

KAZAKHSTAN

LIST OF ISSUES

Analysis, Commentary, and Recommendations¹

Submitted to the UN Human Rights Committee

**in connection with the consideration of the second periodic report of
Kazakhstan**

Kazakhstan International Bureau for Human Rights and Rule of Law, Charter for Human Rights, Feminist League, Legal Policy Research Center, International Legal Initiative, Union of Crisis Centers in Kazakhstan, Media Net, Freedom of Speech Foundation “Adil Soz”, Children Fund of Kazakhstan, Confederation of Free Trade Unions of Kazakhstan, “Aman Saulyk” Foundation. International Partnership for Human Rights (Belgium) provided language editing support.

August 2015

¹ Parts of this document have been produced with financial assistance of the European Union within the project “Action for Freedom from Torture in Kazakhstan and Tajikistan”. The document’s contents are the sole responsibility of the NGOs issuing it and can in no way be taken to reflect the views of the European Union and the co-funding Open Society Foundations.



КОАЛИЦИЯ
ПРОТИВ ПЫТОК



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Introduction:

The following analysis, commentary and recommendations on the Human Rights Committee's List of Issues concerning Kazakhstan was developed by a group of Kazakhstan NGOs: Kazakhstan International Bureau for Human Rights and Rule of Law, Charter for Human Rights, Feminist League, Legal Policy Research Center, International Legal Initiative, Union of Crisis Centers in Kazakhstan, Media Net, Freedom of Speech Foundation "Adil Soz", Children Fund of Kazakhstan, Confederation of Free Trade Unions of Kazakhstan, and "Aman Saulyk" Foundation.

Most of the issues included in the list are similar to those Kazakhstan NGOs presented in 2010 parallel to the initial report of Kazakhstan, as the situation with respect to basic political rights and civil freedoms had not significantly changed since then.

Issue 1. Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented, right to effective remedy (art. 2)

Kazakhstan's constitutional provision of the supremacy of international norms over domestic legislation is only declaratory in effect. The international treaties ratified by Kazakhstan do not have a direct application in the legal system in practice. The courts almost never apply or refer to the provisions of the Covenant in their decisions. The status of international treaty law has been further downgraded by the decision of the Constitutional Council of 18.06.2006, whereby it declared that when the provisions of an international treaty contradict the Constitution, which is established as the supreme law of Kazakhstan, such treaty in full or in part shall not be executed.

The national laws regulating the exercise of rights protected by the Covenant are often couched in broad terms, or contain „escape clauses”, thus giving large discretionary powers to the executive bodies. The resulting practice is that human rights become regulated by internal rules, executive orders and other types of by-laws, which put certain limitations on them without due process or judicial review. For instance, procedures of preliminary inquiry, rules and conditions of detention, internal procedures of closed institutions, etc. are all regulated by various executive orders or decrees. Some of these documents are usually classified for internal use only and are closed to public scrutiny.

There is no effective remedy in practice in cases of violations of human rights protected by the Covenant. The judicial review of decisions of police and prosecutors within criminal proceedings, provided for in the law, almost never bring positive results in terms of remedying the violations. The courts are reluctant to attribute compensations to victims of unlawful actions by state bodies, including the cases of unlawful arrests, prosecution, etc. The rate of enforcement of remedies granted by courts is low or unreasonably delayed. There are insignificant level of acquittals at all instances by courts in criminal trials, even in cases of ill-founded criminal charges brought by prosecutors, or violations of procedural rights during investigations of such charges.

Kazakhstan's human rights institutions are also of little use in the process of obtaining remedies for human rights violations. Their weaknesses result from their statutory and practical dependence on the executive, limited powers of investigation, and the negligible effect of their recommendations on the actions of state agencies. The status and practice of such institutions clearly fail to comply with the Paris Principles on functioning of human rights institutions.

Recommended questions:

- a) Please, provide examples of when Covenant provisions have been invoked by the courts of the State party, and clarify whether and how the Covenant is directly applicable as the law of the land.
- b) Please indicate if national human rights institutions such as the Ombudsman, Human Rights Commission and others are in compliance with the Paris Principles (General Assembly resolution 48/134), especially with the requirements of independence, broad mandate, adequate funding, methods of operations, and quasi-judicial authority. Please, explain whether all the recommendations regarding individual complaints adopted by the Ombudsman have been fully implemented. Please explain whether the establishment of NPM attached to the Ombudsman changed the legal framework as related to Paris Principles, and if the Ombudsman's Office is represented in all the regions of the country, and what financial means are at its disposal. The Ombudsman Office is located in the official governmental building with the limited access of the public. What is the procedure of the access of ordinary citizens to the Ombudsman?
- c) Please describe the practice of obtaining remedy for violations of rights, protected by the Covenant, in particular information concerning judicial review of decisions by law-enforcement agencies (art. 106 of the Criminal Procedure Code), rate of granted remedies to victims of illegal arrest, prosecution, etc (arts. 922, 923 of Civil Code), the rate of acquittals in criminal cases that have entered into force, and the rate of enforcement of judicial decisions for the reporting period.

- d) Please, provide information on the practice of imposing limitations on the exercise of certain rights protected by the Covenant, through the system of executive orders and decrees. Please indicate which documents affecting the exercise of such rights are classified for internal use only, and describe rules of public access to these type of documents.

Issue 2. Discrimination against women and domestic violence (art. 3)

Despite the government's efforts to improve the situation of women in Kazakhstan, there are persistent problems in practice that are not adequately addressed by state policies. Women comprise 52% of the population, but there is continuing underrepresentation of women in public and political life and in decision-making positions, including in Parliament, local representative bodies, the executive bodies, local government, as well as in diplomacy. For instance, there are only 26 women among the 107 parliament members in the lower chamber of the Mazhilis (23%), and only 3 among 47 senators (6,4%).

The recently adopted legislation on equal opportunities fails to include the concepts of formal and substantive equality, the prohibition of direct and indirect discrimination against women, or discrimination by public and private actors. In this regard, the definition of discrimination contained in the law is rather limited and not in line with Article 1 of the CEDAW.

The situation of women in the labor market remains disadvantaged. There continues to be occupational segregation between men and women, a persistent wage gap and a high level of unemployment among women. For instance the average salary of women amounts to 61% of that among men.

It is necessary to revise the list of prohibited types of labor activities for women and to improve working conditions, that are dangerous for the health of women, in order to promote the work of women in such professions. As there is no law against sexual harassment at work, the problem of sexual harassment for women at work is acute.

Kazakhstani courts do not apply broad interpretation - rape with the use of violence or threat, actions without penetration (vaginal intercourse), in conformity with the Convention and the Committee's legal practice under the Optional Protocol. The practice based only on women complaints about domestic violence is continuing and an institute of mediation and reconciliation in cases of violence against women is implemented.

The situation with regard to domestic violence and violence against women remains alarming. About 500 women and young girls die every year from domestic violence and about 20 000 rapes are registered annually by police. The official numbers are not adequate to reflect the situation in practice concerning violence against women due to the low rate of crime reporting and lack of gender and age sensitive indicators for generating criminal justice statistics. Lack of specific guidelines on investigating crimes of domestic violence leads to low rates of prosecution of offenders.

There are neither any general special "hot-lines" for establishing emergency contact with victims of domestic violence nor access to free legal aid for them. There are no social services standards with financial possibilities for providing effective assistance in the re-socialization for domestic violence victims. Protecting orders, as temporary instruments to protect women from the violator, are applied in practice, but there is no clear algorithm for tracking their performance.

Recommended questions:

- a) Please provide information on the number of women employed in the public sector. What programs have been developed for increasing professional developments/requalification for women of pre-retirement, on what professions, and what percentage of women over 50 years old are employed in the different economic sectors?

b) What kinds of prevention programs with perpetrators who commit domestic violence are used and who carries out this work with the aggressors? Please provide statistics on crimes committed in the sphere of the family and domestic relations against women, which reflect results of the adoption of the Law "On Prevention of Domestic Violence" in 2009 on all types of domestic violence (physical, psychological, sexual and economic).

c) Please explain if in practice women who are victims of domestic violence, including rural women, have access to immediate means of redress and protection, such as restraining orders, access to safe shelters, legal aid, social support, etc.

d) What measures are taken against sexual harassment at the workplace?

Issue 3. Right to life (art. 6)

In December 2003, Kazakhstan established a moratorium on execution of death sentences with a view to completely abolishing the death penalty. In 2004, the legislature introduced in the penal code a new measure of criminal punishment of life imprisonment as an alternative to the death penalty. In 2006, Kazakhstan supported the UN General Assembly Resolution (A/RES/62/149), which proclaimed a global moratorium on the death penalty. In 2007, Kazakhstan introduced amendments to its Constitution abolishing the death penalty for all crimes except terrorist offenses, those involving loss of life, and grave offences committed in wartime. In 2015, Kazakhstan introduced a new Criminal Code with an increased number of crimes punishable by the death penalty – 17.

The State party fails to undertake adequate measures to ensure the protection of life as the supreme human right. One example is the situation with the number of deaths in closed institutions, including custody, penitentiary and medical institutions. Civil society organizations raise concerns about torture, ill-treatment and poor medical conditions as the leading causes of deaths in custody. Official explanations of causes of deaths either relate to medical conditions, such as the tuberculosis or to self-injuries and inter-prisoner violence. No information is available to the public on the results of investigations and remedies provided to the victims' families.

Recommended questions:

- a) Please provide information on the State party's strategy to completely abolish the death penalty. Please explain how the 2007 constitutional amendments and new Criminal Code adopted in 2014, whereby more than 17 crimes are now potentially punishable by the death penalty, are consistent with the state's gradual policy of abolishing the death penalty?
- b) Please, provide detailed information on the total number of deaths in all closed institutions, including custody, penitentiary and medical institutions for the reporting period, as well as on the causes of deaths, results of investigations and remedies granted to the victims' families.
- c) Please, provide information on reported instances in which persons, especially women and children, have been infected with life threatening diseases, including the number of resulting deaths, at government-run medical facilities. What measures has the State party taken by to hold the responsible officials accountable and to provide full-scale financial, social and medical support to victims and their families?

Issue 4. Prohibition of torture and cruel, inhuman or degrading treatment (art.7)

The former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, after his mission to Kazakhstan in May 2009, concluded that the use of torture and ill-treatment clearly goes beyond isolated instances. The mission report of the Special Rapporteur supported NGO allegations on common violations by Kazakhstan of its obligations concerning the prohibition, punishment and prevention of torture. Thus, torture

frequently occurs at early stages of criminal investigations when a person is held in effect incommunicado, due to lack of custodial safeguards in practice such as prompt access to a lawyer, a doctor, a judge, and contacts to the outside world in general. Evidence obtained through torture (including threats) or ill-treatment is commonly used as a basis for conviction. The number of torture-related complaints increased significantly after the transfer of the penitentiary system from the Ministry of Justice to the Ministry of Internal Affairs. No independent body for the investigation of claims about torture and ill-treatment yet exists. Access of NGOs to closed institutions is improving because of the establishment of the NPM, but is not subject to clear rules that are respected, and does not cover all places of detention. The existing complaint mechanisms are ineffective. The rights of torture victims to monitor the process of preliminary inquiry and criminal investigation, to demand the timely recording of evidence or to present their own evidence are substantially limited. The rate of investigation and prosecution for torture is rather low compared to the numbers of complaints on torture reported by NGOs. There are still significant gaps in the State party's policy and practice regarding compensation and rehabilitation. On the other hand, there are some positive signs. Kazakhstan has implemented CAT decisions and in two cases paid compensation to the victims. At the same time, Kazakhstan ignores the principle of «non-refoulement» in decisions on extraditions and deportations.

Recommended questions:

- a) Please provide information on the number of complaints received on torture and ill-treatment during the reporting period, including the number of opened criminal cases, number of prosecutions, types of punishment against perpetrators and number of compensations paid to the victims or their families. Please explain how the requirements of promptness, impartiality and independence of investigation are implemented in practice by the State party's law enforcement bodies. Please describe the law and practice regarding the rights of torture complainants during the preliminary inquiry on torture. Please indicate if civil society organizations are able to monitor official investigations on torture complaints.
- b) Please explain what actions judges and prosecutors take in practice during the trial or pre-trial detention hearings in cases of defendants complaining of torture/ill-treatment. What is the common practice of courts regarding the treatment of evidence that has been allegedly received as a result of torture or ill-treatment? Please provide data to support the answers, in particular on the number of complaints of torture made during trials, number of legal motions brought and granted on exclusion of evidence obtained through torture/ill-treatment, number and result of judicial orders ("chastnoe postanovlenie"), issued by courts against police and prosecutors, on violations of procedural rights, including freedom from torture.
- c) Please, provide information on the number and types of all places of detention where persons are deprived of liberty temporarily or for extended periods of time, including administrative, medical and educational. Please, provide information about the NPM, procedures of monitoring and publicity of the results of monitoring.
- d) Please provide information about the measures undertaken to implement the recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
- e) Please provide information about the implementation of the CAT decisions related to Kazakhstan in the reporting period.

Issue 5. Elimination of slavery and servitude (art. 8)

Legislation and practice regarding forced labor in penitentiary institutions do not comply with Kazakhstan's obligations under the Covenant and the ILO Convention on Forced or Compulsory Labor. Refusals of prisoners from work due to lack of alternatives, harsh circumstances of labor or

health conditions result in harsh disciplinary measures, which negatively affect the prospects of their early release or may even lead to additional prison terms.

Trafficking in persons for the purposes of forced labor has been a growing tendency in recent years. Cross-border and in-country trafficking in women and children for sexual exploitation continues to be an alarming practice in Kazakhstan.

Few cases of trafficking are resolved. Only 17 calls to the hotline number 116161 were registered in the first half of 2015 pertaining to forcible deprivation of liberty and work exploitation. But due to the poor quality of the investigations, only one criminal case was opened. For the purpose of rehabilitation, victims of trafficking do not have access to social services that would involve any financial expenses for the state and since 1 January 2015, when the new Criminal Procedure Code came into force, victims have no right to use the services of a lawyer for free and free legal aid.

The use of child labor has been increasing in the reporting period. The ILO office in Kazakhstan reported of the common areas of exploitation of children, such as: agriculture (cotton, tobacco, **livestock-breeding**, etc), construction, transportation, trade markets, criminal structures for drug trafficking and prostitution. The legislative and practical measures taken by the government to combat trafficking and use of child labor are not effective in practice, as they fail to address the problem's root causes, i.e. poverty and lack of social support in rural and economically disadvantaged areas.

Recommended questions:

- a) Please explain how the provisions on prison labor of the new Code of Corrections are compatible with the obligations under Article 8 of the Covenant and the ILO Convention on Force or Compulsory Labor. Please provide information on the rights of prisoners with regard to prison labor and on legal consequences for refusal to perform compulsory labor that is not prescribed by the court decision.
- b) Please provide information on the comprehensive measures taken by the State party to combat human trafficking in its territory and the region. Please, supply the data on criminal convictions related to human trafficking, including for trafficking in women and children for sexual exploitation.
- c) Please, provide data on the use of child labor in the country. Please, explain how this practice is addressed by the government's law enforcement, educational and social support institutions? Please, provide data to support the answers, including statistics on the number of convictions for exploitation of children, on the level of school enrollment among children, and allocation of financial resources, etc.

Issue 6. Liberty and security of persons (arts. 9)

Arrests of persons on criminal charges in Kazakhstan do not comply with the minimum requirements of the Covenant: detainees are not duly informed of their rights and the reasons for arrests (in spite of the fact that the new Criminal Procedure Code adopted in 2014 contains the provisions similar to Miranda Rule); they may be held in unregistered places of custody; the documentation of arrests is normally delayed, increasing the de-facto duration of 72-hour custody prior to judicial appearance; and the use of police violence during arrests is wide-spread and not subject to any review or remedy in practice.

The practice of administrative arrests and detentions raises no less concern than in the area of criminal justice. The law allows for a person to be held for up to 30 days by the prosecutor's sanction in temporary administrative detention centers, solely for the lack of permanent place of residence or documents to verify his or her identity.

The procedure for judicial sanctioning of detention fails short of *habeas corpus* standards. The hearing is limited to formal review of eligibility criteria for detention, without looking into the criteria of reasonableness, proportionality and necessity of detention in the individual circumstances. The law does not provide for judges to look into the lawfulness of arrests, exercise of individual rights at the time of arrests, as well as for the option of resorting to alternative measures of prevention, such as bail. As a result, judges merely rubber-stamp the prosecutors' motions for arrests. The duration of pre-trial detention in practice may extend to several years before the person is brought to trial.

Recommended questions:

- a) Please describe how the rights of individuals upon arrest on criminal charges, guaranteed by Article 9 of the Covenant, are upheld in practice. Please provide information on the time at which arrests are usually documented in practice; the manner of informing an individual of his/her rights, reasons for arrests and the nature of criminal charges; the period of time before the person is brought before the court; and availability of judicial review of lawfulness of arrest. Please supply data on the number of unlawful arrests and amounts of compensation paid to persons, whose rights were violated.
- b) Please explain how the procedure for judicial sanctioning of detention is compatible with the habeas corpus requirements under article 9 of the Covenant. Please, provide data on the use of pre-trial detention in comparison to other alternative measures of prevention during the reporting period. What measures are taken by the State party to bring the law and practice regarding judicial sanctioning of detention in line with the requirements of the Covenant?
- c) Please describe the legislation and practice on the use of administrative detention against persons without permanent place of residence or documents to verify their identity. Please explain how the practice of sanctioning the detention of a person for up to 30 days by the prosecutor in such cases is compatible with the requirements of Article 9 of the Covenant.
- d) Please indicate the average duration of pre-trial detention and the number of cases when the pre-trial detention exceeds one year. What measures are being taken by the State party to decrease the average duration of detention? Please comment on the practice of holding defendants, who have been ordered for pre-trial detention, in places of police custody (temporary detention facilities) for up to 30 days.

Issue 7. Treatment of persons deprived of their liberty (art. 10)

Despite the government's declarations about the putative "humanization" of criminal justice policy, the introduction of NPM and decrease of prison population, the situation in the penitentiary system is still unacceptable. The highly punitive approach reflected in penitentiary policies and practice, including overly long prison terms and the use of regimes that effectively use restrictions on contacts with the outside world as punishment, continues to be a concern for human rights organizations. The situation worsened with the transfer of the penitentiary system back to the Ministry of Internal Affairs, and the adoption in 2014 of a new Criminal Executive Code, which contains more repressive provisions related to the rights of prisoners. The use of solitary confinement without due process of review is commonly used by prison administration as a disciplinary measure. Conditions of detention, prescribed by law for prisoners sentenced to life- or long-term imprisonment, amount to inhuman treatment or torture. Wide discretionary powers given by law to prison administrations impinge on the rights of prisoners for early release or may even lead to additional sentencing. Penitentiary administrations set up prisoner associations and let them regulate the law and order among inmates. This leads to numerous violations of prisoners' rights including violence among inmates. The use of torture and ill-treatment in prisons continues to be a practice, which periodically leads to instances of self-mutilation by prisoners on a mass scale as means of protest.

Recommended questions:

- a) Please provide the grounds for transfer of penitentiary system from Ministry of Justice back to the Ministry of Internal Affairs.
- b) Please indicate how criminal-executive legislation regulate the discretionary powers of prison administrations, in particular with regards to early-release procedures.

c) Please, explain how the procedure and practice in the State party of using solitary confinement as punishment is compatible with the Article 10 of the Covenant. Please provide data on the number of prisoners held in solitary confinement cells, including information on the grounds and duration of such detention.

d) Please provide information concerning legislation and practice of regulating the rights of detainees in custody and pre-trial detention regarding contacts with the outside world and the rights of life- and long-term prisoners. Please explain how they are compatible with the Article 10 of the Covenant?

e) What measures are taken by the government to prevent torture and ill-treatment in prisons by setting up independent and effective channels of bringing complaints by prisoners to an independent body for investigation?

f) How is the establishment and functioning of prisoner associations, with regulatory powers towards other prisoners, compatible with the Article 10 of the Covenant and the Standard Minimum Rules for the Treatment of Prisoners?

g) Please provide information about the conditions and right of persons sentenced to administrative arrest.

Issue 8. Freedom of movement, recognition of legal personality and rights of aliens and (arts. 12, 13,16)

The government continues to employ a strict system of registration of its citizens by place of residence. The absence of such registration prevents persons from obtaining identity documents and consequently from recognition of their legal personality. Those who want to leave Kazakhstan to move abroad for permanent residence need to obtain permission. Foreigners in Kazakhstan who reside in places other than their address of registration are subject to administrative sanctions. Deportation of foreigners can take place by executive decisions of law-enforcement bodies or migration authorities.

Recommended questions:

a) Please explain how the absence of registration in a certain place of residence affects the enjoyment of civil and political rights and recognition of legal personality in general of individuals residing in the State party. What is the process of imposing sanctions in cases of violations of registration rules, including by foreigners? Please provide information on the process of obtaining permissions from state authorities for persons moving abroad for permanent residence, including on the number of cases when such permissions were denied or delayed.

b) Please provide information on the cases of deportation of foreigners when such orders have been issued by state bodies other than judicial. How is the right of individuals to judicial review of administrative decisions on deportation implemented in practice?

Issue 10. Right to a fair trial (art. 14)

The report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, following his mission to Kazakhstan in 2004, revealed important shortcomings of the justice system, affecting the right to fair trial; to date, these shortcomings still exist, as the State party failed to implement the recommendations of the Special Rapporteur. Thus, the right to a fair trial is effectively denied in practice due to several factors, such as:

- lack of institutional independence of the judiciary, both in law and practice, combined with the long established judicial "culture" of corruption

- excessive procedural powers of prosecutors in criminal and civil cases, leading to dominant status of the Prosecutor's Office in comparison to judiciary and legal profession which are even strengthened in a new Criminal Procedure Code put in force in January 2015
- general failure of legislation and practice to adhere to the minimum standards of procedural guarantees in civil and criminal trials, such as presumption of innocence, equality of arms and right to defense.

Examples of violations include: restricted access of the public to court buildings; prosecutorial nature of the judges' exercise of their functions at trials, expressed in rhetoric to defendants, especially in jury trials, or in verdicts, which often copy the language of indictments; denial of the right to choose one's own counsel, especially in cases involving state secrets where only lawyers with special access to state secrets are allowed to act as defense counsels; and denial of the right to effective defense, as a result of the insignificant rate of granted motions to defense counsel at trials in comparison to those of prosecutors.

Recommended questions:

- a) Please provide information on the measures taken by the State party to implement the recommendations of the Special Rapporteur on the independence of judges and lawyers, particularly concerning such issues as promoting judicial independence in law and practice, reducing the prosecutor's dominating role throughout the judicial process and targeting the root causes of the judicial "culture" of corruption.
- b) Please provide detailed information on how the procedural guarantees of publicity, presumption of innocence, equality of arms and right to defense are upheld in practice. Please comment on the reports that the access to court buildings can be restricted beyond the cases provided for in the law, and that judges unfairly and groundlessly deny motions of defense counsels at criminal trials and use prosecutorial language in oral hearings or written verdicts. Please, explain how the practice of denying a person the right to choose a defense lawyer, especially in cases involving state secrets, is compatible with Article 14 of the Covenant. How is the procedure of granting access to lawyers to cases involving state secrets regulated in law and in practice?

Issue 11. Privacy (art. 17)

In spite of the fact that in 2013 Kazakhstan adopted new legislation on personal data there are no effective remedies to protect the full scope of the right to privacy. The protection afforded to honor and reputation, especially that of the state officials, against the exercise of the right to self-expression is much stronger than that of the family, home and correspondence. Newspapers and journalists are regularly served with court orders that award unreasonable compensations in defense of the honor and reputation of state officials. Search and seizure interferences with the privacy of home and correspondence continue to be sanctioned by the prosecutor. There are no effective practical mechanisms in place to ensure data protection.

Recommended questions:

- a) Please provide information on the legislative and practical measures taken by the State party to ensure the protection of home, family and correspondence and personal data from arbitrary interference. Please explain the rationale behind the legislative and judicial practice of affording greater protection of the honor and reputation for state officials than to freedom of expression of journalists and newspapers and how is it compatible with provisions of the Covenant?
- b) Please, explain what measures the State party is planning to take to bring its practice of prosecutorial sanctioning of search and seizure in line with the requirements of Article 17 of the Covenant.

Issue 12. Freedom of religion (art. 18)

The government's policy on regulation of religious organizations and freedom of religion in general is excessively restrictive. The new legislation on religious organizations and religious activities adopted in 2011 sets unreasonable prohibitions and limitations to the exercise of this right, such as by requiring mandatory registration of religious organizations and activities, including missionary and religious education, dissemination of religious literature, materials and items, and by imposing harsh administrative and criminal sanctions for violation of the registration requirements and provisions of the law. In practice, law enforcement bodies treat the activities of religious organizations as potential threats to national security. The government openly demonstrates a policy of preferential treatment to traditional religions, while taking steps to prevent the influence and development of new religions in the country. In the last couple of years there were a number of cases when believers were accused of spreading extremist views or incitement of religious hatred in trials, which raises serious concerns about justification and impartiality of the judicial proceedings.

Recommended questions:

- a) Please explain how the provisions of the new law on religious organizations and religious activities are compatible with the Article 18 of the Covenant, in particular regarding mandatory registration and reporting and limitations on missionary, educational and other activities of religious groups and the scope of liability and interference in the internal activities of religious groups, such as election of leadership, limitations on dissemination of religious literature, materials and items, prohibition of collective religious practices in private premises.
- b) Please provide data on re-reregistration (according the new law put in force in that regard in 2012) and registration of religious groups of non-traditional denominations, indicating information on the number of denials, pending registration and on legal grounds for such decisions. Please indicate the cases when the activities of religious organizations were terminated by court decisions, including information on compliance with due process requirement in such cases.
- c) Please, provide data on cases opened against believers and leaders of religious associations for violating the new law on religious associations and religious activities.

Issue 13. Freedom of expression and information (art. 19)

In Kazakhstan, as before, domestic legislation and practice regarding freedom of expression and receiving and disseminating information continue not to be in line with the principles enshrined in the Covenant.

The new Criminal Code that came into force on 1 January 2015, reduced the criminal liability for insult, but it increased the criminal liability for libel/defamation. When libel/defamation is not connected to its public dissemination, the maximum penalty is now one year of imprisonment. The maximum penalty under the Article on libel/defamation is three years' imprisonment.

The second (periodic) report about Kazakhstan's implementation of the Covenant states: "Since there is a constitutional right of citizens to protection of their honor and dignity and their business reputation, at the current stage it is not envisaged to consider the question of a full abolition of the criminal prosecution for libel, defamation and insulting the honor and dignity of citizens." The authors' affirmation that this position is fully in line with Article 19 of the Convention is groundless, as a range of UN documents explain that deprivation of liberty for defamation is not permissible. In particular, in its General Comment no. 34 (2011) the Human Rights Committee stated: "States parties

should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”

Contrary to the principle of equality of all before the law and the court, the same Criminal Code kept heightened measures of protecting the reputation of various categories of officials, beginning with the President of the country. A new Article (Art. 274) was added that carries imprisonment of up to ten years for disseminating undoubtedly false information, which fully contradicts Article 19 of the Covenant.

The new Code of Administrative Offences (CAO) kept sanctions such as the closure of media outlets for technical mistakes, for example, for giving incorrect figures of a print run, an incorrect date or registration number of the media outlet.

The Civil Code still contains the responsibility of media outlets for unintentionally causing moral harm. There is no statute of limitation in disputes about protection of honor, dignity and business reputation. No limits are given for sums to cover moral damages, which can lead to the ruin of media outlets and journalists.

The Law “On mass media” still envisages not a notification but an obligatory registration of new media outlets. Some conditions of registration are directly related to creative aspects of the activities of media outlets, and the registration procedure is not transparent.

The Law “On TV and radio broadcasts” does not envisage the independence of the regulating broadcasting agency. It does not set out a clear and precise order of registration and licensing.

In 2014, based on their monitoring, civil society organizations recorded 38 cases of criminal prosecution for exercising the right to freedom of expression. Fifteen of these cases related to libel/defamation and resulted in two punishment verdicts. Eight cases related to inciting social, ethnic and religious hatred. Courts closed two independent newspapers and one journal and the decisions were made with legal violations.

In the first five months of 2015, in the context of exercising their right to freedom of expression, receiving and disseminating information, media outlets and citizens were charged with libel/defamation in eight cases, with inciting ethnic hatred in three cases, disseminating undoubtedly false information in three cases, and there were 39 cases of pre-trial claims and suits about the protection of honor, dignity and business reputation. The blogger Tatyana Shevtsova-Valova was found guilty for inciting ethnic hatred and sentenced to a suspended sentence of four years’ imprisonment with a probation period of three years. The blogger Saken Baykenov was found guilty for inciting social, ethnic, clan, racial, class or religious disagreement and sentenced to two years’ limitation of freedom. For the publication of a critical reader’s letter the court demanded that the owner of the domain www.nakanune.kz, Gyuzel Baydalinova, pay 20 million tenge to the bank that was criticized by the reader.

The extra-judicial practice of blocking Internet resources and individual publications on websites continues. In 2014, for example, information about the prosecution of the journal “ADAM bol” was blocked on the following and other websites: www.adilsoz.kz, <http://rus.azattyq.org/>, www.ratel.kz.

Since May 2015, Yaroslav Golyshkin, the main chief editor of the independent newspaper “Versiya” has been under arrest. He is accused of participating in an extortion. The accusation was

brought up following a journalistic investigation in which he interviewed a rape victim who alleged that the son of a senior official was the perpetrator.

Recommended questions:

- a) Why are libel/defamation and insult criminalized and why are heightened measures of protection granted to officials by the criminal legislation of the state-party, and how does this conform with Article 19 of the Covenant?
- b) Please provide information about the registration procedure of new media outlets, limitations regarding monopolization of media, the ban on ownership of media outlets by foreign citizens and companies.
- c) Please provide information about the grounds to stop the activity of and close down media outlets and the number of closures and liquidations of media outlets in the period under review.
- d) Please provide information about the grounds and practice of extra-judicial blockage of internet-publications, the number of blocked sites and internet-publications in the period under review.
- e) Please provide information on the number of journalists held criminally liable for defamation in the reporting period, including the amounts of damages awarded in these cases. Please provide the same information about civil cases against media. Please indicate the measures taken by the State party to bring its legislation in line with the requirements of Article 19 of the Covenant.
- f) Please provide information on the number of court decisions in civil and administrative cases on termination, restriction or prohibition of print media and their editions, as well as decisions on administrative sanctions to media and their representatives.
- g) How does the State party regulate access to government-held information, including by journalists? What measures are taken by the State party to adopt specialized legislation on access to information?
- h) How does the state regulate the ownership of media and broadcasting to ensure equal access and prevent a government monopoly? What measures are taken by the State party to simplify the rules of registration for print media and broadcasting companies in accordance with Article 19 of the Covenant?

Issue 14. Right to peaceful assembly (art. 21)

The right of peaceful assembly in Kazakhstan is so excessively limited by law and practice that in effect individuals are denied their right to gather peacefully in public places. The legislation refers the decision on the place and time of assembly to local authorities. In practice they often delay their decisions and designate remote places for assembly, thus defeating the purpose of the meetings and setting additional organizational obstacles. The law enforcement bodies use excessive force to break up unregistered meetings despite the peaceful nature of their conduct. Sanctions for violating the regulations pertaining to the conduct of assemblies are harsh and are imposed without due process guarantees. Violations of the right to peaceful assembly were highlighted in the Report of the Special Rapporteur on Freedom of Association and Assembly, who visited Kazakhstan in January 2015.

Recommended questions:

- a) How does current legislation on regulating the conduct of peaceful assemblies, in particular concerning such issues as mandatory registration, determination of place and

- time of assembly, liability and nature of administrative sanctions, and use of force in cases of unregistered assemblies, comply with the requirements of Article 21 of the Covenant?
- b) Please provide data on the number of granted and rejected applications for the conduct of peaceful assemblies during the reporting period, especially in the administrative capitals of Almaty and Astana. Please provide information on the number of persons held liable for unauthorized assembly and on the nature of imposed sanctions in such cases.
 - c) Please provide information related to concerns expressed by the Special Rapporteur on Freedom of Association and Assembly, including Zhanaozen events.

Issue 15. Freedom of association and right to take part in the conduct of public affairs (arts. 22, 25)

Legislation on registration of public associations, especially political parties, trade unions and religious associations is extremely restrictive and has evidently been developed with the aim of suppressing political pluralism and dissent. For instance, in the country of 16 million, the law requires a minimum of 40 000 members for a political party to register. There is a mandatory registration of trade unions, religious and public associations. To register public associations, the law requires a minimum of 10 members and to register local religious associations the law requires a minimum of 50 members. A regional religious association (in two and more regions of the country) requires 500 members and national religious association (in more than a half of regions of the country), 5000. The procedures of registration are open to abuse and arbitrariness. The new Criminal Code of Kazakhstan, put in force in January 2015, contains a provision about criminal liability of “leaders” of public associations. The term “leader” of a public association is not defined in the law and thus lacks compliance with the principle of legal certainty and predictability. Violations of the freedom of association were highlighted in the Report of the Special Rapporteur on Freedom of Association and Assembly who visited Kazakhstan in January 2015. Legislation regarding elections is no less undemocratic.

Recommended questions:

- a) Please provide information on the legal and practical measures taken by the State Party to promote freedom of association, including information on the number of registered public associations, political parties, trade unions and religious associations, number of refusals to register political parties, trade unions and religious associations, procedure of monitoring the activities of public organizations and types of sanctions imposed for non-registered activity.
- b) Please explain what the term “leader” of public association means regarding its use in legal procedure.
- c) Please explain how the legislation on political parties is consistent with the principles of democratic governance and requirements of Articles 22 and 25 of the Covenant.
- d) Please explain how the legislation on religious associations and religious activities is consistent with the guarantees of freedom of religion (Article 18 of the Covenant) and freedom of association (Article 22 of the Covenant).
- e) Please, provide information related to concerns expressed by the Special Rapporteur on Freedom of Association and Assembly.

Issue 16. Rights of the Child (art. 24)

There are over 20 thousand undocumented citizens in Kazakhstan, including about 2,000 children who cannot access education or health care without individual identification numbers.

Due to reorganization of the children rights protection system in 2012, Children Rights Protection Departments, which coordinated and controlled state bodies' activities on protection of children's rights and promoted their interests, were liquidated. To date, this function is partially performed by the Committee for the Protection of Children's Rights, which is under the Ministry of Education and Science. The effectiveness of this body is low due to lack of representatives at the regional level, which also complicates work on the organization of emergency assistance in individual cases. Due to this, there is an urgent need to establish an independent institution in the form of a Commissioner for Children's Rights (Ombudsman) with a number of field offices.

Juvenile justice, as a set of public institutions and social and educational services, which should protect the rights of minors and develop a child-friendly justice system, is just developing in Kazakhstan. To humanize the juvenile justice system it is necessary to provide an apartment-cell housing system for under-aged children in closed correctional facilities. In order to maintain family relationships it is necessary to create areas in the correctional facilities for adult people at domiciles of minors.

There is no access to a free of charge national helpline service (150) for children and young people in closed correctional facilities.

Recommended questions.

- a) Are there any national or regional coordinated action plans to protect rights of homeless children, orphans and children not attending school, especially in rural areas?
- b) Please describe what measures are undertaken regarding children without identification documents to assign them individual identification numbers (IIN), which would allow implementing their rights to education, health care, etc.
- c) What steps are planned to establish a complaint mechanism for children? Is it planned that a Children Ombudsman institution will be established as an independent body with sufficient human resources, finance, and representations in the regions for the effective protection of children's rights?
- d) Please provide statistics on sexual offenses against minors, and what measures are taken by the state to prevent sexual violence against children.
- e) Are there any opportunities for further training of teenage girls who became young mothers because of early pregnancy? Are there any programs to improve parental responsibilities in child rearing? What are indicators for measuring the effectiveness of these programs?
- f) Please indicate how many children can use their right "to be heard", addressing the national helpline for children and young people, including those in closed correctional institutions. Who is funding the helpline activity, which response measures are used to protect the rights of children when receiving a call from the child for the protection of his rights, and what government agencies are involved in this?
- g) Please provide statistics across the regions of the country on how many child - victims of cruel treatment have been removed from the family by court decisions for rehabilitation and placed under the protection of the state institution for children.

Issue 17. Non-discrimination, equality before the law (arts. 26)

In spite of the successive recommendations of the UN Committee on Elimination of All Forms of Racial Discrimination, the UN Committee on Elimination of All Forms of Discrimination against

Women, the UN Committee on the Rights of the Child, the UN Committee on Human Rights, the UN Council on Human Rights regarding necessity of including in Kazakhstani legislation the definition of the "discrimination" in accordance with the International Convention on Elimination of All Forms of Racial Discrimination, developing and adopting of a special anti-discrimination legislation, creating of anti-discrimination institutions equipped with efficient anti-discrimination procedures, the State Party did not achieve any progress in this issue.

Recommended questions:

- a) What plans does the State Party has to implement the recommendations of the UN Committee on Elimination of All Forms of Racial Discrimination, the UN Committee on Elimination of All Forms of Discrimination against Women, the UN Committee on the Rights of the Child, the UN Committee on Human Rights, the UN Council on Human Rights for ensuring respect and protection of the right to non-discrimination?
- b) Please provide information about normative - legal acts of the State party aimed at preventing discrimination on any grounds;
- c) Please provide the following information: what specialized government agencies are responsible for investigating of all complaints on discrimination on any grounds;
- d) Please provide statistics on the number of appeals to the governmental, including judiciary, bodies of the State Party with complaints on discrimination and what are the outcomes of these complaints.