



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); Legal Policy Research Centre (LPRC); “Kadir-kasiet” (Dignity); “Aman Saulyk”; CCPR-Centre; Freedom of Speech International Foundation “Adil Soz”; Association of Religious Organisations of Kazakhstan (AROK); “Ar.Rukh.Khak. Foundation; Agency for Legal Information and Journalistic Investigation “Vityaz”; International Center for Journalism MediaNet.

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.

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

One year later, in 2016, Kazakhstan was reviewed by the Human Rights Committee (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](#).

FUNDAMENTAL FREEDOMS

I. Freedom of expression

II. Freedom of association

III. Freedom of peaceful assembly

IV. Freedom of conscience and religion

I. Freedom of expression

1. None of the issues identified by the NGOs over the course of the previous cycles of the UPR with respect to Kazakhstan's compliance with Article 19 ICCPR have been resolved, and not a single recommendation issued by the States parties of the Human Rights Council (HRC) on Kazakhstan with respect to freedom of speech has been effectively implemented. The HR Committee was also concerned about this issue in 2016, focusing on the decriminalization of defamation, the compliance of legislation with the ICCPR and the clarification of vague and broad definitions.²

2. The Criminal Code of Kazakhstan that took force in 2015 introduced a more severe liability for defamation, as well as for derogation of personal non-property rights of the top country officials and representatives of authority. Moreover, a new Article, entitled "Dissemination of Knowingly False Information" was introduced, which provides for a punishment of up to 10 years of imprisonment. The wording of the Article provides for a punishment for dissemination of both information and opinions. The argument that a criminal sentence for defamation would help to defend honour and dignity of people set forth in the formal report within the framework of the second periodical review in the HRC could not convince members of the Working Group, who again, as in 2010, recommended decriminalising defamation and insult. Notwithstanding assurances of the draftsmen of the Criminal Code that preservation of the responsibility for defamation pursues a preventive objective, 34 criminal cases against newsmen and civil activists on a charge of defamation were initiated in 2015 alone (two of them ended in a guilty verdict), in 2016 – 51(5), in 2017 – 21(6), in 2018 – 15 (5)³.

3. Kazakh laws and law enforcement practices contradict international standards. The Civil Code provides for no time limitation of actions for claims with respect of protection of honour, dignity and business reputation. The new Civil Procedure Code, which came into force on 1 January 2016, partially limited the amount of payments as moral damages in cases of disparagement of honour and dignity, tying the amount of the state duty to the amount of recovery. However, this rule does not apply to claims of moral damages brought in criminal libel cases, for which the state duty is still equal to 50% of the monthly calculation index. In practice, this may result in an increase in the number of criminal libel cases, since this allows prosecutors to avoid paying large amounts of state duty.

² Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §49-50.

³ Information of the Public Foundation for the Protection of Freedom of Speech "Adil soz".

4. Unjustified restrictions in the provision of information, which realistically impede freedom of speech, are contained in the Kazakhstan President's Decree, on the Code of Honour of State Officers in Kazakhstan. That document reads: *"Public officers shall not publicly express their opinions as related to the state policy issues and public activities if such opinions depart from the principal directions of the state policy. If of public accusations on the count of corruption are brought against a public officer, he/she shall take measures to rebut such accusations, including in court"*.

5. Persecution of independent media, also electronic media, including their forced liquidation allegedly for extremism or inability to pay extremely large fines is widespread in the country. Among them are the Informational Analytical Portal "Ratel.kz", the newspaper "Tribuna-Sayasi Kalam", the magazine "ADAM", the Internet-portal "Nakanune.kz", and others. New legislative provisions on Internet control are being adopted. From 2014, to simplify and speed up the procedure of blocking Internet resources, Article 41-1 was added to the Law of the Republic of Kazakhstan "On Communications", which states that the General Prosecutor's Office of the Republic of Kazakhstan and the National Security Committee of the Republic of Kazakhstan have the right to temporarily suspend access to networks and/or means of communication without a court decision, if resources are used for criminal purposes detrimental to the interests of the individual, society and the state, as well as for disseminating information that violates the legislation of the Republic of Kazakhstan on elections containing appeals to extremist and terrorist activities, riots, and in cases of urgency, and could lead to the commission of grave and especially grave crimes, and crimes prepared and committed by a criminal group. This provision gives carte blanche to government agencies to freely block access to Internet resources under the pretext of "protecting society and the state".

6. A number of laws that came into force on January 1, 2016 secure for the state a function as the intermediary of all online traffic. One of the laws provides for the responsibility of the information provider for refusing to provide information to the state deemed suspicious. The new system required all Internet users in Kazakhstan to establish a "national security certificate", which will allow the state to be an intermediary between users and all websites on the Internet.

7. Starting in 2015, access for users from the territory of the Republic of Kazakhstan to more than 7044 materials was restricted based on a court decision: 2015 - to 2563 materials, 2016 - to 1154, 2017 - to 3234, 2018 - to 93. According to the instructions of the state body, access to Internet resources / URL-links: 2014 - 0, 2015 - 0, 2016 - 30174, 2017 - 10311, 2018 - 9014. In 2015, according to court decisions, access for users from the territory of Kazakhstan is limited to more than 2563 materials, including 1056 materials on propaganda of ideas of terrorism and religious extremism, in 2016, 753 materials, in 2017, 2470 materials, since the beginning of 2018, 48 materials. Since 2016, there has been a tendency to restrict access to sites precisely according to the instructions of the authorized body, rather than an act of a judicial body. In general, for the period from 2014 to 2018, access to 57,960 Internet resources / URL links was limited.

8. Over the last five years, dozens of civil society activists, bloggers, and religious figures have been indicted under Article 174 of the Civil Code for inciting national, social, religious and other discord. Aside from the fact that the terms "inciting," "social discord" etc. are not sufficiently defined legally and do not comply with the principle of legal certainty and predictability, criminal cases have been mostly initiated based on findings of state linguistic experts, philologists, psychologists and political analysts who found inciting motives for discord in one or another text or expression. Court verdicts in the form of long imprisonments (from 3-5 to 10 or more years) have been delivered based on the aforementioned conclusions, while the opinions of independent experts and specialists have been discarded. In 2016, twelve criminal cases were instigated, with seven resulting in guilty verdicts and long imprisonments; in 2017–12 (10); in 2018 – 46 cases instigated against 57 people in the first half of the year (41 people imprisoned); over the first nine months of 2018, 196 criminal cases where

processed. Over the last four years, the following people have been indicted and imprisoned: civil society activists A.Dzhumayev, A.Ashim, Y.Narymbayev, S.Mambetalin, B.Blyalov, R.Ginatulin, S.Dosov, O.Khalabuzar; religious figures Sh.Kibirov, N.Seitzhanov, Y.Kabduakasov; bloggers S.Baikenov, M.Tkachyov, U.Aliaskarov, Ye.Taichibekov, T.Valova-Shevtsova, and many others.

Recommendations:

1) Decriminalize libel and insult, eliminate enhanced protections for officials. Decriminalize the violations of the privacy rights. Consider decriminalizing defamation and ensure that imprisonment is never pronounced as penalty for defamation. Repeal or otherwise revise the other legal provisions limiting freedom of expression, including provisions on insult, with a view to bringing them into conformity with the ICCPR.

2) Limit the use of such retaliatory measures as suspending and closing the mass media to exceptional cases only. In accordance with the criteria of the HR Committee, eliminate the requirement of re-registration of mass media in the event of a change in topicality and frequency. The right of publication must be reserved to the mass media for a period of at least one year from the date of registration. The mass media must be relieved from liability for citing open sources and publishing information on government officers and officials, and officials of other organisations that are legal entities.

3) Exclude extrajudicial blockage of Internet resources.

4) Bring Article 174 of the Civil Code in line with the principle of legal certainty and predictability by excluding the possibility of its use to restrict the freedom of speech and freedom of expression.

II. Freedom of association

1. The Constitution and legislation of Kazakhstan do not recognize the rights of citizens to join the so-called informal organisations, i.e. those that do not require state registration as a legal entity.

2. It follows from the law enforcement practice of the judicial and prosecutor's office that in certain cases an NGO created by a group of citizens who do not claim the status of a public association and who have not acquired the status of a legal entity is deemed to be an unregistered public association and its organizers are subjected to administrative liability. Similar problems arise with unregistered religious associations.

3. There are a number of problematic issues pertaining to the procedure of registration of not-for-profit organisations in Kazakhstan. Primarily, the problem is the size of the registration fee, for which public non-profit organisations are equated to commercial companies. Kazakhstani NGOs have been pointing out such unfair situations, however no decision has been made so far. The other problem is how the activities of public associations, an organisational and legal form of non-profit organisations, are distinguished on a territorial basis: local, regional and national. Registering a regional public association requires having branches in more than one oblast, while in order to register a national association, branches in more than half of Kazakhstan oblasts, including the capital and the city of national significance, are required. Had the regional or national status of a public association given it any additional rights, advantages or powers, the state's requirement for registration of the branches in a certain number of administrative and territorial entities would have been understandable. But such a status provides no such benefits whatsoever.

4. Kazakhstan legislation permits exceptional measures to suspend and terminate public associations for any violations, however insignificant and minor, if they are committed after a previous administrative penalty. This is how several public movements and parties have been liquidated or suspended (e.g. the Communist Party of the Republic of Kazakhstan). Public associations may also be subjected to administrative liability for any activities that, while fully legal otherwise, "go beyond the charter-stipulated goals and tasks." Article 49 of the Civil Code provides that engaging on a systematic

basis in activities that are not aligned with a legal entity's statutory goals may create grounds for its liquidation.

5. The Civil Code contains a number of articles that provide for increased criminal liability for members of public associations and their heads as compared to regular citizens who are not members of such associations, including for "illegal meddling by public associations with the work of government bodies." The current CC also has a definition of a special legal subject – leader of a public association, who in the absence of a definition of the principle of legal certainty and predictability is subjected to enhanced criminal liability under several articles of the CC.

6. Since 2017, a special requirement has been introduced for reporting by NGOs to a special body – Ministry for Religions and Civil Society (now renamed to the Ministry of Information and Public Development) – which provides for full information on the NGOs, its founders, programmes and projects, as well as additional reporting by any legal entities and individuals who receive foreign financial assistance for legal support, sociological polls and studies, as well as collection, analysis and distribution of any information.

7. Registering political parties continues to be an arduous task and does not comply with international standards. In a country with a population of 18-million, the legislation requires a party to have at least 40,000 members to be registered, including at least 600 members in every oblast. The procedure of establishing a political party is rigidly regulated by the legislation, which prescribes a number of actions such as the creation of an organisational committee, registration with notification, holding a founding congress of 1,000 members within two months, and submitting a list of 40,000 members within four months. Violating timeframes or other procedural requirements will result in a refusal to register the party.

8. The independent trade unions continue to experience pressure, including in connection with the adoption in 2014 of a new Law on Trade Unions, which caused serious criticism from the International Labour Organisation and the International Federation of Free Trade Unions. The use of this law has led to the elimination of many independent trade unions, including liquidation of the Confederation of Independent Trade Unions of Kazakhstan and prosecution of its President L.Kharkova and leaders N.Kushakbayev, A.Yeleusinov and E.Baltabai.

9. The new edition of the CC which was adopted in 2014 essentially made it legal to apply repressions with respect to the independent public associations. Article 403 of the CC provides for criminal liability for illegal meddling by the members of public associations with the work of state bodies; Article 404 makes it criminal to establish, manage and participate in independent public and other associations; Article 405 provides for criminal liability for the creation and participation in the work of a public or religious association or other organisation after a court verdict has been delivered banning it or terminating it due to it having been involved in extremism or terrorism, with punishment varying from fines to imprisonment (3 to 6 years). Given the lack of clear criteria, definitions and vagueness of those terms that are in use, any opposition organisations and informal public associations may be drawn into the orbit of a criminal prosecution under those articles.

10. In March 2018, the opposition movement "Democratic Choice of Kazakhstan" was proclaimed extremist and banned, despite the absence of evidence of a violent nature, goals or activities. Dozens of sympathizers were held criminally responsible for participating in the movement's activity or simply for re-posts and likes in social networks in its support. Some of those people were subjected to a restraint of liberty or even imprisoned, and banned from engaging in public activities, and some were prohibited from attending trainings, seminars and roundtables with socio-political and socio-economic agenda, or participating in public associations, and so on. Among the civil society activists

who were sentenced for “participating in the banned DCK” are A.Abishev, B.Khalelova, A.Tobylova, F.Ishmukhametov, M.Argynbekov, B.Zhunosov, and others. At the end of 2018 A.Abishev was sentenced to four years for participating in the DCK movement.

11. Aside from that, the authorities often use accusations of “propaganda of terrorism and extremism.” A number of civil society activists, including A.Zhumagulov, K.Abishev and others, have been given long sentences on said charges.

12. Moreover, the HR Committee was not only concerned about this issue, but also selected it for its follow-up procedure. The implementation of these recommendations was evaluated in August 2018: “(...) The Committee reiterates its recommendation and requests that the State party comment on information received that the new trade union laws regarding registration have been used to deliberately prevent trade unions from being able to function. The Committee would appreciate information regarding why and under what process the Confederation was closed down, and asks for the State party’s comments on the detention and arrest of Amin Yeleusinov and Nurbek Kushakbayev. The Committee regrets that the State party has provided no information regarding the grounds for the suspension or dissolution of political parties. The Committee (...) requests more information about the efforts made to alleviate undue control and interference in the activities of public associations, specifically regarding: (a) the regulations under which grants are awarded by the State party; (b) how members of the specialized operating body are appointed; (c) how members of the independent expert commission considering applications are appointed and who the commission consists of; and (d) if any other mechanisms are in place to ensure that control over or undue interference in funding is not taking place.”⁴ The issue of trade unions and suspension of political parties both received a C-grade from the HR Committee, meaning that no steps were taken to implement these recommendations. The last issue on undue interference received a B-grade, meaning partial implementation.

Recommendations:

- 1) *Bring legislation regulating the right to freedom of association in line with international human rights and liberties standards that recognise the right to create or participate in associations and unions, including articles 19, 22 and 25 ICCPR and informal ones.*
- 2) *Exclude from the legislation the provisions of mandatory state registration of citizens’ associations, and legal norms of liability for their work only on the basis of a lack of registration.*
- 3) *Bring the restrictions and sanctions with respect to implementation of the right to freedom of association in line with international standards and admissibility criteria.*
- 4) *Refrain from criminalizing public associations, including political parties, for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty.*
- 5) *Reduce the number of members of a party required for its registration down to one thousand or less and bring the provisions on the registration of political parties in line with international standards.*
- 6) *Revise the legislation on trade unions and bring it in line with international standards and recommendations of the International Labour Organisation and international trade union associations.*
- 7) *Revise the provisions of criminal legislations pertaining to participation in public and religious associations in line with the doctrine of necessity in a democratic society, and principle of proportionality.*

⁴ Follow-up letter from the HR Committee, 1 August 2018, available here : http://ccprcentre.org/files/documents/FU_Kazakhstan.pdf

8) Ensure that the new legislation on the allocation of funds to public associations will not be used as a means of undue control and interference in the activities of such associations nor for restricting their fundraising options.

III. Right to freedom of peaceful assembly

1. Kazakhstan has failed to implement the recommendations from the previous UPR cycle of on the right of freedom of peaceful assembly. The State did not take any steps to change its legislation on assembly and regulatory practices. Analysis of Kazakhstani laws, which regulate the right to freedom of peaceful assembly, show that they fail, to a great extent, to comply with the principles and provisions of the international law and recommendations provided by international organisations. Kazakhstan also failed to implement a similar recommendation from the HR Committee: “The State party should ensure that all individuals fully enjoy, in law and practice, their right to freedom of assembly, and revise all relevant regulations, policies and practices with a view to ensuring that any restrictions on freedom of assembly, including through the application of administrative and criminal sanctions against individuals exercising that right, comply with the strict requirements of article 21 of the Covenant.”⁵

2. Legal regulation of all forms of peaceful assembly covered by the Law requires permissions rather than notification and applies similar rules. In contradiction to international standards, current laws contain no distinctions between participants and passers-by, who happen to be around at the location, as well as observers: newsmen, human rights defenders and others from the point of view of holding them responsible if the actions are found to be illegal. As a result, newsmen, incidental observers, onlookers, are held liable in a number of cases.

3. Current laws contain no provisions obliging state authorities, even law enforcement bodies, to assist people in exercise of their rights to peaceful assembly and protect participants of a legal peaceful assembly. The entire law enforcement practice based on the above laws leads to mass denials of peaceful assemblies, persecutions, fines and administrative arrests of organisers and participants of unauthorised peaceful pickets and meetings. As in the past, holding a peaceful assembly is only possible in specially designated places as determined by the *maslikhats* (local executive branch bodies), which makes it impossible to hold pickets and meetings near the buildings where authorities sit, or demonstrations and marches. Holding a meeting is only possible based on a group application; holding a single-person meeting is not legally possible.

4. It should also be noted that in the law enforcement practice, the courts of Kazakhstan began to apply Article 50 of the Criminal Code: “Deprivation of the right to hold a certain position or engage in certain activities” with a view to imposing additional punishment in the form of deprivation of the right to participate in peaceful assemblies for a certain period.

5. The Code on Administrative Offences (Article 488) and CC of the RoK (Article 400) stipulate liability for violating the legislation on the procedure of organisation and holding peaceful assemblies, marches, pickets and demonstrations, and any other public showings. Sanctions vary from warnings and fines to an administrative arrest for a period of up to 50 days.

6. Monitoring that the KIBHR conducted in 2017 demonstrated that a repressive legislation on peaceful assemblies results in a drastic decrease of this form of civil participation; permits are issued extremely rarely, and the number of unsanctioned events exceeds 85%. Aside from pickets, meetings and marches, the authorities consider as unsanctioned such public events and flash mobs, laying of wreath at monuments, walks with air balloons and hunger strikes in public places. Dozens of

⁵ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §51-52.

participants of peaceful protests have been detained and held administratively liable for participating in unsanctioned peaceful events, including for dissemination of information in the Internet or for intent to organise an event.

7. The recommendations by the UN High Commissioner for Human Rights⁶ to create an international commission to investigate the tragic events in Zhanaozen and Shetpe railway station in 2011, where according to official records 16 protesting citizens were killed at the hand of the police, have not been implemented. This also echoes the recommendation from the HR Committee urging the authorities to “*carry out an independent, impartial and effective investigation into the individual deaths and injuries in connection with the events in Zhanaozen*”⁷, This recommendation was also selected as urgent recommendation by the HR Committee under its follow-up procedure. Recent assessment from the HR Committee showed that no progress was made to this issue, as the State received a C-Grade (no implementation)⁸.

Recommendations:

1) *Carry out a reform of the legislation on peaceful assembly and change the law enforcement practices, including the adoption of a new law which would guarantee the right to freedom of peaceful assembly and be in line with international standards, in particular the OSCE Guiding Principles and the Venice Commission of the Council of Europe (freedom of assembly), as well as article 21 ICCPR in which:*

- *set forth a presumption in favour of the freedom of organisation and holding of peaceful assemblies;*
- *spell out the principle of non-discrimination with respect to the use of the right to peaceful assembly;*
- *introduce a clear concept structure with respect to the forms of peaceful assembly that need to be regulated;*
- *establish a possibility to hold peaceful assemblies by notice;*
- *determine the forms of peaceful assemblies that do not require notice based on the numbers of their participants;*
- *provide for the possibility of holding unplanned/spontaneous meetings;*
- *include an exhaustive list of places and locations where peaceful assemblies may not be held, or are restricted;*
- *establish clear procedures for agreeing on a location, time and procedure for holding peaceful assemblies between organizers and authorized state bodies;*
- *establish procedure that allow for expedited and effective review of complaints, including through judicial channels, against refusals or other restrictions of the right to freedom of peaceful assembly;*
- *establish the main rules of conduct for law enforcement officers, including the standards of training of law enforcement officers in using alternatives to brute force and firearms, including peaceful resolution of conflicts, understanding crowd behaviour, and learning methods of convincing, negotiating and mediation, as well as the use of technical means in order to limit the use of brute force and firearms.*

2) *Implement the recommendations given by the UN High Commissioner for Human Rights and HR Committee on the full investigation on the tragic events in Zhanaozen and Shetpe railway station.*

IV. Right to freedom of conscience, freedom of religion, freedom of faith

⁶ See UN News, 12 of July, 201. UN High Commissioner for Human Rights calls on authorities of Kazakhstan to agree with an international investigation of the tragic events in Zhanaozen <https://news.un.org/ru/story/2012/07/1205431>

⁷ See Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §17-18

⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 16 juni 2015, A/HRC/29/25/Add.2, available here: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_25_Add.2_E.docx.

1. The previous UPR recommendations issued to Kazakhstan on ensuring the right to freedom of conscience, religions and faith, have not been properly and fully implemented. They also echo similar concerns from the HR Committee. No progress on such recommendations can be observed in particular on conscientious objection to military service and undue restrictions to the freedom of religion.⁹

The state has been focusing only on implementing the general recommendations given by the HRC¹⁰ which are directly related to the improvement of the practice of respect of the right to freedom of religion. As an example, the state bodies continued to promote the inter-religious dialogue and best practice exchange with other countries by holding international conferences and seminars.

2. In the legislation of Kazakhstan, and especially in its law enforcement practice, the right to freedom of conscience and religion (faith), despite the construction of the constitutional and legal norm which defines that “everyone has the right to freedom of conscience,” is considered a collective right, not as an individual one. Such an interpretation, which contradicts international standards and legal concepts, results in the formation of a special sectoral “religious” legislation that contains an entire number of restrictions which contradict the internationally-accepted principles of international law in the field of human rights and admissibility criteria for restricting human rights and liberties.

3. The main regulatory legal act in the field of legal regulation of the right to freedom of conscience and religion (confession of faith) which is the Law of Kazakhstan On Religious Activity and Religious Associations contains a number of restrictions that do not comply with the main principles of international law on human rights (the principle of presumption in favour of the right, the principle of legal certainty and predictability, the principle of proportionality).

4. Said law and a number of subordinate acts issued thereunder are aimed at rigorous regulation of religious activity, violate everyone's right, together with others, to have and spread religious and other views and act upon them, violate the constitutional principle of separating religious associations from the state with regard to disproportional interference of the state in the matters of religious associations, violate the right to freedom of association and freedom of expression, introduce unreasonable restrictions on the spread of religious views, missionary activities, etc. In addition, the law introduces a requirement for a religious expert examination of all published or imported materials for their consistency with a certain religious doctrine, which constitutes a direct interference with the activity of religious associations.

5. The number of members required for establishing a religious association seems unjustifiably high: 50 persons for a local association, 500 for a regional one and 5000 for a national one, as well as the geographical “fix” of religious associations. If the expectation is that in order to conduct missionary activities, and to have the right to establish, rent and maintain places of worship or religious meetings that would be wide open for public access, one needs to obtain the status of a legal entity, then it is important that the requirements for obtaining such a status should be not too high, so as to allow even small groups to carry on this kind of ordinary religious activity. Attempts to classify the religious associations as local, regional and national so that they will only be allowed to carry on their religious activity in the region where they are registered, are discriminatory as compared to other types of legal entities, with the exception of public associations that suffer from the same discriminatory restrictions. This legal provision is reminiscent of the infamous old Soviet “*propiska*,” only this time with respect to religious and public associations.

⁹ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §45-48.

¹⁰ See. Report of the Working Group on the UPR published on 10 of December 2014 A/HRC/28/10, articles 125.31, 125.34, 125.37, 125.77.

6. The current legislation restricts the freedom of expression and the right to disseminate religious literature and other information materials of religious nature, and religious items, by: introducing censorship (in the form of religious expert examination) which is prohibited by the Constitution of the Republic of Kazakhstan; restrictions on the locations where religious literature and religious materials may be distributed; restrictions on who exactly may disseminate religious views and materials; and by requiring that the religious associations specify their full name on all religious materials. All these restrictions represent serious violations of the international law when it comes to guarantees of freedom of religion and freedom of expression.

7. The current legislation stipulates that the state has the right to make a judgment on whether a religious practice is acceptable or not by conducting a religious expert examination which serves as the basis for a decision to register or to refuse to register the religious associations, missionaries, or to terminate a religious association. This goes against international standards and practices, except for some post-Soviet countries. The “religious expert examination” provides plenty of opportunities for abuse of power and discrimination. Such an examination is not compatible with the protection of religious freedom. The right to freedom of religion, guaranteed under international law, excludes any freedom by the state with respect to determining the legality of religious views or means of expression of such views.

8. The grounds that are provided in the administrative and criminal legislation of Kazakhstan for administrative or criminal liability for violating the legislation on religious activity and religious associations sometimes have vague definitions, such as for instance “religious extremism” or “inciting religious discord,” which do not satisfy the principle of legal certainty and predictability.

9. The recommendations given by the HR Committee¹¹, experts of the OSCE Office for Democratic Institutions and Human Rights, UN Special Rapporteur on Freedom of Religion or Belief, regarding the elimination of the mandatory registration of religious associations, alternative military service, revision of the requirements of registration of missionary activities, appointment of the heads of religious associations, practices of censorship of religious literatures, and others, have not been accepted by the Kazakhstan authorities.

10. Over a number of years after adoption of the new legislation on religious activities and religious associations, the followers of various confessions, especially smaller ones or so-called “non-traditional,” have been subject to persecutions: they have been denied registrations due to their small numbers (less than a 50-person threshold required for registration), they have been held administratively liable for dissemination of religious views or materials outside of designated places, they have been persecuted for unlawful missionary work, and so on. Sanctions vary from fines to imprisonments for “inciting religious discord.”

Recommendations:

1) Revise the legislation and article 22 of the Constitution so that it ensures and protects the right of every citizen to freedom of conscience and religion (belief) in accordance with international standards, including Article 18 ICCPR.

2) Review the Law on religious activity and religious associations and relevant by-laws with a view to bringing them in line with international standards while taking into account the recommendations from the HR Committee, experts of the OSCE Office for Democratic Institutions and Human Rights, and UN Special Rapporteur on Freedom of Religion or Belief.

3) Eliminate mandatory registration of religious associations and ensure that the legislation pertaining to registration guarantees the rights of citizens to freedom of practicing their religion and religious

¹¹ Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §14, 45-48.

beliefs, including without the need to establish formal organisations, as is required by the ICCPR. Ensure that the non-registered communities have the opportunity to practice their belief free of discrimination and fear of threats.

4) Decrease the minimal number of members of religious association required for state registration to ten persons, as is stipulated for public associations. Various territorial statuses for religious and public associations should be excluded as they violate the international guarantees of the right to freedom of assembly (association).

5) Take measures to review the legislation of Kazakhstan to provide a provision on alternative military service. The law must establish a right to refuse military service on the basis of religious and other convictions, and replace it with an alternative service. Ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors.

6) Eliminate the institute of the “religious expert examination,” and leave theological studies and discussions to research institutes, higher educational establishments, and spiritual centres.

7) Revise anti-extremism and anti-terrorism legislation so as to bring it in line with the ICCPR and relevant remarks and recommendations from the HR Committee.

8) Review the provisions of the administrative and criminal legislation in part pertaining to the liability of religious associations, their management and individual followers, for violations of the current legislation, by bringing them in line with the principle of legal certainty and predictability, and doctrine of proportionality (commensurability) with lawful purposes.