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Statement by the President of the Open Dialogue Foundation, Lyudmyla Kozlovska, on the consideration of the third cycle of the Universal Periodic Review of Kazakhstan

Due to the upcoming UPR of Kazakhstan, non-governmental organisations *the Open Dialogue Foundation, the Italian Federation for Human Rights (FIDU) and Kharkiv Institute for Social Research* prepared a joint Submission. For 10 years, the Open Dialogue Foundation has been providing expertise on human rights issues in post-Soviet states, in particular in Kazakhstan. In 2018-2019, FIDU carried out a human rights mission to Kazakhstan, which was also attended by an expert from the Kharkiv Institute for Social Research. Updates of this submission as delivered during the pre-sessions, were possible thanks to the collection of information and supporting evidence provided by the youth human rights initiative *Qaharman*¹. Recommendations regarding the defence of lawyers were developed in the cooperation with the lawyers from Kazakhstan and the International Bar Association's Human Rights Institute.

In this statement, I will provide an update on the issues of **freedom of opinion and expression, justice and the fight against torture**. Sadly, Kazakhstan refuses to comply with key recommendations in this areas.

After the transit of power, the new President, Kassym-Jomart Tokayev, continues Nursultan Nazarbayev's policy and strengthens the authoritarian regime. The authorities of Kazakhstan claim that they are committed to democratic principles. Unfortunately, the reality is completely different.

During the previous UPR, many states requested Kazakhstan to **review the new criminal legislation** that restricted freedom of opinion, freedom of assembly and freedom of information. This recommendation was made by Australia, Austria, Ireland, Slovenia, USA, Finland, Czech Republic, Switzerland and Estonia. However, Kazakhstan refused to accept it.

The new Criminal Code **was adopted contrary to the recommendations of the UN, OSCE and the EU**. The Code contains the following vague and politicised articles that are used against activists, participants in peaceful assemblies, journalists and human rights defenders: 'inciting social discord' (Article 174), 'libel' (Article 130), 'dissemination of knowingly false information' (Article 274), 'violation of the order of organising rallies' (Article 400), 'participation in the activities of an organisation after its recognition as extremist' (Article 405).

States such as Belgium, Japan and Sweden recommended that Kazakhstan create a space for the free and safe activities of civil society representatives. However, practice shows that the authorities of Kazakhstan act in exactly the opposite way. **The total number of politically prosecuted persons is growing rapidly, primarily due to the detentions of participants in peaceful rallies.**

From March to July 2019, another wave of anti-government protests of thousands of people took place in Kazakhstan. Peaceful protesters spoke out against election fraud, against the renaming of Astana to Nur-Sultan in honour of Nazarbayev and against torture in detention facilities, as well as for the release

¹ https://twitter.com/qaharman_kz; <https://www.facebook.com/qaharman.kz.7>

of political prisoners and for improving social security. The authorities dispersed the rallies with the use of force, and in some cases – with open brutality.

On 9–12 June 2019, according to official data alone, **about 4000 peaceful protesters were detained**. In general, from February 2018 to October 2019, **more than 6000 people** were arbitrarily detained for participating in peaceful rallies. More than 230 victims of these persecutions have sent their powers of attorney to the Open Dialogue Foundation with the aim of having their rights protected.

At police stations, detained protesters were interrogated about their political views. The police confiscated phones from detainees and checked whether they were subscribed to the pages of the opposition movement "**Democratic Choice of Kazakhstan**" (**DCK**). The DCK advocates for the creation of a parliamentary republic and promotes its programme of democratic reforms using social networks. In its resolution on the human rights situation in Kazakhstan (dated 14 March 2019), the European Parliament noted the peaceful nature of the DCK.

In March 2018, at the request of the Prosecutor's Office, **the Kazakhstani court recognised the DCK as an “extremist” organisation**. The court stated that the DCK “*incites social discord*” and “*forms a negative image of authorities*”. As you can see, this grounding has nothing to do with jurisprudence. Referring to this court decision, the Kazakhstani authorities regard criticism of them in social networks and participation in peaceful rallies as a crime under Art. 405 of the Criminal Code – ‘participation in the activities of an organisation after its recognition as extremist’.

In indictments, investigators list **such “criminal actions”** as: “positive approval of the ideas of the DCK and its leader Mukhtar Ablyazov” (opposition politician); “reposting materials from the pages of the DCK and Ablyazov”; “shouting out ideas at rallies that provoke protest moods”. In criminal cases, Kazakhstani flags and blue balloons are used as physical evidence, since investigators consider them to be “prohibited propaganda materials”.

On this charge, in July 2019, **single mothers** Gulipa Dzhaukerova and Zhazira Demeuova, as well as **mother of many children** Oksana Shevchuk, whose younger daughter is still breastfed, were detained. 3 people (Aset Abishev, Almat Zhumagulov and Kenzhebek Abishev) are serving prison terms on the same charge, and more than 20 people are under investigation. FIDU observer Daniyar Khassenov monitored these prosecutions, for which he himself was subjected to similar criminal charges.

Thus, the expression of opposition views, participation in peaceful rallies and even human rights activities **are regarded as “extremism” by the authorities**.

That is why we believe it is necessary for Kazakhstan to implement the following recommendations:

- Decriminalise ‘libel’ and ‘dissemination of knowingly false information’, as well as review the politically motivated article ‘inciting social discord’ in accordance with the ICCPR requirements.
- Revoke the decision to ban the peaceful opposition movement “DCK” and cease the use of the “fight against extremism” as an instrument for fighting dissidents.
- Stop the practice of mass forceful detentions and criminal prosecution of peaceful protesters.

In the previous UPR cycle, Canada and France recommended that Kazakhstan strengthen a fair and independent judiciary. However, the authorities **are not taking any real steps to reform justice**. More than 99.8% of sentences in the country are convictions, and political cases are considered with a particularly clear accusatory bias.

According to our calculations and the data from Kazakhstani human rights activists, **at least 21 political prisoners in Kazakhstan (they are currently in prisons or in a pre-trial detention facilities)**. In total, 54 people were subjected to politically motivated criminal prosecution.

A vivid example of Kazakhstan's position on this issue is **the refusal to comply with the UN demands for the release of political prisoners**. At least 25 out of 32 UN Opinions are ignored by Kazakhstan. The UN Working Group on Arbitrary Detention recommended the immediate release of Maks Bokayev and Iskander Yerimbetov, and the UN Human Rights Committee recommended the immediate release of Mukhtar Dzhakishev. The Kazakhstani authorities are ignoring this.

In case of political prisoners, the authorities set the following condition: "repent" in exchange for their release. Iskander Yerimbetov was offered to "plead guilty" and give false testimony against oppositionist Mukhtar Ablyazov in exchange for freedom. He refused to do so and as a result was subjected to severe torture and imprisonment. Maks Bokayev reported that a representative of the Presidential Administration promised him freedom in exchange for "repenting" and refusal of public activities. So, in political cases, decisions "come from above", in particular from the Presidential Administration.

When passing a suspended sentence, **Kazakhstani courts impose additional restrictions on freedom of expression on the defendants**. For example, Serikzhan Bilash and Larisa Kharkova were banned from engaging in civil society activities for 7 and 5 years, respectively.

Further recommendations for Kazakhstan may include:

- Ensure the implementation of international commitments to carry out justice reform.
- End politically motivated imprisonment and prosecution of civil society activists, journalists, bloggers and human rights defenders.
- Implement the recommendations of the UN WGAD and the UN Human Rights Committee on the release of Maks Bokayev, Iskander Yerimbetov and Mukhtar Dzhakishev.

An important part of the discussion during the previous UPR was the topic of **effective fight against torture and ill-treatment in Kazakhstan** (recommendations were made, among others, by Germany and Italy). The results of our monitoring confirm that torture in Kazakhstan's places of detention and impunity for its use are systematic. Penal Reform International recorded more than 1400 cases of torture in the country each year. **At the same time, almost all cases of torture are closed due to "lack of evidence"**. A striking example was the case of Iskander Yerimbetov, when, despite the concerns of the UN Special Rapporteur and calls from the EU, the authorities closed the torture case.

The Kazakhstani authorities point to the introduction of the **National Preventive Mechanism (NPM)** as an example of their fight against torture. However, the recommendations of Germany, Great Britain, Spain and Chile to strengthen the effectiveness of the NPM, guarantee the independence of the Ombudsman and expand his mandate have not yet been implemented. The NPM is dependent on the Ombudsman, who in turn is dependent on the Presidential Administration.

The Netherlands recommended **the admission of international observers to places of detention**. However, international human rights missions have been denied access to, for example, political prisoners Aron Atabek and Mukhtar Dzhakishev for several years. Dzhakishev suffers from life-threatening diseases and can die in prison at any time.

Recommendations for the authorities of Kazakhstan:

- Transfer of the penitentiary system from the jurisdiction the Ministry of Internal Affairs to the Ministry of Justice.
- Ensure full functional and financial independence of the National Preventive Mechanism and the Commissioner for Human Rights.
- Conduct a proper and thorough investigation into the allegations of torture, including by increasing the number of cases of torture brought to the trial stage.

In the previous UPR cycle, the Czech Republic, Spain and Norway recommended that Kazakhstan strengthen **measures to protect lawyers and human rights defenders**. Unfortunately, there are no positive developments on this issue. In 2018 Kazakhstani authorities adopted a new law that lead to state control over the Bar Association. Lawyers who are involved in political cases face threats, intimidation and other kinds of pressure.

Recommendations for the authorities of Kazakhstan:

- Amend the Law on Advocates Activities, eliminating the Ministry of Justice's powers to: decide on admission to the profession and initiate lawyers' disbarment procedure
- Remove Art 39.2.2.-3 of the Law on Advocates' Activities, thus ensuring that also former judges, prosecutors and investigators be properly assessed, instead of having the right to acquire a lawyer license automatically after 10 years of experience
- Stop harassment and prosecution of lawyers who are critical towards the government or who take on sensitive cases and effectively investigate cases of pressure and harassment of lawyers

Human rights activist Elena Semenova told the Members of the European Parliament about the multitudinous facts of torture of prisoners in Kazakhstan, after which she was accused of 'dissemination of knowingly false information'. Thanks to the reaction of the UN and the EU, the criminal case was dismissed.

The facts of **pressure on human rights organisations** are an alarming signal. In February 2019, the authorities illegally expelled members of the human rights monitoring mission of the Italian Federation for Human Rights from Kazakhstan. They were arbitrarily detained and deprived of consular protection. In addition, the Open Dialogue Foundation has been subjected to propaganda attacks and slandering campaigns by the Kazakhstani authorities for several years.

Belgium, Italy, Norway, Finland, France, Estonia, the Czech Republic and Japan recommended that Kazakhstan guarantee **freedom of expression and media as well as protection for journalists and bloggers**. Kazakhstan refused to decriminalise defamation. New amendments to the legislation allow the authorities to block social networks and websites without a court order. The authorities call this "ensuring information security". Almost all of the influential media that were critical of the government were closed down in Kazakhstan.

In 2019, several dozen journalists were brutally detained for covering peaceful protests. They were also attacked by unknown masked individuals (the so-called "titushky").

Recommendations for the authorities of Kazakhstan:

- Cease the practice of intimidating, arresting and prosecuting journalists and bloggers for exercising their right to freedom of expression and information.
- Avoid further persecutions, including criminal prosecution, of activists and lawyers for their legitimate human rights activities.
- Provide conditions for the free and safe work of human rights defenders and members of international human rights missions.

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