

**KAZAKHSTAN NGO COMMENTS ON THE FOURTH AND FIFTH  
PERIODIC REPORTS OF THE KAZAKHSTAN GOVERNMENT ON  
IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON  
THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION  
SUBMITTED AS ONE DOCUMENT TO THE UN COMMITTEE ON THE  
ELIMINATION OF RACIAL DISCRIMINATION IN ACCORDANCE  
WITH THE ARTICLE 9 OF THE CONVENTION.**<sup>1</sup>

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**PART I. INTRODUCTION AND REVIEW OF GENERAL TRENDS**

***General information and overall assessment***

1. In accordance with the Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (*the Convention*) the State Parties shall submit to the Secretary-General of the United Nations, for consideration by the Committee on the Elimination of Racial Discrimination (*the Committee*), a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention. The report shall be submitted within one year after the entry into force of the Convention for the State concerned and thereafter very two years and whenever the Committee so requests.
2. The Republic of Kazakhstan ratified the Convention in 1998 adopting the Law of the Republic of Kazakhstan of 29 June 1998 N245-1 "On Accession of the Republic of Kazakhstan to the International Convention of the Elimination of All Forms of Racial Discrimination". However, Kazakhstan did not submit initial and secondary reports due in 1999 and 2001 until 2003.

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<sup>1</sup>"The following NGOs took part in compiling this Commentary: The Center for Legal Aid to the Ethnic Minorities; Kazakhstan International Bureau for Human Rights and Rule of Law; Educational Center "Bilim – Central Asia", KRELS and a number of political scientists and experts, including K.Aythozhin, K.Kozhamberdi, V.Mamedova, M.Tohmetov, S.Kalpethodzhaeva, Sh.Hamraeva and others. Some of the facts were drawn from open sources and the articles of the Kazakhstani political scientists and sociologists".

3. In September 2003 Kazakhstan has presented a report with a footnote explaining that the document covered the initial, second and third periodic reports due in September 1999, 2001 and 2003 accordingly. At that stage a group of Kazakhstani NGOs submitted Comments to the State Report with their own assessment of Kazakhstan's efforts on implementation of the Convention. The Comments aimed at bringing to the attention of the Committee a number of the system-wide issues related to compliance of Kazakhstan's legislation, practice and institutional policies to the provisions of the Convention.
4. Upon consideration of Kazakhstan's report and taking into account the comments of Kazakhstan's NGOs, in 2004 the Committee adopted concluding observations on the report. The present document aims to assess progress in implementation of these observations.
5. The Comments to the Fourth and Fifth Periodic Reports of the Government of the Republic of Kazakhstan on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination submitted as one document (*hereinafter Report*) relate to implementation of the Convention by Kazakhstan during 2004 – 2008.
6. The group of Kazakhstan's nongovernmental human rights organizations that authored these Comments (*hereinafter NGOs*) welcome the Report of the Republic of Kazakhstan (CERD/C/RUS/19 of 13 October 2008) and support many of the comments and conclusions made by the government. The NGOs agree that over the recent years certain progress was made in the area of interethnic relations, while the State took on a greater role in regulation of conflicts in this sphere. However, many system-wide problems remain unaddressed. This conclusion is further supported by the text of the Government's report, where many of the sections repeats the previous report.
7. The NGO Comments to the Report are based on the following sources: appeals by persons complaining of discrimination lodged to the human rights organizations; administrative and criminal cases instigated as the result of these appeals; data collected in course of human rights monitoring; legislation and court cases analysis; official statistics (where available); mass media publications and articles. Based on this information the NGOs have come to a conclusion that Kazakhstan's legislative, administrative and judiciary mechanisms of protection against racial discrimination still lack efficiency and in a number of cases the State fails to implement these measures to a sufficient degree or fails to enforce the Convention's provisions despite there being no serious impediment to such enforcement.
8. Between 2004 and 2008 the inter-ethnic tension in Kazakhstan has exacerbated. The scale of ethnicity-related conflicts increased, spanning greater territories and leading to more serious consequences. The State has not been effective in interfering with the wide-spreading and increasingly aggressive manifestation of nationalism, national supremacy, xenophobia and isolationism, particularly among the young people and in the media. The media have taken a more aggressive view of inter-ethnic relations and the calls to inter-ethnic discord were central part of some publications.

9. Serious negligence in the national policies implementation, passive stance of local authorities, lack of consistent effort aimed at preventing inter-ethnic conflict, inefficient policy of minority supporting the ethnic groups, minority languages and professional training, aggressive stance of a number of media contributed to emergence and growth of inter-ethnic tension. Serious ethnic conflicts took place in Malybai, Shilik, Mayatas, Malovodnoe, Aktau and other towns. Some of these conflicts resulted in loss of lives. Several protesters were incarcerated. However, the state bodies failed to conduct proper investigation of the causes of these events and to find the culprits.
10. Political situation in Kazakhstan at this stage does not fully provide for protection of political rights and civil freedoms, effective implementation of public policies or for free public discussion of pressing issues. On the contrary, the role of bureaucracy seems to be domineering while the repressive function of the state is taking the leading role with decreasing control of the civil society over the branches of power. The judiciary to a great extent has become just an extension of the executive power. The numerous judicial decisions lack impartiality and objectivity raising suspicion of corruption or political coercion. This discredits the judicial system and undermines the idea of justice and rule of law in general.

### ***Constitutional and legal guarantees of human rights and freedoms***

12. The report, particularly in the sections “Legal and institutional protection of human rights”, “Information and promotion of human rights”, “On human rights protection”, “International legal instruments as part of the national legal system and implementation of the international legal standards by the state bodies and courts in course of judicial proceedings”, notes that *“the state bodies of the Republic of Kazakhstan act within their competence to provide for compliance with obligations taken by the Republic of Kazakhstan under the international treaties”*.
13. In accordance with the domestic legislation, international treaties ratified by the Republic of Kazakhstan take precedence over the national legislation. However, the Resolution of the Constitutional Council of 18.05.2006 N2 “On Official Interpretation of the Paragraph 7 of the Article 54 of the Constitution of the Republic of Kazakhstan” raises serious concern since it contains provisions to the contrary. In its explanatory part the Ruling refers to the previously made Constitutional Council Resolution N 18/2 of 11.10.2000 which states that the Vienna Convention on the Law of Treaties of 1969 “does not establish the procedure for treaty implementation and it is a constitutional and legal prerogative of the State to decide how to implement an international treaty, based on the universally recognized principle of sovereignty and equality of states”. The Council then continues to state that “in case when the international treaty or its separate provisions have been recognized contradictory to the Constitution of the Republic of Kazakhstan which is a supreme legal document at the territory of the Republic in accordance with the clause 2 of the Article 4 of the Constitution, then this treaty shall not be implemented in full or in the part that does not correspond to the Constitution”. Finally, the Constitutional Council resolves that “...4. In case if the international treaty or provisions of the treaty that Kazakhstan is a party to have been recognized contradictory to the Constitution of the Republic of Kazakhstan, then this treaty or corresponding provisions shall not be implemented”. In our view this Resolution of the Constitutional Council does not comply with the Vienna Convention of the Law of Treaties of 1969, particularly to the Article 27 which states: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

14. **The NGOs recommend to review the Resolution of the Constitutional Council of 18.05.2006 “On Official Interpretation of the Paragraph 7 Article 54 of the Constitution of the Republic of Kazakhstan” in order to sustain a political and legal framework that brings domestic legislation provisions in compliance with the country's international obligations with respect to the precedence of the international treaties ratified by Kazakhstan over domestic legislation.**
15. The Decree of the President of Kazakhstan on the Ombudsman in the Republic of Kazakhstan unduly limits the powers of the Ombudsman's office, providing that “...18. *The Ombudsman shall not review appeals and complaints relating to the actions and decisions of the President, Parliament and its members, Constitutional Council, Prosecutor General, Central Electoral Commission and Courts of the Republic of Kazakhstan*”.
16. The recommendations on bringing the status and competences of national human rights institutions in compliance with the Principles Relating to the Status of the National Human Rights Institutions (the Paris Principles adopted by the UN in 1993) have been made by the Committee on the Rights of the Child in its Concluding Observations on the initial periodic report submitted by Kazakhstan under the Convention on the Rights of the Child (paragraphs 593-594) (2003)<sup>2</sup>; in the Concluding Observations of the UN Committee on the Elimination of Racial Discrimination made upon review of Kazakhstan's Initial, Second and Third Periodic Reports on Compliance with the International Convention on Elimination of All Forms of Racial Discrimination (paragraph 20) (2004)<sup>3</sup>; and by Leandro Despuoy, the UN Special Rapporteur on the independence of judges and lawyers in his report on the Civil and Political Rights, Including the Questions of Independence of Judiciary, Administration of Justice and Impunity made after a mission to Kazakhstan (paragraph 90) (2005)<sup>4</sup>.
17. **Based on this, the NGOs recommend a thorough review of Kazakhstan's legal framework that regulates activities of the national human rights institutions, particularly of the Ombudsman's office, to ensure compliance of these laws with the Paris Principles and the observations of the Committee on the Rights of the Child, Committee on the Elimination of Racial Discrimination and the recommendations made by the UN Special Rapporteur on the independence of judges and lawyers.**
18. Kazakhstan's legislation contains little to none anti-discrimination laws, mechanisms and procedures. Discrimination does exist and raises serious concern in Kazakhstan society, however, there are no precedents of court reviewing cases of discrimination based on ethnicity, race or sex, etc. In practice, the prosecutors try to avoid classifying a violation as discrimination. The victims can not prove the fact of discrimination because of the deficient domestic legislation, unclear definition of discriminatory behavior and lack of precise criteria for recognizing and classifying an offense as discriminatory act. The legal counsel and judges predominantly believe that a victim's claim should not contain a request to stop discrimination, but should instead relate to restoration of a specific right. Hence, absence of discrimination cases in the domestic case-law. The Supreme Court also did not make any normative ruling that would guide the lower tier courts on how to review discrimination cases. Such a ruling could be an important step towards combating discrimination. In the paragraph 8 of the Concluding Observations on Kazakhstan's

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<sup>2</sup> CRC/C/15/Add. 213, 6 June 2003

<sup>3</sup> Kazakhstan, CERD/C/65/CO/3, 10 December 2004

<sup>4</sup> Kazakhstan, E/CN.4/2005/60/Add.27 January 2005

initial to third periodic reports, the UN Committee on the Elimination of Racial Discrimination takes note of lack of anti-discrimination legislation in Kazakhstan (2004).

- 19. In connection with this the NGOs recommends to develop and adopt specific law regarding discrimination and to introduce a number of bylaws, administrative and procedural mechanisms aimed at setting up efficient anti-discrimination institutions, tools and procedures.**

*Kazakhstan's policies on education, information and languages*

20. The Constitution of the Republic of Kazakhstan guarantees every person a right to learn and speak their language. This right is envisaged in the paragraph 3 Article 7 which stipulates that *“The state shall promote conditions for the study and development of the languages of the people of Kazakhstan”* and in the paragraph 2 Article 19: *“Everyone shall have the right to use his native language and culture, to freely choose the language of communication, education, instruction and creative activities”*. Article 6 of the Law *“On Languages in the republic of Kazakhstan”* reinforces Constitutional provisions, stating that every citizen *“shall have a right to choose freely a language of communication, instruction and creative activity. The state shall promote conditions for the study and development of the languages of the people of Kazakhstan”*. The Article 26 of the Law on Languages gives every ethnic group residing at the territory of Kazakhstan a right to establish national and cultural centers, Sunday schools to promote development of their language, culture and traditions.
21. State's educational policy is based on the provisions of the national Law on Education. The law stipulates that the main purpose of state's policy on education is to create conditions necessary for personal development and growth, training of qualified professionals, for ensuring free choice of language of education and of educational institutions. The Law on Education has been adopted on 27 July 2007 and contains less explicit guarantees for education in minority languages than the previous Law of 7 June 1999. The paragraph 3 Article 5 of the previous Law on Education said that *“the State shall create conditions for national groups to learn their native language and may set up institutions or departments (classes, groups and etc) in the places inhabited by significant minority groups to meet their education needs”*. However, the paragraph 3 Article 9 of the new Law on Education of 27 July 2007 stipulates that *“the right to education in one's native language is provided by setting up, if circumstances permit, the corresponding educational institutions, classes, groups and creating conditions for their operation”*.
22. The new law on education, therefore, effectively relieves the State of the active duty to ensure the right of ethnic minorities to education in their native language, which contradicts the paragraph 2 Article 14 of the Council of Europe Framework Convention for the Protection of National Minorities that obliges State Parties to ensure that persons belonging to national minorities *“have adequate opportunities for being taught the minority language or for receiving instruction in this language”*. Kazakhstan is not bound by the Council of Europe Framework Convention, but it adopted a Way to Europe 2009 – 2011 State Program, introduced by the decree of the President in 2008, which stresses among other priorities the need to develop the national legislation to *“improve Kazakhstan's legal framework through the use of the positive European experience”*.
23. The domestic legislation does not contain any direct guarantees of the right to receive education in the language of national minorities, in contradiction to the Article 27 of the International Covenant on Civil and Political Rights, Article 27 of the Convention on the

Rights of the Child and the International Covenant on Economic, Social and Cultural Rights ratified by the Republic of Kazakhstan. Each of these treaties guarantees the national minorities a right to learn and receive education in their native language.

24. The Report notes that “*after Kazakhstan has become independent, positive social and political factors contributed to creating conditions for full realization of national and cultural needs of nationalities and ethnic groups that inhabit Kazakhstan. The State takes measures to create equal opportunities for development of languages and cultures off all ethnic groups resident at the territory of the country*”. An objective analysis of human rights cases, however, demonstrates that Kazakhstan does not guarantee full realization of fundamental right of minority groups to ethno-cultural and social development. There is a definite spread of negative trends in provision of right of minority groups to education in their native language. A developed system of minority language schools is the only way to guarantee preservation of national identity of a national minority.
25. However, there state policy with respect to national minority schools lacks consistency and efficiency, while officials in some areas neglect their duty in implementing the educational policy. According to the statistics there are 89 minority language schools and 129 schools with mixed minority language classes in the country (these include Uzbek, Uighur and Tajik language schools). There are over 100 thousand students attending minority language schools. All of the minority language schools and classes operate in Kazakhstan since the Soviet times. No minority language schools have been opened after independence and the number of schools is decreasing. In 2003 there were 80 Uzbek schools in the country, with 71 remaining at the time of preparation of this report. 1 of the total of 15 Uighur schools and 1 of 3 Tajik schools have been closed down since 2004. At the same time new Kazakh language schools are being opened and the state is allocating priority resources to these schools. State support of Kazakh schools contributes to the outflow of staff and students from the national minority schools and increases sentiment of worthlessness of education in minority language.
26. Civil education should include an important element of forming the Kazakhstani identity, positioning the people of Kazakhstan as a single nation, as well as reflecting the historical and cultural ties of different nationalities inhabiting the country. However, the curriculum of junior and high schools and the state-funded academic research represents the history of Kazakhstan as the history of Kazakh nationality, rather than the history of multiple ethnic groups resident at the territory of the country. In many respects the history of Kazakh people is given much greater coverage and its role is greatly emphasized, while the contribution of other ethnic groups is downplayed and historic facts denied. This leads to serious distortion of public views and increases the underlying tension leading to ethnicity-based polarization of society.
27. None of the curriculum subjects relating to history, culture and literature of Kazakhstan contain reference to the contribution made by ethnic minorities to the social, economic, cultural and political development of the country. This contributes to isolation of national minority students and undermines the citizenship values, while the Kazakh students are given a disproportionate view of ethnic supremacy and pre-eminence. At the same time the history of minority groups is no longer part of the curriculum of minority language schools. For example, the History of Uighur People has been removed from the Uighur schools curriculum and the state has still failed to develop a program and draft a new generation textbook on the history of Uighurs. History, culture and tradition of other minority groups equally lack recognition in the schools curriculum.

28. This approach contradicts the Paragraph 19 of the Hague Recommendations Regarding the Education Rights of National Minorities adopted by the OSCE in 1996, which states: *«In view of the importance and value that international instruments attach to intercultural education and the highlighting of minority histories, cultures and traditions, State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities».*
29. The Ministry of Education and Science oversees publication of school textbooks in 4 languages: Kazakh, Russian, Uzbek and Uighur. However, the national minority schools often are insufficiently provided with textbooks and study guides. Staff of the Uzbek and Tajik schools in South Kazakhstan report the lack of textbooks. The needs of Uzbek schools in South Kazakhstan with over 80 thousand students are not met. Tajik textbooks are not published in Kazakhstan and the students of Tajik schools have to use books published in Tajikistan. Republican Center of Uighur Culture reports that Uighur schools face shortage of 52 thousand textbooks. Since 2004 Kazakhstan does not print copybooks for first-graders in minority languages due to the small scale of order. The state bodies take no steps to address the problem. The minority language schools experience shortage of resources and study materials. Requests for more study aid materials sent by schools do not reflect the need in full. The numbers of textbooks printed are decreasing with each year. On many occasions the requests made by minority language schools (e.g. Uighur schools) are ignored. The mixed schools (with several minority language classes), including the newly opened schools and classes are affected most of all.
30. Shortage of qualified staff is another increasingly serious problem. Many minority language teachers are about to reach the pension age, in some areas it is impossible to find teachers to fill in the vacancies. In absence of a state program aimed at training staff for minority language schools, educational and cultural organizations, the problem remains unresolved for years. At the same time the students at the minority language schools are not studying Kazakh and Russian to a full extent unlike their native language. A director of a minority language schools says: *“Our students study a simplified, shortened course of Russian and Kazakh. For example, Russian is introduced into the curriculum in the third grade with just two hours a week. From the fifth grade the hours are increased to three per week. It is not sufficient to ensure that the students learn the language. Even though students take Kazakh starting from the first grade, the curriculum is different from the Kazakh school and provides for a limited number of hours”.*
31. In 2004 Kazakhstan has introduced the National Testing System for high-school graduates, but the national minority school students can not take these tests since there are no minority language versions of the National Test. In practice, the graduates of the minority language schools first have to pass the graduation examination and then, if they wish to enter the university, they have to take a complex test either in Russian or Kazakh. For the rest of the graduates the National Test is a university entrance examination, no separate graduation examination is needed and results are accepted by the universities directly.
32. Language training in the minority language schools is crucial for empowering minority graduates to continue their education. Insufficient training in Kazakh and Russian makes minority schools graduates incompetent at the job market comparing to other graduates. This makes minority language schools a less popular choice for minority students. The

graduate can only choose to take a National Test in Kazakh or Russian in a full-scale advanced language version, which is very difficult for minority language graduates.

33. The national minority groups believe that the situation can be resolved by providing an option for testing in a minority language. However, the Ministry of Education and Science has so far failed to provide such an option, citing impossibility of quality translation of the tests. This results in violation of the Article 28 of the Convention on the Rights of the Child ratified by Kazakhstan on 8 June 1994, which says that State Parties shall “*make higher education accessible to all on the basis of capacity by every appropriate means*”.
34. In course of the past years the Uighur community was trying to ensure that the graduates of Uighur schools would be included into the National Testing System. After the Law on Education was adopted on 27 July 2007, any formal obstacles to taking the National Test for the minority school graduates have been removed. However, in 2007-2008 almost all of the graduates of Uighur schools and classes in the Almaty region were not admitted to National Test in violation of the Law on Education and in open discrimination based on language of education.
35. From 2008 the Kazakhstan Ministry of Education and Science is going to reform the National Test system dividing it into two parts. According to the plan the Test will contain general tests in five subjects for all the graduates with additional three advanced tests for those applying for state-funded grants and aid. The graduates that do not plan to enter college or will pay for their education only have to take the first part of the National Test. With this the number of mandatory subjects for the National Test will increase to five. The graduates of Russian schools will now have to take Kazakh language, while the graduates of Kazakh schools will be tested in Russian. This will further increase the divide between the graduates of national minority schools and other schools graduates.
36. The Uighur community has requested on numerous occasions that the Education Departments at the Almaty, Enbekshi-Kazakh, Talgar, Uighur and Panfilov regions would reinstate the staff position of Uighur schools inspectors and curriculum supervisors. Since the staffing was cut the implementation of educational standards in the Uighur language school has suffered.
37. A university professor from South Kazakhstan reported that, after independence, the Uzbek language and literature chairs at the universities have been abolished. The staff members of the Uzbek schools are at the pension age threshold, but there are no replacements trained at the territory of Kazakhstan. The teacher of Uzbek language and literature can only be trained in Uzbekistan where he or she will not get any knowledge specific to Kazakhstan. In an interview published at the Fergana.ru information website this professor noted: “*Staffing is a serious problem at the Uzbek language schools. Young people at the universities can take classes of Uzbek only as a foreign language*”.
38. Overall, the issues of minority language education are apparently the most pressing. The deficiencies of the National Testing System lead to limited possibilities for minority language school students and discourage minority students from education in their native language. The number of students in the Almaty Uighur school N 153 decreased from 1150 in 2003 to 650 in 2007. Uighur classes were discontinued in the Almaty school N29. In all of the South Kazakhstan region, just several dozens Uighur high-school graduates were awarded financial aid or state loans in 2006, which raises the question of

inequality and underlying segregation in higher education. Over the last 10-12 years the number of students in Uighur schools has decreased twofold. Sustaining Uighur language education is no longer possible without a public policy consistent with the international standards. Further setbacks in addressing these pressing issues will result in closing down of these schools and contribute to the loss of the national identity of Kazakhstan's ethnic minorities.

39. Another problem is the restricted use of minority languages in written and oral communication. For example, in the areas inhabited by large Uighur communities there are impediments to full use of Uighur language in official communication. The international standards of national minority rights provide for use of minority language in educational and cultural institutions and during the mass, political events and protests. The Kazakhstan's Law on Languages, though far from perfect, does not rule out the use of minority languages, but certain de-facto practices impede upon the rights and interests of Uighur community.
40. Some officials allow for arbitrary and unilateral interpretation of the provisions of the Constitution, the Law on Languages and the Law on Education. As a result the use of Uighur language is unduly limited.
41. Any visual references to the Uighur language and culture have been removed from the schools and cultural institutions. For example, the portraits of Uighur academics, writers and historic personalities, quotations and nameplates in Uighur language that were allowed even during the Soviet times have been dismantled. Such arbitrary actions clearly violate Kazakhstan's commitments in the area of national minority rights and undermines Kazakhstan's stance as a OSCE Chairman-to-be. Uighur community including academics, education professionals and parents express their concern with these developments.
42. The minority language media are also in a difficult situation. The leading Uighur language newspaper *Uighur Avazi* is of great importance for Uighur community being central to promoting Uighur identity and inter-ethnic accord. *Uighur Avazi* is the only official minority language newspaper of general interest in Kazakhstan and serves as an example for all the Uighur language media. Majority of newspaper's readers reside in Almaty region. For some time the authorities supported the distribution of this newspaper, offering subscription among the other newspapers to the employees of various institutions and organizations. However, in the last few years many Uighur employees report that they are being offered subscription to the Kazakh-language newspapers only.
43. The authorities use various pretexts to limit the use of Uighur language in mass communications, despite the concern voiced by the Uighur community. Over the last several years the air-time for Uighur language TV shows has been severely limited (previously, Uighur language programs have been on air five times a week). The radio broadcasting in Uighur has been almost entirely dropped. There were talks of closing down the state-funded newspaper in Uighur language. Authorities have also voiced an idea of renaming the Uighur theater into a *Theater for People's Friendship*. The idea of creating a theater for people's friendship is welcomed, however, it should not be done at the expense of the Uighur community.

The constitutional reform envisaged by the Law N 254-III 3PK of 21 May 2007 *On Amendments and Addenda to the Constitution of the Republic of Kazakhstan* makes important changes to the procedure of Parliament Chambers formation in order to ensure representation of '*national, cultural and other significant interests of the society*'. In accordance with the amended paragraphs 2 and 3 of the Article 50 of the Constitution, "*The Senate shall be composed of deputies duly elected in twos from each oblast, major city and the capital of the Republic of Kazakhstan. Fifteen deputies of the Senate shall be appointed by the President of the Republic in order to represent in the Senate the national and cultural and other significant interests of the society*".

The amendments provide for the Majilis (lower) chamber of Parliament consisting of 107 members elected in accordance with the procedure established by the Constitutional Law on Elections. Elections of ninety-eight deputies of the Majilis shall be carried out on the basis of the universal, equal and direct right under secret ballot. Nine deputies of Majilis are elected by the Assembly of People of Kazakhstan.

44. The amendments to the Constitution of 21 May 2007 make the Assembly of People a constitutional body. The Law on the Assembly of People of Kazakhstan adopted by Parliament on 20 October 2008 defines the Assembly's legal status, composition and procedure, enabling it to "*implement the state's national policy, ensuring social and political stability in Kazakhstan and increasing efficient co-operation between state and society groups in the area of inter-ethnic relations*". The members of the Assembly of People are appointed by the President. Assembly of People coordinates the activities of regional assemblies (including the oblast, major city and capital) that are set up under the akims (regional governors).

The purpose of the Assembly of People is proclaimed as ensuring inter-ethnic accord through development of Kazakhstani civil identity and supporting the national competitiveness based on patriotism, civic, spiritual and cultural unity of peoples under the consolidating role of Kazakh nation.

Article 4 of the Law on Assembly envisages the following aims for the Assembly of People:

- 1) to provide for effective co-operation of public bodies and civil society institutions in the area of inter-ethnic relations; promote further strengthening of inter-ethnic accord and tolerance in the society;
- 2) to promote unity of the nation; support and develop the social consensus on the fundamental values of the Kazakhstani society;
- 3) to support the state bodies in their efforts to counteract extremism, radicalism and infringement upon human rights and freedoms;
- 4) to develop political and legal civic culture based on democratic norms;
- 5) to restore, preserve and develop national cultures, languages and traditions of national groups inhabiting Kazakhstan.

The extent to which the Assembly will play a significant role in improving the national policies will depend upon the practical implementation of these declarations. In its existing form, the Assembly of People and its regional arms do not and can not be involved in consistent effort to support the rights of national minorities. The assemblies lack financial and institutional resources and are understaffed.

45. With respect to its composition, powers and functions, the Assembly is a consultative and advisory body. The idea of such an organisation does not raise any objections, but its composition, principles of creation and organization of activities lead to a conclusion that it looks like a “public parliament” of peoples and ethnoses of Kazakhstan, like a meeting of representatives of ethnoses. From this point of view the procedure of Assembly's formation, its functions and forms of activities needs to be specified.
46. After the amendments were made, the first composition of the deputies of the Majilis of the Parliament from Assembly of People was practically appointed, elected on the out-of-alternative basis. This appointment de-facto resulted in administrative action made without participation of the national minority groups and communities.
47. **In connection with this the NGOs recommend to amend the Law on the Assembly of People of Kazakhstan with the purpose of introducing the legal procedure enabling a truly democratic representation of national minority groups in Parliament. The quota for representation of national minority groups should be introduced within Senate of Parliament in order to comply with the Kazakhstan's OSCE commitments,** the Paragraph 7.2 of the OSCE Document of the Coopenhagen Meeting requests the State Parties “to permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote”.
48. **The NGOs believe that there is a need to set a mechanism allowing the national minorities to take part in selection and nomination of candidates to the Assembly, its governing bodies and to provide for election of Assembly members based on transparent and freely contested procedure. National minority cultural centers and other national minority organisations shall be given an opportunity to take part in nomination of candidates rather than giving full prerogative to the executive power, Presidential administration and other state bodies.**

*Legal framework for protection of national minority rights, implementation and practice*

49. **With respect to protection of national minority rights, the NGOs believe that it is necessary to adopt a separate law on rights of national minorities, ensuring compliance with international standards and providing for adequate legal procedure in domestic law.** The existing legislative provisions are fragmented, contradict each other and lack clarity. There are a number of important issues that are not covered by any specific law. Many provisions allow for arbitrary interpretation which leads to de-facto abuse of powers. Acting legislation puts emphasis on meeting cultural, language and education needs of Kazakh nationals, while the ensuing political, social and psychological dominance of one nation prevents creation of any efficient protection of national minority rights, including the right to use of mother tongue, right to education in mother tongue, right of minority communities to inhabit certain areas of the country, and the right of national minorities to preserve and develop their ethnic, cultural and social identity.
50. Republic of Kazakhstan is a multinational state and it would be beneficial to create a special agency on nationalities and inter-ethnic relations to cover the territory of the country through regional departments under the local executive bodies. These departments would require qualified and dedicated staff open to modern values and views on inter-ethnic relations. Currently the nationality-related issues are dealt with by the internal politics department at the local executive level. The language policy and scope of

responsibility of these bodies does not allow for competent and adequate treatment of issues related to ethnicity and minority rights. Many officials lack understanding of inter-ethnic relations. There is no interest and attention to timely and detailed study of ethnic and cultural needs, which prevents any practical results. De-facto the state policy with respect to ethnicity is understood as the need to take measures to strengthen the role of Kazakh as a state language. Language development departments engage solely in promoting Kazakh language and take none, or very little effort to support other languages.

- 51. NGOs believe that the Ministry of Education and Science should set up a department or new staffing positions responsible for development and resourcing of national minority schools and cultural institutions. In some areas of the country regional and local departments of the Ministry may benefit from such staff. The state-funded programs and projects should include long-term policy for training of staff for national minority schools, educational and cultural institutions, taking into account their immediate and long-term needs.**
- 52. Greater effort is needed in terms of co-operation between the state bodies and the NGOs with respect to inter-ethnic relations, international accord and stability and prevention of inter-ethnic conflict.** Inter-ethnic accord is not possible without flexible and well-rounded national policy. Interests and needs of the national minorities, including cultural, language and educational rights, should be given the utmost priority. Emphasis should be put on eliminating reasons and causes of inter-ethnic conflict. For this the state should create conditions needed to meet the cultural, economic and social needs of all ethnic groups; ensure equal representation of ethnic groups in the branches of power; prevent any possible discrimination or unequal treatment of national minorities; promote mutual respect and unity of nationalities and ethnic groups; on this basis support growth of Kazakhstani patriotism.
- 53. In order to promote patriotism among the young people belonging to national minorities, the state should first build a necessary foundation by preserving and developing the educational institutions, taking proactive approach to preserving their national identity and demonstrating respect of their national dignity.**
- 54. Adequate legal action to prosecute offense related to inter-ethnic relations is crucial for harmonic inter-ethnic relations.** The government needs to take consistent effort to prosecute calls to ethnic discord, prevent extreme nationalism and chauvinism, find perpetrators and initiators of ethnic conflicts, prevent any attempts to propagate national supremacy and increase the role and responsibility of the media in addressing the nationality-related issues and promoting a culture of inter-ethnic tolerance. Schools shall be given a primary role in tolerance education and specific policies are needed. School curriculum should be complemented by classes on tolerance and teaching tolerance as a subject starting from junior school.
- 55. Practical implementation of the minority representation principle is needed to ensure representation of national minorities in the state bodies. In the interests of stability, inter-ethnic accord and equality of citizens, the proportional quotas of national minority staff should be introduced for local representative and executive bodies, law-enforcement, education, health and social services and other institutions of social significance. Proportional quotas should be introduced through political will aimed at correcting the existing practice of staff selection and promotion that favors one nationality.**

56. **Measures should be taken to preserve the traditional balance in the areas where persons belonging to the national minority constitute a high proportion of residents.** In the interest of preservation of national minority culture it may become necessary in the nearest future to adopt a policy of protecting the territories where national minorities traditionally reside. The intentional encouragement of outside migration and other actions undermining the ethno-demographic balance can threaten preservation and restoration of national, cultural and language identity of national minorities.

**PART II. ON IMPLEMENTATION OF THE COMMENTS MADE BY THE  
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION TO  
KAZAKHSTAN AT THE 1670-TH MEETING ON 19 AUGUST 2004 UPON REVIEW  
OF KAZAKHSTAN'S REPORT ON IMPLEMENTING THE INTERNATIONAL  
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL  
DISCRIMINATION.**

*“The Committee notes that there is no specific legislation in the State party regarding racial discrimination. The Committee is of the view that specific domestic law regarding racial discrimination, implementing the provisions of the Convention, as well as a legal definition of racial discrimination that complies with the provisions of the Convention, would be a useful tool to combat racial discrimination in the State party”.*<sup>5</sup>

57. Despite the Committee's comment Kazakhstan still does not have specific legislation regarding racial discrimination. At the current stage Kazakhstan also does not have specific legislation regarding discrimination or legal acts containing any definition of direct or indirect discrimination that would meet the requirements of the Convention. Kazakhstan has been a Party to the Convention for over 10 years, however, the plans of the Government and Parliament never included discussion and adoption of a specific legislation regarding discrimination.
58. Constitutional Council did not issue any official interpretation of Constitutional provisions relating to discrimination. Similarly, the Supreme Court's normative rulings do not refer to any discrimination cases and do not comment on any discrimination case-law. In general, the legislators and courts have no specific stance on anti-discrimination legislation and practice.
59. Since the State does not take any specific approach to the elimination of all forms of discrimination based on the provision of the Convention, it can open ways for indirect discrimination in the various areas of public life. The unjustified distinction that leads to negative consequences for a certain person or a group usually is not seen as a direct violation of a right (for example, in case of discretionary exercise of powers, control or supervision), hence, are not viewed as 'discrimination'. In practice, such types of discrimination as distinction, exclusion, limitation or preference on the basis of race, colour, national, tribal or ethnic supremacy can be indirectly effected on a totally different criteria (social status, rank, property, domicile or other circumstances).
60. In absence of any relevant definition of any type of discrimination in the domestic law the law-enforcement bodies can have discretionary interpretation of any specific case. There is no guarantee that this interpretation of discrimination will comply with the Article 1 of the Convention.

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Conclusions and recommendations of the UN Committee on the Elimination of Racial Discrimination.

61. The Article 14 of the Constitution prohibits discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, beliefs, place of residence or any other circumstances. Discrimination is referred to in the Criminal Procedure Code (Article 21), Civil Procedure Code (Article 13), Labour Code (Article 4, 7, 22, 145, Law on Contract Military Service (Article 6), Law on Trade Unions (Article 7), Law on Employment (Article 5) and Law on Migration (Article 3). However, the domestic legislation contains no normative definition of discrimination.
62. In its Fourth and Fifth Periodic Reports on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the Government of Kazakhstan notes that *“there is no objective need for a separate law on racial discrimination in Kazakhstan, since the principles relating to the elimination of racial discrimination are stipulated for in the country's Constitution and many legal acts regarding human and civil rights, particularly in the Civil Procedure Code and Criminal Procedure Code that contain relevant provisions”*.
63. However, a problem for Kazakhstan lies in indirect or complex forms of discrimination. Distinction, exclusion or preference can be based on different grounds, usually such as citizenship, age, sex, current or former place of residence in a certain area and etc. Existing provisions in this area can in reality limit rights and interests of persons belonging to national minority. Limitations regarding certain categories of citizens can be applied in arbitrary manner, based on the ethnic origin of the individual.
64. Therefore, in absence of specific legislation and definition of 'discrimination' and 'racial discrimination' it is impossible to provide for consistent and well-rounded protection of rights and freedoms of national minorities. Adoption of specific legislation aimed at targeting discrimination in accordance with the international standards will promote a more efficient public policy in the area of inter-ethnic relations, contribute to greater responsibility of state bodies and civil society institutions for protection of human rights and interests relating to the national minority rights.

*“While taking note of the constitutional and other provisions prohibiting propaganda regarding racial or ethnic superiority, the Committee is concerned about the insufficiency of specific penal provisions concerning article 4 (a) of the Convention in the domestic legislation of the State party. The Committee recommends that the State party adopt legislation, in the light of the Committee's general recommendation XV, to ensure full and adequate implementation of article 4 (a) of the Convention.*

*While acknowledging that since independence the State party has opened its borders, the Committee also notes that there is a high level of emigration amongst particular ethnic or national groups. The Committee recommends that the State party include information in its next periodic report on emigration, including information on the causes and consequences of this ongoing phenomenon and its impact on particular ethnic or national groups.*

*While welcoming the information provided on several minorities in the State party, the Committee regrets the lack of information on the situation of certain minority groups, in particular the Roma, and their enjoyment of all human rights. The Committee recommends that the State party include information in its next periodic report on the situation of all minority groups, in particular the Roma, and in this connection draws the attention of the State party to its general recommendation XXVII on discrimination against Roma.*

*The Committee notes the absence of legislation regarding the status of languages and that little information has been provided by the State party on the participation of minorities in the elaboration of cultural and educational policies. The Committee is concerned that minority languages are not used in the educational system to an extent commensurate to the proportion of the different ethnic communities represented in the student body. The Committee recommends that the State party adopt legislation on the status of languages and that it include detailed information in its next periodic report regarding the use of ethnic minority languages in education and how ethnic minorities participate in the elaboration of cultural and educational policies.”*

65. In accordance with the official statistics Kazakhstan has about 15 million residents representing approximately 130 nationalities and ethnic groups. 48% of the country's population belong to national minorities, however, the government has not set up a special body, ministry, committee or agency responsible for nationality issues and the two-chamber Parliament also does not have a relevant committee or commission. Kazakhstan also has no official policy document on nationalities, since the strategy of the Assembly of People (which is an advisory body under the President) enforced by the Presidential Decree of 26 April 2002 is not obligatory and can not define the Kazakhstan's policy with respect to national minorities.
66. Russian-speaking residents of the country have certain concern about the violation of the law on languages, pertaining to the social services sphere. The signatures and nameplates for streets, official institutions, including the Employment bureaus, public hospitals and post offices, road police offices and other agencies are in Kazakh only, which creates discomfort for residents that do not speak Kazakh. Tax and customs forms, medical records and medication leaflets are also sometimes provided in one language only. Translation into Russian is not provided at some of the state-funded conferences, including those with participation of the Committee on Languages of the Ministry of Culture, Information and Sport, meaning that a number of non-Kazakh participants are left out of the discussion.
67. Slavic peoples organizations are ready to motivate the Russian-speaking community to learn Kazakh language given the adequate funding. However, the arbitrary action taken by the lower level officials in violation of the language legislation might provoke extreme discontent of Russian-speakers although it is unlikely that they will request restoration of use of Russian to a full extent. The discontent of Russian community will probably lead to a new bout of migration, further encouraged by the active resettlement program offered by the Russian Federation.
68. Onomastics presents an increasingly difficult problem for the Kazakhstan's society. Russian community is very sensitive to the changes of names of places that in their view are connected with first Russian settlers and constitute no affront to the history of Kazakh people. In their view the unfounded changes of names and locations distort the historic perspective for the regions of the country and for Kazakhstan in general.
69. Currently, serious concern is raised in connection with the possible change of names of Petropavlovsk and Pavlodar cities. These settlements were founded by Russians three centuries ago to protect the local Kirghiz-Kaysak tribes from Dzungarian attacks. Russian organizations believe that the process of changing the traditional names of settlements leads Russians to feel that their historic contribution is being downplayed and the public is lead to believe that Russians are “colonialist” outsiders.

70. In general, there is no ethnic divide in Kazakhstan society, however there are certain barriers in terms of social, cultural and language differences. The Law on Languages of 11 July 1997 and the Constitution of Kazakhstan do not provide for sufficient legal status of national minority languages, limiting their use and virtually excluding the possibility to adopt the regional legal acts in minority languages.
71. National minority languages can no longer be used for official written communication in local authority offices, companies and organizations. However, the current criminal procedure and civil procedure legislation does allow for the right to legal proceedings in the language of national minority where needed.
72. The Law on Languages does not contain any reference to international treaties and does not mention the right of minorities to establish ties with the countries inhabited by their ethnic groups and engage in trans-border co-operation. Introducing such provisions could provide for compliance with the Convention and demonstrate Kazakhstan's readiness to observe its international obligations related to the minority rights.
73. Article 7 of the Constitution says that the State shall promote conditions for the study and development of the languages of the peoples of Kazakhstan. It is essentially a neutral provision. It does not oblige the state to develop the minority languages leaving it to the minorities themselves to make the effort. The issue of national minority languages is largely outside of the Constitution scope, which could in the future lead to tension related to the implementation of the language policy.
74. Increasing concern over this issue can lead to political implications and be used by certain forces for destabilization. Kazakhstan being a State Party to the Convention is obliged by the paragraph c) Article 2 to take effective measures aimed at support of languages, culture and traditions of national minorities and to review the policy on languages both at the national and the regional levels.
75. The basis for adopting such domestic legislation could be found in a number of international human rights instruments, in particular the European Charter for Regional or Minority Languages and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UN General Assembly.
76. According to the Constitution, Kazakh language is given status of the State language, while Russian is considered a "language of official use". Paragraph 2 Article 7 of the Constitution and the Article 5 of the Law on Languages stipulate that Russian "is officially used equally with Kazakh" in the state agencies and local self-government bodies. With this the Law has no definition of 'language', 'state language', 'official language', although it does contain the definition of 'diaspora' as a part of ethnic community residing outside of the country of its historic origin. Legislation does not indicate the main principles that should guide the language policy.
77. After the Law on Languages was adopted in 1997, the government issues state programs on language development on a periodic basis. A "State Program of Use and Development of Languages between 2001 and 2010" was adopted in 2001. Representatives of the national minority groups, while not contesting the need for legal provisions and support for Kazakh language, note that the process of implementing these provisions is forced

and disregards the objective issues related to multinational composition of the population and low level of command of Kazakh language.

78. The state census conducted in 1999 demonstrated that just 14.9% of Russians (second largest national group in Kazakhstan) speak Kazakh. Small percentage of other significant national minorities groups speak Kazakh: 16.1% of Ukrainians, 21.8% Germans, 9.9% Belorussians, 25.8% Koreans. At the same time 99.4% Kazakhs said that they speak their mother tongue and 75% speak Russian. All of the significant national minority groups speak Russian: 99.5% Ukrainians, 59.2% Uzbeks, 99.3% Germans, 96.9% Tartar, 76.1% Uighurs, 99.4% Belorussians, 97.7% Koreans.
79. Objectively, Russian is the language of inter-ethnic communication in the multinational state. Despite this, the use of Russian language in mass communication has been limited to a significant degree. One of the principal requirements imposed by the State is that all the broadcast media, including the private media, would keep a proportionate balance of coverage to 50% of air-time dedicated to Kazakh language programs.
80. The language issue has social, cultural, political, legal and ethno-political dimensions. Low command of Kazakh could be a direct or indirect reason for refusing to hire a candidate in civil service, for disqualification from the state contest or political campaigning and could lead to other violation of rights (although there are no court cases or legal claims that authors could be aware of) related to these issues.

*“The Committee notes that the ethnic representation in State institutions does not correspond to the proportion of the different ethnic communities represented in the population of the State party. The Committee recommends that the State party include information in its next periodic report regarding the ethnic representation in State institutions and adopt practical measures to ensure that ethnic minorities have equal access to those institutions.”*

81. According to the statistical data submitted by Kazakhstan “as of 1 January 2008 over 40% of the country's population are non-Kazakhs. 130 minority nationalities are widely represented in the civil service”. However in practice there is a clearly negative trend to limit the representation of ethnic minorities in the civil service and administrative bodies.
82. In absence of real democratic mechanism providing for adequate representation of ethnic groups, new civil service employees are mainly recruited through administrative selection and they either lack understanding of national minority issues or, due to their dependent position, have no influence upon changes in cultural, social or political relation.
83. For example, the number of Uighur staff and members of the local executive and representative bodies has decreased over the recent years. This is particularly evident in the areas, where Uighurs constitutes a significant proportion of the population – at the Enbekshikazakh, Uighur and Panfilov regions. The procedure of the civil service staff selection is hasty, one-sided and frequently does not take into account the proportion of residents belonging to the national minority. Remaining national minority staff feels uncomfortable and out of place and many choose to leave their civil service positions.
84. National minorities have limited access to the positions of power and it constitutes a serious problem. The dominance of Kazakh nationals at the administrative bodies is one

of the factors causing significant discontent of other ethnic groups. Statistics demonstrate that ethnic minorities are poorly represented in the bodies of power.

85. Statistical data of the 1 January 2008 shows that 81.9% of civil servants are of Kazakh origin, Russians are the second group at 12.3%, while other ethnic groups account for 5.8%. On many occasions professional qualifications have less weight in terms of civil servants selection than command of Kazakh language.
86. The State has to take consistent effort to prevent the growing trend of limiting the representation and equal professional prospects for ethnic minorities. Such policy not only violates the constitutional provisions on equality of citizens independently of their national or ethnic origin, but also increases the risk of divide and conflict related to nationalist feelings. The practice of putting one ethnic group into a domineering position should give way to the equal and proportionate representation of all ethnic groups. Selection of staff based on ethnicity should not downplay the need to ensure that candidates are competent and well-suited to their role.

*“The Committee regrets the lack of information in the State party's report on the fundamental rights of non-citizens temporarily or permanently settled in Kazakhstan, including migrant workers. Drawing the attention of the State party to its general recommendation XXX on discrimination against non-citizens, the Committee recommends that the State party include information in its next periodic report on non-citizens and on the enjoyment of their rights. Furthermore, it encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.”*

87. The Report does not refer to the tension in the society caused by the migration of population from rural areas that arbitrarily erects makeshift buildings at the outskirts of the big cities. This creates a lot of issues for city residents and the new migrants alike due to increasing social and economic difficulties. In many respects the problem is exacerbated by the fact that the migrants are left out of any organized effort that would help them adapt to new realities.
88. The Government had announced its intention to implement a Nyrly Kosh program aimed at addressing these issues. However, substantial time is needed for the program to make real change and in the meantime due to the economic crisis the migration issues are further aggravated and have a negative impact upon inter-ethnic relations.

*“The Committee is concerned that some refugees have been forcibly returned to their countries when there were substantial grounds for believing that they might suffer serious human rights violations. The Committee recommends to the State party that it include in its next periodic report information on the situation of refugees, the legal basis for their deportation, and the legal protection provided, including their rights to legal assistance and judicial appeal against deportation orders. It also urges the State party to ensure, in accordance with article 5 (b) of the Convention, that no refugees will be forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations.”*

89. At present time the number of de facto refugees in Kazakhstan is as follows: 3,800 — Chechen citizens of Russia, 381 - Afghans, 27 - Uighurs from China, about 150 Uzbek citizens, 4 Kirghiz citizens (including the officially registered refugees). However, the official statistics states that there are just 580 refugees in Kazakhstan, majority of them — 99.5% - are Afghans (as reported by the Focus newspaper on 4 April 2009).

90. The asylum procedure is accessible only to the Afghani citizens that left their country because of the war. Other refugees that had to leave their country for political reasons can seek asylum in theory, but in practice the authorities do everything in their power to prevent such asylum-seekers from obtaining the refugee status in Kazakhstan. Below see the data on refugee situation in Kazakhstan.
91. Afghan refugees. Asylum seekers from Afghanistan have full access to the official procedure of asylum and are the only category of refugees that enjoy full legal protection by the Government of Kazakhstan. They have left their country due to different reasons. Some of them left were loyal to the Communist regime and left after the government was overthrown in 1992. In absence of stability and security in Afghanistan, citizens of the country continued to emigrate to other states. Over the recent years the Government of Kazakhstan granted the refugee status under the 1951 Convention to over 1,600 Afghani citizens, it has also taken part in programs of resettlement of refugees to other countries.
92. Chechen refugees. Chechens came from Russia to Kazakhstan in course of two major conflicts in the Chechen Republic: during 1994-1996 and 1999-2000. Chechens do not need a visa to cross the Kazakh border. Since Kazakhstan has loyal political relations with Russia, Chechens unofficially are prevented from seeking asylum with the Government of Kazakhstan or the UNHCR office in Kazakhstan. However, the UNHCR provides legal and political support to around 3,800 de-facto asylum seekers from Chechnya. The UNHCR take an official view that Chechens from the Chechen Republic are in need of international protection.
93. The Republic of Kazakhstan has and still is the major destination for many Chechen refugees due to the fact that Kazakhstan always had a large Chechen community. The Government allows many Chechens to stay in the country based on temporary registration permitting them to remain up to 180 days. The same policy is applied to the citizens of other CIS countries.
94. Uighur refugees from China. Ethnic Uighurs from Xinjiang has fled to Kazakhstan in the 90s during the political unrest in their region. The actual number of Uighur asylum seekers in Kazakhstan is not known. Since the late 90s there were over 100 persons that applied for protection to the UNHCR. Their status is vulnerable. These asylum-seekers were never admitted to the official asylum procedure, but the UNHCR had reached an understanding with the Kazakh Government to ensure that the Uighur asylum-seekers can be considered for asylum by the UNHCR in Kazakhstan within its mandate, while the Government allows them to stay in the country. In cases when protection is problematic or refugees can not stay due to political reasons, the UNHCR offers resettlement to third countries.
95. Refugees from Uzbekistan and other countries. In 2005 the human rights situation in Uzbekistan rapidly deteriorated leading to constant outflow of residents that sought asylum in Kazakhstan. The UNHCR office in Kazakhstan has registered almost 300 persons seeking asylum: majority of them from Uzbekistan and a few from Kyrgyzstan. Because of Kazakhstan's political interests and state security issues, over 130 refugees were resettled to third countries. Resettlement is the only option for the rest of these asylum-seekers, since Kazakhstan does not extend the asylum procedure to persons from Uzbekistan and Kyrgyzstan. Authorities express concern over this group of asylum-seekers, viewing their presence as a threat to national security.

96. Asylum in Kazakhstan. Although the state takes primary responsibility for protection of its citizens, the need for international protection may arise in cases when the state protection is not provided de-jure and/or de-facto and there is a threat to fundamental human rights. This could be connected with persecution, threat to life or personal safety, armed conflict, violent actions or other man-caused disasters.
97. Kazakhstan's obligations in the area of refugee protection are not only based on 1951 Convention Relating to the Status of Refugees and 1967 Protocol but also other documents, e.g. Convention on the Right of Child, 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the 1966 International Covenants.
98. Kazakhstan's obligations under the international treaties take precedence over the domestic legislation. Paragraph 3 Article 4 of the Constitution states that “*international treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law.*” Therefore, even if there is no specific legislation on refugees, it should not mean that provisions of the 1951 Convention are not applicable for Kazakhstan. Kazakhstan joined the 1951 Convention and its provisions can be referred to directly by courts and in administrative practice.
99. However, despite ratification of the relevant international treaties relating to refugees, the asylum institute in Kazakhstan still lacks solid basis in terms of clear legal framework and administrative support.
100. Kazakhstan in its legal framework carries over a legacy from the Soviet Union legislation that had two separate concepts for the refugee and the political asylum. Kazakhstan has established two separate mechanisms for implementation of these two concepts. The Resolution of the Commission on Citizenship under the President contains a definition of 'refugee' that is wider, but similar to that of the Convention. The Resolution further notes that the Chairman of the Commission has the power to grant political asylum. However, the Law on Migration contains a different definition of 'refugee', which is more in line with the definition contained in the 1951 Convention. The Committee on Migration and its regional chapters denied some asylum-seekers access to the asylum procedure claiming that their applications referred to political grounds and it is only the President who can make a decision in such case.
101. It should be noted, that the state bodies responsible for determining the refugee status refuse to accept applications from some asylum-seekers. The legislation obliges them to determine the status in accordance with the definition of the 'refugee' in the Law on Migration, which cites political belief as a possible cause of persecution (this is also supported by the Rules on the Refugee Determination Procedure). However, the Instructions of the Ministry of Foreign Affairs on Procedure of Granting Asylum to Foreign Citizens and Stateless Persons in the Republic of Kazakhstan also lists several categories of persons that can not be granted political asylum in Kazakhstan.
102. The Resolution of the Commission on Citizenship clearly states that political asylum can not be granted to persons that: a) were prosecuted for actions (failure to take action) that is recognized as a crime by the Kazakhstani legislation or have been found guilty of actions that contradict aims and principles of the United Nations; b) have been brought before court on criminal charges or have been sentenced by court at the territory

of Kazakhstan; c) have been at the territory of the third country where there is no threat of persecution; d) have presented false information about themselves; and e) have citizenship of a third country, where there is no threat of persecution.

103. However, the Foreign Ministry in its Instructions have added an additional provision stating that political asylum can not be granted to a person, if the fact of asylum *“will significantly affect bilateral relations between Kazakhstan and another state”*. Such a provision violated the fundamentals of refugee protection, since the concept of asylum is related to humanitarian action and is independent of politics.
104. Asylum seekers enter Kazakhstan in the same way as any other foreign nationals. There is no legal procedure that would allow asylum seekers to apply for refugee status at the border. In all of Kazakhstan just two Migration Departments grant asylum and they are located in Almaty and Shymkent. UNHCR office accepts applications only in Almaty. On one occasion in 2005, 30 Uzbek citizens crossed the border to Shymkent that is located 800 kilometers from Almaty. They have addressed the Kazakhstan International Bureau for Human Rights and Rule of Law asking for help in reaching the UNHCR office in Almaty. However, the UNHCR staff refused to assist in this case and requested the asylum-seekers to apply in person, offering them to travel to Almaty at their own risk. Such an approach leaves little space for safety of asylum-seekers or for adequate access to the asylum procedure.
105. Kazakhstan's government excludes the CIS citizens out of the asylum procedure, although majority of asylum-seekers come to Kazakhstan from the CIS countries. Government refers to the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases and the Minsk Agreement on Visa-Free Travel for the CIS Citizens. According to these documents the CIS citizens, including Uzbeks and Chechens (citizens of Russia) do not need the refugee status.
106. As far as the CIS national are concerned Kazakhstan apparently gives priority to the bilateral treaties on national security over the obligations under the international standards for refugee protection. Because of that, Uighur refugees from China, Chechens and Uzbek nationals have been denied access to the asylum procedure in Kazakhstan. With no access to the procedure they are not protected against deportation.
107. Kazakhstan's legislation does not make any difference between a foreign national and an asylum seeker. Paragraph 3 Article 22 of the Law on Legal Status of Foreign Nationals states that foreign national lacking the necessary documents can not enter the territory of the country.
108. Legal issues, request for extradition, forced return. There is no definition of 'extradition' in Kazakhstan's criminal legislation. However, the Article 8 of the Criminal Code provides for a possibility of extradition of persons that committed criminal offense. Foreign nationals and stateless persons that committed criminal offense outside of Kazakhstan and are located at the territory of Kazakhstan can be extradited to face criminal charges or imprisonment in accordance with the international treaties signed by the Republic of Kazakhstan.
109. The Criminal-Procedure Code provides a list of circumstances that can lead to refusal of the extradition request: a) the person was granted political asylum in

Kazakhstan; b) action that was cited as a reason for this extradition request is not a crime under the law of Kazakhstan, c) this person can not be prosecuted due to expiry of the statute of limitations. At the same time the law does not contain any provisions ensuring that asylum seekers can not be extradited until their application has been considered and they were denied refugee status in accordance with the procedure.

110. At present, the extradition issues affect the citizens of Uzbekistan most of all. At present time about 10 Uzbek refugees, residing in Kazakhstan, are on the most wanted list distributed by Uzbekistan. Due to this, they are repeatedly detained or checked upon by the Kazakhstan law-enforcement officials.
111. Starting from 2005, each year there are at least three-four cases when the law-enforcement officials detain Uzbek refugees based on extradition requests from Uzbek authorities. In majority of cases Kazakhstan denies these requests. However, given the proximity of the Uzbek border and the close co-operation of the CIS law-enforcement agencies within the Shanghai Co-operation Organization there is no guarantee against abduction and illegal transfer of refugees across the border into Uzbekistan.
112. On 24 November 2005, nine Uzbek asylum seekers went missing. Four out of them have already applied for refugee status at the UNHCR office. The Kazakh official reply was that these citizens were never detained and they simply left the territory of the country, although the local residents witnessed kidnapping of these persons. At a later time it became known that these Uzbek asylum-seekers were abducted during the joint operation of the Uzbek and Kazakh security forces, taken across the border and put into the investigation isolation prison in Tashkent.
113. At current stage the UNHCR has reached an agreement with Kazakh authorities that Kazakhstan will not extradite refugees. Kazakhstan has observed this agreement so far, but Kazakh authorities are open about their concern over the Uzbek refugees and feel that they are a threat to national security.
114. In accordance with the Minsk Convention, Kazakh law-enforcement officials notify their Uzbek counterparts every time there is a detention of the Uzbek refugees. Such notification also contains information about the location of the Uzbek citizen. Staff of the Kazakhstan International Bureau for Human Rights and Rule of Law have witnessed on several occasions the Uzbek law-enforcement officers visiting the Uzbek refugees detained in Kazakhstan and trying to persuade them to renounce the refugee status and return to Uzbekistan. This creates constant tension and makes refugees fear persecution.
115. Integration and resettlement. Since there is no Law on Refugees in Kazakhstan, status of refugees is no different from the status of other foreign nationals, that raises a lot of issues. The refugees face the following problems: obtaining the residence permit, receiving adequate documents, work permits and the procedure of resettlement to third countries.
116. Residence permit. Certain refugees would like to stay in Kazakhstan, but in order to receive the permit under the Kazakhstani law they have to submit a letter from the Embassy of their country and a document proving that they have legally left their country of residence. No refugee can meet these requirements that are also contradictory to the

international standards. Due to this situation many refugees face serious obstacles when trying to integrate into the society.

117. Identity documentation for refugees. Some refugees left their country in a haste and had no identification documents with them. Others have been in Kazakhstan for a long time and their original documents have expired. These refugees can not obtain new identification, because in accordance with the domestic law on migration the Kazakh authorities require the refugees to obtain new identification through the Embassies of their respective countries. Therefore, the UNHCR certificates are the only form of identification document for some refugees. These certificates have no legal force at the territory of Kazakhstan, can not be used as proper identification and their only function is to protect the refugee from extradition. Refugees from Uzbekistan and China are affected most of all. The refugees whose documents have expired could apply for stateless person status, but once again the legislation requires them to submit a letter from the Embassy and a document proving that they have legally left their country of residence. Refugees from Uzbekistan and Uighurs from China also have to demonstrate that they have at least 13 thousand USD in their bank account.
118. Work permits. Kazakhstan's labour law emphasizes that the country's employment policy is aimed at creating equal opportunities for the citizens of the country, foreign nationals and stateless persons permanently residing in Kazakhstan. However, since the refugees from CIS do not have access to the state's asylum procedure, they do not have right to work officially. Many of them have to seek illegal employment at the construction sites and markets.
119. Refugees from China are in even more difficult situation than the refugees from CIS states. Majority of Uighurs from China that sought refuge in Kazakhstan do not have even the temporary registration. The only document confirming their legal status is the UNHCR refugee certificate, which is not sufficient for legal employment.
120. Resettlement to the third countries. Resettlement seems to be the only option for Uzbek refugees and Uighurs from China to improve the quality of life and protect themselves against the threat of persecution. However, the resettlement procedure in some cases is very lengthy. Some categories of refugees live in Kazakhstan for over 4 years in very difficult conditions, awaiting the decision on resettlement. Considering that these refugees are not admitted to the state's asylum procedure, they cannot be fully legalized. They have no passports, no prospects of legal employment and they constantly have to deal with the police and arbitrary action.
121. Currently the draft Law on Refugees is at the final stage of development, and has been passed to the Government for approval. Refugees and human rights activists hope that situation will change as soon as this law will be passed. Adoption of the law is unlikely to resolve all of existing problems that asylum seekers and refugees face in Kazakhstan, however, it will be a step towards improvement of the asylum practice and legislation at the domestic level.
122. Therefore, the NGOs recommend the following measures: **to intensify and improve the efforts taken by the Government together with the NGOs and the UNHCR; to facilitate and speed up the process of adoption of the Law on Refugees; amend the migration and labor legislation in order to enable the refugees to seek**

**legal employment at the territory of Kazakhstan and promote integration of the refugees into the local society.**

*“While acknowledging that the State party has developed a governmental work plan to combat human trafficking, the Committee notes with concern that there is ongoing trafficking of women and children, particularly affecting non-citizens and ethnic minorities. The Committee recommends that the State party include detailed information in its next periodic report on human trafficking and that it reinforce its ongoing efforts to prevent and combat trafficking and provide support and assistance to victims. Furthermore, the Committee urges the State party to make determined efforts to prosecute the perpetrators and underlines the paramount importance of prompt and impartial investigations.*

*While acknowledging the efforts made by the State party to confront the scourge of terrorism with a national counter-terrorism programme, the Committee is concerned about the lack of information on the impact of this programme on the principle of non-discrimination. The Committee draws the State party's attention to its statement of 8 March 2002 in which it stressed the obligation of States to ensure that measures taken in the struggle against terrorism did not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin and requests the State party to include in its next periodic report further information on its counter-terrorism programme.*

*The Committee notes with concern that, with the exception of the judges of the Supreme Court, all the judges are appointed by the President, who also determines the organization of the work of the courts. The Committee recommends that the State party strengthen the independence of the judiciary and other State organs in order to provide everyone with effective protection and remedies against any acts of violation of the Convention and that it include detailed information in its next periodic report on the measures taken to that end.*

*The Committee notes the absence of court cases regarding racial discrimination in the State party and that only two complaints of racial discrimination were brought before the Commission on Human Rights in 2000 and 2001. The Committee recommends that the State party ensure that the paucity of complaints is not the result of victims' lack of awareness of their rights or limited financial means, or their lack of confidence in the police and the judicial authorities, or to the authorities' lack of attention or sensitivity to cases of racial discrimination. The Committee urges the State party to ensure that appropriate provisions are available in the national legislation regarding effective protection and remedies against violation of the Convention and to disseminate as widely as possible among the public information on the legal remedies available.”*

123. The human rights monitoring is conducted by the Commission on Human Rights under the President in order to prepare the annual National Report on Human Rights Situation in Kazakhstan and by the Ombudsman when drafting an annual Report on Human Rights in Kazakhstan. The reports include a section on violations related to discrimination based on ethnic origin.

124. These reports note that usually the state bodies do not keep separate statistics for human rights violations related to nationality or discrimination. They also state that the complaints of ethnic discrimination have not been confirmed during the checks. For example, the 2005 Report of the Ombudsman states: *“During the reporting period our office received 4 complaints related to discrimination based on nationality. Comparing to the previous year the number of such complaints has decreased significantly (8 claims in 2004) ... Relevant action was taken to check the facts alleged in each application, however there was no proof of discrimination in any of these cases”*. [Report on the

Activities of the Ombudsman in the Republic of Kazakhstan. 2005 – Astana, 2006. - pp. 76-78].

125. Various non-governmental associations conduct a more objective monitoring of the right of national minorities (e.g. the Association of Sociologists and Political Scientists and other). Their sociological polls demonstrate that there is a certain deterioration of inter-ethnic relations in the country.
126. In absence of anti-discrimination legislation there is no way for the State to tell why there are just a few complaints of discrimination lodged by the citizens. There could be different reasons, including low awareness of rights in this area, lack of financial means or distrust towards police and courts. Law-enforcement practice demonstrates that the state bodies do not pay sufficient attention to the issues relating to violation of national minority rights.
127. When the inter-ethnic conflict does happen, the authorities provide just limited information on the event (e.g. riots at the Shelek, Malovodnoye, Kazatkom and etc.).
128. The provisions of the Convention relating to the effective judicial remedy and protection against violation of rights under Convention are still not implemented directly into the domestic legislation. Due to this the state bodies can not provide for maximum dissemination of information about the legal remedies provided for by the Convention.

*“While noting the existence of the Commission on Human Rights, which has a primarily consultative function, as well as the recent nomination of an Ombudsman, the Committee regrets the insufficiency of detailed information regarding their independence and effectiveness. The Committee recommends that in its next periodic report the State party provide additional information on the role and functioning of the Commission on Human Rights and the Ombudsman. Furthermore, the Committee encourages the State party to consider establishing an independent national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134)”.*

129. The Presidential Decree of 9 September 2002 on Establishing the Position of the Ombudsman in the Republic of Kazakhstan introduced the institution of the national ombudsman. Despite subsequent improvement of its legal status, the Ombudsman's office still does not meet the international standards and principles of organization of the national human rights institutions, in particular the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Resolution of the UN General Assembly 48/134), which state that the national human rights institutions should be created in accordance with the Constitution or law, be independent, have a clear mandate, be accessible, co-operate with other agencies, non-governmental organizations, be mobile, flexible and accountable.
130. In order to provide for a truly efficient national human rights institution Kazakhstan needs to:
- **adopt a Law on the Ombudsman in the Republic of Kazakhstan;**
  - **provide the Ombudsman with adequate powers, up to giving the Ombudsman's office a right to instigate administrative and criminal cases with the corresponding bodies;**
  - **ensure that the Ombudsman is elected by the Majilis of Parliament;**

- **provide for the Ombudsman's annual report on human rights and freedoms in Kazakhstan to be presented to Parliament;**
- **vest the Ombudsman with the power to initiate legislative changes and address the Constitutional Council on the issues related to protection of human rights and freedoms;**
- **protect the Ombudsman's independence by ensuring legal immunity for the duration of Ombudsman's powers.**

*The Committee notes the insufficient information on efforts undertaken by the State party to involve non-governmental organizations in the preparation of the periodic report and expresses concern over the restrictions placed by the authorities on civil society organizations, including organizations working to combat racial discrimination. The Committee underlines the importance of the role of civil society in the full implementation of the Convention and recommends that the State party remove all legal, practical and administrative obstacles to the free functioning of civil society organizations that contribute to promoting human rights and combating racial discrimination. Furthermore, the Committee recommends that they be consulted during the preparation of the next periodic report.*

131. Some non-governmental organizations were invited to contribute to the State report, however, the co-operation between the government and civil society remains ineffective. The authorities tend to favour some NGOs over the others, excluding those that bring up the 'uncomfortable' issues and ignoring their requests.
132. Great proportion of population believes that the inter-ethnic conflicts over the recent years were caused by socio-political or economic reasons. The population does not consider inter-ethnic discord to be the main reason for these events.
133. Sociological polls show that a lot of people remain outside of the efforts taken by the government. Many citizens know nothing of the funding allocated for Sunday schools, festivals, exhibitions, sport contests, national theaters and the like. Very few information is available about the activity of the 9 Majilis deputies elected from the Assembly of People. There is even less information about the ethnic group involvement in decision-making process at the local level.
134. Sometimes the cases of renaming places and streets become a politically-charged issue. One example is a conflict between Kazakhs and Uighurs in the Malybay village of the Almaty region that happened on 26-27 June 2008 and resulted in a loss of life (the Kazakh resident A. Halykov was killed allegedly by Uighurs). The representatives of national-patriotic movement came to the funeral and have requested that the authorities would dismiss the local self-government and law-enforcement officials and change the names of streets and schools. According to them, the “*authorities do not address these issues in any way, the oblast and regional administration is passive and ignores the increasing tension, residents have little trust in authority*”.

*The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.*

*The Committee also recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.*

135. The recommendation on providing for the availability of the State's reports and the Committee's observations to the public has not been implemented.

*The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and recommends that it consider so doing.*

*The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 57/194, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was reiterated by the Assembly in resolution 58/160.*

136. It should be noted that at current stage majority of the recommendations made by the Committee have not been implemented. The mechanism of prompt, unbiased and full investigation of discrimination complaints has not been created and the Committee's recommendations were not openly publicized.

137. Kazakhstan is a party to two international treaties relating to the rights of national minorities:
- Kazakhstan signed, but has not ratified the 1994 CIS Convention Guaranteeing the Rights of Persons Belonging to National Minorities;
  - Kazakhstan joined the Convention on the Elimination of all Forms of Racial Discrimination on 29 June 1998.

138. The national minorities status is defined in the sectoral legislation: laws on language, on education (of 18 January 1992) and culture (of 24 December 1996). These laws define the fundamental principles of the state policy in the area of national minority rights. This legislative acts contain the key provisions affecting the interests of national minorities and directed at protection of fundamental rights of all nationalities to develop their native language and culture.

139. The main purpose of the Law on Culture is to preserve, develop and promote the culture of peoples of Kazakhstan. The concept of cultural values used in this law includes languages, as well as traditions and customs of all nationalities in Kazakhstan (Article 1). The cultural heritage of peoples of the Republic of Kazakhstan is understood as the entirety of cultural values of national significance, which belong to Kazakhstan and can not be transferred to other states. The key principles of the state's cultural policy include equality of rights and opportunities and development of education system that would promote knowledge of national and world culture values (Article 3). The cultural activities are regulated by this Law that prohibits the anti-state actions, such as propagating or inciting racial supremacy.

140. The state does not take sufficient measures to develop and protect the rights of national minorities in the social, economic, cultural and other areas of public life.

Analysis of Kazakhstan's legal framework demonstrates that the Constitution and legislative acts contain just general provisions relating to the rights of national minorities, such as provisions prohibiting discrimination based on race, language, religion, provisions guaranteeing the right to choose the language of communication, education and artistic expression. At the same time the country's legislation lacks specific laws aimed at protection, provision and promotion of rights of persons belonging to national minorities.

141. The international agreements signed by Kazakhstan relating to provision of national minority rights (Almaty Declaration on creation of CIS signed on 21 December 1991, bilateral treaties with the Russian Federation, Kyrgyzstan, Belarus and other states) contain no reference to the term “national (ethnic) minority”.

142. This term widely used in the international law is substituted with such incoherent terms like “ethnic group”, “national group”, “ethnic community (expatriates)”, which are unclear from the political and legal point of view. The position taken by the state results in a situation when the legislative initiatives and current legislation are planned and implemented without due consideration for the rights and interests of persons belonging to national minorities.

143. Such insufficiently clear position of the state is further accentuated by the fact that Kazakhstan did not adhere to or ratify the main international instruments containing provisions on protection of national minority rights. Kazakhstan did join the Minsk Convention on Ensuring the Rights of Persons Belonging to National Minorities (21 October 1994), but it has not been ratified by the Parliament and does not have any legal force at the territory of the Republic.

144. Kazakhstan's legislation contains no reference to 'racial segregation' and 'apartheid' due to de-facto absence of such practices. However, there are no legal provisions in the country's legal framework that would be aimed at preventing, prohibiting and eliminating racial segregation and apartheid.

**145. In general it should be noted that in the time that has passed since Kazakhstan submitted its first, second and third periodic reports as one document, there was no specific action taken to implement the Convention and the CERD recommendations.**

146. A number of conclusions and recommendations can be made. The legislation and practical implementation relating to the Convention's provisions to a great degree do not correspond to international standards and need serious improvement. This is especially true of the need to ensure respect for fundamental principles, which should be integrated into the country's legislation and legal practice.

**147. There is the need, first of all, to ensure compliance with the non-discrimination principle. The international standards are based on the idea that the human rights are guaranteed to everyone without any discrimination. The Article 2 of the International Covenant for Civil and Political Rights requires each State “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind”.**

148. **State bodies of the Republic of Kazakhstan should develop a clear guidance and policies to counteract discrimination, and provide for consistent and precise legal regulation of inter-ethnic relations, institutions and procedures in order to ensure efficient anti-discrimination practice.**
149. **It is important to introduce the definition of 'discrimination' into the country's legislation and ensure that such definition is in compliance with the Convention. Kazakhstan does have precedents of adopting such normative definitions.**
150. **Kazakhstan needs to take measures to implement all of the CERD recommendations made in the Concluding Observations related to the initial to third periodic reports of Kazakhstan on implementation of the International Convention on the Elimination of all Forms of Racial Discrimination (2004).**
151. **It would be necessary for the Parliament to adopt a law on ensuring the rights of persons belonging to national minorities. Such law should make use of international standards and reflect the whole spectra of issues related to the national minorities status.**
152. **It would be beneficial, where possible, to set up a new Ministry or agency on nationalities, which would ensure the minority rights.** If not possible, a position of a minister without portfolio is needed to represent the interests of national minorities with the Government. Another option is to set up a separate structure (department or service) within the Ministry for Culture and Information with the aim of covering all of the issues related to protection of national minority rights.
153. **It would be expedient to set up a special department on national minorities within the Ministry of Labour and Social Protection to ensure a more consistent and targeted protection of educational, labour and social rights of national minorities.**
154. **One of the permanent Committees of Majilis and Senate of Parliament should undertake the discussion of issues related to protection of rights and interests of the national minorities.**
155. **Taking into account the positive experience of developed states with a poly-ethnic population it would be beneficial to expand the practice of bilateral agreements between Kazakhstan and other states in the interests of Kazakh minorities and their ties with the country of origin.**
156. **It is expedient to recommend that the Government of the Republic of Kazakhstan would undertake the responsibility of development and implementation of measures to promote, protect and guarantee the national minority rights.**
157. **At the regional level it would be expedient to task the local self-government bodies (oblast, city, regional maslikhats, akims and their offices) to take responsibility for protection of rights and interests of persons belonging to national minorities and support of national-cultural centers and other national minority organizations.**
158. **In order to increase the scope for national minority participation in the public life at the regional and local levels it is recommended that maslikhats, their per-**

manents commissions and akimats of regions and cities with significant minority communities would include the representatives of these communities.

159. It would be necessary also to establish a practice of regular meeting of local executive officials with the representatives of the national-cultural organizations to discuss the issues of promotion and protection of rights and interests of persons, belonging to national minorities.
160. Since education for national minorities is one of the most pressing issues, the Assembly of People should focus on possibilities of addressing this issue at the national level and should prepare a corresponding proposal. At present stage there are a number of measures that should be taken to correct the State's policy relating to education of national minorities:
- increasing the scope of ethno-cultural education programs for schools and universities;
  - restoring the system of university quotas for national minority students;
  - allocating greater resources to minority language schools and improvement of teaching methods;
  - ensuring that Russian language is taught in Kazakh and national schools to a degree, sufficient for passing an entrance examination to the Russian-language universities;
  - developing of specific education programs on history and theory of religion for schools and universities located in the areas with significant number of national minority residents.
161. Greater attention should be given to the language training of teachers in schools and other educational establishments located in the areas where persons belonging to national minorities constitute a large proportion of the population. It is important to ensure training of teachers, publication of quality textbooks, development of modern teaching programs and increase the curriculum hours for minority languages training.
162. Measures are needed to prevent the spread of religious (first of all, Islamic) fanaticism in the regions where religion is an important feature. The Assembly of People and national-cultural centers should initiate the regular lectures, discussions, round tables and other public activities with participation of religious leaders, academics, elders and etc. Such activities should be aimed at explaining the anti-social character of extremist actions, at promoting the ideals of tolerance, respect for views and beliefs of others.

### **PART III. INFORMATION ON THE SPECIFIC CASES OF INTERETHNIC CONFLICT FALLING UNDER THE ARTICLES 2-7 OF THE CONVENTION**

#### **Inter-ethnic conflicts during the period covered by the Fourth and Fifth periodic report of Kazakhstan submitted as one document**

163. For a long time the authorities of Kazakhstan have ignored the increasing tension between the different ethnic groups. Such an approach resulted in a certain effect evident during the years of independence – the inter-ethnic relations were portrayed in overly positive tonality and increasing trend towards nationalism, both Kazakh and non-Kazakh, was ignored. The inter-ethnic tension is still increasing and the inter-ethnic conflicts in different regions of Kazakhstan are an evidence of that.

164. Experts, political scientists and journalists note that *“reaction of the Kazakh population to the events was out of proportion. It is of great concern that the protests by Kazakhs are very well organized and in a very short time the activists are able to draw a crowd of aggressive people armed with iron rods and firearms”* (as it happened at Malovodnoe).
165. It should also be noted that concurrently with these events a number of media publishes articles by Kazakh national-patriots who complained of 'other nationalities taking advantage of Kazakhs in the Kazakh land'. De facto these articles were used as an ideological basis for the nationalistic activities.
166. Some inter-ethnic conflicts are seen as the 'infringement upon the rights of Kazakh people at their native land'. One of the leaders of the national-patriot movement declared, *“Some representatives of other nationalities allow themselves to be rude and condescending towards Kazakhs, which contributes to hostility”*. Another Kazakhstani political scientist and analyst in a newspaper article posed a question, *“...why do 'guests' in this country live in better conditions and own more property than the native population?”* Political games fueling nationalistic feelings in the poor can lead to the events spinning out of control. The incidents of the kind increase the aggressive attitude of non-Kazakhs.

#### ***Aktau events***

167. The riots in Aktau took place on 20 August 2006. According to the press reports, the events started with a non-violent mass meeting of the employees of OJSC Mangistaumunaigas that demanded a salary raise. The mass-meeting was not sanctioned by the authorities. The akimat reported that 10-15 people assembled at the central square to take part in the meeting. However, the following day it was known that towards the evening there were over 200 protesters at the square. According to the official reports, *“several participants of the mass meetings went to the residential blocks in small groups and attempted property damage”*. Witnesses reported, however, that police interfered with the protest and anywhere from 17 to 25 people were detained. Young people joined the protesters and started a fight with the police and, as the opposition media reported, in this moment some protesters started crying out the nationalistic slogans and crashing the small restaurants and shops that belong to Chechens, Azeri and Lezgins.
168. Aktau is a port at the Mangyshlak peninsula, which has seen several inter-ethnic conflicts over the recent years. The most notorious of these is the Novy Uzen (Zhanaozen) riot that took place in summer 1989 when Kazakhs fight with Lezgins and Chechens led to bloodshed. The smaller scale conflicts between Kazakhs and Caucasus diaspora continue at the Mangyshlak peninsula up to now. Usually there is a certain criminal involvement in these conflicts.

#### ***Shelek and Malybai events***

169. The conflict between two groups of residents belonging to different nationalities occurred in the Shelek village of the Almaty region on 18 November 2006. A fight between Uighurs and Kazakhs in a small restaurant led to a wide-scale conflict. The young people formed groups based on nationality and instigated mass fights. On the following day, 19 November, the group of Kazakhs attacked three Uighur shops. Several Kazakhs went down the Oktyabrskaya street where they attacked every grown man they met. The

major fight occurred at the crossroads of the Zhibek Zholy and Ismail Tairov streets, where, according to the media reports, over 300 men assembled from each side. Police could not stop the violence, which subsided only after the appeals from the elders of the two communities. Several people were wounded. The deputy head of the Interior department of the Almaty region colonel Ayubaev came to Shelek on 19 November and called an emergency meeting at the akimat of the Shelek district.

170. A curfew was introduced in Shelek and policemen were dispatched to the streets. The akimat assembled a special committee consisting of the school directors, representatives of the community associations and regional law-enforcement officials. Emergency parent meetings were held in schools. However, these measures proved to be inefficient due to numerous anti-Uighur publications in the media (over 100 articles), particularly in the Kazakh-language press. Many articles had catchy headlines, such as 'It is your state, but the land is ours' (E. Uralbaev in the *Svoboda Slova* newspaper). These appeals gained support of some radical national patriotic organizations that held meetings further fueling the inter-ethnic tension. Several MPs, political scientists and activists also made statements that contributed to the confrontation. An authoritative Kazakh weekly *Zhas Kazak* labeled the conflict as 'fascist' and condemned the Uighurs position. *Kazakhstan-Zaman* newspaper requested that "Uighurs would ask Kazakhs for forgiveness". The media called the Uighur language schools 'a source of ethnic separatism'.
171. Gradually this precipitated into a situation when the Uighur language signage was removed at the Uighur schools in the Almaty region. The information boards recounting the history of Uighurs and Uighur public figures are also removed. Kazakh language newspapers continue publishing negative articles about Uighurs in the wake of Shelek and Malybai events. Kazakh language newspapers *Ana Tili* and *Kazakhstan-Zaman* repeatedly raise the issue of changing the name of the Uighur district of Almaty region. Officials seem to be willing to change the name too. Local residents actively object to such a perspective and voice their concern explaining that the change of name could lead to increased inter-ethnic confrontation. All of these factors contribute to the risk of inter-ethnic conflicts in the future.

### **Malovodnoe events**

172. A mass fight occurred at the Kazatkom village of the Almaty region on 18 March 2007. The day before two young people – a Kazakh and a Chechen – got into an argument at the Malovodnoe village. Reportedly the argument led to a shooting with a small caliber gas gun. The next day a large crowd – majority rural Kazakhs - assembled at a deserted plant next to Malovodnoe. Later at the trial it was revealed that some of them have come to take part in this fight against the Chechens from the distant villages as far as 60 – 100 kilometers away. A number of expensive cars were parked nearby that obviously were not owned by this shabbily dressed young people. The witnesses reported that the crowd got into these cars (there were over 50 of them) and drove to the village Kazatkom. They have attacked the Mahmahanov family. The elder of the family – a 75-year old Mahmahanov lives in Kazakhstan for 45 years and is famous for his sheep-breeding skills. His three sons tried to protect their home and resorted to use of the firearms. Two attackers were hit: one of them - Sadykov died on the spot and the other one - Bugutov died later in a hospital. The Mahmahanov brothers (Hadzhimurat, Nazhmutdin and Amir) ran away from the house trying to distract the crowd. The attackers followed them. The brothers were caught, severely beaten and died in fight. A part of the crowd went to destroy the small shops owned by Chechens in Malovodnoe. Local police failed to subdue the fighting, since the local law-enforcement lacks technical and human resources.

173. The next day the Ministry of Interior held a press-conference in Astana. The law-enforcement official made a statement saying that “this conflict can not be regarded as relating to ethnicity”. Concurrently, the residents of Malovodnoe held an improvised mass meeting marching through the central street towards the neighboring village. The protesters were going to attack the Chechens, but the police stopped them. At the same time the conflict affected the Parliament, where the deputies fell into two groups. Some believed that the conflict was an inter-ethnic one, while others alleged that it was caused by underlying social tension.
174. There are 30 thousand Chechens residing in Kazakhstan with 1.5 thousand residing in Enbekshikazakh region where the conflict happened. Kazatkom events raised a lot of concern. Some media alleged that these events were not just a simple conflict, but were planned from the outside. Witnesses reported that just a few of the attackers of the Mahmahanov's house were local residents. According to some reports attackers came to Kazatkom from Shelek, Akchi, Kyzyl Kayrat, Kaskelen, Almaty and South Kazakhstan region.

### ***Mayatas events***

175. A conflict between Kurds and Kazakhs at the Mayatas village of the Tole-bi region in South Kazakhstan took place in October 2007. A four year old boy was raped and Kazakhs blamed it on Kurds community and have set on fire several houses belonging to Kurds. According to the media, the rape was reported to the authorities in over a week after the event. The suspect was detained and put into the temporary isolation facility and two dozens policemen were dispatched on 28 October to protect his family. This, however, did not prevent the further riots. One night Kazakhs came to the house of the suspect in 15 cars and threw bottles with Molotov cocktail at his and the neighboring houses of Kurds. “*There was wide-scale damage, especially in the Tole-bi region, where a lot of Kurds reside. The attackers knew very well where the houses of Kurds were located*”, said the Honorary president of the Kurds Association Nadirov. Kurds were given police protection. Law-enforcement officials were checking the identity and searching cars at Mayatas at all times of day. However, the media reported that there was none left to protect in the village. After three days of arsons and riots, almost 90% of Kurds had to leave their dwelling. Many left to the nearest big city of Shymkent and were afraid to go back to the village.
176. The conflict was local, but anti-Kurd attitudes continued spreading. Kazakh media wrote that Kurds are acting very rudely. Moldiyar Orazaliev, the chairman of the Administrative police committee of the Ministry of Interior, hinted that violent actions against Kurds were caused by '*some local citizens engaging in petty theft and drug trade*' while adding that '*there was no inter-ethnic discord*'.
177. As a result of these events the head of the Tole-bi regional Department of Interior Namazbaev and his deputy Yerzhanov were dismissed. Kurds continued to press for persecution of all the guilty parties. Yerzhanov was later convicted and sentenced to four years of imprisonment for the failure to timely bring the criminal charges of rape thus contributing to the escalation of the conflict. Another law-enforcement official S.Rustamov is wanted on the same charges.

178. A well-known scientist, academician Nadirov claims that the conflict was rooted in the commonplace discord and the riots happened only due to the failure of the local authorities to stop the violence. *“We demand the inter-ethnic accord and stability. Those who disrespect our demands should be punished. These mistakes have to be rectified, so that people would know that this was no inter-ethnic conflict, that the authorities and police are there to protect and not to incite hatred. This needs to be done urgently so that people would calm down... I feel that in this case it was the responsibility of the local authorities that gave reason to these outbursts and failed to suppress violent action”*, he said.
179. Over a year has passed after the riots, but the Kurd families that lost their houses and property to the fire have not received any compensation. The officials explain that damages should be paid by the perpetrators, but they were not identified.
180. Kurds live in Central Asia since 1937 when they were deported by Stalin from the other Soviet Republics that shared common border with the Turkey. After the inter-ethnic conflicts in Kyrgyzstan and Uzbekistan in the end of the 80-s majority of Central Asian Kurds have fled to Kazakhstan. There are over 7 thousand Kurds residing in South Kazakhstan, 3.5 thousand of this number live in Tole-bi region.