

KAZAKHSTAN

NGO REPORT

TO THE UN HUMAN RIGHTS COMMITTEE
ON IMPLEMENTATION OF THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS
BY THE REPUBLIC OF KAZAKHSTAN

SUBMITTED TO THE 102 SESSION OF THE HUMAN RIGHTS COMMITTEE
11-29 JULY, GENEVA



Almaty
June 2011

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INTRODUCTION

The Report is prepared by a number of human rights non-governmental organizations of Kazakhstan, namely International Fund of Protection of Freedom of Speech “Adil Soz”, Almaty Helsinki Committee, Charter for Human Rights, Feminist League of Kazakhstan, Kazakhstan International Bureau for Human Rights and Rule of Law, International Center for Journalism “MediaNet” and Legal Policy Research Center.

The following organizations contributed additional information during preparation of the Report:

1. Penal Reform International, Office in Central Asia
2. International Legal Initiative, Almaty
3. Public Foundation SAUYGU, Almaty
4. Committee on Monitoring of Penal Reforms and Human Rights, Pavlodar
5. Center for Justice of Zhambyl Oblast, Taraz
6. Regional Center of New Information Technologies, Petropavlovsk
7. Public Foundation RAY OF HOPE, Akmola Oblast
8. Public Association of Lawyers LEGAL INITIATIVE
9. Center for Legal Assistance to Ethnic Minorities, Almaty
10. INTERNEWS Kazakhstan
11. Working Group of NGOs on Protection of the Rights of Children (Kazakhstan)
12. Public monitoring commissions

The authors of the Report used information from open sources, official documents and reports of human rights organizations in Kazakhstan and international organizations.

1. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (Article 2)

1.1. The main law of Kazakhstan guarantees the supremacy of international norms, ratified by the Republic of Kazakhstan, over national legislation. However, the Resolution of the Constitutional Council of the Republic of Kazakhstan № 2 of 18.05.2006 “Official Interpretation of subparagraph 7 of Article 54 of the Constitution of the Republic of Kazakhstan” provides alternative reading of this principle. In its reasoning the Constitutional Council refers to its Resolution №18/2 of 11.10.2000 where it maintains that the Vienna Convention on the Law of Treaties “does not provide for a procedure of implementation of treaties. It is the constitutional and legislative prerogative of the state and it is based on the generally accepted principle of international law, i.e. a sovereign equality of states.” Further on, “Constitutional Council establishes that in case if any international treaty or its separate provisions contradict the Constitution of the Republic of Kazakhstan, which in accordance with paragraph 2 of Article 4 of the main law, has the supreme legal force on the territory of Kazakhstan, such treaty shall not be enforced in full or in part”. Finally, in concluding provisions of the said resolution the Constitutional Council provides that: “4. In case if any international treaty of the Republic of Kazakhstan or its separate provisions is/are found inconsistent with the Constitution of the Republic of Kazakhstan, such treaty or its relevant provisions shall not be subject to implementation”.

The authors of the Report believe that this decision of the Constitutional Council conflicts with the Vienna Convention on the Law of Treaties of 1969¹, in particular with Article 27 of the Convention, which says that: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

1.2. Judicial practice in the Republic of Kazakhstan shows that courts in their decisions almost never refer either to provisions of the Constitution of the Republic of Kazakhstan or provisions of international treaties ratified by the Republic of Kazakhstan, not to mention the principle of priority of international norms over national laws. Such practice exists despite the Resolution of the Supreme Court, dated July 10, 2008 “On application of norms of international treaties of the Republic of Kazakhstan.”

Thus, the international human rights treaties ratified by the Republic of Kazakhstan are de jure a part of national laws, but de facto are never used in the practice of courts or any other government bodies.

¹ Decree of the Supreme Council of the Republic of Kazakhstan N. 2059-XII as of March 13, 1993: “On Joining of the Republic of Kazakhstan to Vienna Convention on the Law of Treaties of 1969.”

1.3. The powers and procedures of two national human rights institutions, i.e. the Human Rights Commission under the President of the Republic of Kazakhstan and the Ombudsman (Institute of Human Rights Commissioner), fail to meet the UN's Principles adopted in 1993 relating to the status of national institutions engaged in encouragement and protection of human rights (Paris Principles).

According to these principles, a national institution on human rights is vested with maximum powers which are clearly set out in a constitutional or legislative act which determines its composition and competence.

In contradiction to these Principles the above-said institutions – Human Rights Commission and the Ombudsman are established by Presidential decrees rather than legislative acts. Moreover, the procedures of appointment also fail to meet requirements of Paris Principles. Thus, they are appointed by the President of the Republic of Kazakhstan rather than in accordance with transparent procedure. The Presidential Decree on the Institute of Human Rights Commissioner also sets substantial limitations on its competence: “18. The Ombudsman does not administer complaints against actions and decisions of the President, Parliament of the Republic of Kazakhstan and its deputies, Government of the Republic of Kazakhstan, Constitutional Council, General Prosecutor's Office, Central Election Committee and courts of the Republic of Kazakhstan.”

2. EQUAL RIGHTS OF MEN AND WOMEN (Article 3)

2.1. While recognizing positive measures taken by the government in the area of observance of a right to equality between men and women in the exercise of civil and political rights, it is necessary to indicate that the status of women in Kazakhstan still needs improvement and practical support. Women in Kazakhstan amount to 52% of the population, however there are few women at the level of decision making. According to the State report, women in Kazakhstan predominantly hold public offices which do not involve decision making.² Today, the Parliament of Kazakhstan has only 21 women, which is 14% of the total number of its members. There is only 1 female minister in the government, 1 woman as a chairperson of a government agency, 1 deputy head of the chancellery of the Prime Minister, 4 executive secretaries of ministries, 5 deputy ministers. There are no women among regional governors (oblast akims); only 3 women are deputy oblast akims and 3 women are district akims. Women account for 17% of all deputy district akims and for 11% of deputy akims of village districts.

Although Kazakhstan adopted Strategy of Gender Equality for 2006-2011 as early as in 2005, these measures remain a mere declaration which is evidenced by absence of any progress over the years regarding the role of women in policy making.

² Initial Report of the Republic of Kazakhstan as of July 27, 2009 (“State Report”), paragraph 61.

2.2. Health index among women is less than 30% in Kazakhstan according to the National Center On Promotion of Healthy Lifestyle, which means less than 30% of women are in good health. More than 60% of women have anemia. Abortion remains among key methods of contraception. The Ministry of Healthcare of the Republic of Kazakhstan reports that 360,000 childbirths in 2009 included 4,360 deliveries of women aged between 15 and 18. Pregnancies recorded among women at the age between 15 and 18 exceed 8,000 cases annually. Half of them are aborted. Due to absence of detailed official statistics in this respect it is impossible to establish an exact number of pregnant teenagers of 13, 14 and 15 years old. Teen pregnancy entails a set of risks for young women. These are psychological, physiological, social and economic problems. It is established that women who have their first child at the age of 15 or younger fail to complete full school program and have only 9 classes of education. As a result, lack of proper education negatively affects their social and economic prospects.

Despite the immensity and complexity of the teen pregnancy issue in the country, the government does not have any efficient state program designed to prevent range of problems relating to teen pregnancy, such as abortions, abandoning of newborns, etc, as well as to provide social, psychological and legal support to minors.

2.3. Every year around 590 women and girls die from domestic violence in Kazakhstan; 20,000 cases of rape are reported annually. Today, 21 public crisis centers provide various type of support to women who become victims of violence. In 2008 these centers received 21,600 applications for assistance. This number included 6,100 applications relating to cases of physical abuse, 5,500 to psychological abuse, 556 to sexual and other types of abuse. Activities of these crisis centers are not sustainable due to lack of targeted state financing and insufficient alternative funding.

The official statistics does not portray a true picture of violence against women. The above mentioned crisis centers report that women are not able to obtain protection from law-enforcement bodies and obtain remedy in the courts. The 2009 Law on Prevention of domestic violence sets the framework for the first response by community police officers with regards to complaints on domestic violence. However, the adoption of this law did not bring any consequent changes to the Criminal Code or the Criminal Procedure Code to guarantee special protection for victims of domestic violence. For instance, there is no criminalization of domestic violence. The practice of investigating such cases as the crime of battery does not reflect the complex nature of domestic violence cases. This problem is topped by slow and inefficient police registration and investigation of such crimes. Women face number of practical problems, such as lack of legal aid, difficulties in collecting evidence, absence of alternative medical expertise, etc. The courts are not sensitive to the victim status of women in such

cases and lack any judicial guidelines for adjudicating cases of domestic violence. The result of such legislative and institutional failures is the persistent impunity of abusers and lack of effective remedy to women victims of domestic violence in Kazakhstan.

2.3. Article 14 of the Constitution establishes general prohibition of discrimination based on the origin, social, official and property status, gender, race, nationality, language, association to religion, beliefs, place of residence and any other grounds. With regards to gender discrimination, in 2009 Kazakhstan adopted the special Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women (“Law on equal opportunities”). The definition of discrimination provided in the Law is not in full compliance with the definition provided in the Convention on the Elimination of all Forms of Discrimination Against Women. Moreover, the Law does not designate any government agency to be responsible for ensuring that equal rights and opportunities are guaranteed in practice. The existing National Commission for Women’s Rights and Family and Demographic Policy has limited powers and covers only issues of women’s rights in the context of family relations. According to its statute, it is established as an advisory body, which can send and receive information and documents from government agencies on women’s rights and request to conduct inspections, if necessary. The Commission is not entitled to consider complaints from citizens and take appropriate measures in response. Therefore, due to absence of effective mechanism of implementation of the Law on equal opportunities, this vital instrument of state policy runs the risk of becoming virtually declarative without any influence on real practice of gender inequality in Kazakhstan.

3. RIGHT TO LIFE (Article 6)

3.1. Death penalty in the Republic of Kazakhstan as a type of criminal penalty is not completely abolished in the law. Amendment to article 15 of the Constitution of the Republic of Kazakhstan indicates that death penalty can be established by law only for terrorist crimes, entailing loss of life, as well as for especially grave crimes committed during war time, with a right of a sentenced person to seek pardon.³

The Concepts on Legal Policy Development adopted in 2002 and in 2010 declared that there will be steady process of narrowing legal grounds for application of the death penalty as the main direction of legal policy on this issue. Despite this declared intent to gradually abolish the death penalty in Kazakhstan, there are a growing number of crimes in the Criminal Code that provide for sentence through death penalty and life imprisonment.

³ Constitution of the Republic of Kazakhstan, article 15, paragraph 2.

In 2002, the article 233 “Terrorism” of the Criminal Code was supplemented by part 4, which provides for capital punishment in cases of infringement on human life committed with a purpose of violating public security.⁴ In 2009, articles 160 “Genocide” and 165 “Treason against the State” of the Criminal Code were supplemented by parts 2, which provide for capital punishment.⁵ The same law envisages death penalty for a number of crimes committed during combat operations or in war time.⁶ Recent amendments to the criminal law adopted in 2010 introduce capital punishment for infringement on life of the First President of the Republic of Kazakhstan – Leader of the Nation.⁷ Currently, the Criminal Code prescribes death penalty for 17 types of crime, while most of them do not involve loss of life.

3.2. The conditions of detention of persons sentenced to death penalty remain alarming according to human rights NGOs. In particular, the persons, who were sentenced to capital punishment and whose sentence was replaced by life imprisonment due to moratorium on execution of death penalty, remain in the legal vacuum. Such category of prisoners spend 23 hours in the cell under video surveillance; they are not engaged in any labor activities; their contacts with the outside world are extremely limited; phone calls are allowed only by the head of a prison administration in exceptional cases; 2 family visits of no longer than 3 hours each are allowed every year; visits of up to 3 days may be allowed only after serving 10 years of the term. According to internal regulation, when taken for a walk, the prisoners are supposed to be escorted by guards with hands behind them in handcuffs, blindfolded with thick garment.⁸ The prisoners have to use plastic barrels instead of lavatories due to absence of a central sewage system in the cells. Prisoners with their death penalty replaced by life imprisonment are practically doomed to die in a prison, because, according to part 8 of article 70 of the Criminal Code of the Republic of Kazakhstan, this category of inmates is not eligible for parole.

3.3 Kazakhstan fails to undertake adequate measures to ensure protection of life as the supreme human right. One example is the situation with the number of deaths in closed institutions, including

⁴ Law of the Republic of Kazakhstan “On Amendments to Some Legislative Acts of the Republic of Kazakhstan relating to Fight Against Terrorism” N 295-II, as of February 19, 2002. Article 233 of the Code of Criminal Procedure of the Republic of Kazakhstan.

⁵ Law of the Republic of Kazakhstan “On Amendments to Some Legislative Acts of the Republic of Kazakhstan relating to Death Penalty” N. 175-IV, as of July 10, 2009.

⁶ Article 367 of the Criminal Code of the Republic of Kazakhstan “Disobedience or any other Non execution of an Order” (in combat operations or in war time) is supplemented by part 3-1 which provides for capital punishment; article 368 “Resistance to Superior or Coercion to Violate Official Duties” (in war time); article 369 “Coercive Actions against Superior” (in war time); article 373 of “Desertion” (in war time); article 374 “Evasion of Military Service by Self-Mutilation or Otherwise” (in war time); article 380 “Abuse, Excess of Power or Failure to use Authority” (in war time) are supplemented by part 4, which provide for capital punishment.

⁷ Criminal Code of the Republic of Kazakhstan, Article 166-1.

⁸ Order of the Ministry of Justice of the Republic of Kazakhstan No.148 as of 11 December 2001 “On endorsement of Rules of internal regulation in correctional facilities (with amendments introduced by orders of Ministry of Justice of RK No.167 of 20.11.02; No 154 of 27.05.04; No 173 of 08.06.04).

custody, penitentiary and medical institutions. Civil society organizations raise concerns of torture, ill-treatment and poor medical conditions as the leading causes of deaths in custody. The official explanations of causes of deaths either relate to medical conditions, such as the tuberculoses or to self-injuries and inter-prisoner violence. No information is available to the public on the results of investigation and remedies provided to the victims' families.

4. PROHIBITION OF TORURE AND CONDITIONS OF DETENTION (article 7, 10)⁹

4.1. Kazakhstan became a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1998. In November 2008, based on the review of the second periodic report on implementation of UNCAT, the UN Committee Against Torture expressed concern over the “frequent use of torture and ill-treatment” and proposed a number of recommendations on 27 substantive issues to the government of Kazakhstan. The UN Special Rapporteur on Torture Manfred Nowak after a mission to Kazakhstan in May 2009 drew a conclusion that “the use of torture and cruel treatment certainly goes beyond isolated instances.” Indeed, in 2009 human rights organizations of Kazakhstan recorded 286 complaints of citizens against torture. In 2010 this number was 263. For information, NGOs registered 212 complaints in 2008; 178 in 2007; 137 in 2006; 64 in 2005 and 104 in 2004. Meanwhile, the official statistics indicate that over 10 months of 2010 only four persons were convicted for the crime of torture (article 347-1 of the Criminal Code of the Republic of Kazakhstan) and in 2009 only 1 police officer was indicted on charges of torture.

In February 2010 the government of Kazakhstan adopted an action plan for 2010-2012 on implementation of recommendations of the UN Committee Against Torture. The human rights organizations observe that while some positive initiatives to amend the legislation and by-laws took place in 2010, they failed to address the problems in the institutional practice, which remained largely unaffected. This is due to the fact that the government selectively approached to UNCAT recommendations, without a comprehensive and consistent national program on combating torture. The implementation of the action plan is being undertaken without civil society input. The action plan as a document is not easily available in terms of public access and there is no regular public reporting on its implementation.

Recent amendments to the criminal code affected the scope and placement of the crime of torture in the legislation.¹⁰ The article on torture was moved from the chapter on crimes against justice to the

⁹ This section contains extracts from the report of the NGO RAY OF HOPE: “Results of Interviews of Persons under Arrest and Sentenced to Imprisonment”, Akmola Oblast.

one on crimes against constitutional rights and freedoms. The definition of torture has also been changed to comply with Article 1 of the UN Convention Against Torture, and currently includes liability of an official person for instigation, acquiescence or at whose consent torture is committed. However, the introduced changes have not resulted in an increased punishment for this crime. The section 1 of the article on torture puts this crime in the category of average gravity crimes, which do not rule out amnesty and reconciliation of parties with a subsequent exemption from criminal liability.

The rate of investigation of torture cases in practice remains low in the face of persistent use by law enforcement. The complaints on torture are preliminary examined by the departments of internal security of the Ministry of Internal Affairs. Such examination usually results in finding “no conclusive evidence” to open criminal investigation. The examination is confidential and lacks any guarantees for victims of torture, such as the right to demand timely and independent medical examination, to summon witnesses, to submit evidence and to access the materials of examination in order to effectively challenge the outcome in the courts. Lack of such guarantees prevent timely recording of evidence and annul any chance for prompt and effective investigation. There are frequent cases when a victim is forced to withdraw a complaint under the risk of repeated torture. In rare instances of initiating criminal investigation, the charges are brought under the criminal article “Abuse of Official Powers” rather than “Torture”. Such practice dilutes criminal statistics as it fails to present the real extent of the problem.

Immunity of perpetrators is complemented by the lack of effective mechanism for compensation and damages to the victim of torture. The overall problem is that a victim of torture cannot obtain any compensation or damages if there is no formal criminal investigation and trial on the case of torture. Taking into consideration isolated instances of criminal investigation and indictments against law enforcement officials, the practice of compensation from the state in Kazakhstan to victims of torture becomes rather limited. The Criminal Procedure Code contains general provisions stipulating reasons and terms under which the right to compensation arises and the procedure of payment from the state budget. Article 40 of the CPC RK establishes a list of persons who are eligible for compensation and damages for harm sustained as a result of unlawful actions by the body in charge of the criminal investigation. According to this provision the victims of torture are not eligible for compensation and damages from the state, because the CPC’s definition of unlawful actions does not include actions which constitute torture. There is no independent civil remedy in cases of harm incurred from the agents of the state. In Article 923 of the Civil Code of the RK (hereinafter “CC of RK”) “Responsibility for the harm, sustained as a result of unlawful actions of the state bodies of interrogation, preliminary investigation, the Prosecutor’s Office and the courts” also contains a narrow

¹⁰ Law of the Republic of Kazakhstan “On Amendments to Some Legislative Acts of the Republic of Kazakhstan relating to Further Humanization of Laws and Reinforcement of Guarantees of Legality in a Criminal Procedure” as of January 18, 2011.

list of persons and conditions which give rise to the right for compensation and damages from state that do not include victims and cases of torture.

Regardless of 2011 amendments to the criminal procedure code, Kazakhstan still lacks efficient guarantees of protection against torture. For instance, persons arrested on suspicion of having committed a crime are registered and have all their rights read to them not at the time of arrest but upon filing an arrest report. The law requires such report be filed within 3 hours after actual apprehension. There is no indication, however, what constitutes the time of “actual” apprehension. As a result, there are widespread violations in practice with regards to recording the time of apprehension. The persons, therefore, spend far longer than 72 hours at the hands of police, before they appear in court.

Official interrogations are often preceded by the so-called informal ‘conversations’ when persons are summoned to the police in order to give information or under any other pretext. Such persons are not formally parties to the criminal case, hence are not able to enjoy any procedural rights, such as the right to defense. During these informal conversations, the persons are subjected by police to psychological and/or physical pressure in order to extract from them information against themselves or third persons. Subsequently, statements obtained in such manner are used as legal grounds to open criminal cases.

It is during these periods of unrecorded or unacknowledged custody, when the persons are held by the police without any contact with the outside world, that they are the most vulnerable to torture and ill-treatment. The predominant share of evidence in the criminal case against defendants is “gathered” during these periods of complete absence of any procedural guarantees and safeguards. The systemic motivation behind such practice is to report high crime solvency rate by the police.

The above described practice of immunity of perpetrators and lack of safeguards against torture is complemented by an inadequate role of the judiciary with regards to inadmissibility of evidence. Judges in Kazakhstan are inclined to consider the defendants’ complaints of torture as their attempt to avoid punishment. The complainants have to prove the incident of torture in order to challenge admissibility of evidence presented by the prosecution. Given the fact that most defendants are in detention during criminal investigation and trial, the burden of prove on the defendant, who claims to be the victim of torture is unreasonably high and contrary to international norms. The resulting practice is that judges reach decisions in criminal cases based on the evidence of prosecution, regardless of defendants’ complaints of torture. The Supreme Court addressed this problem in its special normative resolution, which serves as guideline on judicial practice.¹¹ Unfortunately, the

¹¹ Normative Resolution of the Supreme Court N.7, as of 28 December 2009: “On the implementation of norms of criminal and criminal procedure legislation with regards to freedom of one’s liberty and inviolability, prevention of torture, violence and other forms of cruel and degrading treatment and punishment”.

provision on inadmissibility of evidence although shifted the burden of prove on the prosecution, was rather limited and short on procedural details on how to examine complaints during trial and rule on inadmissibility. For instance, the resolution states that if the defendant was represented by the lawyer, then the latter must indicate the violations in the interrogation protocol. It is not clear whether the absence of such written note from the lawyer will affect the “admissibility” of the complaint on torture during trial. This is important, because, in practice defendants are often represented by ex-officio lawyers, who are criticized for providing low quality of legal aid. Hence the inactions of the lawyer during investigation stage may affect the examination of the torture complaint during trial. Another problem not addressed in the resolution is the time of deciding on admissibility of evidence. The established practice is that the judge postpones the decision on admissibility till the end of the trial to announce it together with the verdict. Such negative practice is not addressed in the normative resolution. Due to these shortcomings, the Supreme Court resolution by large did not affect the negative practice of courts with regards to complaints of torture.

4.2. With regards to the principle of *non-refoulement*, there have been important changes in the legislation following the 2008 Recommendations of UN Committee Against Torture. The criminal legislation in Kazakhstan was amended in January 2011 to include new provisions on special judicial review of the extradition order (Article 531-1 of the CPC), and prohibition of extradition, when there is likelihood that the person might be at risk of torture upon extradition (Article 532 of the CPC). These new legal provisions, however, did not find their way into the court practice. In the case of 29 persons, who came to Kazakhstan, seeking asylum from religious persecution in Uzbekistan, and who are currently wanted by Uzbek authorities in relation to criminal charges of anti-terrorism and religious extremism, the Almaty court denied their appeal against the extradition order. The court ruled that the individuals did not provide sufficient evidence that upon return they shall be subjected to torture. The arguments presented by the defense, that these individuals due to their religious background and previous experience of torture by themselves or their families, shall be most certainly subjected to torture due to nature of criminal charges against them and “systematic” practice torture used by police and prisons in Uzbekistan, especially against religious followers, was disregarded as unsubstantiated. Currently, these individuals are at the risk of extradition and subsequent torture in Uzbekistan despite the UN Committee Against Torture interim measures request to Kazakhstan government in relation to their individual communications.

According to human rights NGOs, Kazakhstan has a long history of violations of the principle of *non-refoulement*. On May 30, 2011, Kazakh authorities extradited to China, a Uighur refugee who had fled to Kazakhstan after the July 2009 Urumqi riots. Four asylum-seekers: Khurshid Kamilov, Saidakhmad Kholmatov, Umarali Abdurakhmanov, and Rasul Rakhmanov were unlawfully extradited

by Kazakh authorities to Uzbekistan during the period of September to November 2010. It became known later that Umarali Abdurakhmanov was subsequently sentenced to 10 years in prison by an Uzbek court. In 2006, Kazakhstan forcibly returned Gabdurafih Temirbaev, who had fled religious persecution in Uzbekistan, and at least nine other Uzbek nationals. In 2008, Kazakh authorities unlawfully extradited Rafik Rakhmonov, who sought asylum in Kazakhstan after the Andijan massacre.¹²

4.3. Situation in prisons/detention facilities

Despite government's statements about diminishing prison population in the country, the official statistics raises concern. In April 2010, there were 62,626 inmates in Kazakhstan serving sentence, which is more than in 2008 by 13,000 and by 11,000 than in 2007.

In January-June 2009 Kazakhstan officially reported 222 deaths in prisons, including 33 suicides, 7 from HIV/AIDS, 88 from tuberculosis and 94 attributed to other diseases. However, there is no mention in government reports whether the cases of death in custody were investigated and what were the outcomes of investigations.

In 2004 pretrial detention facilities of the Ministry of Internal Affairs were transferred to the supervision of the justice ministry. Detention of suspects, however, held under the jurisdiction of national security forces remain in the power of the Committee on National Security, despite specific recommendations of the UN Committee Against Torture to transfer such detention facilities to the jurisdiction of the justice ministry.

Since 2004 the legislation provides for public monitoring of certain places of detention. There are 15 public monitoring commissions acting throughout the country. Unfortunately, these commissions are deprived of the most important power of unannounced and unhindered visits to detention facilities. The recent trend indicates that the prison administrations often deny access of public monitoring commissions to prisons under various reasons.

The public monitoring of places of detentions needs drastic improvement. The government took on the initiative to establish the National Preventive Mechanism (NPM) under the Optional Protocol to the UNCAT. Unfortunately, the NGOs, who closely monitor this process note that the government's proposal is not in line with the requirements of the Optional Protocol. Thus, the government suggests establishing the NPM under the Ombudsman's office, without bringing the latter in compliance with Paris Principles and with the unsecured budget to be determined annually through social procurement. Such approach demonstrates that the government attributes little significance to NPM as an important mechanism of preventing torture.

¹² Joint press statement by ACAT-France, Amnesty International, the Association "Human Rights in Central Asia," Human Rights Watch, and the International Federation for Human Rights (FIDH): "Kazakhstan: Don't Extradite Uzbeks to Torture. Respect International Obligations". Paris, June 7, 2011.

Regarding the prisoners' rights there are a number of concerns and violations registered by the Public monitoring commissions. For instance, the contacts of inmates with the outside world are often at the discretion of the prison administration. Thus, according to the law on procedure and conditions of confinement, meetings of suspects and accused with their attorney, relatives and any other persons are allowed based on written permission of an officer or institution in charge of criminal case. In practice this measure drastically limits the rights of detainees to communicate with the outside world.

Public monitoring commissions of Kazakhstan are concerned about the presence of small cells for "special confinement" in some penal institutions, which are the size of 1 sq.m. without any windows or ventilation. During the inspections, the prison administration explained that they are designed to confine newly arrived prisoners for up to 2 hours during processing of paper work with the convoy.¹³ The members of the commissions believe that such small premises cause claustrophobia and are unacceptable for confinement of anyone for any period of time. Kazakhstan does not allow solitary confinement of prisoners.

One of the pressing issues regarding prisoners' rights is the lack of effective procedures of registration, censorship and delivery of complaints of prisoners to different authorities. For instance, the main demand of prisoners during the campaign of massive self-mutilation in the penal institution LA 55/8 in Zarechny village, which took place on April 15, 2007, was to ensure proper delivery and independent processing of complaints, especially against prison administration. In practice the written complaints of prisoners regarding prison conditions or ill-treatment do not usually reach addressees.

According to public monitoring commissions prisoners often complain not only on torture/ill-treatment by prison administration but also by other inmates. There is a legal provision in the law, which allows delegation of certain functions to a group of inmates, referred to as a "counsel on law & order" in order to "assist prison administration in ensuring discipline and order" in the institution. These inmates enjoy certain privileges for cooperation with the prison administration. During the campaign on self-mutilation, the prisoners complained that they were beaten by other inmates from such counsels along with the prison guards.

There are also problems in practice with the right of prisoners to release on parole. According to current law, preliminary decision on parole is taken by a commission composed of prison administration members ('Penal Commission') as well as representatives of local executive agencies. The human rights organizations are convinced that existing penal system commissions do not act in the best interest of prisoners' rights or the public, but rather promote corruption in the penal system. According to international norms on prisoners' rights, the right of release on parole must be guaranteed by the court. Only judicial authorities should consider the grounds for release on parole. Under present

¹³ "Internal regulations of pretrial detention facilities of the Committee on Penal System of the Ministry of Justice of the Republic of Kazakhstan". Chapter II.

system, if the Penal Commission decides that the prisoner is not eligible for parole, and such decision is supported by the prosecutor, the case does not go to the court. The guidelines for the Prison Commission are based on evaluation system, developed under the soviet law. Thus the commission determines whether a prisoner has set, firmly set or has not set “on the path to correction”. There are no objective criteria to evaluate any such degrees of correction, as a result the evaluation is vague and lack objectivity.

(Attachment 1 to the Report contains information on individual cases of torture and ill-treatment)

5. FREEDOM FROM SLAVERY AND PROHIBITION OF FORCED LABOR (article 8)

5.1. The problem of human trafficking has become an urgent issue for Kazakhstan during the last ten years. Kazakhstan is a country of destination for victims of human trafficking from other Central Asian countries. Annually thousands of people get into labor and/or sex exploitation in the country. In recent years the government has taken important measures to combat human trafficking. The authors of this Report bring to attention some problems, which continue to persist in the law enforcement practice.

First of all, criminal prosecution of persons guilty of crimes related to human trafficking remains superficial and does not have required deterrent effect. This is because an overwhelming majority of criminal cases related to human trafficking are instituted according to the article 271 of the Criminal Code (“Maintenance of Brothels and Prostitution”), which provides punishment only for selected elements of the complex crime of human trafficking, rather than the article 128 (“Human Trafficking”). This is a problem, because the punishment level under article 271 (up to five years of imprisonment) is much less severe than that under article 128 (up to 15 years of imprisonment with confiscation of property). Moreover, charges under article 271 are frequently brought against persons who are only partially involved in human trafficking, for instance, administrators of brothels. Meanwhile, the real owners of brothels and other places where sex exploitation of victims take place either go unpunished or are subjected to minor administrative fines, for instance for violation of migration laws or illegal use of foreign labor.

Another problem is that victims of human trafficking are frequently left without adequate protection and help. In practice, victims of such crimes can be awarded social protection only during the period of criminal investigation and only once they are registered as parties to the criminal case. Upon completion of criminal investigations such social assistance is terminated without due solution to the problems of victims.

Moreover in many cases victims of human trafficking who were illegally brought to Kazakhstan from other countries are accused of violating the migration laws and subsequently deported from the country by decisions of administrative courts. This means that they are exposed to punishment instead of receiving assistance and protection as victims of crimes. According to legislation, foreign citizens who claim that they became victims of grave or especially grave crimes, such as human trafficking, are able to continue their presence in the country until the completion of criminal proceedings in their cases. However, this provision is rarely applied in practice. Although, the numbers of criminal investigations and judgments on cases of human trafficking have increased, the predominant volume of cases is not prosecuted.

The above mentioned problems result from the lack of systematic and consistent police work in relation to identifying cases of human trafficking and non-reporting by victims due to safety concerns and lack of trust to law enforcement bodies to effectively handle their complaints.

5.2. The Constitution of the Republic of Kazakhstan does not contain a direct ban on the use of forced labor but provides that “forced labor is allowed only by a court ruling or in a state of emergency or martial law”¹⁴. The prohibition of forced labor is contained in the labor legislation, with similar exceptions clause.

Despite such prohibition, provisions of penal laws stipulate the following: “1.All prisoners sentenced to deprivation of liberty by imprisonment must work in places and positions to be determined by the administration of a correctional institution.” Moreover, “Refusal to work or suspension of work is a malicious violation of an established procedure of serving of sentence and may entail application of measures of punishment and financial liability ...”¹⁵ This requirement virtually legalizes forced labor without relevant court decision Authors of the Report consider these provisions of the penal legislation as contrary to the requirements of Article 8 of the Covenant. Unlike such punishment measures as community work and correctional labor when engagement in mandatory labor is indicated in the court ruling, the above mentioned mandatory labor in places of detention is not prescribed by the court, but serves as additional measure of punishment to imprisonment.

These provisions are also contrary to the Constitution of the Republic of Kazakhstan. It is important to mention that in many countries community work cannot be prescribed as punishment without consent of a convicted person and are also used with limitations in cases of juveniles.

¹⁴ Constitution of the Republic of Kazakhstan, article 24.

¹⁵ Criminal Penal Code of the Republic of Kazakhstan, article 99.

6. RIGHT TO LIBERTY (Article 9)¹⁶

According to the criminal procedure law of Kazakhstan pre-trial detention is allowed only in cases provided for by law and only subject to approval by court¹⁷ with a right of judicial appeal against the detention order. Kazakhstan introduced judicial sanctioning of pre-trial detention in August 30, 2008. The procedure of judicial sanctioning of detention, however, does not fully comply with the principles and goals of *habeas corpus* and requirements of article 9 of the Covenant. As a result, the introduction of judicial detention has not significantly improved the level of pre-trial detention, which remains to be high in the country. This is evident from pre-trial detention statistics before and after 2008.

Table 1. Number of detention sanctions:

Pre-trial detention sanctioned by public prosecutor			Pre-trial Detention sanctioned by court		
2005	2006	2007	5 months of 2008	2009	H1 2010
Total					
21,618	21,277	20,027	5,970	19,510	7,789
Monthly average					
1,805	1,773	1,667	1,194	1,625	1,299

It is important to note, that due to lack of viable alternatives, pre-trial detention remains the most widely used measure of pre-trial restraint in Kazakhstan, rather than being exceptional, as prescribed by international norms. Thus, in practice most of the individuals, arrested in suspicions of having committed a crime according to article 132 of the Criminal Procedure Code, are subjected to pre-trial detention.

Table 2. Number of persons arrested according to article 132 of the Code of Criminal Procedure of the Republic of Kazakhstan

¹⁶ This section contains statistical information, provided by the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan.

¹⁷ Law of the Republic of Kazakhstan "On Amendments to Some Legislative Acts of the Republic of Kazakhstan relating to Application of Measures of Restraint in the Form of Arrest, Home Arrest", dated July 5, 2008.

Number of persons arrested (art. 132 of CPC of RK)	2005	2006	2007	2008	2009	6 months of 2010
	22,481	21,748	20,309	20,438	20,050	8,221
% of subsequent pre-trial detention orders	96	98	99	70	97	95

This table shows that on average over the last five years arrests of persons, suspected in criminal activity in more than 90% has ended with pre-trial detention regardless of whether the detention was sanctioned by the prosecutor or by the court.

Another significant problem relating to the exercise of the right to liberty in Kazakhstan is the absence of efficient mechanisms of judicial control over legality of arrests. For instance, a person may be arrested without judicial review for the period of up to 72 hours. This is longer than generally accepted standard of 48 hours. Moreover, in practice the requirement of 72 hours is not observed because the law enforcement bodies do not record correct time of arrest. Judges during the hearing on pre-trial detention often ignore the fact that a person has been in custody for more than 72 hours, as well as other violations of procedural rights.

Contrary to the requirements of article 9 of the Covenant the law provides only for formal examination by courts of requests for pre-trial detention. The courts do not look into such important issues as legality of arrests or well-foundedness of criminal charges. Due to deficiencies in legislation, national courts in practice seldom turn down the petitions of prosecutors for detention orders.

Table 3. Number of petitions seeking pre-trial detention, dismissed by courts

Year	Number of petitions seeking pre-trial dismissed by courts
5 months of 2008	131
2009	723
H1 2010	349

Similar situation exists in relation to cases of extension of pre-trial detention. Maximum length of pre-trial detention is 12 months. In practice, however, pre-trial detention can last for several years until the court passes the final verdict on the case. Courts very rarely dismiss petitions to extend the period of pre-trial detention of suspects/defendants.

Table 4. Number of petitions seeking extension of pre-trial detention, examined by courts

Year	Number of petitions seeking extension of pre-trial detention, approved by courts	Number of petitions seeking extension of pre-trial detention, dismissed by courts
5 months of 2008	1,059	10
2009	3,880	38

Article 110 of the Criminal Procedure Code provides for a judicial appeal against pre-trial detention order and extension of pre-trial detention. However, judicial practice shows that courts of higher jurisdiction almost never replace detention order with alternative measures of pre-trial restraint or turned down the decisions of the first instance courts approving pre-trial detention or extension. Thus, in 2008, in 88 % of cases higher courts approved the pre-trial detention orders issued by first instance courts, in 2009 – for 89%, in the first half of 2010 – also 89%.

In view of above, the authors of the Report conclude that legislation and the law-enforcement practice related to the exercise of the right to liberty in Kazakhstan significantly fails to meet standards of article 9 of the Covenant.

7. FREEDOM OF MOVEMENT AND RIGHT TO REMAIN IN A STATE (Article 12, 13)

7.1 Everyone who is lawfully present on the territory of the Republic of Kazakhstan has a right to freedom of movement, which is guaranteed by article 21 of the Constitution of the Republic of Kazakhstan. Currently, the practice of requiring registration at a place of residence, inherited from the soviet legal system, effectively puts limitations to one’s freedom of movement in the country. The registration of citizens as such does not conflict with the international standards on freedom of movement. The problem lies with the legal consequences attributed to the absence of registration. For instance, the issuance of national identity documents or international passports depends on the availability of residence registration. Without registration and consequently identity documents, individuals are not able to exercise such important rights as the right to vote, to be employed, to receive social security, and in general to be recognized as persons before the law. The process of registration is cumbersome and ineffective. For example, to register in a new place of residence, one must provide a written proof of de-registration at the previous residence.

The legislation imposes number of restrictions on the right to leave one's country for permanent residence. The procedure of obtaining permission is overly bureaucratic and subject to abuse. Thus, the person has to go through security clearance to ensure safety of state secrets. The documents to be presented to government authorities include: notarized permission of the rest of the family, such as parent, spouses, children who have a right to receive alimonies; certificate of clearance from military duty, decision of the state board of guardians regarding establishing informed consent of children of 10 years old to leave the country; notarized approval of another parent in case a child of less than 18 years old leaves the country with one parent.

The authors of the report conclude that existing state procedures of residence registration and permission to leave one's country put impermissible restrictions to practice freedom of movement, guaranteed by Article 12 of the ICCPR.

7.2. The legislation of Kazakhstan establishes that foreign citizens have all the rights and freedoms as well as obligations stipulated in the Constitution, national laws and international treaties. The law on the legal status of foreigners guarantees equality to foreign citizens regardless of their origin, social or property status, race, nationality, gender, education, language, religion and occupation.¹⁸ Despite these general provisions, there are legal and administrative restrictions in practice on freedom of movement, freedom of choice of residence for foreigners, which do not relate to security or other legitimate public interests. The practice of mandatory registration of residence for foreigners is still in place in Kazakhstan. The procedure of registration is complicated and burdensome. In practice, if the police find foreigners at the residence, which is not their registered place of residence, they can be held administratively liable for violation of residential rules under article 394 of the Code of Administrative Offences of the Republic of Kazakhstan.

In April 16, 2010 Kazakhstan reduced the permissible length of stay for foreigners in the county from six to two months, except for citizens of Russia and Belarus, parties to the Custom's Union. Today, foreigners can legally stay in Kazakhstan at least 2 months: initial registration is issued for 1 month, which can be further extended for additional month.

Laws of Kazakhstan contain 14 grounds for deportation of foreigners and/or stateless persons, eight of which relate to committing offenses under the Code of Administrative Offences and six are violations of other legal acts¹⁹. Moreover, Kazakhstan practices deportation of foreigners merely on the basis of administrative decisions taken by migration police and national security officers, without

¹⁸ Decree of President of the Republic of Kazakhstan "On Legal Status of Foreign Citizens" as of 19.06.1995 (with amendments), article 3.

¹⁹ Sub-paragraphs *a, b, c, d* article 28 of the Decree on Legal Status of Foreign Citizens; paragraph 3 article 115 of the Code of Health of People and Healthcare System of the Republic of Kazakhstan, paragraph 4 article 24 of the Law on National Safety of the Republic of Kazakhstan.

judicial orders. Although the legislation provides for judicial review of such decisions, lack of timely legal aid and/or interpreters prevent foreigners to receive effective remedy against deportation orders.

7.3. The situation with the observance of the rights of refugees and persons seeking asylum in the Republic of Kazakhstan continue to raise concerns of human rights organizations. According to official information as of January 1, 2011, there were 608 refugees in Kazakhstan. The UNHCR office in Kazakhstan estimates more than 700 refugees to date.

The new law on refugees adopted in January 2010 contains a number of conflicting provisions and does not meet the requirements of the international law. In particular, the Law stipulates that any person who arrived to Kazakhstan seeking asylum must apply to an authorized agency for refugee status within 5 days of arrival. In reality, if a person seeking asylum approaches the authorities later than five days, the application for the refugee status shall be denied without consideration. This violates the provision of the Convention of 1951 regarding treatment of refugees “*sur place*”. After the ethnic conflict in southern Kyrgyzstan city of Osh in June 2010, Kyrgyz citizens of Uzbek origin who at the time were on the territory of Kazakhstan applied to Kazakh authorities for the refugee status. However, their applications were rejected due to fact that they had already been present in the country for some period of time and that they failed to meet the deadline of 5 days upon arrival.

In practice, all refugees are under constant pressure from the migration police or national security officers. They are often denied extension of their temporary registration, regularly detained, their homes are broken in for illegal searches or they are forced to return to their country.

The state authorities are more concerned with political implications rather than individual circumstances in considering the applications for the refugee status. The government agency when considering the cases of persons seeking asylum due to religious or political persecution, for instance from China or Uzbekistan, refuse to study the home country situation under the pretext that they cannot evaluate national policies of sovereign states. Thus, Kazakhstan authorities give priority to maintaining good relations with the neighbors rather than complying with its international obligations regarding determination of refugee status.

Since the adoption of new Law, Kazakhstan authorities demanded that UNHCR office handed over all cases of UN mandate refugees and persons seeking asylum who earlier had been under UNHCR protection. The authorities insisted that the refugee status from now on shall be issued by government agencies of Kazakhstan. Almost 150 files of mainly citizens of Uzbekistan, Kyrgyzstan and China were transferred to the Migration Committee of the Ministry of Labor and Social Protection. Around 120 cases were examined by Kazakh authorities between June and October 2010. Out of these, two citizens of Uzbekistan and 3 citizens of Kyrgyzstan received the status of refugees; the rest of 115 applicants were denied refugee status, regardless of the previous UN mandates.

At present, the judicial appeal against administrative decisions on refugee status is ineffective. For instance, in December 2010 Almaty City Court № 2 dismissed claims of 28 persons who were denied refugee status by the Almaty Department of the Migration Committee. During the trial lawyers for the plaintiffs were denied access to government files of these individuals relating to refugee status determination procedure. The representatives of the government agency refused to present case files for examination during trial under the pretext that they are for internal use only. As a result, the trial was confined to the study of statements by government agency without examination of evidence and significant issues of law and procedures relating to the determination of the refugee status.

Currently, the refugee status determination is within the jurisdiction of the migration police under the Ministry of Interior. Human rights NGOs believe that the situation with refugees in Kazakhstan will further decline. The migration police department is a more closed institution than the previous agency for social protection that handled the refugee cases, and will unlikely provide access to civil society organizations to monitor the process of refugee status determination. Moreover, the migration police are not trained on issues of working with persons seeking asylum and on requirements of international human rights law, including refugee law.

7.4. According to government data there were 7,878 officially registered stateless persons as of 1 April 2011 and an estimated 21,000 persons holding USSR passports, who could be considered to be at risk of statelessness. In 2010, the Government reported that over 10,000 stateless persons had been naturalized and that 6,494 USSR passport holders obtained Kazakh nationality. Preliminary assessment by human rights organizations suggests that government data may not reflect the actual extent of statelessness as restrictive official registration requirements may exclude a considerable part of the stateless population.

The present national legal framework does not contain sufficient safeguards to prevent and to reduce statelessness and does not meet the standards of the two Statelessness Conventions. This undermines efforts to address protracted situations of statelessness or undetermined nationality in individual cases. Administrative practices further restrict access to official registration and legalization of status of stateless persons, naturalization or confirmation of nationality for those at risk of statelessness.

Officially registered and documented stateless persons generally do not face discrimination and enjoy a level of rights equal to permanently residing aliens, with access to legal employment, secondary education, healthcare and the social welfare system on par with those provided to nationals. Those who are not officially registered often have to live without identity documents and are either equated to temporarily staying foreigners and face problems with access to enjoyment of basic rights, or are perceived as irregular migrants and face risks of extortion or short-term detention and

deportation by the law enforcement. They are also not entitled to formal employment, education, healthcare and other social benefits.

National laws do not provide for the system of issuing documents to stateless persons in prisons. Such persons, as a result, are unfairly deprived of their right to employment benefits, the right of release of parole and as well as any social payments.

8. RIGHT TO FAIR TRIAL (Article 14)

The main institutional guarantee of Article 14 of the ICCPR in relation to the exercise of the right to fair trial is the independence and impartiality of the judiciary. The judiciary in Kazakhstan despite various reform initiatives continues to be strongly dependant on the executive power. The procedure of appointment and dismissal of judges in Kazakhstan raises doubts as to independence and impartiality of the judiciary. Thus, judges of the Supreme Court are appointed by the Senate at the nomination of the President. Judges of regional and local courts are all appointed directly by the President. The local and regional courts are established, reorganized and abolished by the President. The number of Supreme Court Judges is also determined by the President. Despite constitutional guarantees regarding termination of judges' tenure, judges can be laid off by an executive order. For instance 400 judges were laid off in 2010 by the presidential decree.²⁰

Recommendations for nominations of the Supreme Court judges and other level judges are put forward by the High Judicial Counsel, members of which are all appointed by the President. The High Judicial Counsel undertakes selection of judges for the nominations. The selection procedures are highly criticized by civil society organizations as non transparent and based on unclear criteria. The overwhelming perception of the public is that the judges are selected on the basis of their connections, loyalty or bribes.

Lack of independence on the systemic level influences the judicial decision making in individual cases. For instance, the high courts are empowered to issue circular instructions to lower courts on how to adjudicate certain types of cases. Lower court judges tend to follow such instructions to avoid reversal of their decisions at the appeal, as it negatively affects their evaluation. Courts maintain statistics of reversed and changed judicial decisions, including number of acquittals. The number of reversed and changed judicial decisions may affect the career of judges entailing disciplinary liability or dismissal. Thus, the system creates negative incentives which prevent judges from exercising independence in individual cases.

²⁰ Decree of the President of the Republic of Kazakhstan "On Measures to Optimize Human Resources of Government Bodies, Maintained by the State Budget and Budget of the National Bank of the Republic of Kazakhstan" dated September 27, 2010.

The initiatives to reform the judicial system lack thoroughness and consistency. For instance, the introduction of the jury trial in January 1, 2007 fell short of its expectations to ensure justice in criminal trials. Thus, according to the law, jury members in Kazakhstan are not independent in deciding on the verdict. The juries convene in the consultation room together with the presiding judge, who gives instructions and clarifications on the matters of law and facts.

Requirement of publicity is an essential element of a right to fair trial. Despite legislative guarantees of publicity of trials, in practice, the media and public may be prevented to enter the court buildings and trial rooms under various reasons. Most often the access is denied due to lack of physical space, lack of prior permission of the judge, prohibition to enter the trial in process, etc.²¹

One of the key criterion of a fair trial is the principle of equality of arms. In Kazakhstan, the adversarial nature of proceedings is only declared as the principle of criminal justice. The criminal procedure law, however, attributes predominant role to prosecution, which is especially evident in the practice of criminal trials. Thus, the evidence presented by prosecution receives preferential treatment than the one presented by defense in criminal trials. The forensic examination conducted by police and presented by prosecution values higher than the alternative examination provided by defense lawyers. As a rule, judges do not take into consideration evidence collected through independent investigation conducted by defense lawyers in accordance with the law. For instance: expert examination, audio and video recordings, testimonies of witness presented in trial by defense lawyers are often evaluated by judges as “raising” doubts. As a result, the courts endorse the prosecution charges and rarely acquit the defendants. The acquittal rate in criminal cases in Kazakhstan is less than 1%, which is the best demonstration of the lack of equality of parties in criminal trials.

The examples from judicial practice include the case of human rights defender Yevgeny Zhovtis, when the court openly ignored the evidence in the form of alternative expert examination, provided by defense, which challenged the findings of the official forensic examination.²² In the case of Narymbaev, the court refused to examine video tape recorded at the crime scene, which was at the disposal of the judge and was withheld from the defense during the trial.²³ In the case of Sadykov, the

²¹ Report of ODIHR/ OSCE, OSCE Center in Almaty, Results of Monitoring of Legal Proceedings in the Republic of Kazakhstan, 2005-2006, <http://www.osce.org/documents/cia/2007/02/23411ru.pdf>

²² Decision of Balkhash District Court of Almaty Oblast dated 3.09.2009, which found Yevgeniy Zhovtis guilty of a crime “Driver’s violation of the Traffic Rules which carelessly caused death of a person” according to part 2 article 296 of the Criminal Code of the Republic of Kazakhstan, and sentenced him to 4 (four) years of imprisonment. Decree of Almaty Oblast Court dated 20.10.2009 sustained decision of Balkhash District Court.

²³ On June 23, 2010 Bostandyk District Court No.2 of Almaty found leader of Arman movement Yermek Narymbayev guilty of crimes provided for in part 1, article 321 and part 2, article 342 of the Criminal Code of the Republic of Kazakhstan “Use of force against police officers” and “Insult of a judge”. Decree of Almaty City Court dated 11.08.2010 sustained decision of Bostandyk District Court # 2.

court failed to examine during trial the video recording of the incident, as well as the medical examination of Sadykov's injuries.²⁴

In the practice of law-enforcement agencies, it is common that police obtains evidence by violating or restricting the rights of defendants during pre-trial investigation. For instance, the investigators involve the same people to witness police search, seizure or other procedural actions to legitimize illegal evidence. Another common procedural violation is limiting time for defense lawyers to study the investigation files before trial. Such violations do not affect the outcome of the trial. In general, once the investigators builds a criminal case file to form the basis of prosecution, it is practically impossible to retract the illegal evidence from consideration during trial due to ineffective laws governing rules of evidence. In reality almost every criminal case contains violations of the norms of the procedural law, including rules of gathering evidence and defendants' rights. However in practice, such violations do not lead to inadmissibility of evidence in first instance or to reversal of judicial decisions on the appeal.

One of the most wide-spread violations in criminal cases is the failure to provide timely access to qualified legal aid. Contrary to article 26 of the Criminal Procedure Code, which guarantees suspects and defendants the right to defense within 24 hours of arrest, in practice the defense lawyers are almost never present at the first questioning with the police. The police use various tactics to avoid the presence of qualified legal defense at the first questioning of suspects/defendants. These include, questioning of persons as witness, misleading the persons by enticing them to give self-incriminating statements or confessions without lawyers, or persuading them to waive their right to defense. Similarly, police call in their "friendly" ex-officio lawyers who are ready to cooperate with investigation by signing on the protocols of interrogations which were conducted without lawyers.

Right to defense includes the guarantee of confidential meetings of suspects/defendants with their lawyers. Criminal lawyers in Kazakhstan observe that they are often denied the right to speak with their clients in confidence. The meetings of lawyers with defendants in pre-trial detention centers can take place in the presence of guards or can be audio recorded. For instance one lawyer in Pavlodar found the transcript of her telephone conversation with the client when studying the criminal case file after investigation.

With regards to the right to choose one's counsel, in 2010, there was an alarming precedent in the case of Dzhakishev, when the defense lawyers of his choice were denied access to enter as counsels to criminal proceedings. The prosecution refused to grant access to lawyers on the grounds that the case involved state secrets, and that there must special clearance for lawyers to act as counsel in such cases. Apparently there was an internal regulation whereby only lawyers who have clearance from the

²⁴ On 16.07.2010 Aktobe City Court No. 2 sentenced opposition activist Aidos Sadykov to two years of imprisonment under sub-paragraph b, part 2 article 257 of the Criminal Code of the Republic of Kazakhstan "Hooliganism related to resistance to official authority." Aktobe Oblast Court has sustained the sentence.

national security office to handle cases involving state secrets are eligible to act as defense counsel. As a result, the court appointed the ex-officio lawyer against the will of the defendant Dzhakishev.²⁵

Right to defense also implies the right to receive free legal assistance. In Kazakhstan there is no effective system of state guaranteed legal aid in criminal cases. Legal aid suffers from poor quality and insufficient funding. The system of appointing lawyers through bar associations is not consistent, transparent and accountable. There is a significant shortage of lawyers who provide legal aid to cover the volume of indigent defendants in criminal cases. At present, ex-officio lawyers are appointed at more than 70% of criminal cases. Small compensation from the state does not motivate qualified lawyers to take such cases. As a result, the quality of defense in legal aid cases is generally poor.

9. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (Article 18)

The existing Kazakhstani laws and their practical application with respect to freedom of religion violate the rights guaranteed in Article 18 of the Covenant.

In accordance with paragraph 1 article 22 of the Constitution of the Republic of Kazakhstan, “Everyone shall have the right to freedom of conscience.” Paragraph 2 of the same article stipulates the following limitation: “The right to freedom of conscience must not condition or restrict universal human rights and obligations before the state.” This limitation is not consistent with the permissible restrictions to freedom of religion and belief provided for in Article 18 of the ICCPR.

According to legislation in force, groups of citizens engaged in religious activities must be registered as a religious association or a religious group. Activities of unregistered religious associations in Kazakhstan are prohibited²⁶ and entail an administrative punishment including a ban on activities.²⁷ Religious groups without state registration cannot perform any form of religious services ‘in community with others’, such as hold prayer meetings (including those in private residence), educate on religious issues, preach, distribute religious literature, etc. A group of 10 citizens can establish a legal entity in the form of a “religious association.”²⁸ The requirement of Kazakhstan citizenship limits the rights foreigners, legally residing in the country, or stateless persons to establish a religious organization.

²⁵ On March 12, 2010 sentence of Saryarka District Court No. 2 of Astana found Mukhtar Dzhakishev guilty under articles of Criminal Code relating to embezzlement or misappropriation of property of other persons entrusted to him and bribery and was sentenced to 14 years of imprisonment.

²⁶ Law of the Republic of Kazakhstan on Freedom of Religion, article 4.

²⁷ Code of Administrative Offences of the Republic of Kazakhstan, articles 374-1, 375.

²⁸ Law of the Republic of Kazakhstan on Freedom of Religion, article 9.

One of the requirements for state registration of a religious group is to obtain expert theological opinion on the statutory documents issued by Committee for Religious Affairs. The registration process can be put on hold for the period of conducting such experts without any time limits.

Although the law does not contain any grounds for denial of registration of a religious group, in practice, complicated, unclear and non-transparent procedures make it possible to arbitrarily drag the registration process for unlimited period of time. During such periods, the religious group is unable to exercise any religious services and therefore subjected to various types of sanctions. For example, authorities of Kulsary Town in Atyrau region were delaying state registration of a Baptist community for five years under various pretexts. During that time, leaders of the community were sanctioned under the article 374-1 of the Code of Administrative Offences for “leadership and participation in activities of unregistered public and religious associations”. In Northern Kazakhstan, the Society for Krishna Consciousness has been seeking state registration since 2001 to no avail. It has been treated as illegal for all these years. In January 2007, Nikolai Zimin, the leader of the community was put to administrative trial for “religious activities without registration” and fined in the amount of 105,000 KZT (approximately USD 840). Fifteen mosque imams were charged with administrative violations and ordered to pay fines for the absence of state registration. Between October 2009 and June 2010, their mosques were closed in Zhambyl region and the city of Taraz in southern Kazakhstan

The legislation provides for the existence of small religious groups, which do not possess all features of a legal entity, and which can function after official notification with local authorities. However, the law does not set out conditions and procedures for notification process. In practice, local authorities arbitrarily use overly complicated procedures which are frequently unacceptable for religious groups. For instance, during such notification process by religious groups, local authorities in several regions request that they provide information for almost thirty questions, including addresses of all group members, ethnic and age composition, personal information about the leader of the group (ethnic origin, marital status, age, occupation, religious education), as well as indication of “the most acute problems raising concerns of believers”, of their “political sympathies” as well as “facts which require the attention of state agencies. Failure to go through official notification process with local authorities is punished in a similar way as absence of state registration.

Even stricter requirements of official notification are prescribed for missionary activities. Thus, missionaries must present the following documents: 1) application form, indicating confessional affiliation, area and period of missionary activities; 2) copy of power of attorney or any other document issued by a religious association in the name of a person to carry out missionary activities; 3) copy of a registration certificate to confirm that a religious association of a missionary is officially registered according to the laws of a home country; 4) invitation by a religious association registered in the Republic of Kazakhstan; 5) literature, audio, video materials and/or any other items of religious

nature intended for missionary activities. Use of additional materials intended for the missionary purposes must be cleared with the local authorities.²⁹

There is an apparent contradiction in the provisions of the law defining missionary activity (article 1-1 of the Law on Freedom of Religion) and requirements for notification process, which is often abused in practice by local authorities. Thus, the definition of missionary activities implies that it relates to new/unknown religions in Kazakhstan, yet the notification requirements include invitation letter by a registered religious organization in the country. Based on this, local officials demand from unwanted missionaries “permission” from locally registered religious organizations to conduct missionary activity. Lack of such permission results in finding the missionary activity illegal, and therefore subject to various sanctions.

In addition to such regulation, on March 1, 2010, a joint decree of the Ministry of Foreign Affairs and the Ministry of Internal Affairs of Kazakhstan introduced a new type of missionary visa, which is issued “on the basis of an invitation letter from a religious association, registered in the Republic of Kazakhstan, approved by relevant government agency dealing with religious affairs” for single, double, triple and multiple entry and exit visas, which cannot be extended.

The Law enables only religious centers - organizations that have entities in more than one region, to establish religious educational establishments.³⁰ In addition, there is a requirement of compulsory licensing of religious educational activities. There are several examples when the religious educational establishments were suspended or closed due to lack of state license; for instance, Christian Institute Yelim, South-West Seminary, Al Karim Islamic University of Paryz Islamic Center in Shymkent, etc.

10. FREEDOM OF EXPRESSION (Article 19)

10.1. Laws of the Republic of Kazakhstan regulating activities of mass media and journalists fall far short of international standards. The Law on Mass Media Law provides for licensing of media by the state. The principle of free distribution of information irrespective of state borders is not guaranteed in the legislation.

The Criminal Code contains four articles which stipulate enhanced protection of state officials, including the President and members of parliament against insult disseminated through mass media.³¹

²⁹ *ibid*, article 4-2.

³⁰ *ibid*, article 7.

³¹ Criminal Code of the Republic of Kazakhstan: article 318 “Infringement upon the honor and dignity of the President of RK”, article 319 “Infringement upon the honor and dignity of the member of the Parliament”, article 320 “Insult of public official”, and article 343 “Defamation against judge, member of jury, prosecutor, investigator, police officer, trial expert, officer of the court”.

Despite numerous recommendations made by various international organizations and civil society, defamation and insult have not been decriminalized and provide for imprisonment of up to three years.

In June 2010, the Law on the Leader of Nation introduced a new article 317-1 to the Criminal, which prohibits public insults and other offense against the honor and dignity of the First President of the Republic of Kazakhstan and Leader of Nation, as well as profanation of the images of the First President and obstruction of legal activities of the First President. Conduct of such illegal actions through the use of media is punishable with a large fine (more than \$4,000) and three years of imprisonment.

Administrative laws contain more than 40 administrative offences in relation to activities of mass media. In the majority of cases, sanctions include suspension and termination of print media, as well as confiscation of all published editions, including for purely technical mistakes.

There is no statute of limitations for claims of protection of non-property (moral) rights against journalist or media outlets. Amounts granted by courts as damages in such cases are not limited and can reach enormous sizes, disproportionate to violation and greatly exceeding media outlet's total revenues. Therefore, the prevailing number of lawsuits against mass media and journalists are anti-defamation claims, where the majority of plaintiffs are state officials and government agencies.

Currently, two journalists are in prison on charges attributed to their professional activities: editor-in-chief of the Law and Justice newspaper, Tokbergen Abiyev (since 2008), and editor-in-chief of Alma-Ata Info, Ramazan Yesergepov (since 2009). In 2010 and 2009, the total amount of moral damage compensation claims brought against mass media exceeded 17 million USD. Court decisions which sustained the compensation claims led to bankruptcy of opposition newspapers *Taszhargan* and *Republic Business Review*, which had to shut down in 2009. A similar judgment was passed against the *Ural Week* newspaper in 2010.

10.2. In July 2009, the legislator passed amendments to the laws regulating information and communication networks. According to new provisions, all Internet resources (websites, blogs, chats, forums, Internet shops, etc.) were attributed the status of mass media, which made them subject to the same level of criminal, civil and administrative liability as media outlets. The new legislation mandates that Internet providers and website owners maintain personal data on file for two years regarding identity of subscribers and users, collected during registration to access Internet resources. The same law has introduced additional legal grounds for suspension and shutdown of any mass media outlet. At least 100 cases of government blocking of independent and oppositional Internet publications of Kazakhstan, as well as various international websites, have been reported during the last four years.

11. RIGHT TO FREEDOM OF ASSEMBLY (Article 21)

Article 32 of the Constitution of the Republic of Kazakhstan guarantees freedom of peaceful assembly. Regulation of the exercise of freedom of assembly in practice is governed by the 1995 Law on Organization and Holding of Peaceful Meetings, Street Processions, Pickets and Demonstrations in the Republic of Kazakhstan (hereinafter referred to as the 'Law'). The Law does not meet requirements of international standards on freedom of assembly on a number of substantial issues. First of all, the definition of "peaceful assembly" is overly broad and includes not only peaceful assemblies held in open public places, but meetings as such, thereby applying strict regulation to various types of meetings. Secondly, the Law also does not provide for an application by an individual, which contradicts the meaning of Article 21 of the Covenant that provides for the right to assembly as an individual right.

Further on, the Law establishes strict requirements for obtaining permission to hold public assembly. The permission is issued by local authorities 10 days prior to an event. In reality, authorities use various grounds to deny permission for holding public meetings, including due to inexpediency. Another wide-spread practice of local authorities is to designate special locations for holding public assembly. As a rule, such places are hard-to reach and located on city outskirts with limited access by municipal transport. Public squares in city centers are reserved only for events approved or held by government agencies.

Holding unauthorized meetings considered an administrative offense. Article 373 of the Code of Administrative Offences and article 334 of the Criminal Code contain overly broad description of violations pertaining to freedom of assembly. Liability under these laws may arise in cases of violations of prescribed rules for organizing and holding of peaceful meetings, rallies, street processions, pickets and demonstrations. Punishment and sanctions depending on criminal or administrative liability include fines, administrative arrest of up to 15 days and imprisonment of up to one year. The Law, however, does not clearly distinguish between administrative and criminal responsibility, giving police broad discretion in evaluating the "potential social harm" resulting from violations. According to paragraph 2 of article 373 of the Code of Administrative Offences, third parties who assist any unauthorized meeting also bear administrative responsibility. This provision has repressive intent to prevent general public from supporting demonstrations.

The Civil Procedure Code does not provide for timely and effective remedy to violations of the right to peaceful assembly. It prescribes a one-month period for consideration of citizens' claims. Such long period of time necessary to obtain the court ruling nullifies the objectives of planned public assembly.

Despite the government policy to restrict the right to peaceful assembly in Kazakhstan, number of unauthorized meetings has been growing in the country. Several years ago they accounted for 40% of a total number of public meetings compared to 80% in 2009 and 84% in January – November 2010 (94% in Almaty).

Between January and November 2010 Kazakhstan International Bureau for Human Rights and Rule of Law (hereinafter “the Bureau”) conducted monitoring of the law-enforcement practice in the area of freedom assembly during the Kazakhstan’s chairmanship in OSCE. The Bureau monitored 64 peaceful meetings held in the cities of Astana, Almaty, Karaganda, Pavlodar, Uralsk and Ust-Kamenogorsk. In 80% of cases, the organizers did not apply for permission and knowingly conducted unauthorized meetings. Most of them were convinced, based on previous experience, that such applications were waste of time, as they would most likely be rejected. Overall, 172 applications were filed during the monitoring period. Permissions were issued in 10 cases (6%), while in 162 cases (94%) authorities rejected the applications. For instance, activists of Alga Party filed 159 applications to hold demonstrations in front of Nur Otan Party offices to protest against the adoption of the Leader of the Nation Law. None was approved.

12. RIGHT TO FREEDOM OF ASSOCIATION AND POLITICAL RIGHTS (Articles 22 and 25)

12.1. The Law on public associations bans the activities of unregistered public associations. The legislation recognizes only public associations registered as legal entities and does not provide for a right to form informal associations. Furthermore, the use of the term “citizens”, with respect to persons who have a right to freedom of association, restricts the rights of foreigners in Kazakhstan to establish any public organizations including political parties.

The legislation requires mandatory registration of public associations, which in practice has many problems, especially with regards to civil society organizations. First of all, it is the territorial requirement. For example, for an NGO to be registered at the republican level, it must have branch offices in more half of the regions of Kazakhstan. Secondly, there are high requirements regarding statutory documents, in particular with respect to mission and objectives of an organization. The authorities require indication of an exhaustive list of objectives, against which their activities shall be monitored.

There is a tough liability regime applied to public associations, their members and leaders. For instance, civil law provides for the liquidation of a non-for-profit organization if it regularly carries

out activities which conflict with its statutory objectives.³² Actions of leaders and members of a public association which go beyond mission and goals stated in the charter entail administrative responsibility including prohibition of activities.³³

The Criminal Code contains a number of articles which stipulate enhanced criminal liability of members and leaders of public associations compared to regular individuals. For instance, article 336 of the Criminal Code prescribes criminal liability “for obstruction of government activities by public associations”, which is punishable by fine or arrest of up to four months for members and imprisonment for up to one year for leaders of such associations. For crimes under article 141 of the Criminal Code “Violation of Equality of Citizens” and article 164 “Incitement of social, ethnic, tribal, racial or religious hatred”, leaders of public associations are subjected to higher levels of punishment than regular individuals. Thus, being a leader of a public association is considered as an aggravating circumstance for these types of crimes.

Independent human rights organizations continue to be under certain pressure from the government. The authorities use administrative and financial mechanisms to impede the activities of human rights NGOs. For example, NGOs are regularly exposed to tax and audit inspections, which result in administrative prosecutions and fines.

12.2. The existing laws of Kazakhstan on political parties contain excessive and unreasonable requirements for the establishment, registration and activities of political parties and do not meet international standards.

In 2009 prior to Kazakhstan’s chairmanship of the OSCE the government amended its laws on political parties. Those amendments, however, did not significantly improve the system of regulation of political parties. For instance, the number of members of a political party required for its registration was changed from 50 000 to 40 000. There is no reasonable justification for the government to establish such high membership requirement, other than to set conditions that hinder political pluralism.

Some legislative amendments made in 2009 aggravated the situation of political parties even further. Thus, a political party can be established by a group of citizens numbering at least one thousand members who convene a representative constituent congress. Preparation and holding of a constituent congress requires establishment of a steering committee with at least ten members. The steering committee must successfully complete a notification registration process, which has much in common with registration of a political party in terms of requirements. After notification is approved, the steering committee must hold a constituent congress within two months and ensure presence of

³² Civil Code of the Republic of Kazakhstan, sub-paragraph 3, paragraph 2 article 49.

³³ Code of Administrative Offences of the Republic of Kazakhstan, article 347.

1,000 citizens and then within 4 months submit list of 40,000 members to get the political party registered. Failure to comply with any of these requirements may lead to denial of registration.

In practice, political parties encounter numerous violations during registration process, especially during verification of signatures. Lack of clear and transparent rules governing verification of signatures prevent ensuring equal treatment of political parties in this process. Moreover, the legislation does not provide for a deadline during which a state authority must approve or dismiss applications for registration. As a result, applicants are kept waiting for the decision on registration for unlimited period of time.

Legislation and law-enforcement practice governing the process of suspension and liquidation of political parties do not meet international standards and need drastic reform. Thus, laws contain broad description of grounds for suspension of activities of a political party, such as: “violation of the Constitution and laws of the Republic of Kazakhstan,” “regular performance of activities contrary to the charter of a political party,” “public speeches of political leaders inciting and calling for extremism”. Similarly, according to paragraph 5 of article 14 of the Law on Political Parties, a political party can be liquidated by a court order, if:

- it fails to comply with the requirements of the Law on political parties;
- it fails to remedy violations, which caused suspension of its activities , within a period of time defined by a court;
- it persistently performs an activity contrary to its charter;
- it performs an activity, which is prohibited by legislation or commits repeated violations (more than two times) or gross violation of the legislation of the Republic of Kazakhstan;
- state registration of a political party is invalidated, due to finding of false information in registration documents, or annulled
- a political party fails to participate in the elections for the Majilis of the Parliament of the Republic of Kazakhstan for two times in a row;
- it is financed by foreign legal entities and citizens, foreign governments and international organizations; it accepts private donations, prohibited by the Law on political parties;
- a political party, its structural subdivisions (branches and representative offices) carry out activities without re-registration in cases envisaged by the legislation of the Republic of Kazakhstan;
- in other cases, envisaged by the legislation of the Republic of Kazakhstan.

This provision does not comply with principles of necessity, legal certainty and foreseeability for the restrictions imposed on political parties to be legitimate.

Currently, there are 10 registered parties in Kazakhstan. The largest party is the ruling Nur Otan Party, which has a monopoly in the parliament. The opposition party “Alga” is unable to receive registration for several years under various pretexts.

Along with restrictive regime for functioning of political parties, there is an extremely high electoral threshold to access the lower chamber of the Parliament. At present, it is required to have 7% of the national electorate for a party to receive seats in the Parliament. Before 2009, Kazakhstan was the only OSCE country where the legislative body consisted only of one political party. In 2009, in view of its chairmanship, Kazakhstan amended its legislation to guarantee at least two parties in the Parliament. The government insists that such restrictions governing political parties and electoral legislation are vital to ensure a stable political system.

13. RIGHTS OF THE CHILD (Article 24)

At present, one of the most serious problems facing Kazakhstan is a high level of suicides among teenagers. Only in 2010, 237 teenagers committed suicide in the country. Not all deaths of children were properly investigated. The government refuses to assume responsibility, declaring it a problem caused by family upbringing and social environment. To explain this outbreak of teen suicide experts outline a number of complex issues that have social, economic and psychological impact on the situation of children, which are not appropriately tackled by the government. Meanwhile, there is no comprehensive state action plan designed to study and provide solutions to address this problem.

Observance of rights of the child in the area of education and early development of children remains a challenge despite efforts of the government. Negative economic factors, low standards of living, poverty, internal and external migration, child labor and other factors create obstacles for a significant number of children to receive education. Despite measures taken by the government there is still insufficient amount of state schools and pre-school educational facilities. Parents of children under the age of six have to wait for years to place a child in a kindergarten. In some cities and rural districts children have to attend schools in two or three shifts, studying in overcrowded rooms, in violation of all health and safety standards for educational facilities. There are persistent problems with low quality medical services in schools, as well as health and nutritional meals for children. It is indicated that 32% of school children have various gastrointestinal disorders. Right to education is limited due to shortage of qualified teaching staff for selected courses. Significant difference in the quality of teaching negatively affects prospects of rural school graduates to continue education in universities.

There is an increasing number of reported violence among children, as well as abusive treatment by teaching staff in public educational facilities. For instance, recent survey of children in 15 state boarding schools and orphanages showed that in more than 35% of cases, children in orphanages complained of violence from the teaching staff. In educational facilities for children with deviant behavior, violence was reported in more than 40% of cases. Types of injuries suffered by children from beatings, included cuts, hemorrhages, broken bones, broken teeth, injuries to internal organs, injuries to the head, eyes and ears. Children who suffered from violence received adequate medical care only half of the cases reported in orphanages. In 18% of cases, children in orphanages attempted to escape as a result of sustained violence and ill-treatment. Children in all institutions admitted that they are afraid of the teaching staff and other children.³⁴

Kazakhstan has more than 150,000 children with disabilities and only one third of them have access to teaching and development programs. Children with disabilities are placed in special (correctional) boarding schools away from home, because there are no special educational establishments at the place of their residence. Public schools do not have necessary conditions and trained teaching staff to work with disabled children. As a result, such children are not able to attend regular schools and kindergartens. There are no special accommodations for handicapped children to even enter schools, public places and municipal transport. Right to social welfare of handicapped children is poorly observed.

Although Kazakhstan has generally progressive laws and a long-term action plan to combat human trafficking, including trafficking of children, the efforts in practice fall short of expectations. The government agencies admit that there is no systematic statistics on the number of children involved in human trafficking. The mechanism of legal protection of children who become victims of violence and human trafficking is ineffective.

Similarly, children of refugees and illegal migrants are deprived of adequate social care and legal protection. For instance, due to various problems with legal documentation, children of refugees are not able to attend public schools. Recent monitoring of schools of Almaty, Taraz and Karaganda cities revealed several hundred of cases when the right to education for children of non-citizens was violated by state schools. It was established that public schools either expelled or did not admit children whose parents were illegal migrants or refugees without local registration and working permits.

Involvement of children in worst forms of child labor, especially among migrant families, continues to be a serious problem in Kazakhstan. During seasonal works children are usually involved in tobacco, cotton plantations and other agricultural works. They are also engaged in household work, construction, small trade, etc. Children have to work in heavy, unhealthy labor conditions for long

³⁴ Dr. Robin Haarr, UNICEF International Consultant: "Violence against Children in State Boarding Schools of Kazakhstan: Status Evaluation. Summary Report." March 2011.

hours including night time without rest. The status of migrant children who illegally stay in Kazakhstan does not award them any type of social or legal protection.

14. RIGHTS OF MINORITIES (Article 27)

14.1. Kazakhstan joined the International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”) more than ten years ago; however, the country still does not have comprehensive anti-discrimination legislation. There is no definition in the laws of the term “discrimination” encompassing both direct and indirect discrimination that is compatible with the requirements of the Convention. This allows for ad hoc interpretation by government bodies of what constitutes discrimination in different cases. In practice, discrimination often takes places with regards to the rights of different groups of minorities.

Population of Kazakhstan makes more than 15 million people of 130 ethnic origins. National minorities account for 48% of the population. Despite such large numbers, minorities do not participate in decision-making process in par with the native population. People’s Assembly of Kazakhstan, consisting of representatives of all ethnics groups, is an advisory body under the President established to ensure participation of minorities in developing government policies. In reality, the Assembly lacks any substantial powers, and is considered more as a symbolic tribute to country’s multinational character, rather than an effective policy instrument for minorities. The UN Special Rapporteur on the Rights of Indigenous People ³⁵ indicates that the Assembly does not appear to be a legitimate representative body. Membership in the Assembly is not based on democratic principles; therefore Assembly members do not report to their ethnic communities. The strategy document of the People’s Assembly, approved by the Presidential decree, does not have the status of a legislative act, which outlines the country’s policy on national minorities.

The Committee on the Elimination of Racial Discrimination after considering fourth and fifth period reports of Kazakhstan noted, among others, the limited participation of minorities in political life and decision-making at both national and regional levels, and in particular their continuing under-representation in both Houses of Parliament, i.e. Majilis and Senate.³⁶ Domination of the indigenous population in public offices is among factors which cause discontent of other ethnic groups, resulting in social tension. Statistics indicate that, as of January 1, 2008, among government officials there were 81.9% of Kazakhs, 12.3% of Russians and 5.8% of other ethnic groups. Often professional

³⁵ Report of the Special Rapporteur on the Rights of Indigenous People on his visit to Kazakhstan. February 1, 2010. HRC/13/23/Add.1.

³⁶ Concluding observations of the Committee on the Elimination of Racial Discrimination for Kazakhstan. March 2010. CERD/C/KAZ/CO/4-5.

qualifications are overlooked in favor of the knowledge of the state language when employing to government offices. Such practice is most detrimental in regions with predominant population by other ethnic groups. For instance, in Yenbekshikazakh, Uighur and Panfilov Districts with majority of Uighur population, the number of Uighurs in local decision making bodies has significantly decreased over the last years.

Certain discontent of the Russian speaking population in Kazakhstan is caused by violation of the languages laws, in particular in the area of services to population. According to the Constitution, Kazakh language is considered a state language, while Russian enjoys special status of the language “for official use”. According to article 7 of the Constitution and article 5 of the Law on Languages, in government institutions and local government bodies “Russian language shall be officially used on equal grounds along with the Kazakh language.” In practice, there are numerous violations of the requirements of language laws, especially in the area of provision of state services. Such violations are manifested for instance in the writings of street nameplates or government office signs, including police, employment bureaus, hospitals, post offices, etc., which are published only in Kazakhstan language. Tax authorities and customs do not always provide for forms in both languages.

Although the Russian language is the language of inter-ethnic communication, the information space in Russian has been drastically reduced. One of main requirements of the state law on mass media is a 50/50 ratio of Kazakh and Russian broadcasting on channels, including private outlets.

The number of cases when social and ethnic tensions between various ethnic groups resulted in violent attacks has notably increased in recent years. Some conflicts had fatal outcomes. Although these outbursts do not suggest persistent inter-ethnic violence in the country, the government must not ignore an ethnic component of these incidents. In practice, however, the government has done its best to prevent comprehensive media coverage of these conflicts to avoid public discussion of these issues in the country.

Annex 1 to the Report contains detailed information about inter-ethnic conflicts in Kazakhstan in recent years.

14.2. The situation of lesbian, gay, bisexual and transgender (LGBT) persons in Kazakhstan continue to raise concerns of human rights organizations. There is no special anti-discriminatory legislation in Kazakhstan that also includes prevention of discrimination on the grounds of sexual orientation

The absence of legal mechanisms protecting homosexual people from discrimination causes serious problems in practice. This leads to violations and abuses not only from the public, but also from the law enforcement bodies. According to the research conducted by the Soros Foundation

Kazakhstan, more than half of 991 respondents said they had to conceal their sexual orientation or gender identity to avoid discrimination or violence.³⁷

Research revealed that LGBT people are often subject to discrimination in the workplace, at school and university, when they seek housing and healthcare, and in their contacts with members of the clergy. More than a quarter of the respondents (27.4%) have experienced acts of homophobic or transphobic physical aggression or assault, including battery, sexual harassment, pushing, hitting, kicking, and sexual assault. Violence usually occurs in public places. In some cases, violent homophobes seek out targets for assault in places where LGBT people are known to gather. In most cases (74.5%), the victims of violence did not report the incident to the police due lack of confidence in protection and remedy available through legal means. Attempts to report homophobic and transphobic violence to police are often met with resistance and even hostility on the part of law enforcement officers.

Transgender people in Kazakhstan face additional legal problems due to conflicting legal regulations relating to issuance of identify documents and performing sexual reassignment surgery. Thus in practice, government agencies refuse to issue new identity documents to change the social gender of applicants before conducting sexual reassignment surgery. The medical institutions are not allowed to perform sexual reassignment surgery without prior changing the social gender, i.e. obtaining new identity documents. As a result, the individuals are in the legal gap, which create number difficulties in the exercise of their civil rights.

³⁷ “Unacknowledged and unprotected: Lesbian, gay, bisexual and transgender people in Kazakhstan.” Soros Foundation Kazakhstan, November 2009,

CONCLUDING RECOMMENDATIONS

1. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (Article 2)

1. The State should take measures to ensure that its authorities, including courts, are fully aware of the rights and freedoms set out in the Covenant, and of their duty to ensure their effective implementation.
2. The State should take measures to bring National Human Rights Institutions in compliance with the Principles relating to the Status of National Institutions and to ensure that such institutions have ability to investigate individual human rights violations.

2. EQUAL RIGHTS OF MEN AND WOMEN (Article 3)

1. The State should amend its legislation on equal opportunity between men and women to bring the definition of 'discrimination' in line with requirements of the Convention on the Elimination of all Forms of Discrimination Against Women. The State should establish an effective institutional mechanism for to ensure gender equality in practice.
2. The State should revise its existing policies to ensure that women have equal representation at the decision making level through increased access to education, capacity development and positive employment policies.
3. The State should take measures to provide financial support to existing crisis centers and to establish new centers to deliver services to women victims of domestic violence.
4. The State should develop legislative, institutional mechanism, as well as allocate appropriate resources to address the problem of teen pregnancy in the country.

3. RIGHT TO LIFE (Article 6)

1. The State should fully abolish the death penalty by amending its relevant legislation. The State should sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
2. The State should revise its regulations concerning the treatment of persons sentenced to death penalty and life imprisonment in accordance with the UN Minimum Standard Rules for the Treatment of Prisoners. The State should introduce amendments to its legislation which bans release on parole for persons whose death penalty was replaced with life imprisonment.

3. The State should investigate and made public all cases of death in custody and providing effective remedy to families of victims.

4. PROHIBITION OF TORURE AND CONDITIONS OF DETENTION (Article 7, 10)

1. The State should reaffirm its policy of zero-tolerance to torture and take effective measures to fully implement recommendations of the UN Committee against Torture and the Special Rapporteur on Torture. To that effect the State should take the following concrete measures:
 - a) Amend its legislation to ensure that the level of punishment for torture is in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amendments should be made to avoid the use of amnesty and reconciliation for the crime of torture.
 - a) Introduce effective mechanisms to guarantee adherence to the principle of non-refoulement in accordance with the requirements of the ICCPR and UNCAT. Ensure that no one can be extradited, expelled, deported, or forcibly returned to a country where he or she would be at risk of torture or ill-treatment or violation of the right to life; End practice of reliance on diplomatic assurances in cases of forced return to countries where persons are at risk of torture. Develop judicial guidelines for effective application of the non-refoulement in cases of judicial review of extradition orders. Conduct training of prosecutors and police with regards to anti-torture protection including non-refoulement.
 - b) End impunity for torture perpetrators by establishing an independent mechanism in accordance with the Istanbul Protocol with the special jurisdiction to investigate the cases of torture and ill-treatment across all areas not limiting to criminal justice, including any cases of death in closed institutions.
 - c) Introduce in the legislation a specialized procedure for the examination of complaints on torture with the following requirements:
 - i. the period of preliminary examination of reports and complaints of torture must be limited to a maximum of 10 days;
 - ii. upon receiving/registering a report or a complaint of torture the specialized body in charge of examination must order an immediate forensic-medical examination to promptly record any physical injuries.
 - d) Provide in the legislation for the special rights of victims of torture during preliminary examination, including, but not limited to the following:
 - i. to be informed of the process of a preliminary examination;

- ii. to raise questions and put forward requests to examine the additional facts and circumstances of alleged torture;
- e) Amend its legislation governing rules of evidence to the following effect:
 - i. To diminish the possibility of law-enforcement agencies to extract confessions during criminal investigation, by making it a rule, that only confessions made before a judge during trial are considered as admissible evidence; confessions under all other circumstances not confirmed in court should be deemed as inadmissible. Similar protection should be guaranteed to witness testimonies.
 - ii. Admit results of independent medical examination conducted other than by official agency on forensic expertise.
- f) Strengthen the safeguards against torture and ill-treatment by taking the following measures:
 - i. End practice of police interrogations in closed offices by introducing strict requirements to the place, time and registration of meetings with persons.
 - ii. End practice of prolong custody of persons before appearing in court, by revising procedures of police arrests to ensure correct reporting of the time and circumstances of arrests. Ensure that the rights of arrested persons are read to them immediately upon apprehension, including the possibility of prompt access to the lawyer.
 - iii. At all time during investigation the lawyer should have an unhindered access to the defendant under any form of detention without prerequisite permission from the investigator.
 - iv. Anyone should have access to independent medical examination, results of which are treated equally as the state agencies on medical expertise
 - v. Anyone arrested or detained should be able to immediately exercise the right to inform his/her family about his whereabouts.
- g) Provide in the legislation for the specific rights of the victims of torture to claim compensation from the state in civil courts independent from the criminal proceedings on the same case. Ensure that the process of payment of compensation from the state budget is adequate and timely.
- h) Establish a mechanism of providing for the psychological and medical rehabilitation for torture victims.
- i) Make available for public review and scrutiny all regulations, instructions or manuals pertaining to the rights and responsibilities of any type of detainees in closed institutors and conditions of such detention, including custody and pre-trial detention centers under the National Security Agency.

2. Establish National Preventive Mechanism in full compliance with the Optional Protocol with the UN Convention Against Torture. Provide for unlimited and unhindered access to all places of detention to the existing public monitoring commissions.
3. Ban use of temporary cells in detention places, which do not meet the requirements of Article 10. Prohibit use of solitary confinement or prisoners in practice.
4. Put in place effective mechanism of control over registration and delivery of complaints and addresses of prisoners to supervisory authorities and public organizations.
5. Establish exceptional judicial procedure to handle prisoners' cases on parole and early release.

5. FREEDOM FROM SLAVERY AND PROHIBITION OF FORCED LABOR (Article 8)

1. The State should improve national laws on human trafficking to ensure their full compliance with international standards to prevent immunity of perpetrators.
2. The State should design systemic approach to identification of victims of human trafficking, including by capacity building programs for police.
3. The State should take adequate measures for protection of victims and witnesses in criminal trials of human trafficking cases.
4. The State should ensure cooperation of state bodies with representatives of the civil society in identifying and supporting victims of human trafficking, including establishment of shelters for victims of human trafficking.
5. The State should introduce clear notion of forced labor to prevent use of such forced labor in penal legislation and practice, particularly by revising article 99 of the Penal Code of the Republic of Kazakhstan. The State should develop and make use of efficient procedures of investigation of statements of slavery and forced labor.

6. RIGHT TO LIBERTY (Article 9)

1. The State should bring the period of police custody to 48 hours from the time of arrest to the time of appearance before the court. The State should introduce strict measures of control over the procedures regulating arrest, specifically:
 - a. registration of time of arrest from the moment of factual restriction of liberty
 - b. reading the rights of arrested persons
 - c. providing immediate access to a lawyer

- d. conducting medical check-up before admitting a person to police custody
 - e. immediately informing the family of a person.
2. The State should amend the legislation on judicial sanctioning of arrest in to comply with the requirements of Article 9, specifically:
- a. Set the standards of reasonableness, proportionality, necessity and exceptional nature of detention as principles governing the judge’s decision on pre-trial detention;
 - b. Empower the judge to immediately release the person if the period of 48 hours of custody has been violated;
 - c. Specify the scope of issues to be considered by the judge, including the issue of reasonableness of criminal charges and legality of arrest;
 - d. Give the power to the judge to release immediately the person in the courtroom if grounds for detention are not established;
 - e. Ensure that the judge is equipped with a wide range of measures alternative to detention;
 - f. Include the provision whereby the judge should inquiry from the defendant if any substantial violations of procedural rights have taken place during the period of custody, such as torture or ill-treatment. In case the judge establishes a reasonable suspicion that the person has been tortured or ill-treatment, the judge should be able to release the person and issue decree on conducting inquiry and investigation into the allegations

7. FREEDOM OF MOVEMENT AND RIGHT TO REMAIN IN A STATE (Article 12, 13)

1. The State should revise its system of residence registration by abolishing the requirement of “propiska”. The State should not attribute such legal consequences to the fact of registration that would impede exercise of civil and political rights by individuals.
2. The State should revise its current practice of affording refugee status to asylum seekers in order to bring in compliance with international human rights treaties, particularly by affording effective judicial review of administrative decisions and to guarantee access to all information by applicants. The state should envisage participation of civil society organizations in government bodies responsible for refugee status determination.
3. The State should take all measure to register stateless persons and afford them all guarantees of civil and political rights provided in the ICCPR.

8. RIGHT TO FAIR TRIAL (Article 14)

1. The State should ensure implementation of general recommendations of the UN Special Rapporteur on the independence of judges and lawyers, in particular those related to a process of appointment of judges of all levels of the judicial system, their tenure of office and dismissal.
2. The State should revise provisions of the criminal procedure, civil procedure and administrative laws of the Republic of Kazakhstan in view of bringing them in line with international standards and principles of fair trial to ensure observance of the following rights:
 - right to public trial: - create all conditions to ensure openness of trials, namely by providing free access to a court building and a courtroom in case of public trials, elimination of the existing practice of obtaining preliminary permits from a judge, secretary, police officer, guard or any other persons;
 - presumption of innocence: - revise its rules on evidence to ensure timely exclusion of any illegally obtained evidence including through torture or ill-treatment in the determination of criminal charges against a person;
 - equality of rights: - ensure that prosecution and defense are on equal foot in terms of presentation, hearing, examination and evaluation of evidence; provide defense with adequate procedural tools to collect and present evidence, including medical and forensic examination.
 - right to defense - guarantee exercise of a right to choose one's lawyer regardless of the type of cases; ensure that the right to confidential meetings with the lawyer are guaranteed in practice.

9. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (article 18)

1. The State should revise its legislation to lift the impermissible ban on the exercise of the freedom of thought, conscience and religion, established in article 22 of the Constitution of the RK.
2. The State should introduce amendments to the Law on religion and corresponding by-laws to ensure that the rights provided in Article 18 of the ICCPR are fully guaranteed in practice. In particular, the State should:
 - a. provide adequate definition of the freedom of religion in line with international standards;
 - b. revise the current system of strict registration and notification by religious groups and missionaries in order to bring it in compliance with Article 18 of the ICCPR;

- c. ban the practice of administrative persecution of religious leaders, members and religious groups waiting for registration.
3. The State should eliminate Committee for Religion Affairs by affording the religious groups the same treatment as to legal entities.
4. The State should introduce legislation on alternative military service which will allow believers to discharge their civil duty without prejudice to their religious feelings. During preparation of such law impose moratorium on criminal responsibility for draft evasion due to religious views.

10. FREEDOM OF EXPRESSION (Article 19)

1. The State should bring laws on mass media in line with article 19 of the ICCPR, in particular:
 - a) to decriminalize defamation and insult;
 - b) to eliminate enhanced protection measures of state officials;
 - c) to liberalize media legislation by simplifying rules of registration for new media, introducing ban on monopoly of media, lifting the prohibition on ownership of mass media by foreign citizens and companies;
 - d) to limit application of such sanctions as suspension of activities and termination of media outlets as exceptional;
 - e) to adopt a law on access to information of citizens and mass media which would regulate, among others, time and scope of providing state withheld information;
 - f) to repeal the law on Internet regulation as undemocratic and violating international principles and standards of freedom of expression. To eliminate practice of extrajudicial blocking of Internet publications and websites;
 - g) to limit a statute of limitations for defamation lawsuits against mass media, as well as maximum amount of compensation for moral damages in such cases;
 - h) to release journalists imprisoned in connection with their professional activities.

11. RIGHT TO FREEDOM OF ASSEMBLY (Article 21)

1. The State should revise the law governing the right of citizens to a peaceful assembly and bring them in line with article 21 of the ICCPR. In particular, the State should ensure the following:
 - definition of the notion “peaceful assembly” is compliant with the understanding behind Article 21 of ICCPR;
 - organization of a peaceful assembly is possible by simple notification procedure, with a reasonable time established for sending the notice in advance.

- all public places are available for peaceful assembly without limitations
- prompt procedures are established for judicial review against prohibition to hold public assembly.

3. The State should ensure observance of a principle of proportionality of restrictions applied to freedom of assembly in law and in institutional and judicial practice.
4. The State must conduct a comprehensive training program for police officers to ensure public order and safety during meetings and acquire special skills of interaction with participants of peaceful assemblies, protection of meetings against provocation and aggression, international standards on the use of force during public demonstrations, etc.

12. RIGHT TO FREEDOM OF ASSOCIATION AND POLITICAL RIGHTS (Articles 22 and 25)

1. The State should bring article 23 of the Constitution of the Republic of Kazakhstan in line with Article 22 of the ICCPR to ensure that right to freedom of association is respected regardless of citizenship.
2. The State should put an end to practice of persecuting organizations/associations for non-charter activities, by providing freedom to associations conduct any activities, which are not contrary to legislation and do not require special permit.
3. The State should revise its registration requirements for public associations by introducing simple notification procedures in line with the provisions of Article 22.
4. The State should revise administrative and criminal laws regarding liability of public associations, their leaders and members in order to bring restrictions and punishments in line with international standards.
5. The State should revise laws governing political parties in order to reduce the requirement of 40 000 members, necessary for registration to the level of 3,000, which was established in the law prior to 2002 amendments.
6. The State should consider reducing a 7-% threshold for political parties to get representation in the lower chamber of the Parliament (Majilis), in order to ensure efficient exercise of a right to take part in the conduct of public affairs, guaranteed by Article 25 of the ICCPR.

RIGHTS OF THE CHILD (Article 24)

1. The State should ensure full implementation of recommendations of the UN Committee on the Rights of the Child issued to Kazakhstan with regards to its obligations under the UN Convention on the Rights of the Child and its Optional Protocol. The State should allocate financial resources for this process, especially in relation to establishing special measures of children's protection.
2. The State should take urgent measures to stop violence, intimidation and abuse of children in state educational facilities and orphanages by providing adequate measures of safety, regular monitoring, psychological and medical assistance to children, victims of violence. The State should ensure that all state institutions dealing with children must be subject to regular independent monitoring and evaluation to ensure that the rights of children are respected and perpetrators are held accountable.
3. The State should ensure that all children regardless of their citizenship and social status are guaranteed the right to adequate education. The State should develop measures of social, medical and psychological assistance to children from families of refugees, persons seeking asylum, forced migrants and oralmans. The State should take special measures to provide children with disabilities with access to development and education.
4. The State should develop a comprehensive national program to prevent children's suicide and assist victims and their families, by involving wide range of social organizations and communities.

RIGHTS OF MINORITIES (Article 27)

1. The State should ensure full implementation of 2010 recommendations of the UN Committee on the Elimination of Racial Discrimination issued to the government Kazakhstan with regards to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
2. The State should introduce the definition of the "discrimination" encompassing both direct and indirect discrimination that is compatible with the requirements of the CERD.
3. The State should provide for establishment of a specialized agency to work with ethnic minorities in order to ensure targeted protection of educational, employment and social rights of national minorities. The State should improve its policies of employment to government positions by ensuring equal access and representation of national minorities.
4. The State should revise the implementation of language laws in order to prevent discrimination and restrictions on the exercise of civil and political rights equally by all.
5. The State should revise its legislation and practice in order to afford lesbian, gay, bisexual and transgender people equal protection of their civil and political rights. The State should take

measures to effectively investigate cases of violence based on sexual orientation. The State should include in the legislation the notion of “sexual” orientation as the ground for discrimination.