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KAZAKHSTAN: Six months after UN decision, no releases from sentences, no compensation

By Felix Corley, Forum 18 (<https://www.forum18.org>)

In September 2021 the UN Working Group on Arbitrary Detention called on Kazakhstan to free eight Muslims from their punishments "immediately" and compensate them for their imprisonment. They were among nine jailed for participating in a WhatsApp Muslim discussion group, and the Working Group stressed its Opinion applied to all nine. More than six months later, none has had their sentence overturned or been compensated. Five are still jailed and four transferred to sentences based at home. "Unfortunately Kazakhstan hasn't implemented the Working Group Opinion and state bodies do not even refer to it," says human rights defender Yevgeny Zhovtis.

More than six months after the United Nations Working Group on Arbitrary Detention called on Kazakhstan to free five members of an online Muslim discussion group "immediately" and compensate them for their imprisonment, all five are still in prison. A further four (including Esim Suleimenov who did not appeal to the Working Group) have been freed from prison, but are serving the rest of their sentences at home under restrictions. None has had their sentence overturned or been compensated as the Working Group demanded. The Working Group stressed that its findings applied to all nine convicted members of the Islamic discussion group.

The regime has also not implemented a "full and independent investigation" called for by the Working Group in September 2021 into why the men were subjected to arbitrary detention. Nor has it implemented "appropriate measures against those responsible for the violation of their rights" (see below).

There is also no indication that the Kazakh government has updated the Working Group within six months of being provided with the Opinion in October 2021 on how it is implementing it, including as to whether it had freed the men and whether it had paid them compensation (see below).

Deeming their imprisonment to be "arbitrary", the Working Group stressed that "no trial" of the men "should have taken place" (see below).

"Unfortunately Kazakhstan hasn't implemented the Working Group Opinion and state bodies do not even refer to it," Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law – which helped the men lodge their UN Working Group appeal – told Forum 18 on 28 April.

"We informed the Foreign Ministry, the Ombudsperson and the General Prosecutor's Office about this Working Group Opinion, but it did not change anything," Zhovtis added. "Kazakhstan is not implementing any of the UN Treaty Bodies or Special Procedures decisions and opinions at all."

Five members of the online Muslim discussion group remain jailed: Beket Mynbasov, Samat Adilov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev (see below).

Abzal Duanbayev, the head of prison ETs-166/23 where Samat Adilov is being held in isolation cell for six months, told Forum 18 he had heard about the UN Working Group Opinion, but had not seen it. Told that it had called for Adilov and the others to be "immediately" freed, he responded: "I can't release him just like that. I need a written decision from above, from a court" (see below).

In February 2022, a court refused a petition for transfer to a lesser form of punishment from 43-year-old Nurgaliyev, because he had been in December 2019 punished for violating prison regulations by praying the namaz (Muslim daily prayers) in his free time after he arrived at his first prison in Akmola Region. On 1 April 2022, Kyzylorda Regional Court rejected Nurgaliyev's appeal against the February 2022 court decision (see below).

Prosecutor's Office official Laura Sagiyeva – who had urged the rejection of Nurgaliyev's case in court in February - insisted that she had based her contention "on the documents", despite a positive assessment from the prison administration. "I'm almost sure that the

character reference was not in accordance with the requirements of the law," she told Forum 18 (see below).

Saule Nurgaliyeva insists that her son should never have been punished for praying in prison in his free time. "Free time is given to prisoners to spend on their own pursuits, such as watching television, drinking tea, or smoking," she told Forum 18. "He chose to spend his free time praying the namaz – and they punished him for that, even though it was illegal."

Nurgaliyeva insists that she and the relatives of the others from the group still in prison will continue to work for their release. "We will fight to the end as long as we the parents have strength and health, if Allah wills it," she told Forum 18. "We will do everything possible and impossible."

Four members of the online Muslim discussion group were released from prison to serve the remainder of their terms on probation or under restricted freedom: Esim Suleimenov (in October 2020), Zhuldyzbek Taurbekov (in December 2021), Azamat Umbetaliyev (in December 2021) and Zhasulan Iskakov (on 18 April 2022). They live at home under restrictions, must report regularly to the police, cannot leave their home town without permission and must be at home each night. They also face restrictions visiting certain venues like restaurants (see below).

"It is unfortunate though that despite the decision of the Working Group, the Kazakh authorities do not grant them unconditional release," US-based Freedom Now – which also helped on the UN Working Group appeal - told Forum 18.

Four others (all of them also Muslim men) are known to be serving jail sentences to punish them for exercising freedom of religion or belief (https://www.forum18.org/archive.php?article_id=2742): Dadash Mazhenov, Dilmurat Makhmatov, Galymzhan Abilkairov and Abdukhalil Abduzhabbarov.

2018 arrests, 2019 jail terms

In October 2018, the National Security Committee (NSC) secret police arrested nine Muslim men from different parts of the country who had been among the 171 members of a Muslim discussion group on the WhatsApp messaging service. The members had exchanged thousands of messages since it was set up in December 2013. The NSC started looking at the messages in August 2018.

The criminal trial of all nine Muslims began at Almaty's Almaly District Court on 12 March 2019 (https://www.forum18.org/archive.php?article_id=2497). However, on 3 July 2019, as Zhuldyzbek Taurbekov's health worsened, his case was separated off from that of the other eight (https://www.forum18.org/archive.php?article_id=2498).

Judge Kairat Imankulov jailed the other eight Muslims for between five and a half and eight years on 5 August 2019 (https://www.forum18.org/archive.php?article_id=2498).

Judge Imankulov convicted all eight Muslims under Criminal Code Article 174, Part 2. This punishes (https://www.forum18.org/archive.php?article_id=2409) "Incitement of social, national, clan, racial, or religious discord, insult to the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their religion, class, national, generic or racial identity, committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, clan, racial, or religious discord". Punishment under Part 2, when such actions are carried out by a group of people, is a jail term of between five and ten years.

Judge Imankulov also convicted three of the eight Muslims under Criminal Code Article 256, Part 2. This punishes (https://www.forum18.org/archive.php?article_id=2409) "Propaganda of terrorism or public calls to commit terrorism", which includes the production, storage for distribution or distribution of [unspecified in the Article] specified materials, carries a punishment of five to nine years' imprisonment plus confiscation of property. If committed by an individual using a state or non-state official position, or with the use of the mass media or other communication networks, or with foreign support, or in a group, the punishment is seven to 12 years' imprisonment with confiscation of property.

Despite his state of health, the same Judge Imankulov Almaly District Court jailed Taurbekov on 6 January 2020 for seven years (https://www.forum18.org/archive.php?article_id=2565).

All nine Muslims – like almost all others convicted for exercising freedom of religion or belief - were added to the Financial Monitoring Agency List of individuals (https://www.forum18.org/archive.php?article_id=2409) "connected with the financing of terrorism or extremism". All nine of the Muslims remain on the List, meaning any bank accounts they might have are blocked (see below).

UN Working Group says "no trial" of the men "should have taken place"

Eight of the nine convicted members of the online Muslim discussion group - Azamat Umbetaliyev, Beket Mynbasov, Samat Adilov, Zhuldyzbek Taurbekov, Zhasulan Iskakov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev - lodged an

appeal to the United Nations Working Group on Arbitrary Detention.

The appeal was filed on 7 December 2020 on behalf of the eight by the Kazakhstan International Bureau for Human Rights and the Rule of Law and the US-based human rights organisation Freedom Now.

The eight argued that their detention was arbitrary because "the Government lacks any substantive evidence to justify their detention and because the Government charged and convicted them under a vague and overly broad provision of the Criminal Code" and because "it resulted from the peaceful and legitimate exercise of their rights to freedom of expression and religion".

The Working Group put the men's claims to the Kazakh government on 18 January 2021, with an eventual deadline for a response of 19 April 2021. As the response came in two days late, the Working Group did not consider it "as if it was presented within the time limit".

The Working Group found on 8 September 2021 – in Opinion A/HRC/WGAD/2021/33 (<https://digitallibrary.un.org/record/3969786?ln=en>) made public on 14 October 2021 - that the Kazakh regime had violated the men's rights.

"While the Government claims that all eight individuals were arrested, tried and convicted for actions that amounted to crimes and not for their religious or other views," the decision declared, "the Working Group has already established that their arrest, detention and imprisonment resulted from their exercise of the rights to freedom of religion or belief and to opinion and expression under articles 18 and 19 of the [International] Covenant [on Civil and Political Rights, ICCPR]."

Article 18 of the ICCPR protects the right to freedom of thought, conscience and religion. Article 19 protects the right to freedom of expression.

The Working Group declared that it "wishes to emphasize that no trial of Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Taurbekov, Mr. Iskakov, Mr. Samatov, Mr. Abdrakhmanov and Mr. Nurgaliyev should have taken place".

It called on the regime to free the men "immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law". It also called for a "full and independent investigation" into why the men were subjected to arbitrary detention and for "appropriate measures against those responsible for the violation of their rights".

The Working Group noted that "there is at least one other individual" [Esim Suleimanov] in a similar situation to the eight other prisoners of conscience who appealed to the Working Group, and urged the regime "to immediately address the situation of this other individual, noting the findings made in the present opinion".

The Working Group sent the Opinion to the Kazakh authorities in early October 2021. It called for the regime to inform it within six months of steps to put the Opinion into practice, including on whether the men were freed and whether they were given compensation.

Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law welcomed the Working Group's Opinion. "The UN's decision is confirmation that the government has committed a grave violation of human rights," he noted on 15 October 2021

(<https://www.freedom-now.org/kazakhstan-un-declares-detention-of-eight-muslim-men-a-violation-of-international-law/>). "We call on the Kazakh government to abide by the UN decision and immediately release the eight members of the WhatsApp group."

Did Kazakhstan respond to UN Working Group?

Despite the call by the UN Working Group in its September 2021 Opinion for the Kazakhstan government to inform it within six months of receiving it (early October 2021) of steps it had taken to implement the findings, there is no indication that the Kazakh government has responded to the Working Group with an update.

Forum 18 asked Kazakhstan's Foreign Ministry Press Office, as well as Kazakhstan's representative to the United Nations in Geneva Yerlan Alimbayev, whether Kazakhstan responded to the Working Group on steps to implement the Opinion and if so what it had said. Forum 18 received no response from either by the end of the working day of 28 April.

"Unfortunately Kazakhstan hasn't implemented the Working Group Opinion and state bodies do not even refer to it," Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18 on 28 April.

"We informed the Foreign Ministry, the Ombudsperson and the General Prosecutor's Office about this Working Group Opinion, but it did not change anything," Zhovtis added. "Kazakhstan is not implementing any of the UN Treaty Bodies or Special Procedures decisions and opinions at all."

Nurgaliyev: Early release denied because of prayers in prison

In February 2022, a court refused a petition for transfer to a lesser form of punishment from one of the nine convicted online discussion group members, 43-year-old Bolatbek Nurgaliyev. The petition was rejected because he had been in December 2019 punished for violating prison regulations by praying the namaz (Muslim daily prayers) in his free time. This happened after he arrived at his first prison TsE-166/25 in Akmola Region.

The prison authorities transferred Nurgaliyev to prison ZK-169/5 in Kyzylorda Region in June 2020, but the "violation" remained on his record.

On 9 February 2022, Nurgaliyev's lawyer sought a recommendation from the then acting head of prison ZK-169/5, Darkhan Berikbai, to prepare to appeal for early release from prison. Berikbai's response of 18 February, seen by Forum 18, notes that Nurgaliyev "is characterised as satisfactory by the administration of the institution". It adds that he maintains cleanliness, observes prison regulations, accepts criticism, and maintains a good attitude. It rates him as having the highest positive level of conduct.

Berikbai made no mention of Nurgaliyev's December 2019 punishment for violating prison regulations when he was in prison TsE-166/25.

An official of ZK-169/5 prison administration confirmed to Forum 18 on 27 April 2022 that it has a positive assessment of Nurgaliyev's conduct. However, the official – who did not give his name – said he could not give any information by phone.

Nurgaliyev and his mother appealed to court to have the unspent part of his prison sentence (four years, two months) transferred to a sentence at home under probation. However, on 8 February, in a decision seen by Forum 18, Judge Kuanyshe Mykhanov of Kyzylorda City Court No. 2 rejected his appeal.

In court, Sh. Doszhanov from prison ZK-169/5 supported its positive assessment of Nurgaliyev's conduct. However, Judge Mykhanov instead accepted the contention by Kyzylorda City Prosecutor's Office official Laura Sagiyeva that Nurgaliyev should not be released because of the December 2019 punishment, which had been imposed because he had prayed the namaz in his free time. Judge Mykhanov said Nurgaliyev's conduct over the whole of his imprisonment needed to be taken into account, not just his recent conduct.

Sagiyeva told the court that "positive changes in his conduct have not been observed", the Kazakhstan International Bureau for Human Rights and the Rule of Law noted on 9 February (<https://bureau.kz/novosti/namaz-ne-dlya-vas/>). It complained that Sagiyeva had "closed her eyes to everything good" in Nurgaliyev's conduct. It added that he had children (some of his six children are still of school age) and elderly parents at home to support and had in any case been jailed "on a more than doubtful basis".

Prosecutor's Office official Sagiyeva insisted that she had based her contention that Nurgaliyev's appeal should be rejected "on the documents". "I'm almost sure that the character reference was not in accordance with the requirements of the law," she told Forum 18 from Kyzylorda on 22 April.

Asked if she did not believe the 18 February character reference from the acting head of prison ZK-169/5, Sagiyeva responded: "I don't think it's a lie." She then refused to discuss anything further. "I don't have the documents in front of me, and in any case I don't have the right to discuss his case."

On 19 February, Nurgaliyev's mother Saule Nurgaliyeva lodged an appeal on her son's behalf (seen by Forum 18) against the 8 February rejection of early release. She complained that Judge Mykhanov "didn't even try to listen to the views of prison representative Doszhanov and didn't try to see the good things which were recorded in the appeal". She insisted that the penalty for praying the namaz in December 2019 had long been extinguished.

Nurgaliyeva also cited the United Nations Working Group finding on her son's case that he and the others sentenced with him should be immediately freed.

On 1 April, a panel of judges at Kyzylorda Regional Court chaired by Mukhtar Erkinbekov rejected Nurgaliyev's appeal against the 8 February decision, according to the decision seen by Forum 18. In court B. Shakenov of the Prosecutor's Office called for the February decision to be upheld. This means that Nurgaliyev will have to serve the rest of the term in prison, unless he can gain early release in future.

The address of the prison where Nurgaliyev is being held:

Kyzylordinskaya oblast

120018 g. Kyzylorda

ul. Yuzhnaya Promzona 18

Uchr. ZK-169/5

Nurgaliyev: Punishment for praying "illegal"

Saule Nurgaliyeva insists that her son should never have been punished for praying in prison. "He prayed the namaz in his free time," she told Forum 18 from Kokshetau on 27 April. "Free time is given to prisoners to spend on their own pursuits, such as watching television, drinking tea, or smoking. He chose to spend his free time praying the namaz – and they punished him for that, even though it was illegal."

Nurgaliyeva insists that she and the relatives of the others from the group still in prison will continue to work for their release. "We will fight to the end as long as we the parents have strength and health, if Allah wills it," she told Forum 18. "We will do everything possible and impossible."

Adilov: 6 months in isolation cell

Samat Adilov, now 35, is serving his 5 and a half year prison term in Akmola Region. On 5 January, after he complained to the Anti-Corruption Service he was transferred from a prison in Aktobe to an isolation cell for six months at prison ETs-166/23 in Kokshetau. This will make it very difficult for him to apply for early release.

"Everything was going very well for him to be able to apply for early release in about February," a Muslim who knows him told Forum 18 on 28 April. "But this didn't happen." He cannot now receive parcels, nor receive visits from relatives.

The head of prison ETs-166/23 Abzal Duanbayev said he did not take the decision to put Adilov in the isolation cell. He told Forum 18 that he had been sent to the prison following a decision taken by others. He refused to say what Adilov had done which led to the decision to put him in isolation for six months.

Duanbayev said he had heard about the UN Working Group Opinion, but had not seen it. Told that it had called for Adilov and the others to be "immediately" freed, he responded: "I can't release him just like that. I need a written decision from above, from a court."

Duanbayev repeatedly refused to say if Adilov is free to pray visibly and read the Koran in his isolation cell.

The address of prison ETs-166/23:

Akmolinskaya oblast

020000 g. Kokshetau

ul. Nikitina 67

Uchr. ETs-166/23

Three more hoping for early release from prison

The other three members of the online Muslim discussion group still serving their terms in prison had been hoping for early release from prison. They all sought to apply for conditional early release or to have the rest of their terms transferred to a lower form of punishment, such as release on probation, relatives told Forum 18.

Prisoners can apply for early release from prison under various conditions:

- Criminal Code Article 72 covers when a court can approve conditional early release, allowing prisoners who have served a proportion of their sentence, or are pregnant or have young children, to be freed when the court believes they do not need to serve their full term in prison. Those freed are on probation for the rest of their sentence term.

- Criminal Code Article 73 covers when a court can approve transfer of a prisoner to a lesser form of punishment. Those convicted who have made recompense for their actions, or who have not "wilfully violated" the prison regime can have their term shortened or can be transferred to a lesser form of punishment for the rest of the term, such as living at home under restrictions.

Beket Mynbasov, now 39, is serving his 7 and a half year prison term in Pavlodar Region:

Pavlodarskaya oblast

140011 g. Pavlodar

ul. Malaya Obezdnaya 4/1g

Uchr. AP-162/1

Nazim Abdrakhmanov, now 34, is serving his 5 and a half year prison term in Pavlodar Region:

Pavlodarskaya oblast

140000 g. Pavlodar

ul. Severnaya Promzona 54a

Uchr. AP-162/3

Ernar Samatov, now 42, has applied for conditional early release. He is serving his 7 and a half year prison term in East Kazakhstan Region:

Vostochno-Kazakhstanskaya oblast

070013 g. Oskemen

ul. Chkalova 34

Uchr. OV-156/3

Four freed on probation or under restrictions

Four of the Muslims jailed for the online Muslim discussion group have now been freed from prison under conditional early release or with the rest of their terms transferred to a lower form of punishment. They are serving the rest of their terms at home on probation or under restrictions.

On 14 December 2021, a court gave Zhuldyzbek Taurbekov a transfer to a lesser form of punishment and he was freed on probation. Courts had earlier refused to approve early release (https://www.forum18.org/archive.php?article_id=2621) despite his poor health, which was not properly treated while he was in pre-trial detention or in prison after conviction.

A court gave Azamat Umbetaliyev a transfer to a lesser form of punishment and he was freed on probation on 6 December 2021. "He has to report in twice a month until the end of his sentence," his mother Anzhelika Belyayeva told Forum 18 on 27 April 2022. "Officials are saying he will have to wear an electronic bracelet to monitor his whereabouts." He is allowed to go to mosque.

A court gave Zhasulan Iskakov a transfer to a lesser form of punishment and he was freed on probation on 18 April 2022. Karaganda City Court had approved the transfer in March, but Prosecutors appealed against the decision. Despite this, Karaganda Regional Court upheld the March decision and released him, Freedom Now told Forum 18.

Another Muslim jailed in August 2019 (https://www.forum18.org/archive.php?article_id=2498) as a member of the online Muslim discussion group, Esim Suleimenov, was freed from prison ZK-169/5 in the city of Kyzylorda (https://www.forum18.org/archive.php?article_id=2621) on 29 October 2020. For the rest of his five-and-a-half-year term he is under restricted freedom. He has to live at home, is banned from visiting places of entertainment (such as restaurants and cinemas) and cannot move or leave his home town without permission. However, he is not banned from attending places of worship.

Financial blocking during sentence term and long after

All the Muslims given criminal convictions for exercising their freedom of religion or belief have been added to the Financial Monitoring Agency List of individuals (https://www.forum18.org/archive.php?article_id=2409) "connected with the financing of terrorism or extremism". The List includes all nine of those convicted in 2019 for membership of the online Muslim discussion group.

Being added to the List means that any bank accounts an individual may have are blocked with no further legal process (https://www.forum18.org/archive.php?article_id=2409). Their families are allowed to withdraw only small amounts for daily living if they do not have other sources of income. Individuals remain on the List for six or eight years after they complete their sentences.

The Kazakh authorities also share information about such individuals with other Central Asian states. Several have also been added to such financial ban lists in Kyrgyzstan and Tajikistan (https://www.forum18.org/archive.php?article_id=2743), based on information from Kazakhstan. (END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan religious freedom survey (https://www.forum18.org/archive.php?article_id=2753)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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