

MATERIALS

Developed by Kazakhstan Non-Governmental Human Rights Organizations in Line with Paragraph 15 c) Annex to Resolution 5/1 and General Guidelines of the Human Rights Council within the Framework of the Implementation of the Universal Periodical Review Mechanism

KAZAKHSTAN

Materials have been provided by non-governmental human rights organizations of Kazakhstan: Almaty Helsinki Committee, Atyrau oblast Youth Resource Center, Kazakhstan Children's Fund, Kazakhstan International Human Rights and the Rule of Law Committee, Committee for Monitoring Penal Reform and Human Rights, Crisis Center «Podrugee», Crisis Center «Zabota», Women's League of Creative Initiative, International Fund for Freedom of Speech Protection «Adil So3», International Journalism Center MediaNet, NGO «Amulet», NGO «Childhood», NGO «Childhood Without Borders», SF «Charter for Human Rights», OS «Women's Association or Development and Adaptation», OS «Namys», OS «Legal Center of Women's Initiatives «Sana Sezim», OS of mothers of disabled children «Raduga», OS «SKO Center for Support to Women», SF «Aman Saulyk», SF of the Center for Development and Adaptation «Fenix», SF "Fund for Parliamentarism Development in Kazakhstan", Republican Network of Independent Observers, ROS «Kazakhstan Confederation of Trade Unions», Feminist League, Center for Legal Policy research, Center for Protection of Children and Family Support, Center for Legal Assistance to Ethnic Minorities, Environmental society «Green Salvation», International Organization «Penal Reform International».

Materials include general assessment of the situation with human rights in the Republic of Kazakhstan in terms of legislative, institutional and practical problems in insuring and protecting basic human rights and freedoms in line with the international commitments of the state.

The materials include references to analytical reviews, optional reports provided by the non-governmental human rights organizations to treaty bodies of the United Nations Organizations to other reference materials that contain additional information and factual data supporting the conclusions and recommendations included into these materials.

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I. GENERAL INFORMATION AND FRAMEWORK BASIS

A. Scope of international commitments

1. Kazakhstan has ratified the majority of international human rights treaties, including International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, however national legislation has not been brought into compliance with the international-legal obligations and liabilities assumed.

2. The State does not apply, either in the legislation or law enforcement practice, fundamental principles of the international law in the area of human rights and freedoms, such as principles of necessity and proportionality of limitation of human rights and freedoms, principle of legal certainty and predictability and non-discrimination principle, Syracuse principles of limitation and denial of rights in the International Covenant on Civil and Political Rights and etc.

(1)

3. When insuring and protecting basic human rights and freedoms and eliminating their

violations the Republic of Kazakhstan does not practically use background documents endorsed within the framework of the United Nations Organization, Organization on Security and Cooperation in Europe, the so called «soft law» as well as such sources of the international law in the area of human rights as resolutions of the national human rights bodies («case law»), including UN Convention bodies, UN Human Rights Commission, European Court on Human Rights in Strasbourg and etc.

4. The Republic of Kazakhstan has not ratified the Rome Statute of the International Criminal Court. No crimes have been committed on the territory of the country that would be covered by the International Criminal Court however ratification of the Rome Statute would have considerably contributed to the development of the criminal justice and appropriate legal process development in Kazakhstan. (2)

5. The Republic of Kazakhstan has not ratified International Convention of 1990 on Protection of all the labor migrants and members of their families, International ILO Convention № 97 on labor migrants of 1949 (revised) and ILO Convention №143 on labor migrants (additional provisions).

***Recommendations.** The national legislation and law enforcement practice in the field of human rights implementation and protection should be brought into compliance with the international liabilities of the Republic of Kazakhstan, having ensured wide use of basic principles of the international law and international standards in the area of human rights, including the ones that are to be found in resolutions, comments and remarks of the UN Convention bodies and other super-national human rights organizations and institutions. The Rome Statute of the International Criminal Court should be ratified. All the basic international treaties on human rights in the area of migration should be ratified.*

B. Constitutional and legislative basis

6. Legislation and law enforcement practice do not ensure adequate measures and procedures of effective legal protection.

7. Human rights victims are not ensured access to effective, immediate, thorough and impartial investigation on the part of the State and its bodies regarding these violation facts; in the majority of cases no any measures are taken with regard to the assumed violators and this leads to their impunity and lack of confidence on the part of violation victims in the efficiency of the measures of legal protection and impossibility to get any damage indemnity.

8. Public bodies and institutions that bear responsibility for public order maintenance (ordre public) and national security bodies when implementing their functions are not controlled by representative power bodies (Parliament), courts and other competent independent institutions and bodies. Obviously there is the dominance of executive power branch in the State, separation of powers is nominal to a great extent and the policy of checks and balances is of little efficiency.

9. Legislation in the field of human rights and freedoms is fraught with ambiguity, language inaccuracy, which allows the authorities to interpret these or those law provisions based on the principle of expediency, multiple reference norms and non-compliance with the principle of legal certainty and predictability.

10. In the law enforcement practice power representatives very often are guided not by the international liabilities of the Republic of Kazakhstan, constitutional provisions or the norms of law but by the provisions of by-laws (instructions, rules and etc.), which very often do not meet either international norms or Constitution or legislation currently in force in the country.

11. In 2008 the Supreme Court of the RK adopted Regulation regarding the implementation of the norms of international treaties; however in reality the courts do not apply the norms of international treaties related to human rights ratified by the Republic of Kazakhstan as well as international human rights standards.

C. Institutional and human rights structure

12. In the Republic of Kazakhstan there are two national human rights institutions: Human Rights Commission under the President of the Republic of Kazakhstan and a Human Rights Commissioner of the Republic of Kazakhstan (Ombudsman). However, none of these institutions meets Paris Principles related to the status of the national institutions in charge of human rights promotion and protection.

13. Human Rights Commission under the President of the RK has consultative-advisory status and the Human Rights Commissioner institute of the RK has been set up not under the law but under the Decree of the President of the RK. The competence of this national human rights institution is considerably limited by the prohibition to consider complaints regarding the activity and decisions of the President, Parliament of the Republic of Kazakhstan and its deputies, Government of the Republic of Kazakhstan, Prosecutor General, Central Election Committee and court of the Republic of Kazakhstan.

14. Recommendations on bringing the status and competences of the national human rights institutions in Kazakhstan in line with the Paris Principles are presented in number of comments and remarks of treaty bodies and UN institutions. **(3, 4, 5)**

***Recommendation.** Legislative basis for setting up and activity of human rights institutions in the Republic of Kazakhstan, specifically Human Rights Institute in the RK should be brought in line with the Paris Principles.*

II. HUMAN RIGHTS PROMOTION AND PROTECTION

A. Cooperation with human rights mechanisms

15. Recommendations, concluding remarks and comments of the UN treaty bodies regarding consideration results of reports of the state as to the implementation of the ratified international human rights treaties or missions of special UN procedures are not practically published and are rarely implemented. Thus, out of 16 recommendations of the UN Committee against Torture made in 2001 only less than half have been implemented and only few of the recommendations of the UN Committee on Racial Discrimination Elimination have been implemented.

***Recommendation.** Recommendations of the UN treaty bodies should be published and awareness of the society should be raised regarding their implementation.*

B. Implementation of international commitments in the area of human rights given the norms of the international humanitarian law

Equality and non-discrimination

16. Practically speaking there is no antidiscrimination legislation, no antidiscrimination institutes and procedures in Kazakhstan. There is no judicial practice to consider cases of discrimination by sex, race, ethnicity, political and religious preferences, sexual orientation **(6)**, age, social status and etc. though there are negative processes and facts indicating the presence of serious problems in the society.

17. Law enforcement practice avoids correct legal qualification of violations confirming discrimination facts. Imperfection of the national legislation, ambiguity of legal signs of discrimination, forms and ways, lack of criteria that would allow judgment as to the presence of discrimination in a specific case excludes the possibility for a victim to prove a discrimination fact.

18. There is no judicial practice of considering discrimination claims; most often in the legal aid agencies and in the courts they believe that statement of claim should include not the request to eliminate discrimination but signification of a specific right violation **(4, 6, 7, 8)**.

***Recommendations.** A set of legislative, administrative and organizational measures should*

be in place in order to promote development of effective antidiscrimination institutes, mechanisms and procedures. Recommendations of the UN Committee on Elimination of All Forms of Racial Discrimination of December 10, 2004 developed based on the results of the review of the Initial – third Reports of the Republic of Kazakhstan as to the implementation of the International Convention on Elimination of All Forms of Racial Discrimination should be implemented.

The Right to Life (Право на жизнь)

19. In December 2003 termless moratorium on capital punishment until the issue of its complete abolishment is resolved was declared based on the Decree of the President of Kazakhstan. In March 2004 imprisonment for life was introduced in Kazakhstan as an alternative to capital punishment.

20. Within the framework of the chosen approach to gradual resolution of the issue of capital punishment abolishment Kazakhstan joined the Statement of the European Union regarding the capital punishment abolishment made on 19.12.2006 at the 61st Session of the UN General Assembly. Kazakhstan has also supported the Resolution of the 62nd Session of the UN General Assembly «Moratorium on the Extreme penalty with the further consideration of the possibility to abolish capital punishment» endorsed on 18.12.2007.

21. In the middle of 2007 amendments were introduced into the Constitution of Kazakhstan, in line with which capital punishment is considered by the Law as an extreme penalty for terrorist crime linked with the death of the people, as well for extremely grave crimes committed in the war time. In 2009 criminal and criminal-procedural legislation was brought in line with the new version of the Constitution of the RK, which closed the possibility for the State to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

22. During the entire period of independence no terrorist crimes have been committed in Kazakhstan, for which perpetrators could have been sentenced to capital punishment, and no state of martial law has been declared while capital punishment could have applied only in case of murder in aggravating circumstances, for which this punishment is no longer imposed. **(9)**

Recommendation. *Such type of punishment as death penalty should be excluded out of the criminal legislation of the Republic of Kazakhstan. The Second Optional Protocol to the International Covenant on Civil and Political Rights should be ratified.*

Right to freedom and personal security

23. In the Republic of Kazakhstan detainees are registered, as a rule, not from the moment of actual detention but from the moment the protocol of «administrative» or «criminal» detention is developed; not in all the cases detainees are informed about the rights they enjoy and about minimum guaranteed rights. There are cases of keeping in custody in places that are not formally recognized as detention facilities (safe houses of the national security bodies) and keeping people in the position of «incommunicado».

24. From August 1, 2008 arrests are sanctioned by the court. This step on the part of the State is aimed at implementing its international obligations, however the procedure of judicial arrest sanctioning does not meet in full the principles and objectives of the «habeas corpus» institute and does not guarantee a person's protection from tortures and illegal detention. The function of the court is limited to the study of the materials concerning circumstances, which are taken into account when selecting prosecution measures, such as availability of the permanent residence place, identification certificate, information on the violation of the previously selected restraint measures, presence of any facts regarding the attempts to escape from criminal prosecution bodies.

25. The court does not have direct responsibility to assess the legality and validity of detention itself. The functions of the court do not include interrogation of a suspect, accused in case of temporary detention as to the possible violation of his/her rights. Court sessions are held in a closed mode and the issue of arrest sanctioning by the court is not considered earlier than in

72 hours after the detention. Courts of the First Instance normally sanction an arrest, in which the criminal case is considered on the merits later on.

Recommendations. *Procedures of arrest authorization by the court should be brought in line with the international standards and practice. Implementation of the rights of detainees since the moment of their actual detention, including mandatory notification about all their rights should be ensured.*

Freedom from tortures and other types of cruel treatment and punishment

26. In 1998 Kazakhstan ratified Convention against Tortures and other Cruel, Inhuman or Degrading types of Treatment and Punishment while in 2008 it ratified Optional Protocol to the Convention against Tortures and made respective statements to Articles 21 and 22.

27. In 2001 the UN Committee against tortures gave recommendations to Kazakhstan, the largest part of which remained unimplemented. **(10, 11).**

28. Kazakhstan does not demonstrate «zero» tolerance to existing torture related problem. Sanctions of Article 347-1 CC RK do not stipulate adequate punishment for torture use. Interpretation of the actions covered by the concept «tortures» is possible under Articles of the CC RK «Abuse of Powers» and «Compulsion of Evidence», which eliminates the possibility to obtain accurate information as to the prevalence of torture cases and other cruel or degrading kinds of treatment and punishment in Kazakhstan.

29. Tortures, psychological pressure and threats are widely used by the members of the law enforcement bodies with the aim of achieving «self-reported case» and confession in committing a crime.

30. In Kazakhstan no independent specialized body to consider complaints of torture and ensure quick, impartial and narrow inquiry of torture cases has been set up. There is no independent system of visiting custody facilities without prior notification and a number of custody facilities, specifically investigative cells of the National Security Committee are under the body in charge of the investigation. **(12)**

31. Evidence obtained as a result of tortures is used by investigation bodies for prosecution and later on is not examined by the courts, while complaints of torture use are considered as an attempt to avoid criminal responsibility.

Recommendations. *“Torture” definition that would be in compliance with Article 1 of the UN Convention against Tortures should be introduced into the criminal legislation of Kazakhstan. Punishment for torture use should be toughened. An independent special body to consider torture complaints should be set up and international standards regarding effective investigation of torture cases should be introduced («Istanbul Protocol») into the guidelines on investigation of cases of torture and other cruel and degrading treatment and also punishment with mandatory interview of torture victim and immediate implementation of independent forensic-medical expert examination. An independent national preventive mechanism congruent to Optional Protocol and Convention against Tortures should be set up in the course of 2010.*

Freedom of expression (freedom of speech)

32. Legislation of the Republic of Kazakhstan that regulates the activity of mass media and journalists to a considerable extent does not meet international standards. Criminal Code of the RK includes six articles that protect honor and dignity of officials, the President of the country, members of the Parliament, power representatives are among them. Injury of dignity and defamation are decriminalized. Administrative law includes more than fifty independent elements of offence in the sphere of media activity. At this in the majority of cases suspension or termination of media issuance as well as confiscation of the number of copies printed, including for absolutely technical weaknesses are stipulated as a way of sanction.

33. In July 2009 the President of Kazakhstan signed the Law «On Introduction of Amendments and Additions into the Legislation on Informational-communicational Networks», which introduced additional control over Internet. According to the Law all the Internet-resources (sites, blogs, chats, forums, Internet-shops and etc.) are considered to be media and

their owners and journalists bear criminal, civil and administrative responsibility. The Law mandates Internet-providers and site owners to store in the space of two years all the personal data of Internet subscribers and users obtained through their registration on the Internet website. In recent years about 100 cases have been registered in Kazakhstan when independent and oppositional Internet-publications were blocked.

34. In 2008 claims were advanced to media on recovery of the moral damage for the sum exceeding 10 mln USD. No limitation periods for reclamations to media have been set by the legislation. Journalists charged with defamation and with the breach of the state secret are to be found in penitentiary institutions.

***Recommendations.** Defamation and encroachment on the honor and dignity of officials should be decriminalized. The procedure of media registration should be simplified. Limitations on the media monopolization should be introduced. Prohibition on holding mass media by foreign citizens and companies should be cancelled. Use of such punishment measures as suspension or prohibitions for the media functioning should be limited. The law on access to information for the citizens and mass media, including among other things a list of possible limitations for access to information conforming to international standards should be passed. A law on Internet regulation given that it violates international principles and norms of freedom of opinion expression should be repealed. The practice of extrajudicial blockage of Internet publications should be terminated. Limitation of action under the claims to mass media on business reputation protection and moral damage indemnification should be limited. Journalists deprived of liberty when implementing their professional responsibilities should be set free.*

The right to peaceful assemblies

35. Legislation and law enforcement practice of Kazakhstan in the area of implementation of the right to freedom of peaceful assemblies does not meet international standards. Legal regulation of all forms of public activities and actions, including flash-mobs, meetings with the deputy candidates or deputies of representative power bodies, service of petitions is of permissive nature and is implemented under unified rules with mandatory application submission not later than 10 days prior to the activity date.

36. Public activities, for which no permission on the part of the authorities is granted regardless their peaceful nature, are very severely suppressed while organizers and participants are called to administrative responsibility, including administrative arrest up to 15 days. Judicial bodies practically in all the cases make decisions in favor of the prosecution, police and local executive power bodies. **(13)**

37. Local authorities assign one or two sites for holding peaceful assemblies, including pickets, rallies and demonstrations, in the capital – Astana, Almaty and in oblast centers, including in the suburbs, which undermines the right itself to peaceful assemblies as an expression of public opinion and a protest with regard to actions and decisions of specific public bodies and officials.

***Recommendation.** Legislation and law enforcement practice in the area of the rights of the people to peaceful assemblies should be brought into compliance with international standards and in the first place with the OSCE Guidelines on the right to peaceful assembly.*

The right to association

38. Legislation of the Republic of Kazakhstan ensuring the right to association does not meet international standards to a considerable extent. State registration of any public association is mandatory; the activity of unregistered public association is prohibited under the law and entails administrative and criminal responsibility for the organizers or participants and activity suspension or association liquidation. **(14)**

***Recommendation.** The law in the area of implementation of human rights to association should be brought into compliance with the international standards of human rights and freedoms, determining the right of a person to set up and join organizations, unions and associations, including those of informal nature. Provisions on mandatory state registration of*

associations of citizens and legal norms regarding their responsibility for their activity only under the reason of missing registration should be excluded out of the legislation. Limitations and sanctions should be brought into compliance with international standards and admissibility criteria.

The right to freedom of conscience, religion, religious denomination

39. Legislation currently in force and law enforcement practice in the Republic of Kazakhstan in the sphere of freedom of thought, conscience and religion does not meet international standards to a considerable extent. It is based on the principle of «presumption of guilt», subjectively interpreted ideological and political expediency and discriminatory approach to the activity of religious associations; they are of permissive-limitation nature, they impose many prohibitions and limitations that completely or partially do not meet respective criteria of admissibility of human rights and freedom limitations formulated in the international rights, do not meet the principles of legal definiteness and predictability.

40. In law enforcement activity of the nomocracy and national security bodies religious associations are considered to be sources of national security threat. Different responsibility is set for religious associations for legislation violation compared to other legal entities; the rights of chapel «together with others» (prohibition for the activity without registration), the right to recognize the legal status, to missionary activity and religious education, to procurement and use of religious literature and articles of worship, the right to establishment and maintenance of international contacts and etc are limited.

41. The state exercises rigid control over the activity of non-traditional religions and religious movements. Members of the nomocracy and special-services practice raids with confiscation of religious literature, preachers are called to responsibility for religious seminars that are held outside of legal address of a religious association. At the beginning of 2009 the preacher of the Unification Church was sentenced to 2 years of imprisonment (later on imprisonment was substituted for a fine) for delivering a religious lecture based on a biased and incompetent expert examination. **(15)**

Recommendations. *The policy of the state with regard to religious groups and associations should be brought in line with the international standards in the sphere of freedom of thought, conscience and religion. The existing Law “On Freedom of Religion and Religious Associations» should be revised and a new Law “On Freedom of Religion and Religious Associations», which should, as a minimum, contain expanded concept of freedom of conscience and religion, meeting international standards should be adopted; wide typology of religious associations given their specific character; the principle of declarative nature of accounting registration and voluntary nature of state registration; terms of state registration, non-discriminatory compared to terms of other legal entities should be passed.*

The rights of women

42. In 1998 Kazakhstan joined the UN Convention on Elimination of all Forms of Discrimination against Women and in 2000 ratified Optional Protocol to it. In 2000 and in 2007 the 1st, 2nd and 3^d regular reports on the Convention implementation and also Alternative Reports of Kazakhstan NGO were submitted. The National Commission on Family and Demographic Policy under the President of the RK was set up in 1999. In 2006 the National «Strategy on Gender Equity of the RK for 2006—2016» was endorsed.

43. Regardless the formal efforts on the part of the Government the position of women in Kazakhstan is in need of real support and gender correction. Women in Kazakhstan make up 52% of the population, however their representation in the Parliament amounts only to - 11,1% (7 out of 154 deputies). The average salary of women in Kazakhstan makes up 61% of the average salary of men. Based on the hotline information of the NGO «Aman-Saulyk» in 2008 80% calls were made by elderly people and women in connection with violation of their rights to have an access to health care. Health index of women makes up 20-30%. More than 60% of women have anemia. Abortion is still a predominant contraceptive method. Annually 20-25

women die of abortion, 570-590 women and girls die of domestic violence and 20 thousand of them become victims of rape or sexual assault.

44. Aggression in the family remains a problem, which is due to impunity, inadequate measures on the part of law enforcement bodies and community tolerance with regard to violence against women. In 1999 and in 2007 the UN Committee on Women's Rights and in 2007 the UN Committee on the Rights of the Child recommended Kazakhstan to urgently develop and pass laws that would protect women and children from domestic violence. The draft Laws «On Equal Rights and Possibilities for Women and Men in the RK» and «On Domestic Violence Counteraction» have been devised but not adopted by the Parliament.

***Recommendation.** Recommendations of the UN Committee on elimination of all forms of discrimination against women of February 2, 2007 based on the results of the review of the Second and Third Reports of the Republic of Kazakhstan on the implementation of the International Convention on Elimination of all Forms of Discrimination against Women should be implemented in full. The Law «On Equal Rights and Possibilities for Women and Men in the RK» and the Law «On Domestic Violence Counteraction» should be adopted. State centers to protect victims of domestic violence should be set up.*

The rights of the child

45. During the period after the submission of the Second-third regular Report of the Republic of Kazakhstan on the implementation of the UN Convention on the Rights of the Child the situation has not considerably improved. Promotion of the rights of the child is hindered due to the lack of adequate attention to the recommendations of UN Committee on the Rights of the Child concerning the main issues of legislation, independent monitoring, national action plan, children of refugees and migrants, juvenile justice, sexual exploitation and trafficking as well as street children.

46. The Committee on Protection of the Child's Rights under the Ministry of Education and Science is unable to address problems related to the rehabilitation of the violated rights of children due to its sector belonging and this is confirmed by numerous complaints submitted to non-governmental organizations.

47. In conditions of a crisis the problems of children of migrants, refugees, oralmans, children of parents with low educational status and homeless ones become especially acute.

***Recommendations.** Recommendations of the UN Committee on Child's Rights based on the outcomes of the review of the Report of Kazakhstan on the Implementation of the Convention of the Rights of the Child should be implemented. A system of juvenile justice should be set up. A complex and effective resolution of the problems of children from poor families, children of migrants, refugees and oralmans should be ensured. An independent body on protection of the rights of children should be set up.*

The rights of invalids and elderly people

48. All the pensioners and invalids (disabled people) belong to the socially vulnerable population group. Given that budget expenditures for pensions in Kazakhstan make up only 14% of the budget expenditures for salary and allowances make up 0,1 % of GDP this population category does not have a chance to get medical and social aid at the expense of pensions and allowances.

49. Complaints of the people submitted to non-governmental organizations prove the availability of multiple problems related to disability. State disability grants are available only for 1% of pediatric and 3% of adult population of the country, which is considerably below the international indicators. People are unjustifiably assigned disability category that is lower than it should be in reality or they are refused in recognizing their disability status.

50. In Kazakhstan there is no special legislation that would ensure and protect the rights of disabled and elderly people except legislation on social support.

***Recommendation:** UN Convention on the Rights of Invalids and Optional Protocol to it should be ratified. Special legislation on the rights of invalids meeting basic provisions of the*

Convention should be adopted. Special legislation on the rights of elderly people that would be in compliance with the UN Principles regarding elderly people should be adopted.

The rights of migrants and refugees

51. The problems of migrants in Kazakhstan are of system nature. Ensuring safety and health, guarantee of minimum wages and other rights are pretty pertinent for the migrants that do not have a permit for entry or employment. Quite often migrants are subject to tortures and degrading treatment. Elements of slavery, violence and coercions in labor relations very often are accepted as a norm but not as human rights violation. In many instances this is due to the fact that migrants under the pressure of circumstances are prepared to put up with slave labor conditions, connivance on the part of the society and the authorities to labor exploitation, suspicion on the part of the power and society to migrants and corruption.

52. In 1998 Kazakhstan ratified the UN Convention of the Status of Refugees; however the Law on Refugees is missing. The procedure of determination and ensuring the rights of refugees is regulated by the migration legislation, which does not included guarantees on the implementation of the rights of the people looking for an asylum that are considered by the law enforcement bodies as illegal migrants. Sometimes Kazakhstan gives up people seeking an asylum being guided not by the 1951 Convention and Convention against Torture but by regional treaties of CIS countries and Shanghai Organization on Cooperation. **(16)**

Recommendation. *Legislative protection of basic rights of all the labor migrants should be ensured regardless their status. The law on refugees that would protect the rights of the people seeking an asylum and non-extradition of the people seeking an asylum on political reasons including to the countries, in which they may be subject to tortures, should be adopted.*

The right to safe environment

53. The people of Kazakhstan are unable to completely implement their right to freedom from pollution, environmental degradation and activities that impact environment or jeopardize their life, health and their right to livelihood and well-being.

54. Among basic causes of mass human rights violations to favorable and safe environment are: lack of state environmental policy, rapacious exploitation of natural resources, destruction of the state system of environmental protection, ignoring international and national legislation, inadequacy of the national legislation and also a system corruption.

55. There is no mechanism in the legislation of Kazakhstan that would take into account public opinion and community participation in the process of decision making. Courts do not take into account evidence obtained from non-governmental sources that have licenses enabling them to carry out expert examination and collect information, which considerably limits the rights of the community to obtain information (access to information).

56. The right of the people to get access to justice on environmental issues is violated and the process itself of self-assertion of environmental rights in courts demonstrates the lack of effective ways of legal protection.

Recommendation. *Implementation in full of 1998 Convention (Aarhus Convention) on access to information, to community participation in decision making and access to justice with the aim of environmental protection should be ensured.*

Notes

- (1) See Initial Alternative Report of the Kazakhstan NGOs on the implementation of the International Covenant on Civil and Political Rights, Almaty, 2008.
- (2) See Analysis of the legislation of the Republic of Kazakhstan compared to the Rome Statute of the International Criminal Court (Kazakhstan International Human Rights and the Rule of Law, Almaty, 2002)
- (3) See Concluding remarks of the UN Committee on the Rights of the Child based on the results of the consideration of the initial Report of Kazakhstan on the implementation of the UN Convention on the Rights of the Child, CRC/C/15/Add. 213, June 6, 2003.

- (4) See Concluding remarks of the Committee on Elimination of Racial Discrimination, Kazakhstan, CERD/C/65/CO/3, December 10, 2004.
- (5) See Report of Special Rapporteur on issues of independence of judges and lawyers Mr. Leonardo Despuee «Civil and political rights, including political issues of independence of judges, jurisdiction and impunity» based on the results of the mission to Kazakhstan, E/CN.4/2005/60/Add., January 27, 2005.
- (6) See Comments of international organizations of Kazakhstan to the official Report of the Republic of Kazakhstan on the implementation of the International Convention on Elimination of all Forms of Racial Discrimination, Almaty, 2009.
- (7) See Brief overview of the situation with the rights of sexual minorities in Kazakhstan (NGO «Amulet», 2009)
- (8) See Kazakhstan has 'room for improvement' on minority issues – UN rights expert, Kazakhstan, 2009
- (9) See Comments to the Draft Law on issues of capital punishment (Kazakhstan International Human Rights and the Rule of Law Bureau, Social Fund «Charter for Human Rights, 2008)
- (10) See Conclusions and recommendations of the UN Committee against Tortures regarding Initial Report of the RK on the implementation of the CRC, 2001.
- (11) See concluding remarks of the UN Committee against Tortures, Kazakhstan, 41 Session, Geneva, November 3-21, 2008, CAT/C/KAZ/CO/2, December 12, 2008.
- (12) See Alternative Report of non-governmental organizations of Kazakhstan «On the Implementation of the UN Convention against Tortures and other Cruel, Inhuman and Degrading Treatment and Punishment by the Republic of Kazakhstan», Almaty, 2008.
- (13) See Monitoring of the violations of the rights to freedom of peaceful meetings in 2008 and the first four months of 2009 (Kazakhstan International Human Rights and the Rule of Law Bureau, 2009)
- (14) See Analysis of international standards and legislation of the RK on the right to association (Kazakhstan International Human Rights and the Rule of Law Bureau, Almaty, 2005)
- (15) See Comments on the Yelizaveta Drenicheva case, Almaty, 2009
- (16) See Brief Information on the case «on concealment», Almaty, 2009.
Almaty, 2009