20, Constitution of the Republic of Kazakhstan adopted August 30, 1995.

under easily recognizable names², but police quickly put an end to such attempts to circumvent censorship.

In effect, the reading and watching public of Kazakhstan currently has no easy access to independent news outlets covering Kazakhstani politics, but must rely on government-controlled media or media that avoids political content altogether. For the time being, social media sites such as Facebook and Twitter are important alternative outlets, but generally reach only certain groups who seek out this type of information. In addition, Kazakhstani authorities frequently block popular web sites containing critical materials. One well-known journalist, Guljan Yergalieva, has had her sites blocked continuously without any form of explanation. Sites are generally blocked without court order, but rather through the state-controlled internet provider Kazakhtelekom.

The government of Kazakhstan should put an end to censorship of critically-minded news outlets and harassment of independent journalists. It should ensure the respect for freedom of speech, as established by the Constitution of Kazakhstan and international standards.

2 “Voice of Respublika” (Golos Respubliki), “Voice of Respublika – kaleidoscope of week events” (Golos Respubliki – kaleidoskop sobityy nedeli), “Respublika. Business kaleidoscope -the second shot” (Respublika. Delovoe obozrenie – dubl’ dva) and several others.

stripped of their democratic nature. As such, they have lost their original function, turning into formal instruments of autocracy.

One should warn against a simplistic understanding of what we mean by “cunning democracy”. The cunning here lies not only in the government’s claim that the country is moving towards democracy, while at the same denying its citizens democratic rights. It is also found in the contradictory measures the government takes to *promote* democracy. This deserves a closer look.

It is undeniable that the government of Kazakhstan initiates certain democratic processes, establishes democratic political institutions and brings legislation into accordance with international standards and so forth. However, within all these processes there is a certain point past which the authorities will not cross under any circumstances. In their understanding, a real division of power would doom the current political system to principled change, something that is not in the interest of government representatives and is seen as a threat to their own position.

In everyday life, this is evident through the political control of all democratic institutions. This form of control eliminates the risk of political parties, civil society or popular initiatives having any real impact on the political situation in the country. This is the core of what we call Kazakh-style “cunning democracy”.

The greatest cunning of all is the country’s Constitution. Or, perhaps more to the point, in the way its norms are realized in practice. Formally based on the Constitution of France, the main legal document of Kazakhstan establishes all basic democratic principles of the state and its institutions: The principle of division of power, free elections, political pluralism, the rule of law, human rights and freedoms; its parliament, courts and media. However, the question of whether a state is democratic or not is decided not formally, through normative rights, but in practice – through its social, moral, economic realities and especially its political realities. In Kazakhstan’s case, the difference between what has been established in the Constitution and how these rights are realized in everyday life is in itself proof of the authoritarian cunning at play.

For instance, the Constitution guarantees freedom of speech and the right to unhindered access to information. However, it is impossible to start a TV channel if public officials are of the opinion that the owner of the channel is not loyal to the political regime. Not one single Kazakhstani TV-channel will permit criticism of the current president of the country. The phrase “Nazarbayev should go” has never been heard on television. With a few minor exceptions, the same goes for printed media. A textbook example is the case of the opposition journalist Ermurat Bapi, who has tried seven times to register a newspaper, who has been rejected every time for different reasons, and who still has not been able to register.

A few oppositional papers with small circulation are the exceptions. These papers have been able to find judicial loopholes and avoid official obstacles. Some managed to circumvent the registration process, some bought their license from owners of old papers. However, the activities of these newspapers are associated with a continuous risk of being held administratively, legally and criminally responsible, something that limits their ability to grow and for readers to purchase their paper. At the same time, the fact that they do exist gives the authorities a chance to speak of “alternative views in the media”, and hence to declare that freedom of speech exists in Kazakhstan. The cunning lies in the fact that this form of freedom of speech is so limited that the majority of the population has no access to alternative information, while those who spread information is under continuous pressure from the government.

For instance, in the beginning of July 2013, the chief editor of the journal *Adam Reader's*, Gulzhan Yergalieva, stated that the latest issue of the Kazakhstani journal could not be published because she could not find any printer who would print it. One press claimed the rejection was due to technical problems, others said that they did not print publications of a political nature. According to the editor, *Adam Reader's* contacted around 24 printers in Almaty and Almaty Province and was rejected everywhere. Many oppositional newspapers have met with the same practice.

Another example. The Constitution of Kazakhstan guarantees the right to vote and to be elected, as well as to participate in nationwide referenda. However, no election in Kazakhstan has ever been held in accordance with the principles of democratic elections. In the absence of alternative views, government-controlled media has been shaping public opinion to fit that of the government. In a sense, the public is being duped into the necessary result. It is impossible for opponents of the government to break through public opinion in the course of a one or two-month election campaign, especially considering that their chances of appearing on television is seriously limited. Secondly, people who to some extent are dependent on government officials (students, the military, doctors and employees of other state- funded institutions) are forced to vote for the preselected candidate. As a rule, a dependent person will not risk problems or enter into conflict, as it could cause him to get fired from his job. For this reason, he also keeps quiet about the pressure placed on him during elections, and does not take the matter to court. The situation is made even more difficult by the fact that Kazakhstani court system is cunning in its own right.

Kazakhstani judges are appointed (directly as well as indirectly through the Senate) by the President and do not enjoy political independence. Twenty years of practice has shown that the judges serve the political interest of the authorities. When a case is politically motivated (trials against political opponents, human rights activists, journalists, civil society activists), the courts rule in favor of the current political regime.

FREEDOM OF ASSEMBLY



The Constitution of Kazakhstan guarantees the right of all citizens to hold peaceful meetings, rallies and demonstrations, street processions and pickets.¹

However, the main Kazakhstani law regulating the exercise of the freedom of peaceful assembly² stipulates that Kazakhstani citizens must first obtain permission from local authorities (Akimats). An assembly held without permission is considered to be a violation of the law, and its organizers are subject to administrative penalties. Only groups are allowed to apply to hold a meeting; there is no such right for individuals.

Not only large-scale demonstrations are affected. Distributing leaflets, joining flash mobs, wearing T-shirts or carrying umbrellas with political signs or slogans, laying flowers at memorials is all considered to be “form[s] of expressing public, collective or personal interests and protest.” Any gathering where citizens discuss social or political issues requires permission from local authorities.

The Law stipulates that assemblies may be held only if certain requirements are met. These include submitting a special application ten days before the date of an assembly and agreement to hold the assembly in a specially designated area. These areas are typically located far from the city center, where the event will not be noticeable to the general public or authorities. In Kazakhstan’s largest city, Almaty, this place is the park behind Sary-Arka cinema³.

1 <http://www.constcouncil.kz/eng/norpb/constrk/#section2>, Article 32.

2 Law of the Republic of Kazakhstan of 17 March 1995, “On the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan”.

3 Areas designated for holding assemblies are established for almost every city and town in Kazakhstan.

In 2013 a local NGO⁴ reported that assemblies devoted to political themes had almost completely disappeared. During the second quarter of 2013, social protests rather than political ones dominated in the country. This is likely to have been caused by recent pressure on opposition groups.

The practice of restricting freedom of assembly in Kazakhstan is in violation of the International Covenant on Civil and Political Rights, the OSCE Copenhagen Document and the OSCE ODIHR Guidelines on Freedom of Peaceful Assembly.

The government of Kazakhstan should put an end to the de facto ban on peaceful assemblies, bringing practice in line with the rights established in the country's Constitution and international standards.

⁴ Kazakhstan International Bureau for Human Rights and Rule of Law.
http://www.bureau.kz/data.php?page=&n_id=6238&l=en

Regardless of the fact that all processes give an impression of a fair trial from a formal point of view, it is impossible to speak of fair trials in Kazakhstan. The cunning lies in the fact that in every such case, the judge is an obedient executor of the political will of the government. As such, Kazakhstani courts have become a universal instrument of the “cunning democracy”.

Another example of the “cunning democracy” is the constitutional right to peaceful assembly. The guarantee of freedom of assembly is formally in accordance with the definitions found in the International Covenant on Civil and Political Rights (ICCPR). However, Kazakhstani authorities seriously curb the right of Kazakhstani citizens to meet peacefully and without weapons.

The ICCPR permits limitations to the freedom of association, but only as separate exceptions from the general right to use this freedom, without any form of limitation. In Kazakhstan, the limitations on the right to peaceful assembly extend far beyond such exceptions and is instead a widely used practice. The mere fact that persons who wishes to hold an assembly can realize this right only after receiving permission from local authorities (the Akimat) is an impermissible limitation on the right to peaceful assembly. The absence of a permit automatically turns a peaceful assembly into an illegal one. In international practice, the legality or illegality of an assembly is decided primarily by its character – whether it is peaceful or not.

Another piece of cunning is the fact that in practically all large populated areas of Kazakhstan, the authorities have established special places where peaceful assemblies can be held. When considering an application to hold a demonstration, the Akimat will suggest that the event should be held in a spot specifically designed for this purpose. And, as a rule, these places are located far away from the center of the city. Events taking place here go unnoticed by society at large and by those whose attention they are supposed to attract. If those who have gathered refuse to hold their demonstration at the designated spot, the Akimat will reject their application to hold the event in a public place altogether. If the applicant does not agree with the Akimat’s rejection, considering this a violation of his rights, he may of course take the matter to court – that universal instrument of “cunning democracy” – which will only confirm the decision of the authorities.

Another right which has been cunningly stolen from the citizens by the current government is the right to establish political parties. The Constitution states that “Citizens of the Republic of Kazakhstan shall have the right to freely associate.” However, the realization of this right is lies in the hands of government officials, who have established legislation that makes registration of a political party highly difficult. In the case of oppositional parties, the law has become an insurmountable barrier. Not only does an opposition under administrative pressure have to find 40,000 members, they also have to observe complicated procedures for holding the meetings required to formally establish their

party. For every step, government officials will find innumerable reasons to withhold registration for unspecified periods of time. In order to reject an application for registration, it is sufficient to find a few persons who are willing to withdraw their signature, or who have died or left the country. This practice was used against the opposition party Alga!, whose party members wandered the offices of government officials for seven years, trying every conceivable way to get registered, but not succeeding in doing so. Such a practice in relation to the right to association looks more like an outright ban on political activity.

The above-mentioned are examples of Kazakhstani authorities' intent to remove democratic content from the norms of the Constitution, to disavow them on the level of laws and regulations. For this reason, the Kazakhstani state, which externally is seen as democratic, is instead a Potemkin village raised to fool those who do not have the possibility to see the true situation with regards to human rights in Kazakhstan.

A perfect example of this is the realization of the National Action Plan on Human Rights for 2009-2012. On 5 May 2009, the president of Kazakhstan approved the National Human Rights Action Plan for 2009-2012, which contains a programme intended to guarantee human rights in Kazakhstan by bringing national legislation and legal practice into correspondence with international standards, including timeframes for the realization of these measures. It also specifies which departments are responsible for carrying them out. The recommendations of the National Action Plan concern the development of mechanisms for realizing the constitutional rights of citizens. Particular attention was paid to the strengthening of the court system, the development of non-judicial mechanisms of protection of human rights and protection of civil and political rights on the level of international standards.

Up until Kazakhstan's chairing in the Organization of Security and Cooperation in Europe (OSCE), this document was considered one of the main indicators that the government of Kazakhstan was intent on keeping course on further democratization of the country. The plan was presented as a serious mechanism for the promotion of democratic principles in Kazakhstan, and received approval by the governments of a number of countries as well as international governmental and non-governmental organizations.

During the four years of realization of the National Action Plan, only 23% of the recommendations included in its main chapters have been fulfilled, and only those which are of secondary importance to the fundamental human rights situation. The cunning is to be found in the fulfillment of only those recommendations which do not influence the actual situation. However, it gives the government the chance to speak about how much they are doing to promote democratic principles, pointing to a general "positive tendency" in the realization of the Action Plan. However, out of 14 points in the plan, each of which regards one concrete human right or freedom, the situation

FREEDOM OF RELIGION OR BELIEF



The Constitution of Kazakhstan states that everyone shall have freedom of conscience and the right to determine his or her own religious affiliation.¹

In October 2011, a new Religion Law was adopted in Kazakhstan, which introduced harsh new punishments for unapproved religious activity. The new Law banned all unregistered religious activity, and required all registered communities to gain re-registration within a year or face court-ordered liquidation.

Although the Religion Law made no mention of it, officials insisted that Muslim communities could only gain state registration if they joined the state-backed Muslim Board, a restriction which was not imposed on other faiths. The Muslim Board only recognizes Sunni mosques willing to subject themselves to its authority, which left independently-minded mosques and Shia mosques in a state of illegality.

Officials also insisted that mosques cannot cater to particular ethnic communities, a provision which equally was not applied to other faiths (such as Jewish, Russian Orthodox or Armenian Apostolic communities).

The Law also bans sharing faith with others, unless an individual has been tasked to do this by a registered religious community and is personally registered to do so. Dozens of individuals have been fined for this in 2013, including Jehovah's Witnesses, Protestant Christians and Muslims. Persecution may also be initiated against non-believers, as was the case for Aleksandr Kharlamov, who initially was accused of "inciting religious

¹ Article 19 and 22 of the Constitution of Kazakhstan. <http://www.constcouncil.kz/eng/norpb/constrk/>

hatred” for writing his atheist views. He has been held incommunicado and under enforced psychiatric investigation.

The 2011 legal changes also imposed a comprehensive system of prior compulsory censorship of all religious literature published, printed and sold in Kazakhstan, as well as imported into the country.

In June 2013, fines were handed down even for inviting other people to religious meetings as courts agreed that this represented illegal sharing of faith. The presence of guests at a religious meeting was enough proof.

The government of Kazakhstan should revise its practice towards religious communities, bringing it in line with the country’s Constitution and international standards.

with regards to 8 human rights (8 parts of the plan) has remained unchanged, whereas the situation with regards to 5 human rights (5 parts of the plan) has worsened.

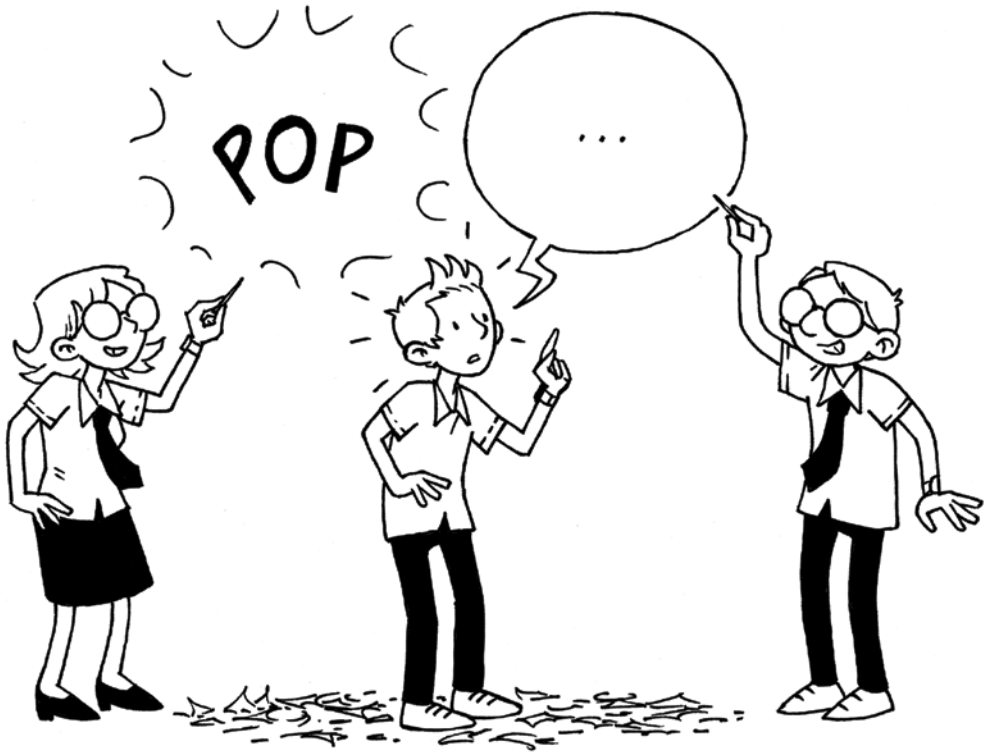
According to monitoring carried out by human rights activists, improvement has only been observed with regards to the rights of the child, while a worsening situation has been noted with regards to respect for fundamental rights and freedoms. Certainly, an improvement of the rights of the child is a very important point. However, this cannot conceal the fact that the situation has worsened with regards to freedom of speech, including peaceful assembly, civil and political rights, the right to freedom of religion or belief and many others. This is a result of one of the greatest cunning of the past few years – the realization of the National Human Rights Action Plan for 2009-2012.

It is highly unfortunate that hypocrisy has become the main characteristic of Kazakhstani authorities' attempts at "promoting democracy". Moreover, under the pretext of bringing democratic institutes into line with the mentality and traditions of the population, these have been transformed into openly authoritarian instruments, through which attacks on human rights and freedoms are being carried out. In the name of the fight against extremism, the authorities crack down on peaceful strikers. While realizing the program "The road to Europe" opposition parties and media were closed down. Within the framework of the realization of the National Human Rights Action Plan, the authorities passes an openly repressive law on religious communities.

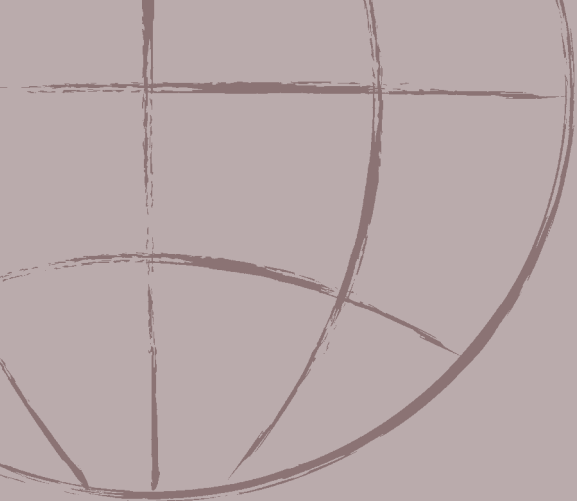
The current governments' particular cunning lies in the fact that among its achievements it does not consider the welfare of the population, not the production potential of the country, not the level of public health or education, but rather membership and chairmanship in various international organizations, the hosting of international forums and award ceremonies.

This can hardly be called an achievement.

Sergey Duvanov, for Norwegian Helsinki Committee/Freedom House



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