



COMMENTARIES

of the Coalition of Non-Governmental Organisations of Kazakhstan on the Universal Periodic Review (UPR) with respect to the Implementation of Recommendations by Kazakhstan based on the Results of the Consideration of the Second Periodic Report of Kazakhstan within the Framework of the UPR¹

These commentaries have been prepared by the informal Coalition of Kazakhstan NGOs (Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR); Charter for Human Rights; CCPR-Centre; Legal Policy Research Centre (LPRC); Union of Crisis Centers of Kazakhstan; Physicians without Drugs Foundation; Echo Foundation.

The commentaries have been developed over the course of expert and public discussion and agreements among the members of the Coalition. A final text of the commentaries has also been offered to representatives of the state bodies for discussion. The Centre for Civil and Political Rights (CCPR-Centre) provided technical, legal and expert support to preparation and drafting of the commentaries, as well as support at all stages of the reporting process at national and international level.

SUMMARY: *In 2014, following the consideration of the Second periodic report of the Republic of Kazakhstan as part of the UPR, the Working Group of the UN Human Rights Council submitted 198 recommendations. In March 2015, the Republic of Kazakhstan accepted 147 recommendations and rejected 51 recommendations.*

Based on the results of the general assessment of the implementation of the recommendations under the UPR, the Kazakhstan NGO Coalition on the UPR obtained the following results on 147 recommendations (51 were rejected): 10 recommendations fully implemented; 103 recommendations partially implemented (in process); 33 recommendations not implemented.

One year later, in 2016, Kazakhstan was reviewed by the UN HR Committee and received recommendations on the implementation of the International Covenant on Civil and Political Rights (ICCPR). 3 recommendations were selected for the follow-up procedure, in which the implementation was evaluated on the following issues: a) torture and ill-treatment, b) freedom of association and participation in public life and c) accountability for human rights violations in connection to the Zhanaozen events. Assessment from the HR Committee in August 2018 revealed that Kazakhstan received mostly C-grades, which means that no steps were taken to implement the recommendations. Some issues got a B-grade, meaning partial implementation but further steps are required. The Concluding Observations are available [here](#). The follow-up letter is available [here](#).

¹ As of February 2019, presented before the consideration of the Third Periodic Report of the Republic of Kazakhstan.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

I. Freedom from torture and other cruel treatment and punishment

II. Migrants and refugees

III. Environment

IV. Housing

V. Statelessness

I. Freedom from torture and other cruel treatment and punishment

1. Article 146.1 of the 2014 Criminal Code provides the definition of “torture” which is much more consistent with the Convention against Torture (CAT). However, the criminal legislation does not contain definitions of other forms of ill-treatment (degrading, cruel, inhuman).

The HR Committee was concerned about torture and ill-treatment in 2016, and even selected this issue for its follow-up procedure. Recommendations were made to ensure that standards of proof are appropriate and reasonable, that investigations are carried out by an independent body and in time, that sanctions are commensurate with the crime, to refrain from using the charge of “false reporting of a crime”, to ensure that victims have access to full reparation and that an independent oversight mechanism is created for the penitentiary system.

In 2018, the Committee evaluated the implementation measures²: the first 2 recommendations got a B-grade (partial implementation), but all other recommendations were not implemented.

2. The punishment for torture is still not commensurate with the severity of the crime, a concern that was also expressed by the HR Committee in 2016.³ According to Article 146.1, torture is not considered to be a serious crime, and a fine or deprivation of the right to occupy a certain position may be applied as the main punishment. Parts 2 and 3 of Article 146 establish more serious punishments which, based on category, allows to classify those crimes as serious offenses.

3. Despite the fact that the criminal procedural legislation does not allow using confessions obtained as a result of torture or other cruel, inhuman or degrading treatment, the problem continues to exist both in legislative and law enforcement practice.

4. For certain reasons (for example, due to the repressive nature of criminal proceedings in practice), the application (or rather, the formal presence) of the rule to exclude evidence obtained under torture, if such rule is available in the Code of Criminal Procedure, raises serious concerns. It seems that the problem lies in the consistency of such exclusion procedure, which is not regulated by this Code, because, apart from the suspension of the criminal proceedings by a court order in connection with the prosecutor's consideration of the defendant's application for torture and appeal against his/her decision, the procedure for exclusion of evidence is not detailed. Consequently, confessions obtained under torture may be excluded from evidence only if a prosecutorial inspection has revealed the fact of use of torture. However, in practice the prosecutor's office generally issues an order terminating a pre-trial investigation and the court rejects a petition seeking to recognize any evidence obtained under torture as inadmissible.

² Follow-up letter adopted by the HR Committee, 1 August 2018, available here:

http://ccprcentre.org/files/documents/FU_Kazakhstan.pdf.

³ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §23-24.

5. The state has taken important steps in investigating the facts of torture: it has created the Office of Special Prosecutors whose job is to investigate any reports of torture. However, the NGOs are still concerned that despite the creation of such special units, majority of reports of torture continue to be investigated by bodies that in practice depend on those very parties against whom the complaint of torture has been filed. Again, this was also a concern for the HR Committee, but their recommendation was only partially implemented in August 2018.⁴

6. Article 187.4 of the new Code of Criminal Procedure provides for the jurisdiction over cases on criminal offences envisaged by Article 146 of the Criminal Code as follows: "Preliminary investigation shall be conducted by the internal affairs agencies or anti-corruption agency that initiated pre-trial investigation in respect of the person who is not an employee of this agency". At the same time, according to an instruction of the General Prosecutor, the consideration of applications and reports of torture received by the prosecutor's office should be handled by special prosecutors with the right to carry out pre-trial investigations. A similar provision is also present in the Instruction on the organisation of supervision over the legality of the pre-trial stage of the criminal process.

7. According to the information received from the prosecutor's office, for example, in 2015 criminal prosecution bodies handled 640 cases on charges of torture, of which 514 (80%) cases were terminated due to the absence of elements and events of the offense. Only 12 cases (1.87%) were brought to court trial. All these cases were investigated by prosecutors. Article 56.5 of the Criminal Procedure Code provides for, in the general provisions concerning the exercise of authorities, the obligation of an investigating judge to entrust a supervising prosecutor with immediate check of the facts specified in the complaint of a suspect regarding tortures or other illegal actions taken against him or her or existence of the markings of foul play on him or her. According to sub-paragraph 3 of Article 482.4 of the Criminal Procedure Code, the judge when considering the complaints of suspects should act in the same manner, who, on the results of consideration, in consultation room, should order to forward a complaint to the relevant prosecutor for conducting investigation pursuant to the complaint regarding tortures, other illegal actions and cruel treatment. However, in practice, these mechanisms still do not work effectively.

8. Therefore, one of the main problems in ensuring the objectivity, promptness and thoroughness of investigations of reports of torture or ill-treatment continues to be the absence of an independent investigation mechanism. TheCAT(2001, 2008, 2014), the UN Special Rapporteur on Torture (2009), the Human Rights Council (2010), the HR Committee (2011, 2016), and human rights organizations have all provided recommendations on the creation of such mechanism. However, no such mechanism has been created to date. The institute of special prosecutors within the prosecutor's offices that supports the prosecution in courts, cannot serve as such an independent mechanism.

9. Yet another problem is that the medical services in prisons report to the Ministry of Internal Affairs rather than the Ministry of Healthcare. For instance, not a single medical worker has been held accountable for concealing the fact of torture. Both medical workers and prosecutors have been found to be concealing the facts of torture or ill-treatment.

10. Prisoners continue to have no access to the necessary medical assistance and narrow-field medical workers, a concern voiced by the HR Committee.⁵ Quite often, when a detainee's health declines while in the court room, medical assistance is called for not immediately but only after the end of the court session. As a matter of fact, medical workers at closed internal-affairs establishments continue to be attested workers of the MIA system, which makes it very difficult for persons in prisons to have access

⁴ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §23-34; Follow-up letter adopted by the HR Committee, 1 August 2018, available here: http://ccprcentre.org/files/documents/FU_Kazakhstan.pdf.

⁵ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §31-32.

to independent medical professionals and complicates documenting the facts of torture. Also, independent medical professionals have no access to prisons.

11. In practice, no effective mechanisms of filing complaints in prisons have been created. In addition, the MIA Internal Regulations for penitentiaries installed mandatory censoring of all correspondence coming from prisoners to the public organizations. The HR Committee recommended in 2016 to create an independent oversight mechanism in the penitentiary system.⁶

12. Since 2011, when the penitentiaries were handed back from the Ministry of Justice to the Ministry of Internal Affairs, problems providing access to penal establishments for public observers and advocates have become more frequent. A number of institutions have adopted a practice of denying access for advocates to prisoners if the prisoners are placed in a disciplinary detention unit (by law, a prisoner may be placed in such a unit for up to 15 days for failing to follow the internal regulations).

13. In view of the aforementioned problems in prisons, such as the lack of access to independent medical workers and professionals, lack of effective and accessible channels of filing complaints, and a total censorship of correspondence, prisoners regularly resort to self-mutilation and hunger strikes as a measure to draw attention to their plight. However, such protests are considered to constitute disobedience of lawful requirements of the penitentiary's administration and a criminal offense punishable by 5 to 10 years of prison.

Moreover, suicides and deaths in custody were a concern to the HR Committee: it recommended to establish effective prevention strategies and ensure investigations into the deaths in custody.⁷

14. In Kazakhstan, there is a Working Group on the Review of Complaints against Torture under the Human Rights Ombudsman. Since 2004, public monitoring commissions (PMCs) operate in accordance with the legislation, but they do not have an institutional independence from the executive authorities and their activities are not very effective to some extent in the sphere of public control over the compliance with rights and freedoms of prisoners held in bodies and institutions of the penal and correctional system. In 2013-2014, the National Preventive Mechanism for the Prevention of Torture (NPM) was established. It was created based on the model «The Commissioner for Human Rights of Kazakhstan (Ombudsman) plus», and according to the process of its formation and representation of civil society activists and human rights defenders it is more in line with the Paris Principles.

15. However, lack of the powers of the NPM for monitoring of such places of deprivation of liberty as the police departments (the situation has been changing since 2017), premises of the National Security Committee, orphanages, special boarding schools, nursing homes for the elderly and disabled people, and military barracks; lack of material resources and the inability to carry out urgent and unscheduled inspections of places of detention, upon relevant request, without coordination with the Commissioner for Human Rights of Kazakhstan; inability to publish their findings and recommendations immediately after the inspections, and not solely on an annual basis are all a source of concern. The HR Committee recommended Kazakhstan already in 2016 to ensure adequate financial and human resources to the national preventive mechanism.⁸

Recommendations:

1) Review its legislation with a view to bringing its definition of torture into accordance with article 7 ICCPR and other internationally accepted standards and ensure that torture cannot be justified under any circumstances.

⁶ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §24.

⁷ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §19-20.

⁸ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §8.

- 2) Ensure that sanctions for torture are commensurate with the nature and gravity of the crime, both in law and practice. *Exclude from Article 146 of the CC the types of punishment that are alternative to imprisonment.*
- 3) *Introduce criminal offence for degrading, cruel, inhuman treatment and punishment.*
- 4) *Establish the right of the court to independently undertake the minimum amount of primary investigation of an allegation of torture (to secure evidence, ensure the right to effective remedies at the national level), thereby contributing to ensuring the independence of the investigating body.*
- 5) *Strictly follow the policy of zero tolerance for torture and implement all recommendations issued by the Committee against Torture, the Special Rapporteur on Torture, as well as commentaries from the UPR.*
- 6) *Consider removing the penitentiary system from the jurisdiction of the Ministry of Internal Affairs and transfer the medical service from the jurisdiction of the Ministry of Internal Affairs, the National Security Committee, the Ministry of Education, etc. over to the Ministry of Healthcare.*
- 7) *Bring the conditions of detention in prisons and other places of detention in line with the Minimum Standard Rules for the Treatment of Prisoners (Mandela Rules), the UN Rules for the Protection of Persons with Mental Disorders, the Beijing and Riyadh Rules, etc. Take the necessary measures to train staff at said institutions.*
- 10) Ensure that investigations into allegations of torture and other ill-treatment are carried out by an independent body and are not unduly delayed, and that “special prosecutor units” are themselves responsible for conducting all investigations into torture and ill-treatment and do not delegate investigative work to law enforcement agencies acting under their supervision;
- 11) Refrain from using the charge of “false reporting of a crime” against alleged victims of torture or ill-treatment;
- 12) Ensure that victims of torture and ill-treatment have, both in law and practice, access to full reparation, including rehabilitation, adequate compensation and the possibility of seeking civil remedies independent of criminal proceedings, not dependent on whether there is a guilty verdict in a torture case.
- 13) Ensure that oversight of the penitentiary system is exercised by an agency independent of the police and internal security forces.

II. Rights of migrants and refugees

1. The processes of internal migration are regulated on the basis of an identity card, which is issued based on whether a person has been registered at the place of his/her residence. Almost all social and medical assistance is tied to whether a person has a registration at the place of his/her residence (akin to the Soviet-time “*propiska*”). If for whatever reason (family circumstances, real estate fraud, inability to restore lost documents etc.) a person loses his/her registration, that person becomes excluded from society: he/she cannot be legally employed, receive free medical aid, go to court, register his/her marriage, give education to his/her children. Once lost, registration is often difficult to restore because the majority of the population cannot purchase real estate and the rental market is weak. When a person is not registered, he/she cannot participate in state governance as a juror, participate in elections because they would not be included in the voters’ lists without having a registration, and apply for a pension.

2. The absence of possibility for registration at the place of residence is usually tied to the absence of one’s own housing, sometimes due to the lack of title documents for the existing property, for one reason or another. For instance, many gypsy families do not have proper documents. Presently, virtually every gypsy family (with rare exceptions) face a fine under Article 492 of the Code of Administrative Offenses in the amount of 7 times the MCI⁹ “for residing without registration or without identity documents.” Such a situation promotes corruption: district police have power over

⁹1 MCI (monthly calculation index) is equal to 2,525 tenge (or \$7)

those people. People are forced to register where they do not actually reside, in violation of the law, at their relatives or acquaintances. In doing so, the owners of the housing who register people that do not actually live there face a fine that is 10 times the MCI under Article 493 of the Code of Administrative Offenses, for violating the rules of registration of internal migrants by the owner of the dwelling or other persons managing the dwelling, building and/or premise in question.

3. The process of mandatory registration at the place of residence not only contradicts international standards, it now allows, due to its complexity and inertia, collecting and analysing information on the population and its movement for state governance purposes, including for the realization of the many other constitutional rights, such as the right to elect, the right to be recognized as a legal person, the right to freedom of movement, the right to work, and the right to social security.

4. Kazakhstan, being a country receiving migrant workers, has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and confirmed that it does not intend to ratify it in the near future due to the long-term financial consequences that may arise as a result of its implementation.

5. The migrant workers' problems have a systemic nature. For migrants who do not have permits for entry or employment, the matters of personal security and health, guarantees of a minimum wage and other rights, are very topical. It is not rare that migrants are subjected to torture and degrading treatment by the law enforcement bodies. Many migrants, due to difficulties with obtaining official employment permits, are forced to work unofficially without proper documents. As a result, they are not protected when it comes to personal security, social and job guarantees.

The HR Committee had similar concerns in 2016: there were reports of forced labour in the tobacco, cotton and construction industries and abuse of migrant workers.¹⁰

6. Population registration has become noticeably tougher over the past few years. The selective analysis of certain regulatory legal acts conducted by the Commission on Human Rights showed their inconsistency with the Constitution, guaranteeing personal freedom and freedom of movement to the citizens. Kazakhstan does not have a separate law that would regulate labour migration. The matters of labour migration are regulated by Chapter 6 of the Law "On the Migration of the Population," which has no provisions that would protect migrant workers against enslavement and cruel treatment. As for the development and implementation of a policy to provide equal access to healthcare and education to children as set forth by the ICMW and ILO Convention No.143, it should be noted that the migrant workers in Kazakhstan do have a certain level of access to healthcare and education services, and in both cases the relevant rights are spelled out in the national legislation. At the same time, a pregnant woman who is a migrant cannot get pregnancy registration at the clinics; labour and delivery of the baby are made on a paid basis. If a woman gives birth as an emergency, she will not be issued documents confirming the birth of her child unless she pays for the services of the maternity clinic.

7. Kazakhstan supports a policy of temporary labour migration, including with respect to skilled specialists and workers, and only issues permits to employers to hire foreign labour forces for a period not exceeding one year.

8. Most budget schools accept children for education only with a residence registration document. In other words, if the parents who are migrants or refugees have an official registration, then their children may have access to education; otherwise access to education is extremely difficult. Despite the ratification of the Convention against Discrimination in Education, inequalities continue to exist when it comes to access to quality education, correctional and rehabilitation programs for children in

¹⁰Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §35-36.

the following categories: children whose parents live with an old Soviet passport or without any documents at all; ethnic Kazakhs who have not fully completed the process of naturalization after returning to their historic homeland; labour migrants and migrants who have not settled the matter of their legal stay in the country because their passports issued in the country of origin have expired and they have problems accessing their countries' embassies and consulates; children with disabilities; and people residing in rural areas.

9. Despite the ratification of the relevant international treaties concerning protection of refugees, the institute of refugees in Kazakhstan is still not sufficiently stable. In December 1998, Kazakhstan signed and ratified the 1951 Convention on the Status of Refugees and the 1967 Protocol to the Convention; however, the level of implementation is still below international standards of protection.

10. In spite of the fact that the Law "On Refugees" entered into force on 1 January 2010, and the Law "On Migration of the Population" of 2011 became effective, the principle of "non-refoulement" is not fixed in these laws in accordance with international standards. The law on migration of the population uses only the term "illegal migration" and defines it as a violation by foreign citizens or stateless persons of the state legislation regulating entry, exit and stay, as well as transit through the territory of Kazakhstan. Persons accused of such violations may be sentenced to a fine and/or deported from the country.

11. Kazakhstan does not fully comply with the principle of non-refoulement of asylum-seekers to countries where they are likely to be subject to torture or other serious human rights violations. Such persons, even if there are sufficient grounds, rarely get asylum; they are threatened with deportation or extradition, if criminal prosecution is conducted against them in any other country. Despite the fact that the Law "On Refugees" provides for the prohibition to return or deport asylum seekers and refugees to the border of a country where their life or freedom is under threat on the basis of race, religion, nationality, citizenship, affiliation with a particular social group or adherence to a certain political opinion, these provisions do not provide adequate and effective legal protection, as evidenced by a number of examples of extradition to other states. Although the Code of Criminal Procedure contains a prohibition on extradition in the event of a threat of torture in the requesting country, Kazakhstan always accepts diplomatic guarantees that no one will be tortured there. In fact, these guarantees never provide for mechanisms for monitoring the situation, and do not always guarantee the access of Kazakhstan's diplomatic representatives to extradited people. There are problems related to the access of migrants, asylum seekers and refugees to qualified legal assistance and the assistance of an interpreter.

The HR Committee shared our concerns in 2016: access to procedures for determining refugee status at all border points remained problematic and ineffective, individuals were extradited in violation of the principle of non-refoulement, asylum seekers were forcibly returned before the decisions on their claims were made, asylum applications by nationals of Syria and Ukraine were routinely rejected, and asylum seekers from China and Uzbekistan were vulnerable to expulsion.¹¹

12. The Law "On Refugees" was adopted in a hurry and hardly finished, despite the recommendations of civil society. The law that was adopted contains a multitude of contradictory provisions and does not comply with international law; it contains a lot of references and links to other legislative acts, which have never been developed properly. For example, the Law gives the status of a refugee in Kazakhstan for a period of one year, which is a violation of international principles of providing asylum, and the 1951 Convention "On the Status of Refugees." The Law provides that the refugee status will be refused for those persons who are being prosecuted for participating in banned religious organisations. Those who seek asylum are not guaranteed unhindered access to Kazakhstan because

¹¹Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §43-44.

the legislative provisions and the level of skills of border patrol employees do not always allow to draw a difference between a refugee and a regular foreign citizen.

13. Along with this, no amendments have been made to other legal acts pertaining to refugees. In this connection, it is precisely the refugees who have no right to work, receive free medical assistance, education, right to pension support, right to social payments, etc. Refugees have almost no possibilities for integration, because they are not equated to foreign citizens temporarily residing in Kazakhstan. When a refugee wishes to obtain permanent residence or citizenship, she/he is required to present to the migration police information from his/her origin country confirming that the country he/she has left is not against him/her obtaining a citizenship of a different country; such a requirement directly contradicts the provisions of the 1951 Convention on the Status of Refugees and is not permissible in international law enforcement practice.

14. Aside from the absence of immediate access to a fair and individualized process of granting the status of a person seeking refuge and complying with the principle of non-deportation, refugees are not guaranteed a fair trial. From 2014 to 2018, the KIBHR brought more than 100 lawsuits to courts to challenge the denial of refugee status, but no practical positive results were achieved.

15. The status of the person seeking refuge is not clearly defined, and the rights of such person are limited. Persons seeking refuge have no right to be employed, despite the fact that the process of rendering a decision on granting the refugee status may take up to a year. Therefore, the person seeking refuge, if he/she does not receive financial support and does not have the right to be employed, will be forced to engage in illegal labour activities.

16. According to the amended 2017 revision of the Code of Administrative Offenses, a court resolution on deportation of a foreign citizen or stateless person enters into force on the date it is made and serves as the basis for deporting the foreign citizen or stateless person from Kazakhstan. The court resolution must also state the timeframe within which the foreign citizen or stateless person must leave the territory. However, there is no place in the Code of Administrative Offenses where it states the timeframe within which the foreign citizen or stateless person must leave the territory. Therefore, this lies within the scope of authority of the court. Therefore, the court may set a timeframe of one (1) day or more, which makes it practically impossible to appeal the resolution to a higher instance.

17. The procedure and the basis for appealing and protesting court resolutions that have come into effect do not provide for effective procedural possibilities for foreigners and stateless persons to change or repeal the deportation resolution. If a foreigner or stateless person still files a petition to the Supreme Court or a prosecutor's office, this will not suspend the execution of said resolution on deportation, and the foreign citizen or stateless person will still have to leave Kazakhstan without waiting for a resolution of the court or prosecutor's office, because he/she must comply with the court's resolution on deportation. This constitutes a violation of the right to effective legal remedies and the principle of non-deportation.

18. Over the last two years a new problem has arisen which relates to the creation in China of so-called camps, or centres of re-education, for the Muslim population of the western regions of China, mainly Uighurs and Kazakhs. These repressive measures have affected a large number of people who have relatives in Kazakhstan and resulted in influx of Chinese citizens who migrate across the border to Kazakhstan and try to stay here. Unlike other countries that have Kazakh diasporas and with whom Kazakhstan has repatriation agreements, there is no such agreement with China, so people of Kazakh nationality arriving from China may not rely on getting the status of Oralmans and thus face

deportation. This problem has been becoming more and more serious and was also reiterated by the HR Committee in 2016.¹²

Recommendations:

1) Revise the national legislation and law enforcement practices so as to simplify the system of registration of citizens. Exclude any legal link between registration of citizens at the place of residence and provision of civil, political, economic, social and cultural rights, and social and economic commitments of the state. Ensure access to general medical services for children who are not registered at the place of residence. Settle legal collisions that prevent from receiving social payments and assistance by the citizens and migrants in Kazakhstan.

2) Conduct monitoring of legislative acts covering public and social services that are provided by the state but not realized fully in the law enforcement practice due to citizens lacking registration at the place of residence.

3) Improve access to legal employment for migrant workers and ensure that a proper framework is in place to effectively enforce their rights and protect them against any form of abuse and exploitation. Ensure the availability of adequate services for victims of forced labour, including legal, financial and social support, and shelters.

4) Ensure the right to freedom of movement, repeal the migrants' obligation to inform the migration police of their movements across the country.

5) Ensure the right to fair procedures and trial with respect to working migrants, persons seeking refuge, and refugees.

6) Bring the national legislation in line with the Convention on the Status of Refugees.

7) Strictly enforce the absolute prohibition of refoulement under articles 6 and 7 ICCPR.

III. Rights to a favourable environment

1. Since the second UPR, the situation in Kazakhstan regarding the rights to a favourable environment has not changed significantly. The Constitution still does not legislate this right; it only says that the state seeks to protect the environment that would be favourable for human life and health (Article 31), but it does not grant such a right. As a result, the Kazakh people cannot fully realize their right to freedom from pollution, environmental degradation and acts that adversely affect the environment or threaten life, health, livelihoods and well-being.

2. The main causes of mass violations of the right to a favourable environment include: the lack of a state environmental policy, extortionate exploitation of natural resources, collapse of the state system of environmental protection, non-compliance with international and national laws, a flawed national legislation and systemic corruption.

3. The legislation lacks a proper mechanism of accounting for public opinion and public participation in the decision-making process. Despite the changes introduced in 2016 into the rules of conducting public hearings, the final protocol of a public hearing is still only a recommendation and not a resolution of an authorized body, which effectively prevents the public from having its opinion actually counted.

4. The main obstacle in public participation at the early stages of the decision-making process is that the decisions are made at the stage of state strategic planning, i.e. long before a state environmental impact assessment is conducted.

¹²Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §43-44.

5. The right of the Kazakh people to access justice on matters pertaining to environmental protection is violated, and the process of protection of environmental rights in courts demonstrates the lack of effective legal remedies. Despite adopting in 2016 a new version of the regulatory resolution of the Supreme Court “On the Practice of Application by the Courts of the Legislation on Disputes in the Field of Environment,” there is still no unified interpretation and correct application by the courts of the environmental legislation during legal proceedings in the field of environmental protection. The resolutions of the Aarhus Committee are not complied with.

Recommendations:

1) Ratify the protocols of the UN Economic Commission for Europe on registers of pollutant release and transfer, on water and health, on strategic environmental assessment, which provide the tools for implementation and ensuring the public right to access important sources of environmental information and participate in the relevant decision-making processes.

2) Develop a state environmental protection policy and bring the national legislation in full compliance with international conventions.

3) In accordance with the Aarhus Convention, develop a mechanism of participation of the public in the decision-making process, which should clearly spell out the procedure for counting public opinion. Introduce a mechanism of environmental impact assessment of strategies, programs and plans, which would ensure realization of the public rights to participation in adopting strategic environmental decisions in accordance with Article 7 of the Aarhus Convention.

4) Establish administrative liability for preventing the public from participating in the adoption of decisions that affect the right to an environment favourable for life and health.

IV. Rights to adequate housing

1. The Kazakhstan legislation does not have a legal provision prohibiting forced evictions and protecting against forced evictions that would be compliant with international standards. The legislation does not contain the concepts of “forced eviction,” “the right not to be subjected to forced eviction,” “the right to protection against forced eviction,” “prohibition of forced eviction,” and others. Contrary to international law, the legislation contains the rules of forced eviction without providing alternative housing.

3. The state does not take legislative measures to realize the right to adequate housing and guarantees against forced eviction for the owners of properties and land plots, troubled borrowers of second-tier banks. There is no effective system and mechanisms of protection that provide stringent control over the conditions in which the evictions are conducted. There are no measures to hold responsible those who have committed violations in the process of eviction. Existence of a great number of state bodies (akimats, committee on land resources, architectural and urban planning administration, and others) result in the lack of unified reliable statistics on forced evictions.

4. There is a growing trend of violations of property-related rights of citizens: the people are evicted from their own property while being offered a compensation that is not commensurate to the property’s market value and not sufficient for purchasing a new property; the state seizes land plots and forcefully evicts the owners of the property relying on public interest; socially unprotected persons spend dozens of years in housing lines; citizens are deprived of their only property due to inability to service bank loans; there is no provision of an alternative property for those who have been subjected to forced eviction.

Recommendations:

1) Adopt legislative measures to realize the right to adequate housing and establish guarantees against forced evictions of the owners of dwellings and land plots, as well as troubled borrowers of second-tier banks.

2) *Provide definitions to such terms as “forced eviction,” legislate the rights “not to be subjected to forced eviction,” “to the protection against forced eviction,” “prohibition of forced evictions.”*

3) *Create an effective system and mechanisms of protection of the right to adequate housing, including stringent control over the conditions in which the evictions are carried out.*

4) *Create a unified state body to protect the right to adequate housing.*

5) *Implement the recommendation of the Special Rapporteur on the matter of adequate housing as a component of the right to adequate standard of life and on the right to non-discrimination in this context.*

V. Legal personality, citizenship, statelessness

1. In March 2017, the Constitution (Article 10.2) was amended to provide for a possibility to denationalise a person for committing a crime of terror and for causing other grave damage to the vital interests of the country. According to that article, dual citizenship is banned under the perjury of administrative liability. Accordingly, the current legislation provides for a possibility of situations when persons who commit a crime of terror or cause other grave damage to the country’s vital interests may find themselves being stateless.

2. Such legislative norms, in addition to violating the principle of legal certainty and predictability, give grounds for situations of statelessness, which is in direct contradiction of the UN’s goals of reducing statelessness.

Recommendations:

1) *Revise the legislation of Kazakhstan and repeal those provisions that allow for situations of statelessness.*

2) *Ratify the UN 1961 Convention on the Reduction of Statelessness and the UN 1954 Convention Relating to the Status of Stateless Persons.*