

**Comments of the Kazakhstan International Bureau for Human Rights  
and Rule of Law to Draft Strategy of the European Bank for  
Reconstruction and Development for Kazakhstan for 2009-2011**

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The Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHRRL) is taking this opportunity to thank the European Bank for Reconstruction and Development for its initiative to hold public consultations to discuss the Bank's new strategy for Kazakhstan.

Please see below our comments to the Strategy consultations, approval procedure and to the Strategy itself:

1. We believe that discussion of the new draft Country Strategy instead of collecting comments to the previous strategy (for example, of 2006), as done before, is obviously a positive and progressive change.
2. The KIBHRRL is thanking the Bank for translation of the brief Strategy Summary, but we still insist that public participation cannot be efficient unless the Bank provides the draft Strategy translated at least into Russian (translation into the Kazakh language is desirable as well). In Kazakhstan, the Russian language is a language of international communication. Also, Russian is one of the EBRD's official languages. The Bank, according to the Public Information Policy, is not obliged to translate any draft Country Strategy, but an approved Country Strategy only. However, we do not agree with this approach. Currently, many representatives of civic organizations are not able to be fully involved in the Strategy's discussion due to the insufficient knowledge of English. The provided translation of the Strategy Summary contains 5 pages, while the full version is 59 pages long. This makes the discussion process incomplete. We therefore think that the Bank should make the relevant changes in its Public Information Policy during its next revision and accept recommendations of the NGOs that already brought the Bank's attention to this issue (e.g. Tajik NGOs in December 2008).
3. The draft Strategy for Kazakhstan provided for discussion does not contain a so-called introduction part listing the goals of this document etc. Document sections that describe the proposed orientations of the EBRD's operations in Kazakhstan have only abstract statements, without any specific information. As the proposed strategy does not provide any specific data about the the projects that will be financed for the period.

We agree with the Bank that **Kazakhstan's economy is highly dependent on oil sector**. And we welcome the EBRD's policy directed on the diversification of Kazakhstan's economy. We would like to emphasize the Bank's attention on the transition of Kazakhstan not only to the market economy, but on the socially fair, low-carbon economy.

4. A positive change is that the new EBRD Strategy for Kazakhstan contains sections which were not included into the previous Bank's Strategy for Kazakhstan, namely *Rule of Law and Human Rights*. We are very happy that the Bank covered this important topic in a separate section, but the facts listed in that sections do not show the real human rights situation in Kazakhstan. We thank the Strategy's authors for describing in the *Law Reform* Section the problems related to the access of the Kazakh people to one of the most important human rights - a right for just and public case settlement by a competent, independent and fair court, however, we think that this problem has not received due attention in the draft Strategy. We therefore think that this section should include more details on the existing problem in the judicial area. As an example of the existing problems in Kazakhstan's legal system, we provide hereunder an extract from Report about the visit of Leonardo Despuit, Special Reporter on independence of judges and barristers, to Kazakhstan: "the existence of a professional and independent legal system is not a privilege of judges, but a fundamental right of the society. To view Kazakhstan as a truly democratic country, it is crucial to reform

its legal system, including even constitutional reforms, to ensure a more just allocation of powers between the state authorities and improve the independence of judicial agencies". Based on the example of other presidential systems, the Special Reporter believes the aforesaid can be done without making any changes in the nature of the president's power in the given political system.

5. Therefore, the issues listed below are of fundamental importance:
  - i) appointment of judges of all levels, tenure, dismissal and salary. For the time being, these issues are almost exclusively handled by the Republic's President, and this should not continue;
  - ii) prosecutor's powers are obviously too wide which does not contribute to the assurance of independence of judicial authorities;
  - iii) structure and operation of the Supreme Court Council are exclusively controlled by the Republic's President;
  - iv) weakness of the Constitutional Council that cannot be a counterbalance for the influence of Republic's President, as it is not entitled to consider the President's decrees and its decisions may be declined by the President.

A good example of the problems existing in the judicial systems are cases related to conviction of well-known public activists, journalists and ex state officials:

- Conviction of Evgeniy Zhovtis
- Conviction of Ramazan Esergepov
- Conviction of Tokhniyaz Kuchukov
- Commencement of proceedings against the owners of the *Kometa C* printing office that printed an opposition newspaper *Respublika*; and other scandalous cases.

All aforementioned people were charged 'legally', but if Kazakhstan's judicial system complied with all international legal principles and requirements of the national law, all the above cases would not have been imprisoned or would have been released immediately. But as all these cases were politically motivated, and the judges' independence is on paper only, Zhovtis, Kuchukov and Esergepov are still kept in prisons.

5. We have also noticed that the part of the Strategy containing the assessment of the previous strategy is almost identical to the 2006 strategy, though this period has seen gross abuses of human rights and loss of democracy. Below are some of the results of the Kazakh NGOs' human rights monitoring:

- Kazakhstan ratified most international agreements on human rights including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but the national laws do not comply with the international legal commitments taken.
- Law and law enforcement policy do not provide efficient legal protection.
- Victims of human right abuses by the state and state authorities do not have access to efficient, immediate, full and just investigations of such abuses; in most cases, no measures are taken in respect of the supposed responsible persons which results in the impunity of such persons, and the victims of the abuses do not therefore believe in the efficiency of the legal protection and a possibility to receive any indemnification.
- Operations of the state authorities and organizations responsible for public order and state security authorities are not controlled by the senior authorities (Parliament), courts or any other competent independent authorities. The country expressly features executive powers, with a nominal division of power and ineffective system of counterbalances.
- Human rights laws are unclear and not specific, which allows the authorities interpret them based on their own needs, and contain many reference laws, and do not meet the legal clarity and predictability rule.

- In law enforcement practice, authorities do not comply with the international commitments of the Republic of Kazakhstan, Constitution or law, but follow subordinate acts (instructions, rules etc) which often do not meet international rules, the country's Constitution and effective laws.
- As a rule, arrests in the Republic of Kazakhstan are registered not at the actual time of arrest, but at the time of making a protocol about an 'administrative' or 'criminal' arrest; the arrested people are not always informed of their minimum guaranteed rights. Sometimes people are forcedly kept at the places which are not official prisons (secret flats of state security authorities) and held *incommunicado*.
- Since August 1, 2008, arrests in Kazakhstan require a court's approval. This step is aimed at the state's compliance with its international commitments, but the procedure of arrest approval by court does not fully meet the principles and goals of *habeas corpus* and does not guarantee a protection from tortures and illegal arrest. The court's functions are limited by investigation of the case materials and circumstances to be taken into account for passing the sentence, including the person's permanent residence address, identity, any previous offences and attempts to avoid criminal prosecution.
- Courts do not have a direct responsibility to assess the legitimacy and validity of arrest. Court's functions do not include the questioning of the preliminarily arrested suspect of any abuses of his or her rights that have taken place. Court settings are closed, and the arrest approval by court is discussed at least 72 hours after detention. Arrest is approved by the courts of original jurisdiction which later investigate the criminal case.
- **Torture-preventing measures**

In 1998 Kazakhstan signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in 2008 ratified the Optional Protocol to the Torture Convention and made relevant statements to articles 21 and 22.

In 2001 the UN Committee Against Torture sent its recommendations to Kazakhstan, most of which, however, were ignored.

Kazakhstan does not show a 'zero' tolerance of the existing torture problem. Sanctions of article 347-1 of the Criminal Code of the Republic of Kazakhstan do not include any punishment for tortures. Actions which can be classified as 'tortures' are allowed under the Criminal Code of the Republic of Kazakhstan, articles *Abuse of Authority* and *Testimonial Compulsion* which makes it impossible to get precise information about tortures and other cases of cruel, inhuman or degrading treatment of punishment in Kazakhstan.

Tortures, psychological pressure and threats are widely used by the law-enforcement officials to get an 'acknowledgement of guilt' and admission of crime.

Kazakhstan has no independent specialized institution to examine torture claims and quickly, justly and fully investigate such cases. Kazakhstan also has no independent system that would allow visiting prisons without prior notice, and many prisons including pre-trial prisons of the National Security Committee, are in jurisdiction of the authorities that investigate the case.

Evidence obtained in the result of tortures is used for prosecution and is not investigated later by courts, and torture complains are viewed as an attempt to avoid criminal responsibility.

The European Court of Human Rights made a decision on the "Kabulov vs Ukraine" case (complaint No. 41015/04) that in fact set a moratorium on extradition to Kazakhstan for all parties to the **European Convention on Human Rights and Fundamental Freedoms (ECHRFF)** until Kazakhstan provides trustworthy evidence that the extradited person will be safe in the country. Democracy is based on principles of the majority rule together with individual and minority rights. All democratic countries that respect the majority rule do everything possible to protect fundamental rights of individual people and minority groups. The court decision states: "*it is proven that in Kazakhstan any person that is a criminal suspect and is kept in jail, is highly exposed to tortures and/or inhuman treatment even without any reason or aim. Therefore the Court agrees with the applicant's statement that just detention as a criminal*

*suspect is enough to suppose that the applicant's treatment back to the country will violate article 3 of the ECHRFF. Thus extradition is a breach of article 3 of the ECHRFF".*

A bright example of the fact that tortures and inhuman treatment are common in Kazakhstan is a legal case brought against ex-head of *KazAtomProm* Mukhtar Jakishev. According to medical documents provided by Mr. Jakishev's defendants, he needed immediate medical help, but investigating authorities refused to allow him to go to a hospital. According to international rules, a refusal to provide medical assistance is viewed as a torture.

- **Mass media**

Laws of the Republic of Kazakhstan on mass media and journalists have considerable deficiencies in respect of compliance with international standards. The Criminal Code of the Republic of Kazakhstan contains six articles protecting honor and dignity of officials, including the country's President, Parliament deputies and authorities. Offence of honor and dignity and slander are not decriminalized. Administrative laws contain more than fifty separate descriptions of administrative offences of mass media. Most sanctions include suspension of release and confiscation of already printed copies, including for merely technical deficiencies.

In July 2009 the Kazakh President signed the Law on changes and amendments in laws on information and communication networks to provide additional control of the Internet. According to this law, all Internet resources (websites, blogs, chats, forums, Internet shops etc) are considered mass media, and their owners and journalists bear criminal, civil and administrative responsibility. Under this law, Internet providers and website owners must within two years keep all personal data of users obtained with their registration. In the recent four years, Kazakhstan has seen about 100 cases of blocking of independent and opposition Internet media.

In 2008, mass media received claims for moral damage for more than USD 10 mn. Limitation period for claims to the media is not covered by the laws. Journalists are kept in prisons for on a charge of slander and disclosure of state secrets.

- **Peaceful assemblies**

Kazakhstan's laws and law enforcement practice in respect of the right to freedom of peaceful assemblies do not comply with international standards. All types of public events and demonstrations including flash mobs, meetings with deputy candidates or deputies of representative authorities, and filing petitions need at least 10 days prior authorizations and must be done in accordance with the common rules. Laws on peaceful assemblies do not allow individual persons to file declarations of public demonstrations.

Public events held without such authorizations, irrespective of their peaceful nature, are stopped immediately, with organizers and participants of such events brought to administrative responsibility including up to 15 days long administrative arrests. In all cases, courts take the side of prosecutor, police and local executive authorities.

In Astana, Almaty and district centers local authorities only allow to hold all peaceful assemblies including pickets, meetings and demonstrations at one or two places, sometimes outside the city, which undermines the very nature of a right to peaceful assemblies to express public opinion and protests against actions and decisions of state authorities and officials.

- **Right to freedom of association**

Laws of the Republic of Kazakhstan include right to freedom of association, but to a great degree do not comply with the international standards. Any public associations must be registered, and unregistered public organizations are illegal and impose administrative or criminal responsibility on their organizers or members including suspension of its activity and liquidation of the association.

- **Right to freedom of conscience and religion**

Effective laws and law enforcement practice of the Republic of Kazakhstan in respect of freedom of conscience and religion to a great degree do not comply with the international standards. They are based on the "presumption of guilt", arbitrary interpretation of ideological

and political expediency and discrimination approach to the regulation of religious associations; they also require obtaining prior permissions, impose many prohibitions and limitations that fully or partially do not comply with the criteria of acceptability of limitation of human right and freedoms under the international law and with the principles of legal certainty and predictability. Law enforcement and national security authorities view religious associations as a threat for national security. Religious associations do not bear the same responsibility for breaking law as other legal entities, and have limited rights for spiritual ceremonies (prohibition to act without registration), for recognition of their legal status, for missionary work and religious education, purchase and use of religious literature and items, for establishment and maintenance of international contacts etc.

The state rigorously controls non-traditional religions and religious movements. Law enforcement agencies and secret authorities conduct inspections and withdraw religious literature, and preachers are made accountable for religious workshops conducted outside of the religious association's registered place. In the beginning of 2009, a preacher of the Unification Church was sentenced to a 2-year imprisonment for a religious lecture based on biased and incompetent expertise (imprisonment was later substituted with a fine).

- **Right to a healthy environment**

People of Kazakhstan cannot fully enjoy their right to freedom from contamination, environmental degradation and actions that adversely impact the environment or threaten human life, health, living and well-being.

Key reasons of mass violation of human right to a healthy environment include the lack of state environmental policy, predatory use of natural resources, degradation of the state environmental protection system, deficiencies in national laws and corruption.

Laws of the Republic of Kazakhstan do not include a procedure of considering public opinion and involving the public organizations in decision-making process. Courts do not accept evidence obtained from non-state sources licensed to conduct expertise and collect information, which significantly limits the right of the people for access to information.

The state also infringes the people's right to access to justice on environmental matters, and the process of protecting environmental rights at courts shows the lack of efficient remedies.

Therefore, the above facts provide a striking evidence of human rights abuse and loss of democracy in Kazakhstan. This is not fully shown in the proposed Strategy.

6. The EBRD Strategy for Kazakhstan does not include a mechanism of the Bank's liaison with civic organizations, which raises concerns. We believe that a country strategy should contain the description of the Bank's relationship with the country's NGOs.

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