



**THE COMMISSION ON HUMAN RIGHTS UNDER THE
PRESIDENT OF THE REPUBLIC OF KAZAKHSTAN**

SPECIAL REPORT

**ON THE SITUATION CONCERNING THE RIGHTS
OF ORALMANS, STATELESS PERSONS AND REFUGEES
IN THE REPUBLIC OF KAZAKHSTAN**

The Commission on Human Rights under the President of the Republic of Kazakhstan

Special report “On the situation concerning the rights of oralmans, stateless persons and refugees in the Republic of Kazakhstan”. Under the general editorship of Kuanysh Sultanov and Tastemir Abishev. Astana, 2012. – 124 p.

The special report by the Commission on Human Rights under the President of the Republic of Kazakhstan “On the situation concerning the rights of oralmans, stateless persons and refugees in the Republic of Kazakhstan” (hereinafter referred to as the report) deals with analysis of the situation concerning the rights of oralmans, stateless persons and asylum-seekers in Kazakhstan.

The report provides a comparative assessment of the situation concerning the rights of the above-mentioned persons since the Republic of Kazakhstan gained its independence and to the present day, and reveals key problems in protection of the rights of oralmans, stateless persons and refugees as well as ways to address them.

The report is based on results of human rights activities of the Commission on Human Rights itself and its special studies conducted during the last period. It widely uses data from public authorities and non-governmental human rights organisations of the Republic of Kazakhstan, the UNHCR Regional Representation for Central Asia, and other international organisations.

The report has been approved by the Resolution of the President of the Republic of Kazakhstan No. 32-42.80 of 21 February 2012.

The report contains comparative analysis of national legislation and enforcement practice as regards protection of the rights of oralmans, stateless persons and refugees, assessment of activities of authorised public bodies, conclusions and recommendations for improvement of the situation concerning the rights of the above-mentioned persons.

Conclusions and recommendations presented in the Commission’s report are aimed at improving legal policy, national legislation and enforcement practice on protection of the rights of oralmans, stateless persons and refugees according to provisions of the UN Convention relating to the Status of Stateless Persons, the UN Convention on the Reduction of Statelessness, the UN Convention relating to the Status of Refugees and its Protocol, and other international legal acts on human rights ratified by Kazakhstan.

Materials provided in the report will be useful to legislative, executive and judicial authorities, law-enforcement bodies, lawyers, representatives of extrajudicial institutes for human rights protection, non-governmental and international organisations, other community-based associations, and diplomatic missions accredited to Kazakhstan.



**United Nations High
Commissioner for Refugees**

This publication (report) has been prepared with technical support from the UNHCR Representation in Kazakhstan. Materials herein do not necessarily reflect official views of UNHCR.

Opening remarks

Human rights and freedoms are a cornerstone of a democratic State governed by the rule of law.

The first article of the Constitution of the Republic of Kazakhstan states that “an individual, his life, rights and freedoms” are the highest values for our State. Therefore, all our efforts during the Independence years have been aimed at exercising fundamental human rights and interests of the entire society. At the same time, Kazakhstan is invariably committed to its international obligations on human rights and supports the efforts applied by the UN, OSCE, OIC and other international organisations in this regard.

Approval of the special report of the Commission on Human Rights “On the situation concerning the rights of oralmans, stateless persons and refugees in the Republic of Kazakhstan” by Nursultan Nazarbaev, President of the Republic of Kazakhstan, is a clear evidence of Kazakhstan’s commitment to international standards of human rights protection.

The practice of a State’s comprehensive activities to protect the rights of repatriates, stateless persons and refugees has proved successful in the world’s most developed countries. At the same time, Kazakhstan, adopting such a special report for the first time ever, is a pioneer of its application in the post-Soviet area as well as among the OIC participant states. I am sure that the measures offered in this special report will become a significant tool for improving Kazakhstan’s legislation and enforcement practice in the field of protecting the rights of the above-mentioned mandate persons.

The report is based on results of human rights activities of the Commission on Human Rights itself and its special studies on protection of civil, social, economic and labour rights of oralmans, stateless persons and refugees. It broadly involves data from public authorities and NGOs of the Republic of Kazakhstan and from the UNHCR Regional Representation for Central Asia.

The report contains specific recommendations for improving the situation concerning the rights of the above-mentioned mandate persons in line with universally recognised international standards of human rights.

The Commission’s special report presented today not only gives a start to development of goals and objectives of a new National Action Plan on Human Rights but will also be a criterion of success of further steps aimed at improving the mechanisms for protection of the rights of oralmans, stateless persons, asylum-seekers and refugees in the Republic of Kazakhstan.

We are grateful to the Regional Representation of the UN High Commissioner for Refugees for Central Asia, public authorities and non-governmental human rights organisations of Kazakhstan for their great support in the development and publication of this very important document.

Kuanysh Sultanov
Chairman,
Commission on Human Rights
under the President of the Republic of Kazakhstan

**Welcome address by Mr. Saber Azam, UNHCR Regional Representative/
Regional Coordinator for Central Asia**

It is a great privilege to me to provide a welcome address to the special report of the Commission on Human Rights under the President of the Republic of Kazakhstan that is an all-round study of the current social situation of oralmans, stateless persons, asylum-seekers and refugees in the Republic of Kazakhstan.

Kazakhstan, situated at a crossroads of continents, has been an epicentre of considerable migration flows and demographic changes since ancient times. Myriads of various groups in terms of generations have co-existed peacefully on this beautiful land. During the 20 years of Independence, the Republic of Kazakhstan has become a shelter for many people of various fates, including stateless persons and evicted individuals such as asylum-seekers and refugees. While many of them have managed to integrate into local communities, others still face problems of legal and administrative nature hindering them to join Kazakhstan's society on full-fledged terms.

Amid the looming regional and global transnational crime that poses a grave threat to national security of the States, ignoring the vulnerable situation of the persons seeking and deserving international protection is the easiest way. It is for this reason that UNHCR, vested with its mandate responsibility to protect and secure well-being of stateless persons, asylum-seekers and refugees all over the world, welcomes efforts of the Commission on Human Rights and the President of the Republic of Kazakhstan, who approved this special report, in their aspiration for improving the situation of oralmans, stateless persons, asylum-seekers and refugees.

This report provides a comprehensive review of Kazakhstan's policy line in respect of oralmans, stateless persons, asylum-seekers and refugees. Special attention in the report is paid to the need for improving juridical and administrative legislation on asylum provision and to the country's accession to the two international UN conventions on statelessness. It offers specific actions to improve the current situation concerning oralmans, stateless persons, asylum-seekers and refugees. I sincerely hope that the report and its significant and substantive recommendations will provide a basis for enhancement of the measures undertaken by the Government of the Republic of Kazakhstan in social and migration domains, and also supplement the Government's efforts in strengthening its work in legal, administrative and social fields.

UNHCR highly appreciates the Commission's work and efforts in improving conditions for vulnerable population groups. I would like to express my heartfelt thanks to the Commission for preparation and publication of this document. The Office of the High Commissioner is always ready to support the Administration of the President of the Republic of Kazakhstan and other public authorities in implementation of recommendations provided in this special report.

**Saber Azam,
UNHCR Regional Representative/Regional Coordinator
for Central Asia**

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SECTION I. ON THE SITUATION CONCERNING THE RIGHTS OF ORALMANS IN THE REPUBLIC OF KAZAKHSTAN

1. THE SITUATION OF ORALMANS IN KAZAKHSTAN

Repatriation of ethnic Kazakhs to their historical homeland is one of the top priorities of the migration policy of the Republic of Kazakhstan.

Among 193 UN Member States, only four – Kazakhstan, Germany, Israel and the Russian Federation – are known to engage at the state level in the repatriates' return to their historical homeland.

Kazakhstan takes measures at the state level to provide mechanisms for repatriation of ethnic Kazakhs, including for their organised resettlement and creation of conditions for their life activities in places of settlement.

Regulation of migration processes has been an important area of the state policy since the very first years of independence.

In 2007, the Concept of the Migration Policy of the Republic of Kazakhstan for 2007-2015 was adopted (Decree of the President of the Republic of Kazakhstan No. 399 of 28 August 2007).

The Concept's legal framework consists of the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan on Migration of the Population of 22 July 2011, Decree of the President of the Republic of Kazakhstan No. 399 of 28 August 2007 *On the Concept of the Migration Policy of the Republic of Kazakhstan for 2007-2015*, Decree of the President of the Republic of Kazakhstan No. 167 of 28 August 2006 *On the Strategy of Territorial Development of the Republic of Kazakhstan through 2015* (hereinafter referred to as the Strategy of Territorial Development of the Republic of Kazakhstan through 2015), and the Decree of the President of the Republic of Kazakhstan No. 1149 of 10 July 2003 *On the State Programme of Rural Development for 2004-2010*.

An oralman is an ethnic Kazakh who was permanently residing outside the Republic of Kazakhstan at the moment when it acquired its sovereignty and his children of Kazakh ethnicity who were born and permanently residing outside the Republic of Kazakhstan after it acquired its sovereignty, which arrived in the Republic of Kazakhstan for the purpose of permanent residence in the historical motherland and received a relevant status according to the procedure set forth by the Law on Migration of the Population.

According to the Law on Migration of the Population, an ethnic Kazakh is a foreigner or stateless person of Kazakh ethnicity permanently residing abroad.

Currently, the oralmans' legal status is rather distinctly defined by Chapter 3, Law of the Republic of Kazakhstan on Migration of the Population of 22 July 2011, that regulates such matters as granting the oralman status and including in the immigration quota for oralmans; specific features of including some members of oralman families in the immigration quota for oralmans; adaptation and integration of oralmans, termination of the oralman status, and their rights and responsibilities.

Within the framework of the current legislation of the Republic of Kazakhstan, oralmans and their family members receive benefits, compensations, and other types of social assistance as well as adaptation and integration services.

All oralmans are secured access to health care services, education and social se-

curity; they are included into one of the target groups covered with employment promotion measures. According to the Ministry of Labour and Social Protection (MLSP) and the Ministry of Internal Affairs (MIA) of the Republic of Kazakhstan, more than 70% of working-age oralmans are employed in various production areas whereas every fourth is employed in agriculture.

The adaptation programmes, being implemented in oralman adaptation and integration centres, offer consultations on legal matters, teaching of the state language and, optionally, Russian, vocational training, re-training, and skills development.

Besides, amendments were made in July 2011 to the Law on Citizenship of the Republic of Kazakhstan, according to which oralmans are granted citizenship of Kazakhstan according to the simplified (registration) procedure within three months.

Analysis of the dynamics and structure of the population of oralmans who arrived in the Republic of Kazakhstan shows that **221.3 thousand families, or 860.4 thousand ethnic Kazakhs have returned to their historical homeland between 1991 and 1 October 2011** (see Tables 1 and 2).

Out of them, 127.7 thousand families have been included **in the immigration quota** whereas 94.2 thousand families have settled down by themselves, **outside the quota**.

In addition, more than 51% of the total number of the new arrivals accounts for 2004-2008 (439,430).

Dynamic of the oralman flow into the country by five-year period is as follows:

1991-1996 – 12.1% (104,009);

1997-2001 – 9.6% (82,335);

2002-2006 – 44.8% (384,106);

2007-2011 – 33.5% (287,710).

Out of the total population of oralman, most of all (60.5%) arrived from *Uzbekistan*, 12.4% came from *China*, 10.4% from *Mongolia*, 7.8% from *Turkmenistan*, 5.3% from *Russia*, and 4.0% from other countries.

The countries of oralman departure predetermined their settlement regions. The largest numbers of oralmans live in *South Kazakhstan oblast* – 21.4% (or 183,400), *Almaty oblast* – 15.2% (130.7 thousand), *Mangistau oblast* – 12.5% (107.5 thousand), and *Zhambyl oblast* – 9.3% (80.3 thousand).

Percentage of arrived oralmans in the population of the above-mentioned regions is 7.1% in *South Kazakhstan oblast*, 7.0% in *Almaty oblast*, 20.1% in *Mangistau oblast*, and 7.7% in *Zhambyl oblast*.

In terms of educational attainment, 9.2% have higher education, 1.4% have incomplete higher education, 20.5% - vocational secondary education, 65.0% - general secondary education, and 3.9% have no education at all.

54.1% of the oralmans are working-age persons, 41.2% are children below 18, and 4.7% are pensioners.

The number of oralman families admitted as per the immigration quota and their settlement regions are specified by a resolution of the Republic of Kazakhstan Government.

Throughout the implementation period of this policy, the country's legislation envisaged no requirement for strict assignment of the arriving oralmans for settlement on the administrative and territorial division. Places of residence in the territory of Kazakhstan were chosen by the oralmans themselves as they wished.

In this regard, settlement of the oralmans was taking place not uniformly, without consideration of regions' socioeconomic needs, and it was mainly predetermined by their countries of departure.

For example, 65.7% of oralmans from Uzbekistan (325.2 thousand out of 494.5 thousand) settled in *South Kazakhstan, Almaty, Mangistau* and *Zhambyl* oblasts.

85.5% of oralmans from China (73.9 thousand out of 85.5 thousand) settled in cross-border *Almaty* and *East Kazakhstan* oblasts.

78.2% of oralmans from Turkmenistan (49.8 thousand out of 63.7 thousand) settled in *Mangistau* oblast.

59.3% of those who came from Russia (21.0 thousand out of 35.4 thousand) settled in *North Kazakhstan, Pavlodar, Kostanai* and *West Kazakhstan* oblasts.

87.2% of oralmans from Tajikistan (10.2 thousand out of 11.7 thousand) settled in *South Kazakhstan* oblast.

Oralman populations are small in *Atyrau* oblast (21.4 thousand including 18.4 thousand from Uzbekistan), *Kyzylorda* oblast (20.2 thousand including 18.1 thousand from Uzbekistan), *West Kazakhstan* oblast (17.4 thousand including 13.5 thousand from Uzbekistan and 3.5 thousand from the RF), *Almaty* city (8.4 thousand including 2.7 thousand from Uzbekistan, 2.6 thousand from China, and 1 thousand from Mongolia), and *Astana* city (8.6 thousand including 2.7 thousand from Uzbekistan, 1.6 thousand from the RF, 1.5 thousand from Mongolia, and 1.2 thousand from China).

In other oblasts, oralman quantities vary between 28.2 thousand (*Kostanai* oblast) and 53.8 thousand (*Karaganda* oblast).

An effective tool promoting oralman resettlement and retention in northern regions consisted of the mechanism for their purchase of housing at the republican budget expense, which was in force in 1999-2003.

However, the procedure for housing provision to oralmans was changed in 2004, and, instead of housing purchase, funds of the value of 100 of the monthly calculation index (MCI) began to be disbursed to each member of an oralman family.

It was expected that the new procedure would encourage oralmans to choose a place of residence in less economically developed areas where the cost of housing is lower. Besides, it was to promote socioeconomic development of regions due to labour inflow.

However, the procedure had a reverse effect in practice and resulted in the oralmans' lower interest in settlement in northern regions. Upon having received the financial support according to the oralman immigration quota in northern regions, some of them started moving to southern regions, more favourable in terms of climatic conditions.

Those processes were actually uncontrollable: when an oralman acquires citizenship the oralman status is automatically lost, and that category fell out of the immigration authorities' sight.

Considering that **citizenship of Kazakhstan has been granted to 756.7 thousand oralmans** (88.1% of those who arrived since 1991), there is no information now available on where they are currently living and on their occupations.

Besides, oralman settlement in northern regions has not been promoted by the fact that there is still no differentiated approach towards provision of financial aid to them depending on the region of settlement.

Table 1
Quantitative information on oralmen who arrived from foreign States
between 1991 and 1.10.2011

Country of departure	TOTAL			Akmola oblast		Aktubinsk oblast		Almaty oblast		Atyrau oblast		East Kazakhstan oblast		West Kazakhstan oblast		Karaganda oblast		Mangystau oblast		South Kazakhstan oblast		Almaty city		Astana city		
	families	%	persons	%	f	p	f	p	f	p	f	p	f	p	f	p	f	p	f	p	f	p	f	p	f	p
2	3		4		5	6	7	8	9	10	11	12	13	14	17	18	19	20	25	26	31	32	33	34	35	36
Uzbekistan	133970	60,5	519734	60,4	2935	14058	6001	30820	18834	61742	3971	18891	614	3401	2437	13624	8950	29307	14529	50524	47818	161252	964	2914	774	3165
Mongolia	22920	10,4	113705	13,2	4675	24035	404	2625	4436	17167	87	655	1919	13552	3	3	4590	19390	115	930	12	29	269	1100	347	1598
China	28000	12,6	90881	10,6	639	2308	117	681	14998	45073	0	0	9191	33115	5	32	1216	3805	4	14	92	190	971	2653	383	1325
Turkmenistan	16517	7,5	64862	7,5	46	224	471	2339	593	2096	86	330	15	69	20	71	30	145	13309	50818	901	4524	61	269	56	259
Russia	11433	5,2	36357	4,2	749	2876	886	2714	567	1259	704	1321	98	281	1415	3571	166	387	803	2436	344	742	250	586	454	1754
Tajikistan	2760	1,2	11684	1,4	16	63	11	33	56	191	11	82	17	84	14	43	3	10	2	3	2401	10234	23	76	3	13
Kyrgyzstan	2559	1,2	9248	1,1	54	216	10	23	592	1323	10	24	29	180	18	67	188	618	22	47	166	492	156	508	126	485
Iran	1149	0,5	5985	0,7	0	0	17	46	65	446	0	0	0	0	0	0	0	0	331	1447	697	3839	6	13	0	0
Turkey	906	0,4	3511	0,4	1	4	0	0	464	1688	0	0	0	0	0	0	1	3	71	346	274	1147	77	251	3	13
Other CIS countries	355	0,2	934	0,1	2	6	0	0	14	16	5	14	4	30	12	34	0	0	6	11	81	167	5	14	6	24
Other non-CIS countries	789	0,4	3549	0,4	2	2	0	0	89	374	14	64	3	28	0	0	49	159	15	79	489	2195	25	64	0	0
TOTAL:	221358	100	860450	100	9119	43792	7917	39281	40708	131375	4888	21381	11890	50740	3924	17445	15193	53824	29207	106655	53275	184811	2807	8448	2152	8636

Table 2
General oralman data, 3rd quarter 2011

Oblast	Total				Of them:						Age						Working-age persons' educational attainment as per degree							
	families	persons	male	%	female	%	below working age		total	%	working age		total	%	retirement age		total	%	higher	%	vocational secondary	%	general secondary	%
							male	female			male	female			male	female								
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
<i>Almaty</i>	433	1105	568	51.4	537	48.6	163	217	380	34.4	391	302	693	62.7	14	18	32	2.9	47	6.8	83	12.0	556	80.2
<i>Aktubinsk</i>	333	1556	762	49.0	794	51.0	318	345	663	42.6	419	414	833	53.5	25	35	60	3.9	48	5.8	302	36.3	414	49.7
<i>Almaty</i>	2468	7680	3771	49.1	3909	50.9	1250	1200	2450	31.9	2394	2460	4854	63.2	127	249	376	4.9	141	2.9	291	6.0	68	1.4
<i>Atyrau</i>	211	505	245	48.5	260	51.5	89	88	177	35.0	149	160	309	61.2	7	12	19	3.8	36	11.7	115	37.2	158	51.1
<i>East Kazakhstan</i>	1002	2275	1089	47.9	1186	52.1	262	266	528	23.2	762	844	1606	70.6	65	76	141	6.2	15	0.9	17	1.1	1574	98.0
<i>Zhambyl</i>	1270	3946	1966	49.8	1980	50.2	715	648	1363	34.5	1190	1219	2409	61.0	61	113	174	4.4	196	8.1	622	25.8	1591	66.0
<i>West Kazakhstan</i>	79	184	86	46.7	98	53.3	31	22	53	28.8	55	69	124	67.4	0	7	7	3.8	23	18.5	38	30.6	63	50.8
<i>Karaganda</i>	887	2457	1247	50.8	1210	49.2	563	503	1066	43.4	652	642	1294	52.7	32	65	97	3.9	78	6.0	388	30.0	708	54.7
<i>Kostanai</i>	398	1242	628	50.6	614	49.4	249	218	467	37.6	364	372	736	59.3	15	24	39	3.1	63	8.6	277	37.6	382	51.9
<i>Kyzylorda</i>	66	205	92	44.9	113	55.1	32	44	76	37.1	57	66	123	60.0	3	3	6	2.9	11	8.9	39	31.7	61	49.6
<i>Mangistau</i>	1146	4834	2403	49.7	2431	50.3	849	840	1689	34.9	1461	1480	2941	60.8	93	111	204	4.2	119	4.0	631	21.5	2191	74.5
<i>Pavlodar</i>	209	640	300	46.9	340	53.1	119	138	257	40.2	173	194	367	57.3	8	8	16	2.5	47	12.8	54	14.7	215	58.6
<i>North Kazakhstan</i>	233	804	395	49.1	409	50.9	160	142	302	37.6	224	251	475	59.1	11	16	27	3.4	45	9.5	97	20.4	333	70.1
<i>South Kazakhstan</i>	1909	7636	3532	46.3	4104	53.7	1230	1530	2760	36.1	2140	2298	4438	58.1	162	276	438	5.7	442	10.0	1096	24.7	2584	58.2
<i>Almaty city</i>	123	286	133	46.5	153	53.5	45	55	100	35.0	82	94	176	61.5	6	4	10	3.5	43	24.4	29	16.5	96	54.5
<i>Astana city</i>	366	925	444	48.0	481	52.0	133	134	267	28.9	300	324	624	67.5	11	23	34	3.7	134	21.5	143	22.9	79	12.7
TOTAL:	11133	36280	17661	48.7	18619	51.3	6208	6390	12598	34.7	10813	11189	22002	60.6	640	1040	1680	4.6	1488	6.8	4222	19.2	11073	50.3

A solution to this problem was offered by *Nurly Kosh* Programme according to which a differentiated approach is established to lump-sum benefit amounts for oralmans.

The provision on a differentiated approach to payment of lump-sum benefits is also enshrined in the new wording of the Law on Migration of the Population, which also provides for the following: if a person moves from his/her place of settlement to some other region (*within three years*) or abroad (*within five years*), then any benefits received must be paid back to the budget.

However, preliminary implementation outcomes of pilot projects within the framework of Nurly Kosh Programme (*except for that in Asar community of Shymkent city, South Kazakhstan oblast*) show that the mortgage lending mechanism is not accessible to most oralmans because of their having insufficient income or no income at all.

For example, most arriving oralmans wishing to engage in Nurly Kosh Programme have no necessary speciality and qualification for placement in the highly-paid jobs offered.

On the other hand, local executive authorities failed to secure creation of a sufficient quantity of jobs of proper quality that they had themselves claimed during development of the Programme and submission of applications for pilot projects.

For example, within the pilot projects launched in 2010 in Aktiubinsk oblast, 271 apartments (90%) of the 300 apartments built remain not moved into; in East Kazakhstan oblast, 170 houses (47%) of 363 built are still empty.

Problems also remain concerning pilot projects commenced in 2009: in Akmola oblast, only 257 out of 276 houses have been moved into whereas in Kurchatov city (East Kazakhstan oblast), 100 out of 200 planned apartments remain not moved into.

In this connection, it is necessary to put in place clear mechanisms, both administrative and encouraging, to regulate the oralman settlement processes with due account of state interests of regional socioeconomic development.

In the framework of the IV World Kazakh Kurultai held on 25-27 May 2011 in Astana, with participation of the President of the Republic of Kazakhstan Nursultan Nazarbaev, the Ministry of Internal Affairs, jointly with the Ministry of Foreign Affairs, held a round-table conference on 26 May 2011 entitled "Ethnic repatriation in the contemporary stage: situation and problems".

The round-table conference involved representatives of the Committee of Customs Control under the Ministry of Finance, the Border Guard Service under the Committee of National Security, the World Kazakh Association, and 36 delegates from foreign countries.

The event considered pressing issues related to removal of ethnic Kazakhs, their adaptation in Kazakhstan, purchase of housing, acquisition of citizenship, reasons for return to countries of departure, etc.

2. THE RIGHT TO SOCIAL PROTECTION

According to the Law of the Republic of Kazakhstan on Migration of the Population, social protection is granted to oralmans on equal terms with citizens of the Republic of Kazakhstan.

1. Pension provision in the Republic of Kazakhstan is implemented in accordance with the Law of the Republic of Kazakhstan on Pension Provision in the Republic of Kazakhstan of 20 June 1997 (hereinafter referred to as the Law).

According to Article 2(2) of the Law, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan shall be entitled to pension provision on equal terms with citizens of the Republic of Kazakhstan unless otherwise specified in laws and international treaties.

Hence, in accordance with the legislation in force, oralman status holders, as foreigners permanently residing in the country's territory, have the same pension entitlements as citizens of the Republic of Kazakhstan.

The current legislation envisages no compensating addition to oralmans' pension payments.

The law is based on the principles of granting equal rights to pension provision to all citizens, hence there is no ground to pay pension in the amount established in the person's previous place of residence.

2. Besides, the following benefits are paid to oralmans and their family members:

- state social benefits, namely disability benefits, survivor's benefits, and old-age benefits in accordance with the Law of the Republic of Kazakhstan on State Social Disability Benefits, Survivor's Benefits and Old-Age Benefits in the Republic of Kazakhstan;

- special state benefits in accordance with the Law of the Republic of Kazakhstan on Special State Benefit;

- benefits to families having children in accordance with the Law of the Republic of Kazakhstan on State Benefits to Families Having Children.

Besides, oralmans are granted state targeted social assistance from local budgets in accordance with the Law of the Republic of Kazakhstan on State Targeted Social Assistance.

3. According to Article 5, Law of the Republic of Kazakhstan on Employment of the Population, the State takes measures to promote employment of target population groups, including oralmans. Citizens in target groups are entitled to engage in public works and undergo vocational training, advanced training and re-training on a priority basis. The Law provides for a simplified procedure for registration of oralmans as unemployed with employment bodies based on the oralman's certificate issued by territorial services of the authorised body for migration of the population.

During 9 months of 2011, 1261 oralmans applied to employment bodies, including 590 in rural areas. Of them, 658 have been placed in a job, including 305 in rural areas. 168 unemployed oralmans have taken part in public works, including 83 in rural areas.

175 oralmans have been sent for vocational training, re-training and advanced training (101 in rural areas), and 138 of them have completed the training (81 in rural

areas). Out of the total number of those who completed the training, 73 persons have been placed in permanent jobs. 215 persons have been placed in social jobs.

The Employment Programme 2020, aimed at increasing people's income through promotion of sustainable and productive employment, has been under implementation since 1 July 2011. The Programme involves self-employed, unemployed and low-income population groups. Oralman have also been given the right to take part in the Programme.

Implementation of the Programme is focused on training, job placement, and assistance to individuals in starting and expanding their own business at their place of residence, or, if there are no such opportunities, on promotion of voluntary removal from communities with low economic potential to those with high economic potential and to economic growth centres in order to expand accessibility of productive employment.

4. According to the Law of the Republic of Kazakhstan on Migration of the Population, oralman and their family members included in the oralman immigration quota receive the following additional benefits alongside the privileges, compensations, benefits and other types of social assistance, according to the procedure specified by the Republic of Kazakhstan Government:

1) payment of lump-sum benefits differentiated depending on the region of settlement and including costs of initial adaptation, travel to a permanent place of residence and transport of possessions;

2) disbursement of funds for purchase of housing, or provision of a preferential loan for construction, reconstruction or purchase of housing.

The lump-sum benefits and funds for purchase of housing are paid to the persons included in the oralman immigration quota even in case of the oralman's death or acquisition of citizenship of the Republic of Kazakhstan.

The lump-sum benefits and funds for purchase of housing are paid by the Central Pension Centre upon receipt of an abstract on their assignment for territorial migration police units.

In 2010, 10,243 families (43,457 persons) included in the immigration quota were paid lump-sum benefits and funds for purchase of housing in the amount of 8,227.1 million tenge; as of 1 November 2011, the figure for 2011 is 4,741.3 million tenge for 5,871 families (23,441 persons).

According to the Decree of the President of the Republic of Kazakhstan No.1066 of 22 September 2010 *On some matters of implementation of the Decree of the President of the Republic of Kazakhstan No. 1039 of 17 August 2010*, functions of the Ministry of Labour and Social Protection of Population of the Republic of Kazakhstan in the field of migration as well as concerning refugees, except for functions of quota setting for engagement of foreign labour and functions of payment of lump-sum benefits and compensations to oralman and their family members who arrived under the oralman immigration quota, were transferred to the Ministry of Internal Affairs of the Republic of Kazakhstan.

3. THE RIGHT TO EDUCATION

The Republic of Kazakhstan is a party to seven fundamental international UN human rights treaties, including the International Covenant on Economic, Social and

Cultural Rights. According to these instruments, the State assumed the commitment to take, to the maximum of its available resources, appropriate legislative, administrative, judicial and other steps with a view to achieving progressively the full realisation of the right to education.

Kazakhstan provides all the conditions for meeting the commitments enshrined by the Convention on the Rights of the Child as to securing the child's right to education (free and compulsory primary and secondary education, higher education accessible to all on the basis of capacity by every appropriate means). Also, all appropriate measures are taken to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention on the Rights of the Child.

By the Law of 31 December 2009, the Republic of Kazakhstan ratified the CIS Convention on the Legal Status of Migrant Workers and Members of Their Families (in force since 21 February 2010), under which members of migrant worker families (except for frontier and seasonal workers) enjoy the right to education in Kazakhstan.

Kazakhstan has signed, but not yet ratified, the Convention on the Rights of Persons with Disabilities that regulates the right of persons with disabilities to inclusive education, without discrimination, at all levels and to lifelong learning, enabling such persons to learn life and social development skills to facilitate their full and equal participation in education and as members of the community.

4. LEGISLATIVE AND STRATEGIC FRAMEWORK

The Constitution has supreme legal force and direct effect on the entire territory of the Republic of Kazakhstan. Article 30 of the Constitution contains education-related provisions. According to these provisions, citizens are guaranteed free secondary education in public educational institutions. Secondary education is compulsory.

Besides, this Article provides for the right to free higher education in a public higher educational institution on the competition basis as well as the right to paid education in private educational institutions exercised on the basis and according to the procedure specified by law.

The National Action Plan on Human Rights for 2009-2012 focuses on strengthening the national system of promotion and protection of human rights and on raising general public awareness on human rights and their protection mechanisms. The plan defines a package of specific measures to eliminate gaps existing in national laws and practices as well as to improve coordination between public authorities and non-governmental organisations dealing with protection of human rights.

Kazakhstan has adopted a number of legal acts and regulations on education. The Law of the Republic of Kazakhstan on Education (No. 319-III of 27 July 2007) is the core regulatory document in the field of education. Alongside this law, there are other laws that govern legal relations in the field of education, in particular:

1) the Law on the Rights of the Child in the Republic of Kazakhstan (Law of the Republic of Kazakhstan No. 345 of 8 August 2002), designed to regulate relations arising from the exercise of fundamental rights and legal interests of the child guaranteed by the Constitution of the Republic of Kazakhstan;

2) the Law on Social and Medico-Pedagogical Adjusting Support for Handi-

capped Children (Law of the Republic of Kazakhstan No. 343-II of 11 July 2002) that focuses on the establishment of an efficient system of assistance to children with developmental defects as well as on addressing problems related to their bringing-up, education, employment preparation, vocational training, and prevention of children's disability;

3) the Law on State Youth Policy in the Republic of Kazakhstan (Law of the Republic of Kazakhstan No. 581 of 7 July 2004) that defines legal foundations for state youth policy shaping and implementation in the Republic of Kazakhstan;

4) the Law on Family-Type Child Villages and Youth Houses (Law of the Republic of Kazakhstan No. 113 of 13 December 2000) that defines the legal status of family-type child villages and of youth houses established in order to meet the rights of orphan children and children deprived of parental care to live and be brought up in a family, as well as in order to secure their all-round moral, spiritual and labour education and bringing-up.

The State completely recovers expenses for training of citizens of the Republic of Kazakhstan in need of social assistance during the period of their education.

According to legislation of the Republic of Kazakhstan as well as under the State Programme of Education Development for 2011-2020 (hereinafter referred to as the Programme), every citizen of the Republic of Kazakhstan, regardless of sex, has the right to equal access to education services.

The Ministry of Education and Science of the Republic of Kazakhstan (hereinafter referred to as the Ministry), in cooperation with bodies of internal affairs, labour and social protection as well as other authorities concerned, carries out work to ensure equal rights of all the children staying in the national territory, particularly the right to education.

According to reports of education authorities, more than 6 thousand migrant children live in the country as of October 2011, including 889 preschoolers and 5,358 school children. Most migrant children arrived from Uzbekistan – 2,599, Kyrgyzstan – 1,563, Turkmenistan – 591, and other neighbouring countries and beyond.

24,725 repatriate pupils (oralmans) study in establishments of general secondary education, including 9,658 in the primary stage, 11,379 in the basic stage, 3,679 in the higher stage of general education school, and 9 persons disabled since childhood. Their greatest numbers live in such oblasts as South Kazakhstan (6,010), Almaty (4,578), Zhambyl (4,477), East Kazakhstan (3,909), and Mangistau (1,204). At present, all school-age repatriate children (24,716) are covered by education, except for the 9 being disabled since childhood.

381 repatriate teachers have arrived in the republic. 96.3% (367) of the repatriate teachers are employed; besides, advanced training courses have been organised for them.

General secondary education establishments of the republic provide additional lessons, consultations and special transition programmes for oralman pupils who came from neighbouring and other countries, in order to eliminate gaps in their knowledge and to secure their adaptation to curricula.

To master Kazakh or Russian language better, schools introduce additional special courses. They also organise hobby groups and elective sessions on Kazakh and Russian languages. Repatriate children engage actively in social life of schools, take

part in amateur talent groups, participate in review contests and academic competitions, and attend sports clubs.

Measures are taken to provide oralman children with clothes, footwear, and school supplies. Traditionally, the Day of Oralmen is held in oblasts of the country.

Pursuant to the assignment given by Prime Minister of the Republic of Kazakhstan K. Masimov (No. 20-11/1596 of 25 March 2010), work has been carried out to allocate necessary funds, when refining local budgets for 2011 by region, for additional lessons to be given to oralman children.

For example, more than 53.5 million tenges have been disbursed for these purposes in Almaty oblast, 9 million tenges in Aktiubinsk oblast, and 912 thousand tenges in Atyrau oblast.

In accordance with the Resolution of the Republic of Kazakhstan Government No. 296 of 28 March 2008 *On approval of the admission quota for entering educational organisations that implement professional training programmes of technical and vocational, post-secondary and higher education*, an admission quota for persons of Kazakh ethnicity not being citizens of the Republic of Kazakhstan is established (2%).

Studying oralmen are provided, on the mandatory basis, with space in the educational organisation's hostel, grants and hot meals.

In 2010, the Ministry amended *the Rules of Acquisition of Preschool, Primary, Basic Secondary and General Secondary Education by Foreigners and Stateless Persons Permanently Residing in the Republic of Kazakhstan* approved by the Order of the Acting Minister of Education and Science of the Republic of Kazakhstan No. 659 of 27 December 2007. The rules in force provide for a procedure of admission of foreigners and stateless persons for study and a procedure for organisation of their study.

Unfortunately, facts of violation of the oralmen's rights guaranteed by the existing legislation of Kazakhstan do happen in practice.

Analysis of oralmen's appeals to the Commission on Human Rights under the President of the Republic of Kazakhstan as well as of findings of the inspections carried out by prosecution authorities shows that some territorial branches of the authorised state body for migration often violate requirements of the Law of the Republic of Kazakhstan on the Procedure of Processing of Appeals from Natural and Legal Persons as well as those of the Instruction on Oralman Status Determination and on Inclusion in the Oralman Immigration Quota. Besides, some oralmen drew the Commission's attention to violation of their rights to receive pension payments prior to their acquisition of citizenship of the Republic of Kazakhstan.

Analysis of the current legislation of the Republic of Kazakhstan on the matters related to assignment of housing assistance, payment of pensions and benefits to oralmen showed that, according to Article 2, Law of the Republic of Kazakhstan on Pension Provision in the Republic of Kazakhstan, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan are entitled to pension provision on equal terms with citizens of the Republic of Kazakhstan unless otherwise specified by law and international treaties.

One of the measures to encourage repatriation of Kazakhs to their historical homeland consists of providing them, free of charge, with land plots for individual housing construction.

In this process, there are frequent breaches of requirements of Articles 405, 502 and 506, Tax Code of the Republic of Kazakhstan, according to which oralmans are exempted from state duties when registering their immovable property rights and transactions as well as when acquiring citizenship of the Republic of Kazakhstan.

There are some facts when state duties were unlawfully recovered from oralmans.

Sharing the State's position and striving to promote the historical process of return of Kazakhs to their historical homeland, the Commission on Human Rights under the President of RK initiates a series of recommendations intended to improve state policy on oralmans' migration relations. The Commission comes out for a differentiated approach considering the multifaceted nature of the problem itself and taking account of the need for concerting various approaches and stands, and believes that priorities should be determined concerning oralmans and that the return first of all of those who found themselves in foreign countries unwillingly should be preferred. As regards Kazakhs compactly residing in the territory of Russia and Uzbekistan, one should bear in mind that most of them have been living in these countries from time immemorial, although, undoubtedly, there are many people among them who found themselves there in hard times – during the revolution and forced collectivisation that turned into a real genocide for the Kazakh nation. As can be seen from findings of the monitoring carried out by members of the Secretariat of the Commission on Human Rights under the President of RK in St. Petersburg city, Saratov oblast, Omsk oblast and Omsk city, most ethnic Kazakhs living in these regions prefer to work and reside in Russia.

For the purpose of protecting the oralmans' rights to return to their historical homeland under or without the immigration quota and of securing their social and economic rights, the Commission on Human Rights under the President of RK recommends that the Government develop and adopt a special regulatory legal act that would exempt the oralmans from customs duties when they cross the state border, regardless of the quantity of belongings and property. Besides, the Commission recommends supplementing the Law on Migration of the Population accordingly.

The state housing policy needs to be adjusted, and a balanced approach considering interests of both oralmans and other Kazakhstan residents should be implemented. A solution can only be found within the framework of social partnership between society and authorities. Care for oralmans must not infringe upon interests of other citizens or violate their rights. This circumstance assumes responsibility not only of the State but also of civil society, NGOs, and trade unions. Problems of oralmans are common problems of the country. To solve them, interaction between society and the State is required. For example, handling the problem of oralmans' adaptation can be assisted by establishment of modern integration centres designed to help people in dealing with such issues as job placement or acquisition of a speciality.

5. ORALMANS' PROBLEMS

(based on analysis of the current legislation, NGO materials, and media publications)

Although legislation contains provisions on assistance in job placement, advanced training, and language adaptation of oralmen, there are no special integration programmes in the republic for oralmen such as language courses, information and directory services, assistance in job placement, or advanced training courses. The current legislation also includes provisions on the establishment of oralman adaptation and integration centres. However, according to the International Organisation for Migration (IOM), at present most of these centres, unfortunately, fail to perform the tasks assigned thereto.

In the opinion of International Legal Initiative PF, the key problem for oralmen consists of their integration into the Kazakhstan society. Upon moving to Kazakhstan, some oralmen are exposed to discrimination by local residents because of their ignorance of the Russian language. This makes them less competitive in Kazakhstan's labour market, which spawns grievance against authorities and generates accusations of being unable to address the oralmen's problems. Besides, practices of NGOs working with oralmen show that most oralmen face corruption both before and after resettlement, which aggravates negative opinion about their situation in the RK even more. Another serious problem consists of oralmen's ignorance of the national legislation of RK and even their failure to understand it because of their specific mentality established in the country of departure and due to differences in the legal systems.

More recently, the State has advanced greatly in addressing the oralmen's problems, however they face such challenges as unemployment or lack of funds to buy housing upon removal, which forces them to leave the regions they were distributed to and search for employment opportunities in Almaty, Astana, or oil regions of the country. Hence, oralmen turn from external migrants into internal ones.

Most oralmen are dissatisfied with their situation upon resettlement to the RK, which makes their community attractive for various political influence groups and groups of extremist nature aiming to destabilise the situation in Kazakhstan. It could be clearly seen in the events in Shanyrak and Bakai, in Almaty, and in Zhanaozen (Mangistau oblast). According to the press, among the striking oilmen in Zhanaozen, 25% were oralmen, i.e. every fourth striker was a repatriate. Besides, discontent is engendering among the oralmen living in Kyzylagash settlement, Almaty oblast, because, according to them, the flood victims included many oralmen who were not registered in Kyzylagash and were not mentioned among the dead. They seem to be declared missing. All these protest moods among the people who do not see ways of addressing their problem are amassing and can lead to a social outburst.

High unemployment levels among oralmen can be explained by a number of reasons.

A language barrier is the most significant factor behind the low level of economic integration. Oralmen poorly speaking Russian or not speaking it all can encounter serious challenges in job search, especially in Kazakhstan's northern areas. In southern oblasts where the Kazakh language is common, the language barrier is less problematic although language difficulties can exist there as well. For example,

oralmans from China, Afghanistan and Pakistan write in the old Kazakh alphabet (based on the Arabic alphabet) whereas the Roman graphics are used for the Kazakh language in Turkey. Some oralmans coming from these countries face difficulties because they cannot read and write in Kazakh. Hence, their insufficient knowledge of both languages results in a situation when an oralman is actually not able to find a job.

Secondly, education system differences also affect job placement. An oralman having a higher education degree can face problems in job search unless his degree has been recognised. In some cases, oralmans cannot find a job according to their specialities. This is also true for oralmans with higher education (engineers, technologists, physicians, economists) and for those having no education as such (traders).

Surveys showed that about 20% of oralmans had worked in the public sector (education, health care, science, etc.) before coming to Kazakhstan but only 7.2% of them had managed to find a job in such bodies. The number of manual-work earners among oralmans increased from about 2% to almost 5%. Besides, the number of people engaged in small-scale trade actually doubled (from 1.9% before resettlement to 4.9% thereafter). This data is provided by Erkenur Sharapat Public Foundation.

According to the Law on Migration of the Population, the State should help oralmans in job placement, skills development, and new occupation training. Local authorities charged with rendering assistance to oralmans mainly can advise them to get registered with local employment bodies or offer temporary employment in so-called 'public works'.

Another not unimportant factor complicating job placement of oralmans is that settlement distribution of the ethnic immigrants into regions takes place without consideration of territorial deployment of productive forces, and there is secondary migration. A considerable percentage of oralmans live now in labour-abundant regions – South Kazakhstan, Mangistau, Almaty and Zhambyl oblasts, whereas northern regions face shortage of skilled human resources.

Oralman integration is to be assisted by adaptation centres that, according to law, should work in all Kazakhstan oblasts. However, a joint raid by representatives of the Committee for Migration local departments and the MOM experts in 2010 revealed that five oblasts have no such centres at all. Besides, four centres hosted persons other than oralmans, and one centre had no resident at all. It was also found that only three adaptation centres met technical and hygienic requirements. Other buildings need overhaul, many of them don't have hot and cold water supply, and there is no electricity.

Upon coming to Kazakhstan, oralman families usually encounter great problems with school enrolment of their children. Generally, they prefer Kazakh-medium schools. Although most oralmans speak Kazakh, they have difficulties with spelling and reading because they don't know Cyrillic. Both in Russian-speaking and Kazakh-speaking schools, oralmans feel huge differences between Kazakhstan's education system and the one they studied in when they lived in their previous countries of residence.

The situation is aggravated by spontaneous movement of internal migrants that creates social tension worsening the unbalanced domestic labour market as it is. Secondary migration and desire for living in South Kazakhstan, Mangistau, Almaty and Zhambyl oblasts, regarded as labour-abundant regions, strengthens the tendency of

treating oralmen adversely. According to the Centre for Sociological Studies, the tendency exists among low-income people.

The system of social support for oralmen requires further improvement. A main share of social benefits is used for housing support and removal of the families included in the immigration quota. The housing arrangement mechanism fails to meet modern requirements, due to which about a half of oralman families have no housing at all.

There is neither a comprehensive approach nor coordination among public administration bodies engaged in addressing migration-related issues.

Efficiency of image-building and awareness-raising activities among representatives of the Kazakh diaspora in foreign countries is low.

Unfortunately, there are some people among oralmen who, having timely executed documents for pecuniary aid as per quota and received it, do not hurry to have their Kazakhstan citizenship formalised. By now, 651 oralmen have been held administratively liable with a small fine for deliberately dragging out formalisation of the Republic of Kazakhstan citizenship.

Examination of Kazakhstan's immigration policy by experts of the Kazakhstan Institute of Social and Economic Information and Forecasting, in cooperation with the Soros Kazakhstan Foundation, using oralmen mainly from non-CIS countries as an example, clearly revealed that they have a number of substantial problems:

- the fact that most oralmen have no housing as a result of the rural privatisation process in which the repatriates could not take part because their civil rights are reduced;

- high unemployment rates caused by crisis occurrences in regional economy and by unavailability of loans because of having no Kazakhstan citizenship or collaterals;

- some aspects of repatriates' adaptation to the contemporary conditions in Kazakhstan, among which the main points include a language barrier (ignorance of Russian), unfamiliarity with the RK legislation, and facts of neglectful treatment of oralmen by some local residents.

The problems typical for the policy of oralmen's return to their historical homeland call for establishment and improvement of extensive state and interstate regulation in the context of the global labour market and integration in the country. As a result, our country's demographic situation has been developing improperly; there is still no system of legal and economic guarantees stimulating, for example, attraction of immigrants to under-populated areas. Indeed, mass oralman movements to heavily populated places with favourable natural and climatic conditions or a relatively high level of socioeconomic development constitute a factor promoting social tension in such areas, which can prevent political and economic transformations in the country. One of the key directions in dealing with this issue is to secure optimal re-distribution of skilled labour among regions in order to provide necessary labour resources for the national economy.

CONCLUSIONS AND RECOMMENDATIONS for Section 1

The policy of furthering the return of ethnic Kazakhs to their historical motherland has promoted achievement, for the first time since 2004, of a positive migration balance that showed a substantial negative trend in the middle 1990s.

However, a number of systemic problems existed in the implementation of the migration policy towards oralmans:

1. No proper attention was paid to mechanisms of optimal settlement of oralmans in the territory of the Republic of Kazakhstan in accordance with social and economic needs. The top priority was to ensure greater attraction of ethnic Kazakhs to the country, and authorised public bodies aimed their efforts at activities related to oralmans' registration and provision of common state support to them regardless of their settlement regions.

As a result, the arriving oralmans and their families settled non-uniformly and concentrated mainly in southern and western regions (**especially in South Kazakhstan and Mangistau oblasts**), and a critical labour surplus emerged in those regions.

Proceeding from this, we recommend that the Republic of Kazakhstan Government settle the oralmans in an optimal way in accordance with social and economic needs of regions.

2. There was no systemic approach to oralman immigration quota setting; the quota size was changed depending on migration flow volumes and on the State's desire for covering a greater number of arriving oralmans with state support and financial assistance measures.

3. Considerable enlargement of the funds allocated for resettlement-related activities (*up to 16 billion tenges per annum*) as well as imperfect laws resulted in numerous facts of corrupt practices leading to embezzlement of budget funds both by public authority staff and by immigrants themselves and third parties.

4. Lack of legally enshrined mechanisms of participation of Kazakhstan's institutions abroad in activities related to immigration of ethnic Kazakhs.

It contributed to inflow, especially in more recent years, of immigrants with low educational attainments, unclaimed in the labour market, and, hence, to complication of the process of their adaptation in the place of arrival and their integration into society.

5. Over the independence years, the authorised body for migration of the population has been changed for four times. As a result, frequent staff turnover, including among the body's management, led to loss of the decision-making continuity and consistency principles. In addition, the authorised body always had insufficient powers for coordination of other public authorities involved, according to their scope of competence, in implementation of the migration policy.

Measures required to address problems of ethnic immigrants:

- provide for a possibility of initial approach of ethnic Kazakhs with an application to foreign institutions of the Republic of Kazakhstan in the place of their residence abroad. This requires reinforcement of these services with skilled staff in the countries of ethnic Kazakhs' departure;

- introduce payment of differentiated benefits (financial aid) depending on settlement regions. For example, it is suggested to set the lump-sum benefit amount

adjusted by the factor of **2.0** for the oralman settlements in the northern axis regions (*Akmola, Aktiubinsk, East Kazakhstan, West Kazakhstan, Kostanai, North Kazakhstan and Pavlodar oblasts*); by the factor of **1.7** for central regions (*Atyrau, Mangistau, Kyzylorda and Karaganda oblasts*); and by the factor of **1.5** for the southern axis regions (*Almaty, South Kazakhstan and Zhambyl oblasts, Almaty and Astana cities*);

- implement the mechanism for payment of monetary funds to oralman through individual bank accounts and only upon presentation of documents proving the oralman's identity such as the oralman's certificate or identity card, or the Republic of Kazakhstan citizen's passport.

These measures will also allow strengthening oralman's interest in timely acquisition of the Republic of Kazakhstan citizenship, preventing dual citizenship and providing conditions for proper use of budgetary funds.

These provisions are envisaged in the Law on Migration of the Population in a new wording adopted on 22 July 2011. At present, work is going on to adopt subordinate regulatory legal acts aimed at implementation of this Law.

At the same time, to strengthen control over oralman's arrival in the Republic of Kazakhstan and improve measures on provision of state support to them, we deem it reasonable to do the following, within the bounds of legislation in force:

- differentiate amounts of funds allocated to oralman for purchase of housing depending on the settlement region (northern, central, and southern axes);

- abandon construction of separate settlements for oralman within the Nurly Kosh Programme framework in order to prevent their artificial concentration in certain communities (districts, cities), using as much as possible restoration and purchase of empty or ownerless dwellings in existing communities;

- give top priority to consideration of the applications coming in through diplomatic missions of the Republic of Kazakhstan abroad; when receiving applications for inclusion in the oralman immigration quota, the diplomatic missions should advise the oralman to settle in priority regions where development of socioeconomic potential is required, the list of the regions to be compiled by the MIA RK as proposed by the MLSP, MEDT and local executive authorities;

- MIA RK territorial commission for inclusion in the oralman immigration quota should make relevant decisions based on the oralman's having an occupation in demand in the given region, their educational attainment, etc.

6. Fix in legislation a minimum pension benefit to the oralman of retirement age from those foreign States with which the Republic of Kazakhstan does not have bilateral agreements on pension matters.

7. In order to protect oralman's rights to return to their historical homeland under or without the immigration quota as well as to secure their socioeconomic rights, it is necessary to develop and adopt a special regulatory legal act exempting them from customs duties when they cross the state border, regardless of the quantity of belongings and property. Besides, the Law on Migration of the Population should be supplemented accordingly.

8. Revise Nurly Kosh Programme so as to increase the degree of oralman's integration into the Kazakhstan society.

9. To improve the situation with oralman's integration into the Kazakhstan society, we recommend to increase the number and maintain activities of oralman adapta-

tion and integration centres, not only state but also non-state ones, for example in the form of private institutions, foundations, or other non-profit organisations. In such centres, the oralmen wishing to be included in the resettlement quota and having no secondary and higher education, arriving from countries where the legal system differs from that in Kazakhstan, and Muslim countries, must undergo an adaptation course on the compulsory basis; the adaptation course must include work with a psychologist who would identify oralmen's problems in the adaptation process thereby allowing to prevent destructive moods in their community. Meetings should be organised in these centres between oralmen and officials of migration police, prosecution authorities, akimats and social services for the oralmen to have a clear idea of the structure of public authorities, their competence and powers. Special attention should be paid to training on interaction with public authorities, and on rights and responsibilities of foreigners, stateless persons, and citizens of the Republic of Kazakhstan. Only skilled and highly skilled repatriates should be exempted from the compulsory adaptation course. To attract highly skilled oralmen, privileges and benefits should be envisaged not only in cash but also in the form of provision of housing right on their arrival in Kazakhstan. That would be an incentive to attract exactly such, most promising for Kazakhstan, repatriates.

10. For the purpose of securing the oralmen's right to housing, it is necessary to develop and practically implement a mechanism of providing oralmen with affordable housing within the State Housing Programme framework.

11. In order to secure in full the oralmen's rights to acquisition of the Republic of Kazakhstan citizenship according to a simplified procedure as well as to eliminate possible conditions for corruptive offences on the part of officials of migration police and other public authorities, we recommend to exclude from the list of documents necessary for formalisation of citizenship an address certificate for oralmen that obliges them to get permanently registered at the place of residence right after resettlement to their historical homeland despite they do not yet have any proprietary permanent housing at the place of residence.

12. For the purpose of eliminating oralmen's dual citizenship, it is necessary to conclude bilateral intergovernmental agreements with their countries of departure, which would contain provisions on compulsory notification by the Ministry of Internal Affairs of RK of relevant authorised public bodies of foreign States about acquisition of Kazakhstan citizenship by a concrete oralman.

13. For the purpose of improving the national mechanisms of protection of oralmen's rights and providing a permanent consultative and dialogue-oriented platform on oralmen and foreign Kazakh diaspora, we recommend establishing a consultative and advisory body for oralmen and foreign Kazakh diaspora under the Government of the Republic of Kazakhstan.

SECTION II. ON THE SITUATION CONCERNING THE RIGHTS OF STATELESS PERSONS IN THE REPUBLIC OF KAZAKHSTAN

INTRODUCTION

The Republic of Kazakhstan declared its sovereignty from the USSR in 1990, and proclaimed its independence on 16 December 1991 becoming another emerging democratic nation in the former USSR's territory. Adoption of two core regulatory legal documents – the Declaration on State Sovereignty of the Kazakh Soviet Socialist Republic of 25 October 1990 (Sovereignty Declaration) and the Constitutional Law of RK on State Independence of the Republic of Kazakhstan of 16 December 1991 (Constitutional Law on Independence) – laid a foundation of the new State's political and legal system and defined all the basic symbols of the sovereign and independent nation. Along with that, withdrawal from the USSR and the resulting disintegration of the former Soviet Union led Kazakhstan to legal succession of state power. Most importantly, the new political and legal status gained by the country together with its sovereignty entailed renunciation of ex-USSR citizenship by Kazakhstan residents and acquisition of citizenship of the new independent State, the Republic of Kazakhstan.

Following the USSR break-up, many new sovereign States had neither adequate legal mechanisms to identify, prevent and reduce statelessness nor an efficient administrative structure necessary to enforce compliance and implementation of relevant laws; due to all the above-mentioned processes, the phenomenon of statelessness spread over the ex-USSR territory, including the Republic of Kazakhstan.

Relevant authorised bodies failed to respond adequately and timely to numerous situations when stateless persons found themselves vulnerable under no protection on the part of the State with which they were to have a legal bond.

According to official data of MIA of RK, 7,872 stateless persons were permanently residing in Kazakhstan as of 1 October 2011, including 7,467 from the CIS countries and 405 from other states.

According to available information, there are also about 9,700 persons with undetermined citizenship (ex-USSR passport holders) living in the republic, and they are regarded by UNHCR as persons potentially at risk of statelessness.

Meanwhile, the status of many persons who were not registered with public authorities remains unclear.

This report analyses the situation of existing stateless person categories living in the Republic of Kazakhstan, and provides analysis of legislation and law enforcement practices related to reduction and prevention of statelessness and protection of stateless persons' rights.

The report uses materials of public authorities and NGOs of the Republic of Kazakhstan, the Commission on Human Rights under the President of RK, the UNHCR Representation in the Republic of Kazakhstan, and other international organisations accredited in Kazakhstan.

DEFINITION OF TERMS

Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as a person “who is not considered as a national by any State under the operation of its law”.

At the national level, stateless persons are defined as “persons not being citizens of the Republic of Kazakhstan and having no proof of their affiliation to the citizenship of any other state”; this definition is provided in Article 2 of the 1995 Law on Legal Status of Foreigners.

In the context of this study, both *de jure*¹ and *de facto*², stateless persons including those finding it difficult to establish their nationality are hereinafter referred to as stateless persons. The study also considers persons at risk of statelessness who include, inter alia, persons whose nationality is not properly confirmed by documents (persons at risk of statelessness).

METHODOLOGY

The paper entitled *Statelessness: An Analytical Framework for Prevention, Reduction and Protection* (hereinafter referred to as the Framework), published by UNHCR in 2008, was taken as the key methodological tool for this study.

Information provided herein is based on country reports of UNHCR and other UN agencies and international organisations. Meetings were held with representatives of the Migration Police Committee under the Ministry of Internal Affairs of RK, the Ministry of Justice of RK, the Ministry of Foreign Affairs of RK, and the UNFPA and UNICEF offices in Almaty and Astana. Besides, stateless persons were interviewed and questioned in Almaty and South Kazakhstan oblast by staff of the UNHCR Division of International Protection, UNHCR consultants on statelessness, Kazakhstan International Bureau for Human Rights and Rule of Law NGO, and the Migration Police Department of South Kazakhstan oblast³ (focus groups). Besides, the report highlights the questions discussed at the National Round Table organised by the UNHCR Regional Representation in cooperation with the Migration Police Committee under the Ministry of Internal Affairs of RK (National Round Table) on 30 September 2009 in Astana. The report considers and analyses legislation in force in the Republic of Kazakhstan.

1. INTERNATIONAL LEGAL FRAMEWORK FOR THE RIGHT TO CITIZENSHIP AND FOR THE REDUCTION OF STATELESSNESS

Citizenship is a highly sensitive issue as it is a manifestation of a country’s sovereignty and identity. Not surprisingly, disputes about citizenship can, and often do, result in tension and conflict, both within and between States. During the 20th century, there was both an increase in the incidence of statelessness around the world and growing awareness of and concern for human rights. International law on citizenship thus evolved along two tracks: to protect and assist those individuals who were already stateless, and to try to eliminate, or at least reduce, the incidence of statelessness.

¹ According to Article 1 of the Convention relating to the Status of Stateless Persons, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law (Convention relating to the Status of Stateless Persons, 360 U.N.T.S. 117, entered into force on 6 June 1960 (The 1954 Convention)).

² A person having no state “to turn to for protection” though legally he/she is regarded as a national of a certain state (states) under the operation of the law of such state(s). See “The Convention relating to the Status of Stateless Persons: Its History and Interpretation”, a commentary by Nehemiah Robinson, Institute of Jewish Affairs, World Jewish Congress, 1955, reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees, 1997, p. 7.

³ The Special Working Group held meetings and interviews with stateless persons in Almaty and Shymkent cities as well as in Sairam district (Aksu city), Saryagash district (Saryagash city), and Makhtalar district (Zhetysay city). Overall, the Special Working Group interviewed 61 persons, including 34 men and 27 women.

Article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws reads:

“It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality”.

In other words, the concept based on which the State exercises its right to determine who are its nationals must comply with provisions of international law. Throughout the 20th century, the provisions were developing towards human rights prevalence over state sovereignty.

Article 15 of the 1948 Universal Declaration of Human Rights declares:

“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

This right is based on existence of a genuine and effective link between an individual and a State. The first time the link was recognised as a ground for nationality was the Nottebohm Case considered by the International Court of Justice in 1955. The Court pointed out as follows in its judgment:

“According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.”

The genuine and effective link, made manifest by birth, residency, and/or descent, is now reflected in the provisions of most States’ nationality legislation as well as in recent international instruments relating to nationality, such as the 1997 European Convention on Nationality.

How are the rights of refugees and stateless persons protected?

Although Article 15 of the Universal Declaration of Human Rights asserts that every person has the right to a nationality, it does not prescribe the specific nationality to which a person is entitled. To ensure that individuals are not deprived of a minimum set of rights associated with nationality, the international community developed two main treaties: the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons.

Is there any link between the 1951 Convention relating to the Status of Refugees and the issue of statelessness?

In the aftermath of World War II, the most pressing issues for the member States of the newly created United Nations was how to address the needs of the millions of individuals whom the war had left as refugees or had rendered stateless. A 1949 resolution of the UN Economic and Social Council (ECOSOC) led to the appointment of an Ad Hoc Committee whose task was to consider formulating a Convention on the status of refugees and stateless persons and to consider proposals for eliminating statelessness.

In the end, Committee members drafted a Convention on the status of refugees and a Protocol to the proposed Convention that focused on stateless persons. The Committee did not fully address the elimination of statelessness largely because it was assumed that the newly formed International Law Commission would focus on that issue.

Historically, refugees and stateless persons both received protection and assistance from the international refugee organisations that preceded UNHCR. The draft Protocol on Statelessness was intended to reflect this link between refugees and stateless persons. But the urgent needs of refugees and the impending dissolution of the International Refugee Organisation meant that there was not sufficient time for a detailed analysis of the situation of stateless persons at the 1951 Conference of Plenipotentiaries that had been convened to consider both issues. Thus, the 1951 **Convention relating to the Status of Refugees** was adopted at the Conference, while adoption of the Protocol addressing stateless persons was postponed for a later date.

Under the 1951 Convention, a stateless refugee receives protection as a refugee, since the arbitrary denial of citizenship because of a person's race, religion, nationality, membership in a particular social group, or political opinion can indicate that the individual should be recognised as a refugee.

What does the 1954 Convention relating to the Status of Stateless Persons provide for?

The Protocol on stateless persons that had been drafted as an addendum to the 1951 Refugee Convention was made into a Convention in its own right in 1954. **The 1954 Convention is the primary international instrument that aims to regulate and improve the status of stateless persons** and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination.

The provisions of the Convention are, in many respects, very similar to those of the 1951 Refugee Convention. **Acceding to the Convention is not a substitute for granting nationality to those born and habitually resident in a State's territory.** No matter how extensive the rights granted to a stateless person may be, they are not the equivalent of acquiring citizenship.

The 1954 Convention includes a strictly legal definition of a stateless person: "*a person who is not considered as a national by any State under the operation of its law*" (what is known as *de jure* stateless).

Who is a national? Who is stateless?

To be considered a national by operation of law means that an individual is automatically considered to be a citizen under the terms outlined in the State's enacted legal instruments related to nationality or that the individual has been granted nationality through a decision made by the relevant authorities. Those instruments can be a Constitution, a Presidential decree, or a citizenship act. Most people are considered nationals by operation of only one State's laws – usually either the laws of the State in which the person was born (*jus soli*) or the laws of the State of which the person's parents were nationals when the individual was born (*jus sanguinis*).

Individuals who have not acquired nationality automatically or through an individual decision under the operation of any State's laws are known as ***de jure* stateless persons**: persons who are stateless with reference to applicable law.

It is presumed that an individual has a nationality unless there is some evidence to the contrary. However, sometimes the States with which an individual might have a genuine link cannot agree as to which of them is the State that has granted citizenship to that person. The individual is thus unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection. He/she is considered to be ***de facto* stateless**.

Although the Convention's drafters felt it was necessary to make the distinction between *de jure* stateless persons (those who have not acquired nationality automatically or through an individual decision under the operation of any State's laws) and *de facto* stateless persons (those who cannot establish their nationality), they did recognise the similarity of their positions. The Final Act of the Convention addresses the issue of *de facto* stateless persons with a non-binding recommendation:

“that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.”

The decision as to whether a person is entitled to the benefits of the Convention is made by each State Party in accordance with its own established procedures. Through its representations/offices or its services at Headquarters, UNHCR is available to provide advice on how to create and implement these procedures, if requested.

What does the 1961 Convention on the Reduction of Statelessness provide for?

In August 1950, an ECOSOC Resolution requested that the International Law Commission (ILC) prepare a draft international Convention or Conventions for the elimination of statelessness. The ILC drafted two Conventions for consideration, both addressing the problem of statelessness resulting from conflicts of laws. One Convention, on the *elimination* of future statelessness, contained provisions that went much further than those contained in the second draft Convention, which focused on *reducing* the incidence of statelessness in the future. Participants in a conference convened to consider the issue determined that the former Convention was too radical and elected to work with the draft Convention on the Reduction of Future Statelessness. The instrument that finally emerged from this process is the **1961 Convention on the Reduction of Statelessness** (hereinafter referred to as the 1961 Convention).

The articles of the 1961 Convention aim to avoid statelessness at birth, but they neither prohibit the possibility of revocation of nationality under certain circumstances, nor retroactively grant citizenship to all currently stateless persons. The Convention also provides for the creation of a body to which a person who may benefit from the provisions of the Convention may apply to have his/her claim examined and to seek assistance in presenting the claim to the appropriate authority. The General Assembly subsequently asked UNHCR to fulfil this role.

The ILC and State delegates determined that international assistance for stateless persons was necessary because when an individual is denied citizenship of a State, he/she would have neither the financial resources nor the expertise required to present a claim to nationality to the authorities of that State. No other State could plausibly argue for the individual. Representation by an international agency would also sidestep the question of whether or not an individual was a subject of international law. In addition, an agency devoted to this work would eventually develop expertise on the issue that would be useful not only for advising concerned individuals, but also for proposing ways of acquiring an effective nationality and of reducing statelessness, in general.

In seeking to reduce the incidence of statelessness, the 1961 Convention requires that signatory States adopt nationality legislation that reflects prescribed stand-

ards relating to the acquisition or loss of nationality. Should disputes concerning the interpretation or application of the Convention arise between Contracting States and they are not resolved by other means, they can be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

The Final Act of the Convention includes a recommendation much like the one contained in the Final Act of the 1954 Convention that encourages States Parties to extend the provisions of the Convention to de facto stateless persons whenever possible.

How does human rights law ensure the right to a nationality?

Various other international legal instruments address the right to a nationality. The 1957 **Convention on the Nationality of Married Women** echoes the Universal Declaration of Human Rights by stipulating the right to a nationality and the right not to be deprived of a nationality. It also seeks to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to sex.” The first three Articles of the Convention contain specific provisions concerning a wife’s nationality:

Article 1 asserts that *“neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.”*

Article 2 states that *“neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.”*

Article 3, which is divided into two parts, states that “the alien wife of one of [the Contracting State’s] nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures” and that “the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.” It also stipulates that the Contracting State shall not construe the Convention *“as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband’s nationality as a matter of right.”*

The 1965 **Convention on the Elimination of All Forms of Racial Discrimination** obliges States to *“guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law,”* particularly in the enjoyment of several fundamental human rights, including the right to nationality (Article 5).

Article 24 of the 1966 **International Covenant on Civil and Political Rights** states that:

“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth the right to such measures of protection as are required by his status as a minor, on the part of his family, society and State.”

“Every child shall be registered immediately after birth and shall have a name.”

“Every child has the right to acquire a nationality.”

Article 26 of that Covenant also asserts that *“All persons are equal before the*

law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 9 of the **1979 Convention on the Elimination of All Forms of Discrimination against Women** states that:

“States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.”

“States Parties shall grant women equal rights with men with respect to the nationality of their children.”

The **1989 Convention on the Rights of the Child**, which has been ratified by almost every State, contains two important articles relevant to nationality:

Article 2 stipulates that *“States Parties shall respect and ensure the rights set forth in the... Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

Article 7 states that *“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.”* The Article also stipulates that *“States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”*

In 1997, the **European Convention on Nationality**, another regional instrument drafted by the Council of Europe, was adopted. It was born out of the perceived need to create a single text that consolidated all the developments in domestic and international law regarding nationality since the 1930 Hague Convention addressed the issue of conflicts of nationality laws. Indeed, the 1997 Convention allows for the acquisition of multiple nationalities for married persons of different nationalities and their children. But the Convention also covers questions of the acquisition, retention, loss, and recovery of nationality, procedural rights, nationality in the context of State succession, military obligations, and prevention of statelessness. The Convention refers to the 1954 Convention relating to the Status of Stateless Persons for its definition of a stateless person: that is, only *de jure* stateless persons are covered by the provisions of the European Convention on Nationality.

Europe’s recent experience with state succession led to a recognition that large numbers of people risk becoming stateless because they may lose their nationality before acquiring another. In an effort to avoid statelessness through state succession – which may occur as a result of a transfer of territory from one State to another, unification of States, dissolution of a State, or separation of part or parts of a territory – European States drafted a Protocol to the European Convention on Nationality that

focuses specifically on this problem. Elaborating on the Convention's general principles on nationality, the Draft Protocol on the Avoidance of Statelessness in relation to State Succession contains specific rules on nationality in cases of State succession. Its 21 Articles provide practical guidance on such issues as the responsibilities of the successor and predecessor states, rules of proof, avoiding statelessness at birth, and facilitating the acquisition of nationality by stateless persons.

2. FAVOURABLE PROTECTION ENVIRONMENT

2.1. DEMOGRAPHIC PROFILE

According to data provided by the Migration Police Committee under the Ministry of Internal Affairs of RK ("Migration Police"), 7,872 persons registered as stateless ones and having received proper documents were permanently residing in Kazakhstan as of 1 October 2011. Focus groups identified a lot of persons whose legal affiliation with the country is not established. Quite a number of people from the neighbouring CIS countries, whose only identity documents are ex-USSR passports or invalid passports of a CIS country, live in Almaty and in South Kazakhstan oblast.⁴ This part of the stateless population is mainly represented by persons who moved in to the Republic of Kazakhstan from the ex-USSR republics and their family members as well as migrant workers from the CIS countries.

According to NGO data, stateless persons are present among *oralmans* who are ethnic Kazakhs having arrived in Kazakhstan within the framework of a special state policy and legislative measures envisaged for ethnic Kazakhs living all over the world and willing to return to live in Kazakhstan as in their historical homeland.

There are also stateless persons among recognised refugees living in Kazakhstan. According to information received from the Committee for Migration in 2010, 603 refugees officially recognised by the Republic of Kazakhstan included 160 from Afghanistan registered as stateless; there are also 90 Afghani children. However, the migration authorities mentioned quite a number of situations when Afghani refugees, registered as stateless persons, had received Afghani passports later on, and claimed that a greater part of the persons in question could receive valid passports but they fail to do so asserting that they may not address the State they left as refugees. The UNHCR experience shows that when Afghani refugees retry to ask their State for protection the Afghani authorities usually recognise them as Afghani citizens and the latter cease to be stateless.

A general population census was taken in the Republic of Kazakhstan in 2009, and data provided by the Agency of Statistics of the Republic of Kazakhstan confirm that the quantity of stateless persons, based on the census results, exceeds the official data of the Migration Committee of MIA RK considerably, being **57,278** persons, including 28,903 males and 28,375 females (see Table 1).

Rural residents prevail among stateless persons; their total number is 31,660 whereas 25,618 stateless persons live in urban areas.

The largest numbers of stateless persons live in Almaty oblast (17,016), Mangis-tau oblast (8,807), South Kazakhstan oblast (8,675), Almaty city (5,156), Karaganda oblast (3,636), and Zhambyl oblast (2,820).

⁴ By now, a joint assessment with a small number of stateless persons living only in Almaty and South Kazakhstan oblast has been conducted whereas stateless persons or persons with unidentified nationality can also live in other regions of the country.

Table 1
Stateless persons, based on the 2009 census results

persons

	Males and females	Of them			
		Urban areas		Rural areas	
		Male	Female	Male	Female
Republic of Kazakhstan	57278	12873	12745	16030	15630
Including by age					
0-14 years	15418	3141	3121	4695	4461
15-64 years	39577	9316	8876	10820	10565
65+ years	2283	416	748	515	604
Akmola oblast	1909	287	248	708	666
Including by age					
0-14 years	456	59	44	167	186
15-64 years	1355	209	178	519	449
65+ years	98	19	26	22	31
Aktiubinsk oblast	1662	438	488	370	366
Including by age					
0-14 years	620	158	163	153	146
15-64 years	960	263	291	203	203
65+ years	82	17	34	14	17
Almaty oblast	17016	1129	1182	7459	7246
Including by age					
0-14 years	4215	275	271	1910	1759
15-64 years	12051	788	819	5269	5175
65+ years	750	66	92	280	312
Atyrau oblast	492	164	174	80	74
Including by age					
0-14 years	96	33	33	12	18
15-64 years	381	127	134	68	52
65+ years	15	4	7	0	4
West Kazakhstan oblast	517	163	156	110	88
Including by age					
0-14 years	123	33	30	39	21
15-64 years	360	124	109	65	62
65+ years	34	6	17	6	5
Zhambyl oblast	2820	350	365	1003	1102
Including by age					
0-14 years	738	71	80	308	279
15-64 years	1951	264	259	658	770
65+ years	131	15	26	37	53
Karaganda oblast	3636	1586	1530	272	248
Including by age					
0-14 years	899	367	387	75	70
15-64 years	2565	1165	1050	190	160

65+ years	172	54	93	7	18
Kostanai oblast	829	212	194	211	212
Including by age					
0-14 years	176	50	42	43	41
15-64 years	603	154	133	159	157
65+ years	50	8	19	9	14
Kyzylorda oblast	540	96	101	180	163
Including by age					
0-14 years	192	23	28	72	69
15-64 years	333	69	69	104	91
65+ years	15	4	4	4	3
Mangistau oblast	8807	1688	1723	2791	2605
Including by age					
0-14 years	2756	447	461	961	887
15-64 years	5860	1212	1200	1784	1664
65+ years	191	29	62	46	54
South Kazakhstan oblast	8675	2423	2536	1777	1939
Including by age					
0-14 years	3240	880	893	703	764
15-64 years	5215	1484	1556	1041	1134
65+ years	220	59	87	33	41
Pavlodar oblast	1194	335	363	261	235
Including by age					
0-14 years	282	48	50	96	88
15-64 years	795	255	249	155	136
65+ years	117	32	64	10	11
North Kazakhstan oblast	896	187	155	312	242
Including by age					
0-14 years	180	49	30	58	43
15-64 years	659	130	119	231	179
65+ years	57	8	6	23	20
East Kazakhstan oblast	1533	277	316	496	444
Including by age					
0-14 years	237	27	22	98	90
15-64 years	1239	245	287	374	333
65+ years	57	5	7	24	21
Astana city	1596	884	712	0	0
Including by age					
0-14 years	330	179	151	0	0
15-64 years	1226	689	537	0	0
65+ years	40	16	24	0	0
Almaty city	5156	2654	2502	0	0
Including by age					
0-14 years	878	442	436	0	0
15-64 years	4024	2138	1886	0	0
65+ years	254	74	180	0	0

According to the UNFPA Office in Almaty, stateless persons were offered an opportunity to identify themselves as such during the census. However, the methodology used to collect information on stateless persons was not concrete enough, i.e. the census did not implement for the persons identifying themselves as stateless a mechanism that would allow verifying the actual status of their affiliation to the nationality of any state.

In the opinion of the Commission on Human Rights, the data on the number of stateless persons from the 2009 census cannot serve as objective data because the methodology of population survey on statelessness matters was not perfect.

All the people officially recognised as stateless persons and living in Kazakhstan have stateless person certificates issued by public authorities of the Republic of Kazakhstan, and enjoy the rights and freedoms provided for by legislation of the Republic of Kazakhstan and its international commitments on human rights.

2.2. REASONS OF STATELESSNESS

Many unregistered stateless persons involved in the focus groups as well as public authorities dealing with stateless persons mentioned difficulties in receiving documents from a country of their previous residence necessary to prove their non-affiliation with that country's nationality, which is one of the obstacles for official recognition of the stateless person's status or for acquisition of nationality.

According to Article 10(3), Constitution of the Republic of Kazakhstan, foreign citizenship of a citizen of the Republic shall not be recognised.

According to the Constitution of RK (Article 12) and the Law of RK on Citizenship of the Republic of Kazakhstan (hereinafter referred to as the Law), foreigners and stateless persons in the Republic shall enjoy rights and freedoms as well as bear responsibilities equally with citizens of RK.

Article 15 of the Law states that foreigners and stateless individuals can acquire the citizenship of the Republic of Kazakhstan on their application.

Conditions for granting citizenship of the Republic of Kazakhstan are stipulated in Article 16 of the Law. Citizenship of the Republic of Kazakhstan can be granted to individuals who have been permanently residing in the Republic of Kazakhstan on legal grounds for no less than five years or married to a citizen of the Republic of Kazakhstan for no less than three years.

According to the Resolution of the Republic of Kazakhstan Government No.1137 of 18 September 1996 *On measures to expedite the process of exchange and issuance of passports and identification cards of the Republic of Kazakhstan citizen*, issuance of 1974-form passports was ceased since 1 July 1997, in order to ensure timely completion of documentation of the population.

The ex-USSR passports bearing marks on the holder's affiliation with citizenship of any of the CIS country, remained valid in the territory of Kazakhstan until completion of document exchange in those countries. Such passports were stamped with a stamp on registration (*propiska*) in the permanent place of residence in the territory of RK.

The stateless person status was also granted to persons having USSR 1974-form passports without any mark on affiliation with any citizenship and not subject to con-

ditions specified in Article 3, Law on Citizenship of the Republic of Kazakhstan as well as to persons who in that period were temporarily staying in Kazakhstan with 1974-form passports.

According to clause 74 of the Instruction on the application of the Rules of entry and stay of foreigners in the Republic of Kazakhstan as well as their departure from the Republic of Kazakhstan, and on organisation of official operational activities of the bodies of internal affairs to prevent and suppress illegal foreigner migration in the territory of the Republic of Kazakhstan (*approved by the Joint Order of the MIA No. 215 of 9 April 2004, the MFA No. 08-1/93 of 14 April 2004, and the Chair of the Agency for Migration and Demography of RK No. 35-n of 14 April 2004*), foreigners permanently residing in the Republic of Kazakhstan, who have not produced new or extended documents within six months from the date of expiry of the documents they have, are issued stateless person certificates by the bodies of internal affairs based on a relevant opinion.

The same provision was present in the previous Instruction approved by the Joint Order of the MIA RK No. 422 of 28 July 2000 and the MFA RK No. 100 of 8 August 2000. If the stateless person certificate holder produced a valid passport to the bodies of internal affairs, the certificate was replaced with the foreign national's residence permit in the Republic of Kazakhstan.

The stateless person certificate was used for delivery to a respective embassy and for documentation with national passports.

These persons did not eventually address their embassies, stayed in Kazakhstan, and still remain to be citizens of the countries they had arrived from (*as per legislation of their countries of nationality*) (Uzbekistan, Tajikistan, Azerbaijan).

According to Article 17 of the Law, an application for acquiring citizenship shall be refused if an applicant is a citizen of another country.

Accordingly, when an application for acquiring citizenship of Kazakhstan is filed, the applicant must alongside produce a certificate on renunciation of citizenship of the country of departure.

At present, these persons may apply to their country's embassy to renounce its citizenship or to be issued a national passport; after that, they may file an application for acquiring citizenship of Kazakhstan in due course.

According to the Constitution of RK (*Article 10(1)*), citizenship of the Republic of Kazakhstan shall be acquired and terminated as prescribed by law, shall be indivisible and equal regardless of the grounds of its acquisition.

Article 14, Law on Citizenship of the Republic of Kazakhstan, states that a child born on the territory of the Republic of Kazakhstan to stateless individuals permanently residing in the territory of the Republic of Kazakhstan is a citizen of the Republic of Kazakhstan.

Citizens of the Republic of Kazakhstan are issued a passport and an identification card of the Republic of Kazakhstan citizen by judicial bodies.

In this connection, a child born to stateless persons on the territory of the Republic of Kazakhstan may be documented with a passport of the Republic of Kazakhstan citizen if his/her parents wish so.

At the same time, practice shows that stateless persons take time to document their children with the Republic of Kazakhstan citizen passports because if they leave

abroad and wish to acquire some other country's citizenship the question will come up on their child's renunciation of the citizenship of RK, which would require long time and expenses.

As a result, in most cases they are documented with a stateless person certificate.

The Resolution of the Republic of Kazakhstan Government No. 1235 of 24 December 2008 approved a new form for the stateless person certificate containing electronic information media. The certificate is made in accordance with international requirements and standards set for machine-readable travel documents.

A stateless person certificate is issued to stateless persons who have attained 16 years of age and permanently reside on the territory of the Republic of Kazakhstan, for a 10-years period and confirms its holder's identify in the Republic's territory and outside.

When leaving abroad without parents, caregivers or guardians, a stateless person certificate may be issued to persons under 16 years of age.

Hence, stateless persons' children currently have access to issuance of identity documents equally with those of the Republic of Kazakhstan citizens.

It should be noted that a precondition for registration as a stateless person in the Republic of Kazakhstan consists of production of a *solvency document* confirming that the person has means of subsistence. Lack of sufficient personal funds or of a confirmation from sponsors providing means of subsistence can also constitute an obstacle for proper registration of destitute stateless persons in the Republic of Kazakhstan⁵.

2.3. IDENTIFICATION OF UNDOCUMENTED STATELESS PERSONS

Officially, there are about 8 thousand stateless persons in Kazakhstan. These are persons already documented with a stateless person certificate. However, a real quantity of stateless persons is considerably higher than the above-cited figure. In the overwhelming majority of cases, they have no identity documents and only come into the view of the migration police that does not address their no-document problem radically. The stateless population is predominated by residents of Kazakhstan and other post-Soviet countries that have not been issued national identity documents after the USSR break-up. They have remained beyond vision of the public authorities responsible for documentation of the population. Absence of documents restricts fundamental human rights such as the right to education, the right to work, the right to qualified medical care, the right to social benefits and pensions, and limits access to adequate housing; moreover, undocumented persons may not register their marriage and birth of their children. Besides, they have no permanent earnings because they may not obtain legal employment. For such persons to obtain or renew documents, they need between 10 and 100 thousand tenges, considering various dues, duties and fines. Usually they do not have such money. Besides, children born to undocumented stateless persons may not be documented without their parents' documents.

Undocumented persons' dependence on any people exercising powers of authority is another problem. They fuel corruption and human trafficking.

At present, free-of-charge documentation is only possible for persons of no fixed

⁵ See the Rules of confirmation by foreign nationals and stateless persons, pretending to obtain permits for permanent residence in the Republic of Kazakhstan, of their solvency during the period of stay in the Republic of Kazakhstan, approved by the RK Government Resolution No. 1185 of 26 November 2003.

abode in some cities of Kazakhstan, particularly in Astana and Aktobe. Unfortunately, such a largest Central Asian megalopolis as Almaty has no such opportunity because documentation expenses are confirmed by a maslikhat's resolution whereas in Almaty, such costs are not included in the budget of the local Social Adaptation Centre for Persons of No Fixed Abode. International Legal Initiative Public Foundation implemented a project, supported by the Canadian Embassy, on assisting undocumented persons, particularly in payment for documentation-related expenses. Currently, International Legal Initiative PF provides assistance to 25 persons being Kazakhstan citizens and stateless persons.

An exact number of undocumented persons, among them also being stateless ones, is so far not known or at least was not officially announced. Meanwhile, considering concentration of functions in the Ministry of Internal Affairs, it is not hard to do: they only should instruct district police officers all over the country to reveal such persons in their respective districts. That way they could determine, more or less reliably, the number of undocumented people in Kazakhstan within a short period of time and take measures to ensure their quickest possible documentation.

In our opinion, the situation should be addressed by the State within the shortest possible time. We suggest carrying out a large-scale action to reveal and document all persons having no identity documents and being in that situation for a long time, and to relieve them from administrative liability for having no identity documents. Kazakhstan would thereby secure access of undocumented persons and their family members to fundamental human rights, from civil and political to economic, social, and cultural rights. Besides, we recommend that administrative liability for having no identity documents, provided for by Article 377, Code of Administrative Offences of RK, be repealed because the duty of documentation lies with the State, identity documents are also owned by the State, and it is the State that is primarily interested to have all the population of Kazakhstan documented.

The focus groups held for a small number of individuals registered in the Republic of Kazakhstan as stateless persons as well as of individuals of uncertain nationality have shown that there is no systematic method for identification of stateless persons. An existing identification method is confined either to submission of an application to respective public authorities by persons wishing to legalise their status of stay in the country or to referral of persons having an illegal stay status to migration bodies by respective local public authorities. For example, representatives of the civil registry office (CRO) said that they referred persons having invalid documents to migration bodies to obtain either a stateless person certificate or a national passport if such persons apply to the CRO bodies for registration of marriage or birth that requires the above-mentioned documents.

2.4. INTERNATIONAL AND REGIONAL INSTRUMENTS

The Republic of Kazakhstan is not a party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Nevertheless, Kazakhstan is a party of some international and regional treaties that regulate matters related to nationality or can prove useful for prevention and

reduction of statelessness in the country. For example, Kazakhstan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2005, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1998, the Convention on the Rights of the Child (CRC) in 1999, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1998 and its Optional Protocol No. 1 in 2001, and the Convention on the Nationality of Married Women. Besides, Kazakhstan is a party to other human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) that apply to the entire population of the region including stateless persons.

The Republic of Kazakhstan is a party of such regional documents as the CIS Convention on Human Rights and Fundamental Freedoms, signed on 26 May 1995 in Minsk, Belarus (the 1995 Minsk Convention on Human Rights). The Convention provides for all the fundamental civil, political, economic and social human rights and freedoms contained in international human rights instruments, including everyone's right to citizenship and the guarantee that no one can be arbitrarily deprived of his citizenship or of the right to change it (Article 24).

Other important regional and bilateral documents ratified by Kazakhstan include:

Treaty on the Legal Status of Citizens of the Republic of Kazakhstan Permanently Residing in the Russian Federation, and of the Citizens of the Russian Federation Permanently Residing in the Republic of Kazakhstan;

Treaty between the Republic of Kazakhstan and Mongolia on Regulation of Voluntary Resettlement and Citizenship of Persons Arrived in the Republic of Kazakhstan on Labour Contracts (signed in Almaty on 2 December 1994);

Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on Simplified Procedures of Citizenship Acquisition (signed in Moscow on 26 February 1999) (multilateral agreement).

A similar agreement was also concluded between the Republic of Kazakhstan and Ukraine⁶.

2.5. NATIONAL LEGAL FRAMEWORK

The Constitution of the Republic of Kazakhstan provides for basic principles of citizenship such as indivisibility and equality of Kazakhstan citizens regardless of the grounds of citizenship acquisition as well as prohibition of dual citizenship.

The rules of acquisition and renunciation of Kazakhstan citizenship are envisaged in the Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan dated 20 December 1991 (the 1991 Citizenship Law). There is also a number of regulatory legal acts, governing or covering matters of citizenship and statelessness, listed below:

Decree of the President of the Republic of Kazakhstan No. 198 of 10 October 2006 *On the Commission for Citizenship under the President of the Republic of Kazakhstan*;

⁶ See the Agreement between the Republic of Kazakhstan and Ukraine on a Simplified Procedure for the Acquisition and Loss of Citizenship for Citizens of the Republic of Kazakhstan Who Are Permanently Resident in Ukraine and Citizens of Ukraine Who Are Permanently Resident in the Republic of Kazakhstan, and the Avoidance of Statelessness and Dual Nationality.

Resolution of the Republic of Kazakhstan Government No. 2106 of 14 December 2009 *On the approval of standards of the public service for acquisition and renunciation of the Republic of Kazakhstan citizenship*;

Instruction on examination of matters related to the Republic of Kazakhstan citizenship by the bodies of internal affairs, approved by the Order of the Minister of Internal Affairs of RK No. 556 of 23 August 2002 (MIA RK Citizenship Instruction);

Instruction on execution of documents related to the Republic of Kazakhstan citizenship by foreign missions of the Republic of Kazakhstan, approved by the Order of the State Secretary, Minister of Foreign Affairs No. 08-1-1-1/13 of 19 January 2011 (MFA RK Citizenship Instruction);

Law of the Republic of Kazakhstan on Migration of the Population of 22 July 2011, containing provisions on the issuance of certificates to stateless persons (the 2011 Migration Law).

The following by-laws were adopted in pursuance of the Migration Law provisions as well as to address some procedural issues related to the application and issuance of residence permits and certificates to stateless persons (the stateless person certificates):

1. Resolution of the Republic of Kazakhstan Government No. 1063 of 12 July 2000 *On the approval of the Rules of documentation and registration of the population of Kazakhstan* (the 2000 Documentation Rules);

2. Resolution of the Republic of Kazakhstan Government No. 136 of 28 January 2000 *On some matters of regulation of temporary residence of foreigners in the Republic of Kazakhstan* (the 2000 Stay Regulation);

3. Instruction on the application of the Rules of documentation and registration of the Republic of Kazakhstan population, approved by the Order of the Minister of Internal Affairs No. 338 of 4 June 2005 (the MIA Instruction on the Documentation Rules);

4. Instructions on the application of the Rules of entry and stay of foreigners in the Republic of Kazakhstan as well as their departure from the Republic of Kazakhstan, and on organisation of operational and service activities of the bodies of internal affairs to prevent and suppress illegal foreigner migration in the Republic of Kazakhstan territory, approved by the Joint Order of the MIA No. 215 of 9 April 2004, the MFA No. 08-1/93 of 14 April 2004, and the Chair of the Agency for Migration and Demography of RK No. 35 of 14 April 2004 (the 2004 Joint Order);

5. Public service standards *On the issuance of stateless person certificates to foreigners permanently residing in the Republic of Kazakhstan*, approved by the Resolution of the Republic of Kazakhstan Government No. 2101 of 14 December 2009 (Standards of Issuance of Statelessness Certificates and Residence Permits);

6. Public service standards *Registration and issuance of a permanent residence permit in the Republic of Kazakhstan to foreigners and stateless persons*, approved by the Resolution of the Republic of Kazakhstan Government No. 2102 of 14 December 2009 (Standards of Foreigners and Stateless Persons Registration for Permanent Residence);

7. Public service standards *Registration of foreigners and stateless persons temporarily staying in the Republic of Kazakhstan*, approved by the Resolution of the Republic of Kazakhstan Government No. 2105 of 14 December 2009 (Standards of Foreigners and Stateless Persons Registration for Temporary Residence).

The Law of the Republic of Kazakhstan on Legal Status of Foreigners of 19 June 1995 (the 1995 Foreigners Law) provides for a legal regime for foreigners and stateless persons and establishes standards of treatment, including fundamental human rights such as the right to education, medical care, social protection, employment and property. The procedures for realisation of the rights, specified in the 1995 Law on Legal Status of Foreigners, have been elaborated in various regulatory legal acts and administrative rules, and they will be analysed in this report.

2.6. DEFINITION OF A STATELESS PERSON

A person not being a citizen of the Republic of Kazakhstan and having no proof of his/her affiliation with citizenship of any other state shall be officially recognised as a stateless person (Article 2, Law on Legal Status of Foreigners). The above-stated definition, depending on its interpretation, potentially includes persons not mentioned in Article 1 of the 1954 Convention, for example persons who have a citizenship but have no identity documents or travel documents specifying their citizenship. The 2000 Stay Rules, which were given effect to in addition to the 1995 Law on Legal Status of Foreigners, promote substantiation of such a broad interpretation of the definition of statelessness, suggesting the rules of issuance of stateless person certificates to foreigners who are not able to produce a new foreign passport within six months from the date of expiry of the passports they have (clause 24).

2.7. AUTHORISED STATE BODIES

In accordance with the 1991 Citizenship Law, the Ministry of Internal Affairs of RK and its territorial bodies are responsible for determination of a person's affiliation with the Republic of Kazakhstan citizenship, receiving applications on the matters related to the Republic of Kazakhstan citizenship and registering renunciation and loss of the Republic of Kazakhstan citizenship (Article 30, 1991 Citizenship Law) as well as issuing a residence permit and a stateless person certificate.

The authorised body for migration of the population (Article 9, 2011 Migration Law), represented by the Migration Police Committee of MIA RK and its territorial bodies:

- performs recording and registration of foreigners and stateless persons;
- issues temporary and permanent permits for residence in the Republic of Kazakhstan to foreigners and stateless persons;
- makes decisions on granting the oralman, refugee or immigrant status, and on assigning payment of lump-sum benefits and funds for purchase of housing to the oralmans included in the oralman immigration quota.

Diplomatic mission of the Republic of Kazakhstan Ministry of Foreign Affairs receive application on acquisition of citizenship as well as register citizens permanently residing abroad and those who lose their citizenship during their stay abroad. Protection of specific rights of stateless persons is exercised by courts and relevant executive authorities responsible for protection of civil and socioeconomic rights (Article 18, 1995 Law on Legal Status of Foreigners).

2.8. PARTNERSHIPS

According to the UNHCR Representation in the Republic of Kazakhstan, the level of cooperation and partnership relations between UNHCR and other UN agencies is low. No country-level joint activities or programmes to combat statelessness or secure protection of stateless persons have been undertaken by UNHCR, other UN agencies, or international organisations. None of the population-related or children-related projects implemented by UNICEF or UNFPA aimed at reducing or preventing statelessness or protecting stateless persons although they can ensure coverage of these groups within the population as a whole.

2.9. Relationship between the Government of the Republic of Kazakhstan and UNHCR

Cooperation between the Government of the Republic of Kazakhstan and UNHCR is exercised on the constructive basis in various refugee-related activities such as capacity building and strengthening of the country's asylum system through joint consultations, working groups on the Law on Refugees, and interaction on individual asylum claims.

In the course of drafting of the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012, the Commission on Human Rights under the President of the Republic of Kazakhstan cooperated actively with the UNHCR Representation in Kazakhstan. The UNHCR staff was involved as independent consultants in the process of elaboration of the above-mentioned Action Plan.

In the regional cooperation development context, we should point out a successful regional conference on refugee protection and international migration in Central Asia, organised in cooperation with UNHCR and IOM on 15-16 March 2011 in Almaty.

The conference resulted in a Declaration that provided for the establishment of a Regional Cooperation Framework that would join efforts of all stakeholders such as governments, international organisations, and NGOs.

In this regard, as further practical steps to implement the agreements reached, we suggest organising a meeting in Astana on the level of diplomatic missions of the region's countries to discuss follow-up measures for establishment of the Framework.

In this connection, UNHCR's humanitarian role should be strengthened further on, and its cooperation with governments in all areas needs to be deeper.

Kazakhstan is committed to its obligations under the Convention relating to the Status of Refugees, and intends to remain an active partner for UNHCR in the region, expanding interaction in improvement of the situation concerning refugees and stateless persons.

2.10. NATIONAL AND REGIONAL DEVELOPMENT POLICIES

The Republic of Kazakhstan has adopted a variety of socioeconomic development lines since declaration of its independence, e.g. the Strategic Development Plan of the Republic of Kazakhstan through 2010 (Strategic Plan). Besides, the Strategy of Socioeconomic Development of the Country through 2020 has been adopted.

Within the framework of its main goal of social sphere reform, the Strategic Plan aims at improving the overall demographic situation, achieving gender equality in the society, enhancing economic opportunities for low-income society members, encouraging employment in emerging economic sectors, improving living standards and employment rates, reducing poverty, guaranteeing universal access to medical services, general and vocational education, security and a wide range of other social security services provided to the population.

3. PREVENTION AND REDUCTION OF STATELESSNESS

3.1. Prevention and reduction of statelessness due to state succession and implementation of state strategies

Disintegration of the former USSR resulted in succession of state power and emergence of new independent states in its former territories. The Republic of Kazakhstan declared its independent statehood and guaranteed retention of USSR citizenship to every citizen of the Republic of Kazakhstan⁷.

In 1991, the USSR ceased to exist as a State. Hence, there was no USSR citizenship anymore, and citizens of the ex-Union republics faced the citizenship change problem. During that same year, the Republic of Kazakhstan confirmed adoption of its own citizenship by approving the Constitutional Law on Independence (Article 7) followed by the Constitution of the Republic of Kazakhstan (Article 10). As the Law on Citizenship came into force in 1991, USSR citizenship was changed and USSR identity documents were replaced since the state power succession became a key issue in securing a safe transition from Soviet to new citizenship, that of the Republic of Kazakhstan. That was the reason why the Government of RK enacted a resolution on replacing old USSR passports with newly issued national passports and identity cards of the Republic of Kazakhstan citizen by 1 March 1999⁸.

According to available data, some people did not manage to have their old USSR passports replaced within the set timeframe⁹. Besides,

persons with ex-USSR passports who arrived in the country after the 1991 Citizenship Law had taken effect¹⁰ and born not in Kazakhstan were not entitled to acquire Kazakhstan citizenship automatically. Currently, these people are stateless persons or at risk of statelessness. The 1991 Citizenship Law partly resolved the situation with ex-USSR residents by allowing them to acquire citizenship without the need to reside permanently in Kazakhstan for five years provided that they have an immediate relative such as a child, spouse, parent(s), grandfather or grandmother, brother or sister having Kazakhstan citizenship as well as provided that the person arrived in Kazakhstan for permanent residence purposes. All other ex-USSR residents who did not manage to acquire citizenship prior to taking effect by the 1991 Citizenship Law or who have no immediate relative having Kazakhstan citizenship are

⁷ See the Sovereignty Declaration, Article 5.

⁸ Resolution of the the Republic of Kazakhstan Cabinet of Ministers No. 256 of 5 April 1993 and the Regulations on the Passport System in the Republic of Kazakhstan approved by the above-mentioned Resolution and supplemented by Resolutions of the Republic of Kazakhstan Government No. 277 of March 1996, No. 1137 of 18 September 1996, No. 314 of 10 April 1997, and No. 1235 of 4 December 1998.

⁹ In 2008, the Ministry of Justice of RK reported on 4,617 applications (submitted during the first 10 months of that year) from Kazakhstan residents on replacement of old Soviet passports. As the ministry explained, such applications might not be rejected although the applicants had submitted them upon expiry of the set timeframe, i.e. after 1 March 1999. However, such applications are only processed if the migration authorities of RK confirm the applicant's affiliation with the Republic of Kazakhstan citizenship. Source: <http://www.minjust.kz/en/node/387>, 10 May 2010.

¹⁰ The 1991 Citizenship Law took effect on 1 March 1992.

entitled to acquire citizenship of the Republic of Kazakhstan according to the procedure established by law. The existing provisions that regulate granting of citizenship to those ex-USSR nationals who have not yet acquired the Republic of Kazakhstan citizenship are important tools to eliminate the risk of statelessness and improve the current statelessness situation.

3.2. Prevention and reduction of statelessness through acquisition of citizenship

Article 5, 1991 Citizenship Law, guarantees equal treatment of all citizens regardless of the way they acquired their citizenship. In its Ruling on Official Interpretation of Articles 10 and 12 of the Constitution of RK dated 1 December 2003 (the 2003 Constitutional Council Ruling), the Constitutional Council of the Republic of Kazakhstan expressed the opinion that the principle of equality of citizens formulated in Article 10 of the Constitution means equality of rights, freedoms and responsibilities of citizens regardless of their origin, social or property status, racial or national background, language, religious affiliation or beliefs, residence or any other circumstances. None of the provisions in the 1991 Citizenship Law allows discrimination due to which certain persons or groups may be deprived of, or denied, citizenship.

Kazakhstan's legislation specifies four general ways of acquiring citizenship (Article 4, 1991 Citizenship Law), namely:

- at birth;
- as a result of being granted citizenship (naturalisation);
- on the basis or according to procedures set forth by the country's intergovernmental agreements;
- on other grounds provided for in the 1991 Citizenship Law.

In our opinion, each of these four ways promotes prevention of statelessness although they do not contain all the necessary safeguards provided by international law.

PREVENTION OF STATELESSNESS THROUGH ACQUISITION OF CITIZENSHIP AT BIRTH

Four different articles of the 1991 Citizenship Law regulate acquisition of citizenship at birth. Acquisition of citizenship at birth depends on whether the child's parent (or both parents) has (have) a citizen status at the moment of the child's birth or whether the child's parents have the Republic of Kazakhstan residence permit (if the parents permanently reside in the country lawfully then their children may be granted citizenship).

Substantial law. The absolute *jus sanguinis* applies to a child whose parents are citizens of the country, and such a child acquires citizenship regardless of the place of birth (Article 11, 1991 Citizenship Law). If parents have different citizenship and one of them was a citizen of the Republic of Kazakhstan at the moment the child was born, then the child is a citizen of the Republic of Kazakhstan if:

- i. he/she was born in the territory of the Republic of Kazakhstan;
- ii. he/she was born outside of the country but his/her parents or one of them had

permanent residence in the Republic of Kazakhstan at the moment the child was born (Article 12).

Citizenship of a child born outside of the Republic of Kazakhstan, one of whose parents was a citizen of the Republic of Kazakhstan while another one was a foreign national by the moment the child was born, is determined upon written consent of both parents (Article 12, part 2). *Jus sanguinis* applies also, and a child is a citizen of the Republic of Kazakhstan regardless of his/her place of birth, if one of the parents was a citizen of the Republic of Kazakhstan by the moment the child was born while another one was a stateless person or had an unknown nationality. In case of establishment of paternity for a child under 14 years of age whose mother is a stateless person and for whom a citizen of the Republic of Kazakhstan is admitted as a father, the child automatically becomes a citizen of the Republic of Kazakhstan regardless of the place of birth. If such a child lives outside of the Republic of Kazakhstan his/her citizenship is determined upon a written application of his/her parents (Article 12, part 4). A child staying in the Republic of Kazakhstan whose parents are both unknown is a citizen of the Republic of Kazakhstan (Article 13). A child born to stateless persons having a permanent place of residence in the Republic of Kazakhstan is a citizen of the Republic of Kazakhstan (Article 14).

Citizenship of a child born in the Republic of Kazakhstan to foreigners of different nationality having a permanent place of residence in the Republic of Kazakhstan is determined upon a notarized written consent of the child's parents (Article 14, part 2).

A child whose both parents had a foreign nationality by the moment the child was born is not a citizen of the Republic of Kazakhstan regardless of the place of birth (Article 11-1).

PROCEDURAL MATTERS AND INTERNAL CONSISTENCY

Provisions in part 2, Article 12, 1991 Citizenship Law, that deal with citizenship of children born outside of the country, with parents having different citizenship (one being a citizen of the Republic of Kazakhstan) and living outside of Kazakhstan at the moment the child was born, can increase the child's risk of statelessness if the parents fail to come to terms concerning the child's citizenship. The 1991 Citizenship Law does not establish any procedure for acquisition of citizenship by such children in case of no consent between the parents. Neither the MIA RK Citizenship Instructions nor the MFA RK Citizenship Instructions consider such cases or provide a citizenship acquisition mechanism when parents cannot come to terms. Besides, neither of Kazakhstan's applicable legislative acts fixes a term within which the parents must reach agreement and determine their children's citizenship; this situation increases the risk of statelessness.

Article 14, 1991 Citizenship Law, makes citizenship acquisition by a stateless parents' child born in the Republic of Kazakhstan conditional on the parents having a permanent place of residence in the Republic of Kazakhstan. This condition, however, does not apply to stateless persons not officially registered.

The problem of having valid identity documents can arise for stateless persons under the following circumstances. First of all, the provision may not apply to stateless persons not assigned the official stateless status and not having proper supporting documents, as mentioned above¹¹.

¹¹ Article 12 of the Standard on the issuance of a stateless person certificate and a residence permit requires the stateless person to produce an identity

Secondly, birth of children to stateless persons in the national territory can only be confirmed by registration of birth and a birth certificate. The Rules on the procedure of civil registration in the Republic of Kazakhstan, approved by the Resolution of the Republic of Kazakhstan Government No. 620 of 22 May 1999 (the 1999 Civil Registration Rules), allow for birth registration of stateless persons' children in the Republic of Kazakhstan provided that the parents produce valid identity documents (clauses 6.4 and 33). This provision does not allow undocumented stateless persons (e.g. holders of ex-USSR passports) to register birth of their children and, consequently, does not allow such children to acquire citizenship at birth as per part 2, Article 12, 1991 Citizenship Law.

Thirdly, the child's parents having no citizenship must prove the fact of their permanent residence in the country. According to the 1995 Law on Legal Status of Foreigners, foreigners and stateless persons are recognised as permanently residing in the Republic of Kazakhstan if they have a proper authorisation and a permanent residence document issued by public authorities of the Republic of Kazakhstan (Article 4). Besides, the 2000 Documentation Rules point out that stateless person certificates must be issued to stateless persons permanently residing in Kazakhstan (clause 7) because they are registered at their permanent place of residence based on a stateless person certificate (clause 27). Hence, that the parents have stateless person certificates is a compulsory condition for acquisition of citizenship by their children, and being unable to produce such a certificate prevents the child to acquire citizenship.

The 1991 Citizenship Law makes no distinction between sexes as far as transfer of citizenship to children is concerned. Generally, children born out of wedlock have the same rights to acquisition of citizenship as those born in wedlock. However, to acquire citizenship, a proof of paternity should be produced if one of the parents is a citizen of the Republic of Kazakhstan and the other one is stateless (Article 12, part 4). Despite that, the 1991 Citizenship Law grants citizenship to children whose one parent was a citizen of the Republic of Kazakhstan by the moment the child was born and the other one was stateless, regardless the child's place of birth (Article 12, parts 3 and 4). If the child's mother is stateless and did not enter into official marriage with the child's father, lack of official recognition of paternity by the parent being a citizen of the Republic of Kazakhstan can pose an obstacle for determination of the child's citizenship as mentioned in Article 12, parts 3 and 4. The 1999 Civil Registration Rules allow for establishment of paternity for a child born out of wedlock through a written agreement between the parents (clause 24).

COMPLIANCE WITH INTERNATIONAL STANDARDS

The 1991 Citizenship Law contains certain guarantees for acquisition of Kazakhstan citizenship by stateless persons at birth. These guarantees correspond to the provisions formulated in the 1961 Convention and the CRC that state that every child has the right to acquire nationality (Article 7).

Hence, Article 1, 1961 Convention, provides granting of nationality to a person born in the country's territory who would otherwise be stateless. Contracting States that are parties to the Convention must grant nationality to such persons:

- a) at birth, by operation of law, or

document for him/her to be issued a stateless person certificate.

b) at some later time, upon an application being lodged.

The same applies to children born abroad if one of the parents is a national whereas otherwise the child would be stateless.

The 1961 Convention allows its Contracting Parties to specify criteria that should be met by a person born in their territory for acquisition of nationality, e.g. age or habitual residence in the country (Articles 1.2(a) and (b), and 4.2(a) and (b)). The criterion requiring habitual residence, as mentioned in the 1961 Convention, can apply to a person lodging an application for nationality but not to his/her parents or relatives. In this connection, introduction of the requirement on a permanent place of residence for parents of stateless children born in the Republic of Kazakhstan, as specified in Article 14, Citizenship Law, fails to comply with the provisions in the 1961 Convention.

Similarly, part 1, Article 12, 1991 Citizenship Law, that regulates the matters related to children born outside of the Republic of Kazakhstan, with one parent being a citizen of the Republic of Kazakhstan, requires that the child's parents have a permanent place of residence in the Republic of Kazakhstan for the child to acquire citizenship. This requirement is not in line with the guarantee provided for in the 1961 Convention. Article 4 of the 1961 Convention guarantees granting of nationality to a child, not born in the territory of a Contracting State, if the nationality of one of his parents is that of that State. The Convention allows a State to introduce the permanent residence criterion for a person applying for nationality but says nothing on requirements to the person's parents' place of residence (Article 4.1 and 2).

Although other provisions of the 1991 Citizenship Law related to acquisition of citizenship at birth cover most situation that can entail statelessness and meet most provisions of the 1961 Convention, as already mentioned above, citizenship at birth can be granted not to all persons who otherwise would be stateless. For example, despite possible granting of citizenship to a stateless person's children by Article 14 of the 1991 Citizenship Law, still not every child can actually acquire citizenship of the Republic of Kazakhstan. This gap can be filled either by providing a general guarantee against statelessness at birth according to Article 1, 1961 Convention, or, as an alternative, such a guarantee could be included in the Law for children of foreign nationals who are not able to transfer their citizenship to their children or for children one of whose parents is such a foreign national, the other one being stateless. Such legal guarantees, for example, were included in the Russian Federation Law of Citizenship¹².

REDUCTION OF STATELESSNESS THROUGH ACQUISITION OF CITIZENSHIP

There are no separate statistics on stateless persons who acquired citizenship of the Republic of Kazakhstan. The Committee for Migration Police under the Ministry of Internal Affairs reports on about 850 thousand persons who have acquired citizenship of the Republic of Kazakhstan since 1991 due to conferment of nationality according to the Citizenship Law and international agreements. Of them, citizenship of Kazakhstan has been granted to 756.7 thousand oralmans (88.1% of those who arrived in the country between 1991 and 1 October 2011).

¹² Article 12.1(d), the 2002 Law of the Russian Federation on Citizenship.

In July 2011, some amendments were made to the Law on Citizenship of the Republic of Kazakhstan, according to which Kazakhstan citizenship is granted to oralmans in a simplified procedure (by registration) within three months.

Although there is no precise information and statistics on the number of stateless persons among oralmans, public authorities confirmed that those who lodged applications for the oralman status include stateless persons and holders of ex-USSR passports.

SUBSTANTIAL LAW

The 1991 Citizenship Law guarantees stateless persons the right to lodge an application for acquiring citizenship of the Republic of Kazakhstan. A final decision on applications for acquiring citizenship is made by the President of the Republic of Kazakhstan (Article 15). The 1991 Citizenship Law provides for two general conditions for granting of citizenship. First of all, an applicant must have permanently resided in the Republic of Kazakhstan for no less than five years at the moment of lodging the application, or have been married to a citizen of the Republic of Kazakhstan for no less than three years (Article 16(1), Citizenship Law). Meeting these conditions is not required when citizenship of the Republic of Kazakhstan is granted to minors, incapable persons, or persons (and their family members) who deserve well of the Republic of Kazakhstan or have occupations enjoying great demand and meet requirements according to the list specified by the President of the Republic of Kazakhstan¹³, as well as persons who had left the territory of Kazakhstan and descendants thereof if they returned for permanent residence to the Republic of Kazakhstan as their historical homeland.

Besides, citizenship of the Republic of Kazakhstan can be granted to citizens of former USSR republics who arrived in the Republic of Kazakhstan for permanent residence and whose immediate relative is a citizen of the Republic of Kazakhstan: a child (included an adopted one), a spouse, one of the parents (adoptive parents), a sister, a brother, a grandfather, or a grandmother, regardless of the period of their residence in the Republic of Kazakhstan (Article 16(2)). No requirement on permanent residence is set forth for this category of persons.

Matters of citizenship of military servicepersons on active duty stationed in the Republic of Kazakhstan are determined by interstate treaties of the Republic of Kazakhstan.

What follows is a list of grounds for refusal of citizenship according to the 1991 Citizenship Law. An application for acquiring citizenship of the Republic of Kazakhstan may be refused if the applicant:

- (i) committed a crime against humanity as defined by international law or if he deliberately comes out against the sovereignty and independence of the Republic of Kazakhstan;
- (ii) calls on for infringement of unity or integrity of the territory of the Republic of Kazakhstan;
- (iii) carries out illegal activity causing harm to public security or public health;
- (iv) excites inter-ethnic or religious hostility or counteracts operation of the official language of the Republic of Kazakhstan;

¹³ At present, the Decree of the President of the Republic of Kazakhstan No. 1587 of 6 June 2005 lists 24 occupations and requirements to the level of training and skills of applicants in those occupations, among them being physicians, school teachers, archeologists, biologists, geologists, engineers, pilots, mathematicians, etc.

(v) belongs to terrorist or extremist organisations or has been convicted for terrorist activities;

(vi) is internationally wanted, serves a sentence on a judgement that has entered into legal force, or his/her acts have been judicially found to be especially dangerous backslide;

(vii) is a citizen of an other country;

(viii) reported false data on him/herself when lodging an application for acquiring citizenship of the Republic of Kazakhstan, or without valid excuse failed to produce data within the timeframe set by legislation of the Republic of Kazakhstan;

(ix) has an unexpunged or outstanding conviction for committing a deliberate crime in or outside of the Republic of Kazakhstan that is recognised as such in the legislation of the Republic of Kazakhstan;

(x) committed an offence in the field of economy and/or legislation of the Republic of Kazakhstan on migration within five years preceding the lodging of an application for acquiring citizenship of the Republic of Kazakhstan;

(xi) lost citizenship of the Republic of Kazakhstan according to sub-clauses 1), 2) and 5), Article 21, Citizenship Law, within five years preceding the lodging of an application for acquiring citizenship of the Republic of Kazakhstan Article 17).

In this case, loss of citizenship of the Republic of Kazakhstan is understood as loss:

1) because of a person's entry into military service, security service, police, judicial authorities or other public and administration authorities of some other State except for cases provided for in interstate treaties of the Republic of Kazakhstan;

2) if citizenship of the Republic of Kazakhstan was acquired due to submission of deliberately false data or forged documents;

3) if the person acquired citizenship of some other State.

The latter ground, i.e. acquisition of some other State's citizenship does not apply to the list of persons specified in Article 16-1, Citizenship Law, who applied to bodies of internal affairs with notarised written address on renunciation of foreign citizenship.

Foreign passports of oralmans are sent to a respective foreign State upon their acquisition of citizenship of the Republic of Kazakhstan.

PROCEDURAL MATTERS AND INTERNAL CONSISTENCY

Priority among ex-USSR citizens permanently residing in the Republic of Kazakhstan is given to persons whose immediate relatives are citizens of the Republic of Kazakhstan, as mentioned above. All the other persons must meet general conditions for granting of citizenship that include continuous permanent residence during five years. The MIA RK service standards contain a list of necessary documents to be submitted for confirmation of permanent residence by all persons not entitled to acquire citizenship in a simplified procedure, e.g. ex-USSR residents having no immediate relative who is a citizen of the Republic of Kazakhstan (clause 12).

COMPLIANCE WITH INTERNATIONAL STANDARDS

The condition of not being a citizen of any other State at the moment of lodging of the application for acquiring citizenship of the Republic of Kazakhstan (Article 17, 1991 Citizenship Law; clause 15.8, MIA Citizenship Instruction) does not comply with the 1961 Convention that provides for acquisition of other country's nationality prior to renunciation of another nationality.

Article 32, 1954 Convention, calls on States to facilitate the assimilation and naturalisation of stateless persons, in particular by expediting naturalisation proceedings and reducing the charges of such proceedings. As mentioned above, the process of acquisition of citizenship of the Republic of Kazakhstan by stateless persons does not provide for a simplified procedure of granting of citizenship.

INFORMATION ON CITIZENSHIP ACQUISITION PROCEDURES

An application and documents for acquisition of citizenship of the Republic of Kazakhstan must be submitted to bodies of internal affairs at the applicant's place of residence (Article 30, 1991 Citizenship Law; clause 2, MIA Citizenship Instruction), or to embassies of the Republic of Kazakhstan abroad (Article 31, 1991 Citizenship Law; clause 3, MFA Citizenship Instruction). The 1991 Citizenship Law prescribes six months as a maximum timeframe for processing of the application (Article 32). The Law further specifies that relevant bodies send applications on citizenship, along with a grounded opinion on reasonability of granting of citizenship, to the President of the Republic of Kazakhstan (Article 34). The Commission for Citizenship under the President of the Republic of Kazakhstan thoroughly assesses each application, opinion and finding of public authorities, properly executed testimonial evidence and other materials, and gives its recommendations on each application or submission (Article 35). Thereafter, the President of the Republic of Kazakhstan issues a Decree on Granting of Citizenship (Article 36).

According to available data, every year about 10 thousand applications on granting of citizenship receive positive replies. The stateless persons involved in the focus group work did not report on active dissemination of information on acquisition of citizenship of the Republic of Kazakhstan although they mentioned support and assistance from local migration services in preparation of applications and collection of necessary documents in a whole number of districts in South Kazakhstan oblast.

OTHER WAYS TO ACQUIRE CITIZENSHIP

SUBSTANTIAL LAW

Other grounds, provided in the 1991 Citizenship Law for retention or restoration of citizenship of the Republic of Kazakhstan, are presented below:

should one parent (both parents) change their citizenship, citizenship of their children under the age of 14 changes accordingly (Article 22);

should one of the parents become a citizen of the Republic of Kazakhstan while the other parent is a citizen of another State or stateless, the child may acquire citizenship of the Republic of Kazakhstan provided that he/she is under the age of 14 and resides in the Republic of Kazakhstan (Article 23);

should one of the parents renounce citizenship of the Republic of Kazakhstan while the other one remains a citizen of the Republic of Kazakhstan, the child under the age of 14 retains his/her citizenship of the Republic of Kazakhstan. Such a child may be allowed to renounce citizenship of the Republic of Kazakhstan only upon a notarised written consent of the parents (Article 24);

a child under the age of 14 being a citizen of another State or stateless who is adopted by a citizen of the Republic of Kazakhstan becomes a citizen of the Republic of Kazakhstan (Article 25, part 1);

a child under the age of 14 being a citizen of another State or stateless who is adopted by spouses, one of whom is a citizen of the Republic of Kazakhstan while the other one is not, becomes a citizen of the Republic of Kazakhstan based upon written consent of the adoptive parents (Article 25, part 2);

a child under the age of 14 residing in the Republic of Kazakhstan retains citizenship of the Republic of Kazakhstan upon his/her guardian's application if both of his/her parents or a single parent retain citizenship of the Republic of Kazakhstan and are deprived of parental rights (Article 26, part 1);

a child being a citizen of the Republic of Kazakhstan, adopted by foreign nationals, retains citizenship of the Republic of Kazakhstan until the age of majority. A child adopted by citizens of the Republic of Kazakhstan retains citizenship of the Republic of Kazakhstan until the age of majority in case these persons renounce citizenship of the Republic of Kazakhstan (Article 27).

Citizenship of children aged 14 to 18 in the above-mentioned cases can only be changed with their notarised written consent (Articles 27, 28, and 33).

PROCEDURAL MATTERS AND INTERNAL CONSISTENCY

Provisions of the 1991 Citizenship Law envisage possible recovery of citizenship (Article 18). This possibility could be a tool for reduction of statelessness in cases when a person has renounced citizenship of the Republic of Kazakhstan but has not acquired any other citizenship. However, the citizenship recovery process is not a simplified one compared to consideration of applications on recovery of citizens of oralmans or victims of political repressions.

COMPLIANCE WITH INTERNATIONAL STANDARDS

The 1961 Convention contains only one standard related to recovery of citizenship. Article 5(2) of the Convention establishes the rule of recovery of nationality by a child born out of wedlock who lost the nationality in consequence of recognition of affiliation. The recovery provision in the 1991 Citizenship Law enjoys more extensive use but, as mentioned above, it does not expedite re-acquisition of citizenship as compared to general procedures for granting of citizenship.

The 1961 Convention does not concern directly acquisition of citizenship in situations when children are adopted by citizens of a State. However, on the whole the Convention is designed to reduce the risk of statelessness. As a result, the requirement on consent of both parents as regards their child's citizenship in the situation when both adoptive parents have different citizenships causes concern that was already dealt with above for children born in a marriage between a citizen of the Republic of Kazakhstan and a foreign national outside of Kazakhstan.

3.3. RENUNCIATION OF CITIZENSHIP

SUBSTANTIAL LAW

The 1991 Citizenship Law provides for voluntary renunciation of citizenship (Article 20). Renunciation of citizenship may be denied if the applicant has outstanding obligations to the Republic of Kazakhstan or property obligations related to material interests of citizens, enterprises, institutions, organisations or public associations

located in the Republic of Kazakhstan. Renunciation of the citizenship may also be denied if the applicant has been held criminally liable as a defendant, or is serving a sentence in accordance with the court's valid decision, or if the individual's renunciation of citizenship of the Republic of Kazakhstan conflicts with national security interests of the Republic of Kazakhstan (Article 20).

Besides, the Law envisages the following specific rules concerning change of children's citizenship:

- change of citizenship of parents entails change of citizenship of their children under the age of 14 (Article 22);

- should one parent renounce his/her citizenship of the Republic of Kazakhstan while the other one remains a citizen of the Republic of Kazakhstan, their children under the age of 14 retain Kazakhstan citizenship. Children's renunciation of citizenship is only allowed upon a notarised written consent of their parents (Article 24);

- if one or both parents of a child under the age of 14 residing in Kazakhstan renounce citizenship of the Republic of Kazakhstan and are deprived of parental rights, the child retains his/her citizenship upon his/her guardian's application (Article 26(1));

- children under the age of 14 residing in Kazakhstan retain their citizenship upon their guardian's application if both parents, being citizens of other States, are dead or missing, if relatives being citizens of the State of which the parents were citizens refuse to adopt the child, or if the child does not want to be adopted thereby (Article 26(2));

- children under the age of 14 residing in Kazakhstan retain their citizenship upon their guardian's application if one of the parents is dead or missing. In that case, the child's citizenship is determined at the second parent's wish (Article 26(3));

- children being citizens of Kazakhstan but adopted by foreign nationals retain their citizenship until the age of majority. A child adopted by citizens of Kazakhstan retains his/her citizenship until the age of majority if they renounce the citizenship of the Republic of Kazakhstan (Article 27).

Renunciation of citizenship by a child aged 14 to 18 in the above-mentioned cases can only be accepted upon his/her written and notarised application (Articles 27, 28, and 33).

PROCEDURAL MATTERS AND INTERNAL CONSISTENCY

The 1991 Citizenship Law does not specify that renunciation of a citizenship is a precondition for acquisition of other citizenship. Renunciation of citizenship is not automatic, it needs a decision by the President of the country (Article 29). Existing bilateral and multilateral agreements of the Republic of Kazakhstan on simplified acquisition and renunciation of citizenship are intended to ensure a possibility of avoiding statelessness when people change their citizenship. For example, both multilateral (Article 1) and bilateral agreements with Ukraine state that acquisition of citizenship of one of signatory States as well as renunciation of citizenship of other State depends on free will of a person concerned. At the same time, the agreements allow a person to apply to a signatory State for citizenship while retaining his/her country's citizenship until he/she is granted the above-mentioned State's citizenship (Article 2). The same provisions are envisaged by the Order of the Minister of Internal Affairs of the

Republic of Kazakhstan No. 556 of 23 August 2002 *On the approval of the Instruction on examination of matters related to the Republic of Kazakhstan citizenship by the bodies of internal affairs*. Persons granted the Republic of Kazakhstan citizenship must deliver national passports of their previous citizenship countries to the bodies of internal affairs. The passports, along with an original notarised application on renunciation of the previous citizenship and a notice on granting of the Republic of Kazakhstan citizenship, are sent to the Department of Consular Service of the Ministry of Foreign Affairs of the Republic of Kazakhstan according to an established form (clause 43).

The 1991 Citizenship Law contains a number of provisions on change or retention of citizenship by children under the age of 14 whose parents renounce citizenship; however, the process through which children's citizenship is changed or retained is not explained. Some of the provisions on retention of citizenship by children under the age of 14 in case of their parents' renunciation of citizenship prevent child statelessness.

Article 28, 1991 Citizenship Law, also aims at preventing a child's statelessness provided that change of citizenship of a child aged 14 to 18 in case their parents change their citizenship or the child is adopted or taken under guardianship can only be effected upon the child's consent.

COMPLIANCE WITH INTERNATIONAL STANDARDS

Articles 7(1) and 7(2), 1961 Convention, deal with a common standard for renunciation of nationality that requires that a State does not permit renunciation of nationality if the applicant does not or did not have a proper assurance of acquiring the nationality of other State. In contrast with this principle, the 1991 Citizenship Law does not specify that an assurance of acquiring other citizenship must be a precondition for renunciation of citizenship, except for citizens of Belarus, Kyrgyzstan, Russia and Ukraine in accordance with multilateral and bilateral agreements on simplified acquisition of citizenship.

The only provision in the 1961 Convention dealing with nationality of an adopted child is Article 5(1) that requires a State to make the loss of nationality by an adopted child conditional upon acquisition of another nationality. Article 27, 1991 Citizenship Law, envisages that a child being a citizen of Kazakhstan and adopted by foreign nationals must retain his/her citizenship until the age of majority. A child adopted by citizens of Kazakhstan retains his/her citizenship until the age of majority if both adoptive parents renounce the citizenship of the Republic of Kazakhstan. Such a child's renunciation of citizenship of the Republic of Kazakhstan is only allowed upon attainment of the age of majority and of his/her own free will.

Article 7, 1961 Convention, establishes a general provision for renunciation of nationality that requires a State not to permit renunciation of nationality if the person concerned has not acquired another nationality. Contrary to this principle, the 1991 Citizenship Law does not require a person to have acquired another citizenship. However, Article 18 of the same Law allows persons who renounced citizenship of the Republic of Kazakhstan to restore the citizenship if they have not acquired citizenship of another State. As mentioned above, the procedure of restoration of citizenship of the Republic of Kazakhstan assumes meeting the same criteria as granting of citizen-

ship, including the need for a decision by the President of the Republic of Kazakhstan (Article 29). Thus, provisions of the Law in this part do not comply with those established by the 1961 Convention concerning renunciation of citizenship.

3.4. LOSS AND DEPRIVATION OF CITIZENSHIP

SUBSTANTIAL LAW

The 1991 Citizenship Law specifies several grounds for loss of citizenship.

Citizenship of the Republic of Kazakhstan is lost if:

(i) the person concerned has entered into military service, security service, police, judicial authorities or other public and administration authorities of some other State except for cases provided for in interstate treaties;

(ii) if citizenship of the Republic of Kazakhstan was acquired due to submission of deliberately false data or forged documents;

(iii) there are grounds provided for by interstate treaties of the Republic of Kazakhstan;

(iv) if the person acquired citizenship of some other State;

(v) if the marriage with a citizenship of the Republic of Kazakhstan used a ground for the person to acquire citizenship of the Republic of Kazakhstan has been declared invalid by a court (Article 21).

In case a citizen of the Republic of Kazakhstan enters into marriage with a foreign national or dissolves such marriage, his/her citizenship is not changed (Article 7).

PROCEDURAL MATTERS AND INTERNAL CONSISTENCY

The 1991 Citizenship Law is silent on whether loss of citizenship by parents (biological or adoptive) entails automatic loss of citizenship for their children, except for cases when such parents renounce their citizenship. The Law only deals with possible loss of a child's citizenship in case his/her parent(s) change or renounce citizenship. Thus, Article 7(1), 1961 Convention, sets a standard of safe transition, i.e. loss or renunciation of nationality may only happen if a person concerned has or acquires another nationality.

COMPLIANCE WITH INTERNATIONAL STANDARDS

Legally ensuring acquisition of another nationality before an existing nationality is lost is a requirement set forth in Article 7(1), 1961 Convention. Besides, Article 8(1) requires a Contracting State not to deprive a person of its nationality if such deprivation would render him stateless. The same article envisages an exception in this case for persons who have obtained their nationality by misrepresentation or fraud (Article 8(2)(b)). This also allows the States to formulate specifically their intention of retaining their right to deprive a person of his nationality at the time of signature, ratification or accession to the Convention according to the list of grounds specified (Article 8(3)).¹⁴

Other grounds consist of misrepresentation or entry into military service, police or security service of another State, which fall under the grounds for deprivation of

¹⁴ Citizenship laws do not distinguish between loss and deprivation of citizenship but usually reduce all the situations to the definition of 'loss of citizenship'. It should be noted that the 1961 Convention draws a line between the loss of nationality occurring *ex lege* (automatically or under the law) and the deprivation of nationality in case of a decision made by the person him/herself or by an executive or judicial body.

citizenship envisaged by Article 8, 1961 Convention. However, if Kazakhstan decides to access to the Convention it will need to present its intention of retaining such grounds for deprivation of citizenship at the date of accession.

According to the 1961 Convention, a proper legal procedure, including “the right to a fair hearing by a court or other independent body”, is guaranteed by a State to a person deprived of its nationality (Article 8(4)). The 1991 Citizenship Law provides for general assurances that a decision on citizenship matters, including the loss of citizenship, can be reversed by the President of the Republic of Kazakhstan upon an application of the person concerned. Actions of authorities concerning the implementation of national procedures can be appealed against to a higher authority or court (Article 41). The MIA RK Instruction obliges competent bodies to register the loss of Kazakhstan citizenship if the fact of misrepresentation or entry into another State’s military service, police or security service has been found. The person concerned is notified on reasons and grounds for the deprivation of citizenship (clauses 26 and 27). Similar standards are provided in the MFA RK Instruction that also includes instructions for the procedure of appeal (clause 21).

3.5. STATELESSNESS IN THE MIGRATORY CONTEXT

Among the five Central Asian countries, Kazakhstan receives the greatest number of immigrants arriving from the CIS countries, Mongolia, and China. Foreign immigrants having valid identity documents issued by other State must have a valid visa or residence permit that allows them to reside lawfully in the Republic of Kazakhstan territory. Any immigrant wishing to register as a stateless person in the Republic of Kazakhstan should lodge an application to obtain a stateless person certificate and produce written evidence from public authorities of his/her previous country of residence to the effect that he/she is not a citizen of that State. Both central and local migration authorities mention a great deal of cases when requests on personal identification and confirmation of whether a person concerned is a citizen of another State were sent to relevant bodies of neighbouring States, and replies were received, although not always. Unanswered requests asking to confirm whether a person is a citizen of another State sent to relevant bodies of the immigrant’s previous countries of residence remain the main obstacle for public authorities of the Republic of Kazakhstan in personal identification of immigrants and their citizenship.

The 1991 Citizenship Law specifies that the Republic of Kazakhstan provides conditions for return to its territory of persons (and their descendants) who left the Republic’s territory during the periods of massive repressions, forced collectivisation or other antihuman actions, as well as of ethnic Kazakhs residing in other States (Article 3). A special programme was developed and appropriate administrative structures were established for the ethnic Kazakhs coming back to their historical homeland.

The Consular Statute of the Republic of Kazakhstan, approved by the Decree of the President of the Republic of Kazakhstan No. 217 of 27 September 1999, authorises consuls of the Republic of Kazakhstan to issue and replace national passports abroad (clause 38). In case a citizen of the Republic of Kazakhstan loses identity documents, diplomatic missions and consulates of the Republic of Kazakhstan abroad issue a *laissez-passer* that allows the holder to return to the country lawfully and have the lost identity documents restored (the 2000 Documentation Rules, clause 25).

3.6. Factors impeding the effectiveness of procedures for acquisition of citizenship

The meetings held with stateless persons within the framework of focus groups in Almaty and South Kazakhstan oblast as well as with the migration authorities responsible for reception and initial processing of citizenship-related applications, showed that the key obstacle for stateless persons in submission of citizenship-related applications, much as for public authorities in processing them, consists of the fact that it is difficult to meet the requirement on not being a citizen of another State before lodging the application. Both stateless persons and public authorities reported frequent occasions when it was not possible to obtain a written confirmation of being not a citizen of the State of previous permanent residence, required by public authorities of the Republic of Kazakhstan and by stateless persons themselves.

It should be pointed out that in practice, bodies of migration police in most cases require the applicants themselves to produce documents on not having citizenship of another State.

The MIA RK service standards envisage exemption from the duty for processing of citizenship acquisition applications for oralmans and persons forced to leave the Republic of Kazakhstan during the periods of massive repressions, forced collectivisation or other antihuman actions and their descendants. The exemption is one-time and does not cover any subsequent application (clause 12). Besides, oralmans are also exempted from taxes on all the notary services related to acquisition of citizenship of the Republic of Kazakhstan (clause 11-2). All other applicants must pay a state duty equal to one monthly calculation index (about 10 U.S. dollars).

At present, UNHCR legal clinics in Almaty, Shymkent, Taraz, Kostanai, Karaganda and Astana provide legal assistance to stateless persons and individuals with unknown citizenship in the process of lodging applications and undergoing procedures for acquisition of the Republic of Kazakhstan citizenship. However, stateless persons in South Kazakhstan oblast said that residents of remote communities have no sufficient access to competent legal assistance.

3.7. EFFECTIVE REMEDIES

According to clause 8, MIA RK Citizenship Instruction, a person denied acquisition of citizenship receives a notice from bodies of migration police indicating reasons for denial. The 1991 Citizenship Law envisages that a decision on citizenship can be reversed by the President of the Republic of Kazakhstan.

Unreasonable refusal of applications on citizenship, failure to comply with application processing deadlines, or other incompetent actions of officials, violation of the procedure for consideration of citizenship cases or of the procedure for execution of decisions on citizenship can be appealed against under the law to a higher official or a court (Article 41).

4. FAIR PROTECTION PROCESSES AND DOCUMENTATION

4.1. PROCEDURES FOR DETERMINATION OF THE STATELESS STATUS AND THE RESIDENCE STATUS

The 2011 Migration Law and the 2000 Documentation Rules contain provisions and establish procedures for documentation of stateless persons. According to the 2011 Migration Law, certificates are issued to stateless persons for the purpose of obtaining a permanent residence permit but not for establishing a citizenship status concerning Kazakhstan or any other State. The 2011 Migration Law provides for issuance of a stateless person certificate to individuals arriving in the country for permanent residence. The 2000 Documentation Rules specify that a stateless person certificate is issued to stateless individuals who have attained the age of 16 permanently residing in Kazakhstan (clause 7). However, they mention also that a stateless person certificate is issued on the basis of any identity documents such as, for example, national or foreign passports or stateless person's documents issued abroad. Similar provisions are present in the MIA RK Instruction on the Documentation Rules that view a stateless person certificate as an identity document for a stateless person permanently residing in Kazakhstan and that prescribe that a certificate issued outside of Kazakhstan must be delivered to the bodies of internal affairs along with an application on issuing a stateless person certificate in Kazakhstan (clause 1)¹⁵. At the same time, the Standard of Issuance of Statelessness Certificates and Residence Permits allows for documentation of a stateless person and issuance of a stateless person certificate to that individual based on expiry of a national (foreign) passport, a stateless person certificate, a certificate on release from imprisonment, a certificate on renunciation of Kazakhstan citizenship, or a military card, provided that the person was registered as permanently residing in Kazakhstan. It is not clear if the stateless person documentation procedure is applied, and whether a stateless person certificate is issued, to those stateless individuals who have no identity document.

The requirement on having a certain amount of funds¹⁶ in a bank account to provide oneself with housing in the Republic of Kazakhstan also poses an obstacle complicating documentation of stateless persons (clause 1, MIA Instruction on the Documentation Rules). This requirement can be abolished if a stateless person is provided with housing by a natural or legal person, which can be proved by a written consent thereto.

The stateless persons involved in focus groups and having no property reported they had lease agreements and, consequently, they meet the above-mentioned condition. However, it is by no means so with the stateless persons having no document who are not able to make a civil transaction because they have no valid identity document.

Article 16 of the 1995 Law on Legal Status of Foreigners assumes that stateless

¹⁵ According to the 2004 Joint Order, a person applying for a stateless person certificate must submit an application, a CV, another State's written consent for the applicant's permanent residence abroad or a written confirmation of having no citizenship of another State, a stateless person's document (a statelessness certificate), an official medical examination certificate, a solvency-confirming document, a state duty payment receipt, and two photos.

¹⁶ The rules of solvency confirmation by foreigners and stateless persons wishing to obtain the right to permanent residence in the Republic of Kazakhstan during their stay in the Republic of Kazakhstan, according to the Resolution of the Republic of Kazakhstan Government No. 1185 of 26 November 2003, set an amount of funds as equivalent to twenty times the minimum wage (about USD 13,500) that must guarantee purchase of housing at the rate of 15 sq. m. per each person pretending to permanent residence. As mentioned above, for applicants to prove required solvency, applicants must have a bank account in Kazakhstan, opening of which requires valid identity documents; therefore, persons having no identity document are not able to apply for permanent residence and so cannot be officially registered and documented as stateless persons.

persons have the right to choose their place of residence according to the procedure specified by legislation of the Republic of Kazakhstan. Restrictions on the choice of residence are set by acts issued by properly authorised public bodies of the Republic of Kazakhstan when it is necessary to ensure public security, public order, health and morals of the population, and to protect rights and legitimate interests of citizens of the Republic of Kazakhstan and other individuals. The stateless persons involved in the focus groups in Almaty and South Kazakhstan positively appraised the provisions on choice of a place of residence in Kazakhstan.

4.2. DOCUMENTATION OF STATELESS PERSONS

A stateless person certificate is issued by the bodies of internal affairs to stateless persons and citizens of Kazakhstan aged 16 and older (clauses 6, 7 and 10, 2000 Documentation Rules). A stateless person certificate can also be issued to persons under the age of 16 if they leave the Republic of Kazakhstan without their parents or guardians (clause 7).

A birth certificate is the main form of an identity document for minor stateless persons and minor citizens of the Republic of Kazakhstan.¹⁷

The focus groups in Almaty and South Kazakhstan oblast as well as meetings with staff of migration authorities showed that a key obstacle hindering documentation of stateless persons consists of their inability of producing stateless person's documents, i.e. a certificate issued by diplomatic bodies or competent authorities of the country of their previous residence. This is especially true for holders of ex-USSR passports. Absence of any properly functioning procedure to establish the stateless person's status prevents public authorities from deciding about documentation of any individual as a stateless person in cases when it is not possible to obtain any written evidence of that person's not having another citizenship or when such evidence is delayed thereby placing the burden of proof on stateless persons.

4.3. INDIVIDUAL DOCUMENTATION

Birth

The international commitment of the Republic of Kazakhstan on registering the fact of birth after a child's birth ensues from Article 7, CRC, to which the Republic of Kazakhstan is a State Party.

On the national level, the Law on the Rights of the Child in the Republic of Kazakhstan of 8 August 2002 (the 2002 Child Rights Law) extends application of this commitment to all the children including stateless ones (Article 2). However, the Law contains no direct provision obliging the State to register birth of children although it establishes every child's right to personal identification, including acquisition of a first name, patronymic and last name, knowledge of his/her origin and acquisition of citizenship (Article 9), which in turn can only be implemented fully given proper birth registration and issuance of a birth certificate.

Besides, the 1999 Civil Registration Rules provide for birth registration of state-

¹⁷ It should also be pointed out that, according to Article 4, 1991 Citizenship Law, these documents also serve as a certificate of the statelessness status for minors, which disadvantages the stateless persons' children born in Kazakhstan. As mentioned above, they are regarded as Kazakhstan citizens from birth but, since the birth certificate contains no line specifying the child's citizenship and only mentions that of his/her parents, citizenship of such a child may not be confirmed by a birth certificate, which is in conflict with the provision in the article considered above.

less children (clause 6.4). However, to lodge an application on birth registration and obtain a birth certificate, one needs valid identity documents such as a stateless person certificate (clause 33). Although the 1999 Civil Registration Rules provide for compulsory birth registration in cases when identity documents cannot be produced, such registration is based on a record on conclusion of marriage between the parents, and a birth certificate is not issued until the parents produce valid identity documents (clause 21).

The above-mentioned rule appears to be equally applicable to foreigners, citizens, and stateless persons.

A medical birth certificate is issued by the delivering staff of healthcare facilities.

Birth is registered by the Civil Registry Office (CRO) that is a structural unit of the Committee of the Registry and Legal Assistance under the Ministry of Justice at the child's place of birth or at the place of residence of the child's parents (or one of them) (clause 12). However, a person's place of residence can only be confirmed by a house register. If the biological parents have no such register, then the child's birth is registered by the CRO at the child's place of birth. The 1999 Civil Registration Rules require that the act of birth be registered within two months (clause 18). Any later birth registration can be allowed by a decision of the territorial judicial body's CRO.

The Law of the Republic of Kazakhstan on the National Registers of Identification Numbers, passed in 2007, allows every person to have a universal individual code, i.e. an identification number currently in use. The figures assigned to a citizen at birth and recorded in his/her birth certificate will accompany him/her throughout his/her life. CROs of the Ministry of Justice started implementing registration procedures for child birth within the new programme framework since 13 August 2007. Registration data and changes thereof (supplements thereto), as well as cancellation and restoration are recorded in the central server node in Astana where all the information is kept in a central database. The information contained in the database allows reviewing and printing out certificates, reports, etc. The identification number assigned at birth registration is a sequence of numbers that allows a personality to be uniquely defined. The number is assigned only once; it remains the same even in case of any change in information, e.g. last name, patronymic, citizenship, etc., and its repetition is not allowed. The identification number will accompany a person throughout all his/her life: when receiving an identity card or passport; when making tax and other compulsory payments to the budget; when withholding and transferring compulsory pension contributions; when registering real estate and vehicles; when opening bank accounts; when obtaining permit documents (licences, patents, driving permits, etc.); when receiving registration documents (an individual entrepreneur's certificate, registration as an international trade entity, etc.); when receiving a military card; when undergoing customs formalities, etc.

Other types of civil registration – registration of marriage, divorce, death, paternity, adoption, changes of first name, last name or patronymic – are also exercised through the information system. Hence, if an individual has no identity documents then civil registration is impossible¹⁸.

Implementation of a new electronic database for all types of civil registration, including birth, that will be carried out by CROs and the Committee of the Registry and Legal Assistance responsible for civil registration in the Ministry of Justice (hereinafter referred to as the registration bodies), aims at replacing an old registra-

¹⁸ <http://www.minjust.kz/en/node/16679>

tion method in hospitals and stopping the use of the registration system now manually maintained. As the registration bodies explained, the database assigns an individual code to every child being a citizen of the Republic of Kazakhstan at birth; this code is also printed on all birth certificates. The Ministry of Justice informed UNHCR that children born to stateless persons permanently residing in the Republic of Kazakhstan are also assigned codes and, therefore, they can acquire citizenship at birth in accordance with Article 14, 1991 Citizenship Law.

The focus group held in Almaty in September 2009 involved mainly Afghani individuals registered as stateless persons in Kazakhstan. Besides, there were two more stateless persons having no documents, none of whom voiced any problems with birth registration and with obtaining birth certificates for their children. Outcomes were the same as with the focus group in South Kazakhstan oblast.

The stateless persons not registered as such pointed to some difficulties in obtaining birth certificates because of having no valid identity documents. The focus group participants mentioned no problem with medical examination of birth by doctors and healthcare facilities, and such confirmations are reported to be issued for all children regardless of having or not having documents.

Marriage

The 1999 Civil Registration Rules establish the right of foreigners and stateless persons to enter into marriage with a citizen of the Republic of Kazakhstan or with any other person as well as other rights related to marriage and family relations, equally with citizens of the Republic of Kazakhstan (clause 92). Stateless persons must produce valid stateless person certificate or identity documents to have their marriage registered (clause 93). The stateless persons having proper documents who visited focus groups informed that they had managed to register their marriage while the stateless persons having no documents, including ex-USSR passport holders and their adult children, often got a refusal. Civil registration bodies both in Almaty city and South Kazakhstan oblast confirmed that they could not register their marriage if the couple failed to produce valid identity documents.

4.4. TRAVEL DOCUMENTS

Stateless persons in the Republic of Kazakhstan are issued a stateless person certificate valid for internal travel. Although the law does not directly view the stateless person certificate as a document allowing its holder to travel abroad, the document format is designed so as to meet the standard of international travel documents, including an electronic media and pages for visas.¹⁹ Moreover, the document is executed in two languages, Kazakh and English, contains alphabetic and numeric characters typical for international travel document, and is supplied with special protection degrees to prevent fraud.²⁰ However, many stateless persons having stateless person certificates, who visited focus groups, said that their documents were not recognised as international travel documents by other States and embassies. There is no information on bilateral and multilateral agreements between Kazakhstan and other States on recognition of stateless person certificates as international travel documents.

¹⁹ See items 1 and 10 in the specimen of the stateless person certificate as approved by the Resolution of the Republic of Kazakhstan Government No. 1235 of 24 December 2008.

²⁰ *Ibid.*, item 14.

5. SECURITY FROM VIOLENCE AND EXPLOITATION

5.1. LAW ENFORCEMENT

Stateless persons attending focus groups reported on different treatment by public authorities. Persons registered as stateless in the Republic of Kazakhstan did not mention any discrimination or abuse on the part of law enforcement bodies. Stateless persons having no proper documents, including ex-USSR passport holders, reported on fears of possible persecution by law enforcement bodies for having no valid documents.

There were no reports during the focus groups discussions saying that stateless persons had become victims of human trafficking for sexual or labour exploitation, forced labour or slavery, however the MIA RK is yet to examine this issue thoroughly, involving relevant public authorities and NGOs.

5.2. SEXUAL AND GENDER-BASED VIOLENCE

The Criminal Code of the Republic of Kazakhstan dated 16 July 1997 treats any direct or indirect restriction of human rights and freedoms, including on the grounds of sex, as violation of citizen equality and provides for a punishment up to imprisonment (Article 141). Moreover, *corpus delicti* of some other offences points to actions that can fall under the definition of sexual and gender-based violence. For example, coercion of a person in sexual intercourse by way of intimidation, threatening with destruction, damage or withdrawal of property, or with the use of the victim's material or other dependence is a criminal offence punishable by imprisonment (Article 123). The Criminal Code envisages punishment for sexual intercourse and other acts of sexual nature with a person who did not attain sixteen years of age (Article 122), and regards the commission of lecherous actions without violence involving a person known to have not attained fourteen years of age as a criminal offence (Article 124). Other types of violence, such as rape, violent actions of sexual nature and harassment, human trafficking including trafficking in children, as well as drawing into prostitution, are criminal offences punishable according to the Criminal Code. However, domestic violence is not presented as a separate criminal offence although it could be included into *corpus delicti* of other offences provided for by the Criminal Code. It should be noted that criminal liability applies to any person committing any offence in the Republic of Kazakhstan territory regardless of whether the person is a citizen of the Republic of Kazakhstan, a foreign national, or a stateless person (Article 6).

Considerable steps have recently been made in Kazakhstan to ensure gender equality and prevent violence against women. Of great importance was Kazakhstan's accession to the Convention on the Elimination of All Forms of Discrimination against Women and to other international legal instruments in this field, which allowed paying greater attention to eradication of violence, especially domestic, against women and children. A huge role in this matter is played by the National Commission for Women, Family and Demographic Policy under the President of the Republic of Kazakhstan established by the Decree of the President of the Republic of Kazakhstan of 22 December 1998. In cooperation with the Republic's ministries and agencies, the Commission has been continuously working to eradicate violence against women.

Nevertheless, the number of offences involving domestic violence remains rather high. For example, according to the Ministry of Internal Affairs of RK, the number of offences in the field of family and domestic relations totalled 954 over 12 months of 2008 (total number of registered offences was 118,965), including 65 minor ones, 215 crimes of average gravity, 336 grave offences, and 338 especially grave ones.

The number of offences in the field of family and domestic relations over 12 months of 2009 totalled 887 (total number of registered offences being 110,103), including 61 minor ones, 207 crimes of average gravity, 297 grave offences, and 322 especially grave ones.

The total number of offences against person included 842 domestic ones.

The number of offences in the field of family and domestic relations over 3 months of 2010 totalled 194 (total number of registered offences being 38,689), including 19 minor ones, 25 crimes of average gravity, 72 grave offences, and 78 especially grave ones.

However, as a greater part of incidents remains unregistered, the real number of victims obviously exceeds official statistics a few times. The situation is aggravated by the fact that, in addition to physical, mental and moral suffering, victims of aggressive acts feel themselves unprotected and lose their faith in the State's capability of securing their constitutional rights and personal safety. A study on Kazakhstan people's awareness of domestic violence shows that more than 60% of women were exposed to some type of violence (physical, sexual, economic, social, psychological, etc.) at least once in their life and that any family members become an object of family violence, but the most widespread type of family violence, which the respondents faced or heard about, is moral and psychological violence: it was stated by 306 (53.7%) respondents, or every second one. Physical violence is second in terms of prevalence, being pointed out by 290 (51.1%) respondents, or nearly every second one. The third position in the survey is occupied by economic violence; it is mentioned by 198 (34.7%) persons, or nearly every third. Sexual violence was mentioned by 131 (23.0%) persons, or every fourth. It can be noted that people are more willing to talk about violence happening "somewhere". Nevertheless, family violence occurs in every 12th out of 570 families. Violence can be seen in every eighth friend family, and family violence also occurs in almost every fourth neighbouring family.

A practical measure to implement the gender policy and prevent violence consisted of the establishment of units to protect women against violence, which were formed within the bodies of internal affairs in 1998. At present, the unit includes 126 police staff. Kazakhstan is the only post-Soviet country to have established such a unit. To provide help to women who suffered from violence, the unit staff arranged work with crisis centres. Some crisis centres are able to provide shelter in their premises to a woman and her children (such as *Podrugy*, *Zabota* in Almaty, *GIAC* in Karaganda, etc.).

For the purpose of improving the situation in this field, a questionnaire poll was held in 2010, according to a MIA-developed methodology, among women in various regions of the country to examine levels of their knowledge about forms and ways of violence committed in family and domestic relations. The study provided information on violence not only against women but also against children, men, aged parents, and other family members. The poll results also promoted elaboration of new forms

and methods of prevention and suppression of violence in family and domestic relations as well drafting of recommendations for staff of the bodies of internal affairs on violence prevention. The study was held in cooperation with the MIA Academy's research institute.

The MIA interacts closely with the Commission on Human Rights and the National Commission for Women, Family and Demographic Policy under the President of the Republic of Kazakhstan. Jointly with representatives of the Commission on Human Rights and the National Commission, round-table discussions, seminars and preventive measures to prevent and suppress violence against women are held.

It should be noted that the current legislation of Kazakhstan envisages criminal and administrative liability for various offences related to domestic violence such as abasement of human dignity, assault, torture, bodily harm, murder, etc. Alongside, the Civil Code contains provisions that allow everyone to suppress judicially any action violating, or threatening to violate, somebody's rights. Nevertheless, these legal provisions were not always applied to victims of domestic violence, which in turn did not allow one to suppress such violence quickly, to create safe conditions for potential victims, and to render them necessary medical, psychological, legal or other social assistance.

A significant step to ensure gender equality and combat domestic violence consisted of adoption of a number of key documents such as the Strategy of Gender Equality for 2006-2016 as well as the Law on State Guarantees of Equal Rights and Opportunities for Men and Women and especially the Law on Prevention of Domestic Violence signed by the President in December 2009. In pursuance of these laws, it was necessary to amend some other legislative acts, particularly the Code of Criminal Proceedings, the Code of Administrative Offences (the latter was supplemented in 2008 with a provision establishing liability for unlawful acts in family and domestic relations (Article 79-5)), laws on bodies of internal affairs, on arms turnover, etc.

On 4 December 2009, the Law on Amending and Supplementing Some Legislative Acts of the Republic of Kazakhstan on Prevention of Domestic Violence was passed. A well-formulated conceptual framework is an important feature of this legal instrument. In particular, it provides such notions as physical, sexual, psychological and economic violence. At present, domestic violence is understood as a deliberate unlawful act (action or inaction) of one person in family and domestic relations towards other person(s), which causes, or threatening to cause, physical and (or) mental suffering. Family and domestic relations are a circle of relations between persons having marriage and family relations and living together within an individual residential house, apartment or other living space, and between former spouses.

A very important provision in this law consists of definition of powers of the entities exercising prevention of domestic violence – the Government, local executive authorities, commissions for women, family and demographic policy and for minors, bodies of internal affairs, education and health care authorities, bodies of social protection, etc.

A certain difficulty in counteraction to domestic violence consists of the fact that victims are often unwilling to surrender a violator because of being afraid that their situation would get worse. In this regard, public authorities must urgently provide

victims with safe conditions and necessary information, legal and psychological support, as well as apply measures of individual prevention to an offenders. As regards liability of the persons committing violence, this issue is successfully addressed by the current criminal and administrative laws. According to new legislative acts, the police are granted new powers such as the right of giving an offender a preventive talk; the right of delivering the offender to bodies of internal affairs for drawing up a report or protective injunction; the right of making a protective injunction that restricts the violator's behaviour towards the victim; the right of administrative detention (isolation from the victim) for up to 48 hours; the right to apply to a court for establishing special requirements to the offender's behaviour; the right to restrict, for the investigation period, the rights of the suspect or accused to whom a recognizance not to leave and to behave properly has been chosen as a measure of restraint. The body handling the criminal proceedings warns the suspect or the accused in written on the prohibition of searching for, persecuting, or visiting the victim, carrying out oral or telephone conversations with him/her, or getting into contact with him/her in any other way.

For violation of a protective injunction or special requirements to the offender's behaviour as well as for failure to comply with restrictions set for individuals held criminally liable, the legislature envisages stricter liability or a stricter measure of restraint.

The victim can, at his/her will, have the protective injunction term extended to 30 days by lodging an application and receiving a prosecutor's permission. If the violator breaks the prescribed requirements, a police officer has the right to draw up a report and submit the case to a court that can determine necessary restrictions already for up to one year.

According to the data of MIA RK, more than 27 thousand offenders were held administratively liable by courts in 2009 for unlawful acts in family and domestic relations.

Due to adoption of the Law on Amending and Supplementing Some Legislative Acts of the Republic of Kazakhstan on Prevention of Domestic Violence, more than 8 thousand protective injunctions were rendered towards persons committing offences in everyday life.

As a result of the organisational and practical measures taken to prevent domestic violence, the number of offences committed in family and domestic relations decreased by 12.8% in 2009.

At the same time, training of judges and lawyers on law enforcement practices in protection of women's rights becomes especially important.

It is quite obvious that the issues of domestic violence prevention and suppression should be addressed in package by law-enforcement, judicial, health and education organisations.

It should be pointed out that the focus groups revealed no case of sexual and gender-based violence against stateless persons.

5.3. PROTECTION OF CHILDREN

The overall minimum age for entering into an employment agreement is 16 years although the Labour Code of the Republic of Kazakhstan of 15 May 2007 reduces it to 15 years provided that a child acquires education, or to 14 years for performing, during non-study time, work not likely to be harmful to the child's health and not such as to prejudice his/her attendance at school (Article 30), and permits conclusion of employment agreements with individuals under 16 years of age in the film-making organisations, theatres, concert organisations, and circuses for participation in creation and (or) performance of artistic works without prejudice to their health and moral development. An employment agreement with individuals under 15 years of age can only be concluded for part-time work and given written consent of a parent, guardian, caretaker or adoptive parent (Article 30). Although the administrative and legal systems established for stateless persons do not cover the entire variety of the stateless population, do not address specific needs of stateless boys and girls, and fail to provide for special treatment of stateless persons, the rights and freedoms guaranteed to children by national laws also apply to stateless children.

Prosecution authorities exercise general oversight over observance of labour law provisions by all employers. The Ministry of Education and Science of the Republic of Kazakhstan has in its structure the Committee for Protection of Children's Rights. The Committee has territorial branches in all regions of Kazakhstan.

5.4. FREEDOM OF MOVEMENT, INCLUDING THE RIGHT TO RETURN

Freedom of movement is guaranteed to stateless persons by the 1995 Foreigners Law that states that foreigners and stateless persons may move freely in the territory of the Republic of Kazakhstan open for foreign nationals. Restrictions can be set by public bodies the Republic of Kazakhstan authorised thereto when it is necessary to ensure national security, protect public order, health and morality of the population, and protect rights and legitimate interests of citizens of the Republic of Kazakhstan (Article 16). In case of visiting "open area", information on the period of stay, the purpose of visiting, and the address of stay of foreigners and stateless persons must be submitted to the MIA RK by the legal and natural persons receiving the foreign nationals and stateless persons 10 days prior to the movement of the foreigners and stateless persons (the 2004 Joint Order, clause 47).

To visit any area temporarily closed for foreign nationals, foreigners and stateless persons need special permits (passes) issued by the Committee of National Security (CNS) as per clause 48, 2004 Joint Order. It should be pointed out that the notification procedures are applied to foreigners and stateless persons who have no permit for permanent residence in the Republic of Kazakhstan.

The 2000 Stay Rules indicate the Ministry of Internal Affairs (MIA) and the Committee of National Security (CNS) of the Republic of Kazakhstan as the public bodies authorised to issue acts that impose restrictions on the freedom of movement (clause 26) as well as to grant to MIA or MFA, upon the CNS consent, powers for determination of the way of movement in certain areas temporarily closed for foreign nationals (clause 27).

Having no proper identity document generally means that the chance of receiving a special permit required for movement in the areas temporarily closed for foreign nationals is low.

Some of the stateless persons attending the focus groups and holding ex-USSR passports or having no valid identity documents reported on a number of cases when they could not move freely because of having no document and so were not able to buy plane or train tickets. Difficulties with travel to cities hosting foreign embassies and consulates pose further obstacles, especially if an individual needs to lodge an application for confirmation of having no other citizenship (the confirmation must be produced by undocumented stateless persons to public authorities of the Republic of Kazakhstan to obtain documents).

It should be pointed out that properly registered and duly documented stateless persons attending the focus groups mentioned no problem related to their free movement within the Republic of Kazakhstan.

Documented stateless persons pointed out having little opportunities to leave the Republic of Kazakhstan for business or recreation purposes. They also noted some difficulties they face when receiving foreign visas because only few foreign embassies accept a stateless person certificate.

5.5. DETENTION

Detention because of unlawful stay or due to having no identity document was not mentioned among the problems usually encountered by the stateless persons involved in the focus groups in Almaty and South Kazakhstan. However, the focus group participants told about one case of repeated detention of an undocumented stateless person in Almaty. Both stateless persons and representatives of relevant authorities taking part in the discussions emphasised that the detention risk for undocumented stateless persons is much higher in large cities and settlements. In such cases, detention is related to attempts of identifying the detained individual and finding out if he/she stays and resides in the country lawfully. According to migration police bodies in South Kazakhstan oblast, in small settlements stateless persons including undocumented individuals are generally well known to bodies of internal affairs and migration police. Detention based on statelessness is rare, hence undocumented persons were not viewed as a problem in small and remote rural areas.

Special concern is caused by the situation with documentation of stateless persons and those at risk of statelessness as well as persons staying in detention facilities and serving sentences. The law sets forth clear procedures for execution of documents for Kazakh citizens in all stages of criminal proceedings and serving sentences in imprisonment facilities²¹ but the situation with foreigners, stateless persons and individuals of uncertain nationality is much more difficult. If an accused foreigner is not able to produce an identity card, criminal proceedings may be instituted, as an exception, on the basis of some other document. The following documents are regarded as identity documents in such a case:

- 1) passport;
- 2) identity card;

²¹ See Article 280.2(2) of the Code of Criminal Proceedings of Kazakhstan, and paragraphs 3-9 of the Instruction for documentation of suspects having lost their identity cards, approved by the Order of the Minister of Internal Affairs No. 34 of 22 January 2003.

- 3) foreigner's residence permit in the Republic of Kazakhstan;
- 4) stateless person certificate;
- 5) driving licence;
- 6) military card;
- 7) birth certificate (for persons under 16 years of age);
- 8) citizen's birth statement.

As can be seen from Article 280, CCP RK, the refugee certificate is not included in the list of identity documents. We deem it necessary to fill this gap in the legislation on criminal proceedings and criminal execution of the Republic of Kazakhstan.

As far as foreigners or stateless persons are concerned, the procedure requires the investigation body to inform the Department of Consular Service of the Ministry of Foreign Affairs and the Ministry of Justice that the detained foreigner has no identity documents. However, application of the above-mentioned list is strictly confined to purposes of criminal prosecution, and the person in question will not be able to use such documents as identity documents either during detention²² or after release – be it due to repeal of a sentence or upon having served the entire term. This in turn leads to serious restrictions on the rights of detainees during their time in custody (i.e. such persons, unlike other serving individuals, have no possibility of working and earning money because placing them in a job requires identity documents). Moreover, they will encounter serious problems with their documentation upon release because the law principally envisages possible documentation of stateless persons only based on the documents confirming that they have served their imprisonment term.²³

Foreign nationals are subject to deportation if they violate Kazakhstan laws²⁴; deportation is exercised upon the person's release from a detention facility. Such a situation can substantially complicate for such persons possible determination of their citizenship status and its formal documentation although it is not clear how deportation will take place given lack of any valid identity document.²⁵

5.6. ACCESS TO LEGAL REMEDIES

The 1995 Law on Legal Status of Foreigners guarantees that stateless persons are equal before the law regardless of their origin, social and property status, race, nationality, sex, language, education, religious affiliation, occupation or profession. The Law guarantees also that stateless persons have the rights and duties established by the Constitution, laws and international treaties of the Republic of Kazakhstan except for cases provided for by laws and international treaties of the Republic of Kazakhstan. Exercise of the rights and freedoms by stateless persons must not be detrimental to interests of the Republic of Kazakhstan, rights and legitimate interests of its citizens and other persons, and is inseparable from discharge of their duties specified by laws of the Republic of Kazakhstan (Article 3).

The law also guarantees stateless persons the right to apply to courts and other

²² According to information provided by the Department of Correctional Facilities of the Ministry of Justice, as of 1 October 2010, 711 prisoners having no identity cards were serving their sentences in various places of Kazakhstan at that moment (73 of them were stateless persons, 481 were foreigners, and 157 were Kazakh citizens). 82 persons had Soviet-form passports, of which 14 were supposed to be Kazakh citizens and 68 had uncertain citizenship.

²³ Clause 11.2, Public service standards *On the issuance of stateless person's certificates to foreigners permanently residing in the Republic of Kazakhstan*, approved by the Resolution of the Republic of Kazakhstan Government No. 2101 of 14 December 2009.

²⁴ Article 28.1(6), *Code of Administrative Offences*.

²⁵ See Article 12.2(3) of the *Law on State Border of the Republic of Kazakhstan envisaging that persons leaving Kazakhstan may be allowed to cross the Kazakhstan border if they have documents permitting them to do so*.

public authorities to have their property rights and personal non-property rights protected. Stateless persons have procedural rights in courts equally with citizens of the Republic of Kazakhstan unless otherwise specified by laws (1995 Citizenship Law, Article 18). Hence, for example, the Civil Procedural Code of the Republic of Kazakhstan of 13 July 1999 (the 1999 Civil Procedural Code) guarantees stateless persons the right to apply to a court to have their infringed or contested rights protected, and their legitimate interests are safeguarded by law (Article 413).

Entertainment of actions filed by stateless persons with courts of the Republic of Kazakhstan on civil procedures is guaranteed by the 1999 Civil Procedural Code (Article 24). The 1999 Civil Procedural Code also guarantees stateless persons the right to make statements, provide explanations and testimonies, make motions, lodge appeals, examine case materials, appear in court in their native language or in any other language they know, and use interpretation services free of charge (Article 14).

The right to apply to courts and other public authorities is available to the stateless persons having stateless person certificates,²⁶ and, according to existing information, stateless persons have resorted to this right in practice. However, stateless persons having no bank account voiced concern that they would not be able to pay duties because of having no valid identity document. Therefore, such persons' access to courts is limited. Protection of stateless persons' rights is included in the mandate of the national Ombudsman whose office informed about many cases when stateless persons' rights were upheld. However, the stateless persons living in remote areas of South Kazakhstan oblast told about limited access to free legal assistance that is provided by legal advice bureaus only.

5.7. EXPULSION

The 1995 Law on Legal Status of Foreigners points to grounds that may lead to expulsion of stateless persons. In particular, a stateless person can be expelled from the Republic of Kazakhstan if his/her actions are in conflict with national security or public order concerns; or if this is necessary to protect public health and morals, rights and legitimate interests of citizens of the Republic of Kazakhstan and other persons; or if such a person violated legislation of the Republic of Kazakhstan; or in case of invalidation of marriage with a citizen of the Republic of Kazakhstan if the marriage with a citizen of the Republic of Kazakhstan was used as a ground to allow the stateless person to have permanent residence in the Republic of Kazakhstan.

The Code of Administrative Offences of 30 January 2001 mentions administrative expulsion as a type of punishment that can be imposed by court (Articles 45 and 46). The Code defines administrative expulsion of stateless persons as punishment for various offences such as, for example, performing missionary work without record registration (Article 375), breach of the state border regime (Article 391), violation of the rules of stay in the Republic of Kazakhstan (Article 394). The case of an administrative offence that entails administrative expulsion from the Republic of Kazakhstan is considered on the day of receiving the administrative offence report and other case materials, or, for a person subjected to administrative detention, no later than within

²⁶ Kazakhstan International Bureau for Human Rights and Rule of Law, a national NGO, confirmed that the right to apply to courts is used by stateless persons in practice, and legal advice bureaus provide free legal assistance to stateless persons who address them in Almaty city and South Kazakhstan oblast.

48 hours from the moment of his/her detention (Article 647). The order on administrative expulsion from the Republic of Kazakhstan is enforced by border guard service authorities and bodies of internal affairs (Article 730). The person concerning whom an administrative expulsion award is made is given a reasonable term during which he/she must leave the territory of the Republic of Kazakhstan (Article 651). Free translation and interpretation services in court are guaranteed by the above-mentioned Code. An administrative expulsion award may be appealed against to the Supreme Court (Article 655). The Code guarantees participation of a defence lawyer in administrative process stages (Articles 588-590).

The focus groups in Almaty city or South Kazakhstan oblast received no data on any facts of deportation of stateless persons although a risk of deportation remains for undocumented stateless persons, including ex-USSR passport holders, in case lawfulness of their residence in the Republic of Kazakhstan is contested.

According to UNHCR data, facts of deportation of undocumented persons occur in practice in Kazakhstan.

6. BASIC NEEDS AND ESSENTIAL SERVICES

Discussions in the focus groups involving stateless persons in Almaty city and South Kazakhstan oblast showed that the stateless persons having received proper documents in the Republic of Kazakhstan are able to meet their basic needs and have access to basic services equally with citizens of the Republic of Kazakhstan. Having no proper or valid identity documents that would confirm the official status of stateless persons is a key obstacle for undocumented stateless persons in access to services. According to available data, execution of legal or administrative formalities required to get access to housing (notary services), to health care (registration in polyclinics and hospitals), and to education (official enrolment) is practically possible only subject to having valid documents.

6.1. FOOD SECURITY AND NUTRITION, WATER AND SANITATION, AND SHELTERING

Legislation of the Republic of Kazakhstan envisages no specific provisions concerning food security, access to water and sanitation for stateless persons; rather, such provisions regulate access for entire population of Kazakhstan as a whole.

According to the 1995 Law on Legal Status of Foreigners, the right to housing is guaranteed to stateless persons permanently residing in the Republic of Kazakhstan. Article 9 of the said Law states that stateless persons temporarily staying in the Republic of Kazakhstan have the same right to housing as foreign citizens in similar circumstances. Stateless persons permanently residing in the Republic of Kazakhstan have the same housing rights as citizens of the Republic of Kazakhstan, i.e. provided for by the Law of the Republic of Kazakhstan on Housing Relations of 16 April 1997 (Article 9).

The stateless persons attending focus groups in Almaty city and South Kazakhstan oblast voiced no anxiety concerning access to food, drinking water or sanitation

services. As far as housing is concerned, undocumented stateless persons mentioned difficulties related to the ability to lease and especially to buy housing.

Stateless persons having stateless person certificates pointed out that they had not faced any restriction in the exercise of their rights to housing.

6.2. HEALTHCARE

In health care, foreigners and stateless persons staying in the Republic of Kazakhstan have the rights and freedoms, and incur the duties, established for citizens unless otherwise stipulated by laws of the Republic of Kazakhstan and international treaties (part 1, Article 7, 1995 Law on Legal Status of Foreigners).

According to Article 88(5) of the Code of RK on the Health of People and the Health Care System, foreigners and stateless persons staying in the Republic of Kazakhstan have the right to receive a guaranteed amount of free medical care in case of acute diseases posing danger for the wider public, as per the list specified by the Republic of Kazakhstan Government unless otherwise specified in the international treaties ratified by the Republic of Kazakhstan.

The list of socially significant diseases and of diseases posing danger for the wider public has been approved by the Resolution of the Republic of Kazakhstan Government No. 2018 of 4 December 2009. According to the list, foreigners and stateless persons staying in the Republic of Kazakhstan have the right to receive a guaranteed amount of free medical care.

However, the above-mentioned list contains only 21 disease types, which actually does not ease the socioeconomic situation of stateless persons.

In the framework of implementation of the Law of the Republic of Kazakhstan on Migration of the Population of 22 July 2011, the Order of the Minister of Health of RK No. 665 of 30 September 2011 approved the Rules for Delivery of Medical Care to Immigrants. This order is registered in the Ministry of Justice of RK Register for state registration of regulatory and legal acts under No. 7292.

The stateless persons involved in focus groups reported that their rights to medical care are observed. However, some stateless persons having no valid identity document informed on difficulties in access to medical care in polyclinics.

6.3. PRIMARY AND SECONDARY EDUCATION

The 1995 Foreigners Law guarantees foreigners and stateless persons permanently residing in Kazakhstan the rights to preschool, primary, basic secondary and general secondary education, on equal terms with citizens of the Republic of Kazakhstan, according to the procedure specified by the Republic of Kazakhstan laws on education (part 1, Article 10).

The rules for acquisition of preschool, basic and general secondary education by foreigners and stateless persons permanently residing in the Republic of Kazakhstan, approved by the Order of the Minister of Education and Science (MES) No. 468 of 28 September 2010, specify that stateless persons must produce their stateless person certificates containing information on their place of residence in order to enrol their children (under 16) into a school (clause 4).

According to data of the Ministry of Education and Science of RK as of 5 November 2011, all the children of stateless persons and refugees permanently residing in the Republic of Kazakhstan are guaranteed preschool, primary, basic and general secondary education.

The stateless persons taking part in focus groups did not mention any case when their children would be denied school enrolment in Almaty city and South Kazakhstan oblast.

However, as the UNHCR's work practice shows, facts of infringing the rights of undocumented parents' children to primary and secondary education do occur.

According to the MES RK Order No. 468 of 28 September 2010, parents must produce their identity documents to enrol their children into a school. This provision of the MES RK is in conflict with provisions of the Convention on the Rights of the Child (Article 28) and the International Covenant on Economic, Social and Cultural Rights (Article 13), according to which every child, regardless of his/her origin and other circumstances, has the right to free and compulsory primary education as well as to higher education on the basis of his/her capacity.

6.4. HIGHER EDUCATION, LANGUAGE AND VOCATIONAL TRAINING

Stateless persons permanently residing in the Republic of Kazakhstan are entitled to free technical and vocational, post-secondary, higher and post-graduate education, on the competitive basis in accordance with the state education order, equally with citizens of the Republic of Kazakhstan (part 2, Article, 1995 Foreigners Law).

According to Article 47, Education Law, citizens of the Republic of Kazakhstan, foreigners and stateless persons have the right to choose an educational institution and a mode of study according to terms and conditions of enrolment.

The stateless persons having no stateless person certificates on hand informed about inaccessibility of higher education for their children.

7. COMMUNITY PARTICIPATION, SELF-MANAGEMENT AND SELF-RELIANCE

7.1. RIGHTS AND RESPONSIBILITIES OF STATELESS PERSONS

Information on stateless persons' rights and duties is available in Kazakh and Russian, hence it is understandable for most stateless persons residing in Kazakhstan.

The stateless persons' rights and duties are provided in the Law of RK on Legal Status of Foreigners of 19 June 1995 and the Law of RK on Migration of the Population of 22 July 2011.

Stateless persons in the Republic of Kazakhstan have the right to:

- 1) exercise the rights and freedoms provided for citizens of the Republic of Kazakhstan, unless otherwise specified in the Constitution, laws and international treaties;
- 2) education, health care and social assistance according to the procedure set forth by the Republic of Kazakhstan legislation;

3) freely move in the Republic of Kazakhstan areas opened for immigrants and stateless persons;

4) freely choose residence according to the procedure set forth by the Republic of Kazakhstan legislation;

5) apply to courts and public authorities to have their property rights and personal non-property rights protected.

Stateless persons in the Republic of Kazakhstan:

1) bear duties specified for citizens of the Republic of Kazakhstan, unless otherwise specified in the Constitution, laws and international treaties;

2) must comply with the Constitution and laws of the Republic of Kazakhstan, including the established procedures of entry, exit and stay in the Republic of Kazakhstan.

It should be pointed out that stateless persons living in remote areas in South Kazakhstan informed about lack of information and about unawareness on their rights and, hence, about a limited ability of exercising their rights provided for by the Republic of Kazakhstan legislation for stateless persons.

At present, the legal clinics implementing the UNHCR projects are centres distributing information on the current legislation of the Republic of Kazakhstan on migration.

We recommend broad dissemination of the Digital Library of the Commission on Human Rights under the President of the Republic of Kazakhstan that provides free legal information in all regions of the country.

7.2. PARTICIPATORY ASSESSMENT AND COMMUNITY MOBILISATION

Most stateless persons in Almaty city and South Kazakhstan oblast do not live in isolated communes. They are integrated into the local population, and live and work peacefully alongside citizens of the Republic of Kazakhstan.

There is no restriction on stateless persons' involvement in social life of the country.

The 1995 Foreigners Law guarantees freedom of association and freedom of conscience to stateless persons, and prohibits rousing of hatred and enmity on religious grounds (Articles 12-13).

Stateless persons in the Republic of Kazakhstan can contract and dissolve marriages with citizens of the Republic of Kazakhstan and other individuals, they enjoy rights and bear duties in marital and family relations on equal terms with citizens of the Republic of Kazakhstan according to laws and international treaties of the Republic of Kazakhstan.

The stateless persons attending the focus groups pointed out that their rights to freedom of faith are observed.

7.3. SELF-RELIANCE AND LIVELIHOODS

The Constitution of the Republic of Kazakhstan guarantees everyone, including stateless persons, the right to freedom of entrepreneurial activity and free use of his property for any legal entrepreneurial activity.

According to the Law of the Republic of Kazakhstan on Private Enterprise of 12 September 2008, any individual may carry out entrepreneurial activity not prohibited by law (Articles 6-8). The Civil Code of the Republic of Kazakhstan understands natural persons, including entrepreneurs in the civil law context, as citizens of the Republic of Kazakhstan, citizens of other States as well as stateless persons (Article 12).

According to the Civil Code, stateless persons are entitled to acquire the same rights, and must perform the same duties, including having an occupation or own business, as those provided for by civil legislation for citizens of the Republic of Kazakhstan, unless otherwise specified by legislative acts.

Foreigners temporarily staying in the Republic of Kazakhstan may be private enterprise entities. Meanwhile, the 1995 Foreigners Law prohibits temporarily staying stateless individuals from carrying out entrepreneurial activity as a small or medium enterprise entity without establishment of a legal person (Article 6).

Restrictions on entrepreneurial activity may only be imposed pursuant to law and only by public bodies authorised thereto by law (Article 3, Law on Private Enterprise).

Many stateless persons visiting the focus groups said they were engaged in entrepreneurial activities and had their own business. Undocumented stateless persons cannot obtain access to trade or have their own business because it must be officially registered, which creates a barrier for self-employment further on.

The focus groups held in South Kazakhstan oblast showed that many documented and undocumented stateless persons have access to land plots and, therefore, are able to provide themselves with some livelihood by tilling the land and engaging in animal husbandry in rural areas. However, stateless persons having no proper documents who wish to acquire title to land and must comply with legal and administrative procedures reported certain difficulties. Invalid identity documents pose to them an obstacle that prevents them from meeting a whole range of requirements, e.g. for notarial acts and civil transactions.

7.4. WAGE EARNING EMPLOYMENT

In the legislation of the Republic of Kazakhstan, stateless persons' rights to engage in labour activities can vary depending on their residence status in the Republic of Kazakhstan, i.e. temporary stay or permanent residence. The 1995 Foreigners Law entitles stateless persons permanently residing in the Republic of Kazakhstan to engage in labour activities equally to citizens of the Republic of Kazakhstan, as well as provides them with equal rights in employment relations, except for public posts or other similar activities that, under the Republic of Kazakhstan legislation, require citizenship of the Republic of Kazakhstan (Article 6).

The Labour Code of the Republic of Kazakhstan limits the possibility of concluding employment agreements with stateless persons temporarily staying in the Republic of Kazakhstan unless there is a special permit issued by competent local administrative authorities to the employer (Article 26).

A stateless person permanently residing in the Republic of Kazakhstan must have a stateless person certificate to be hired lawfully by a local employer (Article 31(2), Labour Code). In practice, employment opportunities available to properly

documented stateless persons differ from those for persons having no proper document.

The undocumented stateless persons attending the focus groups said that their employment opportunities were limited because they could only perform one-day work since employers are not able to employ them with no valid document. Hence, stateless persons having no proper documents are often paid less because one-day employment does not allow them to be covered with the requirement on minimum wage that employers must pay to workers.

7.5. THE RIGHT TO SOCIAL SECURITY AND JUST AND FAVOURABLE CONDITIONS OF WORK

The Constitution of the Republic of Kazakhstan guarantees everyone, including stateless persons, the right to freedom of labour, to free choice of occupation and profession, to safe and healthy working conditions, and to fair remuneration without discrimination (Article 24).

The Constitution of RK guarantees everyone social protection against unemployment.

According to the current legislation of the Republic of Kazakhstan, stateless persons become entitled to social assistance as soon as they receive a permit for permanent residence in the country.

The 1995 Foreigners Law points out that stateless persons permanently residing in the Republic of Kazakhstan have the same rights and bear the same duties concerning social and pension provision as citizens of the Republic of Kazakhstan have, and their record of service abroad may be taken into account for assignment and payment of pensions on the grounds and according to the procedure specified by legislation and international treaties of the Republic of Kazakhstan (Article 8).

Many stateless persons attending the focus groups, including ex-USSR passport holders, said that their rights to social and pension provision were observed, although there were a few cases when some stateless persons were denied payment of pensions because of not having valid documents.

7.6. RIGHT TO OWN PROPERTY

The 1995 Law on Legal Status of Foreigners distinguishes ownership rights of stateless persons permanently residing and those temporarily staying in the Republic of Kazakhstan. In particular, stateless persons permanently residing in the Republic of Kazakhstan may have ownership of movable and immovable property as well as have intellectual property rights on equal terms with citizens of the Republic of Kazakhstan. The Law specifies further that stateless persons temporarily staying in the Republic of Kazakhstan are also entitled to enjoy property rights on the grounds and according to the procedure specified by laws and agreements of the Republic of Kazakhstan (Article 9).

Many stateless persons married to citizens the Republic of Kazakhstan stated when attending the focus groups that they had their own houses or apartments although the official ownership belonged to their spouse being a citizen of the Republic of Kazakhstan.

lic of Kazakhstan. Although no serious concern was expressed as to the exercise of ownership rights by the stateless persons having stateless person certificates, undocumented stateless persons mentioned difficulties they encountered in the exercise of their ownership rights because of not having proper documents, which results in inability of complying with legal requirements set by current laws concerning conclusion of agreements and civil transactions.

CONCLUSIONS AND RECOMMENDATIONS for Section 2

The Republic of Kazakhstan took necessary measures to prevent statelessness of certain categories of the former USSR citizens during the period of state power succession after the Soviet Union break-up, and many people were granted citizenship of Kazakhstan. The former USSR citizens having close relatives and having no citizenship were invited to acquire the Republic of Kazakhstan citizenship according to laws in force. That policy enjoyed broad regulatory and administrative support, including a simplified procedure for granting of citizenship to ethnic Kazakhs, or oralmans. However, some residents of the former USSR – holders of old USSR passports and persons from neighbouring countries – could not timely legalise their citizenship of the Republic of Kazakhstan.

The situation with undocumented persons must be resolved by the State within the shortest possible terms. We suggest carrying out a large-scale action to find and document all the persons having no identity documents and being in such a situation for a long time, as well as to exempt them from any administrative liability for having no identity documents. In that way, Kazakhstan would secure undocumented individuals' and their family members' access to fundamental human rights, from civil and political to economic, social and cultural rights. In addition, we advise repealing administrative liability for having no identity document provided for by Article 377 of the CAO RK, because the duty of documentation lies with the State, identity documents are also owned by the State, and it is the State that is primarily interested to have all the population of Kazakhstan documented.

The 1991 Citizenship Law and other regulatory legal acts set forth certain rules and procedures that allow Kazakhstan to prevent a great deal of possible statelessness cases, both at birth and thereafter.

The bilateral and multilateral treaties concluded by the Republic of Kazakhstan with the Russian Federation, Belarus, Ukraine, the Kyrgyz Republic, and Mongolia, allow many people to successfully acquire citizenship of the Republic of Kazakhstan or change citizenship of one of these countries to that of another one. However, there is still a number of faults that should be eliminated to ensure compliance with standards and guarantees offered by international law for preventing statelessness.

Granting citizenship to children whose parents are foreign nationals unable to transfer their citizenship to their children, or to children one of whose parents is such a foreign national, another one being a stateless person, would strengthen the preventive effect of the provisions concerning at-birth citizenship acquisition. Legal guarantees of renunciation or loss of citizenship only subject to acquisition of another citizenship would promote prevention of statelessness in the future. Introducing an alternative way of producing evidence for persons having no citizenship of other States or a shorter term of permanent residence required for granting of citizenship would help reduce the number of existing statelessness cases or the quantity of persons at risk of statelessness.

Kazakhstan's accession to two UN Conventions (the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness), regulating protection of stateless persons and offering instruments to prevent and reduce statelessness, would improve effectiveness of the country's legal

and administrative systems in the fight against existing risks of statelessness and their manifestations in the future.

Considering the above-mentioned, we recommend that the Government and the Parliament of the Republic of Kazakhstan ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

We recommend that the Ministry of Internal Affairs of RK organise and carry out in all regions of Kazakhstan a large-scale action to find stateless persons and undocumented individuals, amnesty them, and take measures to document them.

For the purposes of building institutional and professional capacity of authorised public bodies in the field of protection of stateless persons' rights, we recommend that the MIA RK, together with the UNHCR Representation in Kazakhstan, organise and hold a series of seminars, trainings and other events on finding stateless persons, preventing and reducing statelessness.

III. ON THE SITUATION CONCERNING THE RIGHTS OF REFUGEES IN THE REPUBLIC OF KAZAKHSTAN

1. INTERNATIONAL STANDARDS FOR THE DETERMINATION AND CESSATION OF REFUGEE STATUS

Acquisition of refugee status is a formal confirmation of a person's right to international protection or asylum. Formal determination of refugee status entails legal consequences, namely a certain person or group's situation meets relevant legal criteria. An individual is recognised as a refugee as soon as his/her situation begins to meet the definition. Therefore, refugee status determination does not make a person a refugee but only declares him/her as such. Problems arise if States evade refugee status determination, or if States and UNHCR determine it differently.

UNHCR determines refugee status according to its Statute and the UN General Assembly resolutions on this matter, whereas the States Parties to the 1951 Convention relating to the Status of Refugees (hereinafter referred to as the 1951 Convention) and the 1967 Protocol are required to determine refugee status according to these documents. Subject to differences in definitions, a person can be recognised as a mandate refugee, a Convention refugee, etc.

Convention refugees are persons recognised as refugees under the 1951 Convention. The States Parties to the 1951 Convention and the 1967 Protocol undertake appropriate commitments concerning such refugees.

Mandate refugees are persons recognised as refugees by the UN High Commissioner for Refugees under the UNHCR Statute. Recognition of individuals as mandate refugees does not depend on whether the State of asylum is a party to the 1951 Convention and the 1967 Protocol. Mandate refugees are directly under the UNHCR protection.

The refugee status determination procedure is not regulated by the 1951 Convention, hence the procedures applied by the States Parties to the 1951 Convention and the 1967 Protocol vary greatly. In some countries, refugee status is determined according to official procedures set forth specially for that purpose. In other countries, the refugee status question is considered under general procedures applicable to foreigners.

In this regard, the UNHCR Executive Committee, at its 28th session in October 1977, suggested that these procedures should satisfy certain basic requirements. These basic requirements, which reflect the special situation of the applicant for refugee status and which would ensure that the applicant is provided with certain essential guarantees, are the following:

I) The competent official, e.g., immigration officer or border police officer to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He/she should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

II) The applicant should receive the necessary guidance as to the procedure to be followed.

III) There should be a clearly identified authority - wherever possible a single central authority - with responsibility for examining applications for refugee status and taking a decision in the first instance.

IV) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his/her case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

V) If the applicant is recognised as a refugee, he/she should be informed accordingly and issued with documentation certifying his/her refugee status.

VI) If the applicant is not recognised, he/she should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

VII) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph III) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

It is a general legal principle in the refugee status determination that the burden of proof lies on the person submitting a claim. Usually, circumstances of flight is such that an applicant is not able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

Determination of refugee status is a process which takes place in two stages.

Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained. The provisions of the 1951 Convention defining who is a refugee consist of three parts, which have been termed respectively "inclusion", "cessation" and "exclusion" clauses.

The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. They form the positive basis upon which the determination of refugee status is made. The so-called cessation and exclusion clauses have a negative significance; the former indicate the conditions under which a refugee ceases to be a refugee and the latter enumerate the circumstances in which a person is excluded from the application of the 1951 Convention although meeting the positive criteria of the inclusion clauses.

INCLUSION CLAUSES

Proceeding from the definition of a refugee (Article 1 A (2)), it is possible to highlight the following provisions compliance with which allows recognising a person as a refugee, i.e. including him into the scope of the Convention (hence, the term 'inclusion clauses' is used):

- 1) well-founded fear of being persecuted;
- 2) for reasons of race, religion, nationality, membership of a particular social group or political opinion;

- 3) is outside the country of his nationality;
- 4) is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;
- 5) not having a nationality and being outside the country of his former habitual residence.

1) "well-founded fear of being persecuted"

The phrase "well-founded fear of being persecuted" is the key phrase of the definition. The term "well-founded fear" contains a subjective ("fear") and objective ("well-founded", "being persecuted") elements. In determining whether well-founded fear exists, all these elements must be taken into consideration.

The source of objective information consists of presentation of the case by the applicant, his view on his life events that led him to the refugee situation.

The objective element consists of the country of origin information, available documentary evidence, and other information that can be matched with the subjective element of the case.

- Fear

The applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there. These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant.

When refugee status is determined on an individual basis, the person applying for refugee status must provide a well-founded reason for a personal fear of being persecuted. This is not required in situations when entire groups have been displaced, under pressure of circumstances, indicating that each member of the group could be considered individually as a refugee. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.

- Persecution

There is no universally accepted definition of "persecution". From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution.

- Discrimination

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature

for the person concerned (serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities, etc.).

- Punishment

Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim – or potential victim – of injustice, not a fugitive from justice. More often, it may not be the law but its application that is discriminatory. Prosecution for an offence against “public order”, e.g. for distribution of pamphlets, could for example be a vehicle for the persecution of the individual on the grounds of the political content of the publication.

- Agents of persecution

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

2) “for reasons of race, religion, nationality, membership of a particular social group or political opinion”

a) Race

Race, in the present connection, has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as “races” in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population. Discrimination on racial grounds will frequently amount to persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person’s human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights. However, the mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim to refugee status. Belonging to a group may in itself be sufficient ground to fear persecution due to particular circumstances affecting the group.

b) Religion

Persecution for “reasons of religion” may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.

c) Nationality

The term “nationality” in this context is not to be understood only as “citizenship”. It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term “race”. Persecution for reasons of nationality may consist

of adverse attitudes and measures directed against a national (ethnic, linguistic) minority. In certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution. In most cases persecution for reason of nationality is feared by persons belonging to a national minority. However, there have been many cases where a person belonging to a majority group may fear persecution by a dominant minority.

d) Membership of a particular social group

A “particular social group” normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other grounds, i.e. race, religion or nationality. Membership of such a particular social group may be at the root of persecution because there is no confidence in the group’s loyalty to the government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the government’s policies. Generally, membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.

e) Political opinion

Holding political opinions different from those of the government is not in itself a ground for claiming refugee status. An applicant must show that he has a sufficient fear of persecution for holding such opinions. This presupposes that the applicant holds opinions not tolerated by the authorities, which are critical of their policies or methods. It also presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant.

Persecution “for reasons of political opinion” implies that an applicant holds an opinion that either has been expressed or has come to the attention of the authorities. Nevertheless, an applicant claiming fear of persecution because of political opinion need not show that the authorities of his country of origin knew of his opinions before he left the country. He may have concealed his political opinion and never have suffered any discrimination or persecution. In such circumstances the test of well-founded fear would be based on an assessment of the consequences that an applicant having certain political dispositions would have to face if he returned. This applies particularly to the so-called refugee “sur place”.

3) “is outside the country of his nationality”

It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality. There are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country. An applicant’s well-founded fear of persecution must be in relation to the country of his nationality. As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country’s protection. He is not in need of international protection and is therefore not a refugee.

The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person

who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee “sur place”. A person can become a refugee “sur place” both due to circumstances arising in his country of origin during his absence and as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence.

This provision is a key one for identification of differences between refugees and persons falling under the “forced migrant” status (based on the 1993 Agreement on Assistance to Refugees and Forced Migrants among the CIS Member States). Unlike refugees, forced migrants flee from the country of their former habitual residence and ask their country of nationality for protection.

4) “is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”

Being unable to avail himself of such protection implies circumstances that are beyond the will of the person concerned. There may, for example, be a state of war, civil war or other grave disturbance, which prevents the country of nationality from extending protection or makes such protection ineffective. Protection by the country of nationality may also have been denied to the applicant. The term “unwilling” refers to refugees who refuse to accept the protection of the government of the country of their nationality. It is qualified by the phrase “owing to such fear”.

5) “not having a nationality and being outside the country of his former habitual residence”

This provision relates to stateless refugees and supplements the preceding phrase, which concerns refugees who have a nationality. In the case of stateless refugees, the “country of nationality” is replaced by “the country of his former habitual residence”, and the expression “unwilling to avail himself of the protection...” is replaced by the words “unwilling to return to it”. In the case of a stateless refugee, the question of “availment of protection” of the country of his former habitual residence does not, of course, arise. Moreover, once a stateless person has abandoned the country of his former habitual residence for the reasons indicated in the definition, he is usually unable to return.

It should be noted that not all stateless persons are refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee. Once a stateless person has been determined a refugee in relation to “the country of his former habitual residence”, any further change of country of habitual residence will not affect his refugee status.

In addition to the inclusion clauses considered above, the 1951 Convention contains geographical restriction of events due to which a person is subject to the Convention. However, only few states use this restriction for the time being.

CESSATION CLAUSES

The cessation clauses (Article 1 C (1) to (6) of the 1951 Convention) spell out the conditions under which a refugee ceases to be a refugee. They are based on the consideration that international protection should not be granted where it is no longer necessary or justified. Once a person’s status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses. These clauses are provided in Article 1 (C) of the 1951 Convention:

- (1) voluntary re-availment of national protection;
- (2) voluntary re-acquisition of nationality;
- (3) acquisition of a new nationality;
- (4) voluntary re-establishment in the country where persecution was feared;
- (5) re-availment of the protection of the country of nationality;
- (6) re-availment of the return to the country of former habitual residence.

Of the six cessation clauses, the first four reflect a change in the situation of the refugee that has been brought about by himself. The last two cessation clauses are based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for a person becoming a refugee have ceased to exist.

(1) Voluntary re-availment of national protection

This cessation clause refers to a refugee possessing a nationality who remains outside the country of his nationality (the situation of a refugee who has actually returned to the country of his nationality is governed by the fourth cessation clause). A refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer “unable or unwilling to avail himself of the protection of the country of his nationality”.

This cessation clause implies three requirements:

- (a) voluntariness: the refugee must act voluntarily;
- (b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality;
- (c) re-availment: the refugee must actually obtain such protection.

If the refugee does not act voluntarily, he will not cease to be a refugee. He may also be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be considered to be a “voluntary re-availment of protection” and will not deprive a person of refugee status.

A distinction exists between actual re-availment of protection and occasional and incidental contacts with the national authorities. If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection

A refugee requesting protection from the authorities of the country of his nationality may only be deemed as having re-availed himself of that protection when his request has actually been granted. The most frequent case of re-availment of protection will be where the refugee wishes to return to his country of nationality.

(2) Voluntary re-acquisition of nationality

This clause is similar to the preceding one. It applies to cases where a refugee, having lost the nationality of the country in respect of which he was recognized as having well-founded fear of persecution, voluntarily re-acquires such nationality. The

re-acquisition of nationality must be voluntary. The granting of nationality by operation of law or by decree does not imply voluntary reacquisition, unless the nationality has been expressly or impliedly accepted.

(3) Acquisition of a new nationality

As in the case of the re-acquisition of nationality, this third cessation clause derives from the principle that a person who enjoys national protection is not in need of international protection.

(4) Voluntary re-establishment in the country where persecution was feared

This cessation clause applies both to refugees who have a nationality and to stateless refugees. This is to be understood as return to the country of nationality or former habitual residence with a view to permanently residing there. A temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute “re-establishment” and will not involve loss of refugee status under the present clause.

(5) Nationals whose reasons for becoming a refugee have ceased to exist

“Circumstances” in this provision of the Convention refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere – possibly transitory – change in the facts surrounding the individual refugee’s fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable.

(6) Stateless persons whose reasons for becoming a refugee have ceased to exist

The present clause deals exclusively with stateless persons who are able to return to the country of their former habitual residence. “Circumstances” should be interpreted in the same way as under the fifth cessation clause. It should be stressed that, apart from the changed circumstances in his country of former habitual residence, the person concerned must be able to return there. This, in the case of a stateless person, may not always be possible.

Article 1 (C) does not deal with the cancellation of refugee status. Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; e.g. if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the exclusion clauses would have applied to him had all the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled.

EXCLUSION CLAUSES

The 1951 Convention, in Sections D, E and F of Article 1, contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1, Section A, are excluded from refugee status.

Such persons fall into three groups.

- The first group (Article 1 D) consists of persons already receiving United Nations protection or assistance.

- The second group (Article 1 E) deals with persons who are not considered to be in need of international protection.

- The third group (Article 1 F) enumerates the categories of persons who are not considered to be deserving of international protection.

A person already receiving the UN protection or assistance is understood to mean any person who has received protection or assistance of existing or previously existing UN organs or agencies other than the United Nations High Commissioner for Refugees.

The second provision relates to persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship (they are frequently referred to as “national refugees”). The country that has received them is frequently one where the population is of the same ethnic origin as themselves. This exclusion applies when a person’s status is largely assimilated to that of a national of the country. In particular he must, like a national, be fully protected against deportation or expulsion. This implies continued residence and not a mere visit.

The third group is the largest one both in terms of inclusion and in terms of the number of its applications. This provision covers, first of all, *combatants*, i.e. persons who fled from the country and being formally in a refugee situation but continuing armed struggle. This group also includes persons who committed:

a) *War crimes*

There are a considerable number of international instruments that contain definitions of this notion. The most comprehensive definition can be found in the 1945 London Agreement and Charter of the International Military tribunal:

(a) *crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;*

(b) *war crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;*

(c) *crimes against humanity: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.*

b) *Common crimes*

The aim of this exclusion clause is to protect the community of a receiving country from the danger of admitting a refugee who has committed a serious common crime. This provision does not apply to persons having committed political offences. In determining whether an offence is “non-political” or is, on the contrary, a “political” crime, regard should be given in the first place to its nature and purpose i.e. whether it has been committed out of genuine political motives and not merely for personal reasons or gain. There should also be a close and direct causal link between the crime committed and its alleged political purpose and object. The political element of the offence should also outweigh its common-law character. This would not be the case if the acts committed are grossly out of proportion to the alleged objective, first of all is they involve acts of an atrocious nature.

Only a crime committed or presumed to have been committed by an applicant “outside the country of refuge prior to his admission to that country as a refugee” is a ground for exclusion. A refugee committing a serious crime in the country of refuge is subject to due process of law in that country. In extreme cases, Article 33 paragraph 2 of the Convention permits a refugee’s expulsion or return to his former home country if, having been convicted by a final judgement of a “particularly serious” common crime, he constitutes a danger to the community of his country of refuge.

Since the term “crime” has different connotations in different countries, it is necessary to explain that a “serious” crime must be a capital crime or a very grave punishable act. Minor offences punishable by moderate sentences are not grounds for exclusion under Article 1 F (b).

A special case consists of a crime committed as a means of escape from the country where persecution was feared. Such crimes may range from the theft of a means of locomotion to endangering or taking the lives of innocent people. This exclusion clause may not apply when a refugee, not finding any other means of escape, may have crashed the border in a stolen car. However, if he escaped by hijacking an aircraft, i.e. forced its crew, under threat of arms or with actual violence, to change destination in order to bring him to a country of refuge, such a crime is regarded as “particularly serious”. The various conventions adopted in this connection deal mainly with the manner in which the perpetrators of such acts have to be treated. They invariably give Contracting States the alternative of extraditing such persons or instituting penal proceedings for the act on their own territory. The latter obviously implies the right to grant asylum.

c) Acts contrary to the purposes and principles of the United Nations

The purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations. They enumerate fundamental principles that should govern the conduct of their members in relation to each other and in relation to the international community as a whole. From this it could be inferred that an individual, in order to have committed an act contrary to these principles, must have been in a position of power in a member State and instrumental to his State’s infringing these principles. However, there are hardly any precedents on record for the application of this clause, which, due to its very general character, should be applied with caution.

Normally it will be during the process of determining a person’s refugee status that the facts leading to exclusion under these clauses will emerge. It may, however, also happen that facts justifying exclusion will become known only after a person has been recognised as a refugee. In such cases, the exclusion clause will call for a cancellation of the decision previously taken.

Alongside the clauses considered above, there is a number of *special cases* not covered by the 1951 Convention. In these cases persons formally fail to meet the inclusion clauses in the Convention sense but are actually in a refugee situation.

WAR REFUGEES

Persons compelled to leave their country of origin as a result of international or national armed conflicts enjoy the protection provided for in such international instruments as the Geneva Conventions of 1949 on the Protection of War Victims

and the 1977 Protocol additional to the Geneva Conventions of 1949 relating to the protection of Victims of International Armed Conflicts. However, foreign invasion or occupation of all or part of a country can sometimes result in persecution for one or more of the reasons enumerated in the 1951 Convention. In such cases, refugee status will depend upon:

- whether the applicant is able to show that he has a “well-founded fear of being persecuted” in the occupied territory;
- whether or not he is able to avail himself of the protection of his government, or of a protecting power whose duty it is to safeguard the interests of his country during the armed conflict;
- whether such protection can be considered to be effective.

Protection may not be available if there are no diplomatic relations between the applicant’s host country and his country of origin. If the applicant’s government is itself in exile, the effectiveness of the protection that it is able to extend risks being inefficient.

DESERTERS AND PERSONS AVOIDING MILITARY SERVICE

A deserter or draft-evader may be considered a refugee if he is able to prove that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.

In some cases, however, the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience. It is the type of military action, with which an individual does not wish to be associated, that matters. If this type is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.

Refusal to perform military service may also be based on religious convictions. If an applicant is able to show that his religious convictions are genuine, and that such convictions are not taken into account by the authorities of his country in requiring him to perform military service, he may be able to establish a claim to refugee status.

Besides, an expanded interpretation of the term “refugee” in a number of documents (the 1969 OAU Convention, the 1984 Cartagena Declaration) directly includes escape from military action and civil disorder in the grounds for granting refugee status. This expanded interpretation is generally used by UNHCR for the most flexible approach to granting of international protection to those in need of it.

PERSONS HAVING RESORTED TO FORCE OR COMMITTED ACTS OF VIOLENCE

An application for refugee status by a person having (or presumed to have) used force, or to have committed acts of violence of whatever nature and within whatever context, must in the first place – like any other application – be examined from the standpoint of the inclusion clauses in the 1951 Convention. Where it has been de-

terminated that an applicant fulfils the inclusion criteria, the question may arise as to whether, in view of the acts involving the use of force or violence committed by him, he may not be covered by the terms of one or more of the exclusion clauses.

STATUS GRANTING

It should be pointed out that solely peaceful population is considered as refugees in the meaning of the 1951 Convention.

Refugee status can be granted either by a national government or by UNHCR. If the State is a party to the 1951 Convention or the 1967 Protocol then its government undertakes to grant refugee status to a person applying thereto with a properly lodged claim and meeting necessary criteria. On the national level, there are various procedures to make decisions on granting refugee status that usually involve UNHCR. From the refugees' point of view, the refugee status under the 1951 Convention (a Convention refugee) is the most favourable for them. First of all, having this status is a guarantee of non-refoulement, and, secondly, confers on a refugee a number of economic and social rights (as per the Convention and its Protocol).

Some governments grant a humanitarian status in exceptional cases. The humanitarian status is applied to persons who cannot be considered as refugees in the meaning of the 1951 Convention but who can, in case of return to their country of origin, be exposed to danger due to widespread expressions of violence, foreign aggression, or internal conflicts.

If the decision to grant refugee status is made by UNHCR the given person is considered to be a mandate refugee. Recognition of some or other persons as mandate refugees does not depend on whether the given State is a party to the 1951 Convention or the 1967 Protocol. Even those persons whose previous claims for recognition as refugees under the 1951 Convention were rejected can become mandate refugees. A person recognised as a mandate refugee enjoys the UNHCR protection due to which he/she is not subject to refoulement and is guaranteed treatment according to fundamental humanitarian principles. Such protection does not assume guarantees of the rights identical to the rights of refugees subject to the 1951 Convention.

2. THE SITUATION OF REFUGEES IN KAZAKHSTAN

On 15 December 1998, the Republic of Kazakhstan officially acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol thereby assuming certain commitments concerning refugees towards the international community. These include, first of all, such principles as non-refoulement, access to procedure, information, the right to appeal against decisions, and provision of registration for the period of case consideration and appealing. Kazakhstan's accession to the 1951 Convention was considerably promoted by constructive cooperation between its official authorities and the UN High Commissioner for Refugees (UNHCR) Representation in Kazakhstan.

Pursuant to Kazakhstan's obligations ensuing from the ratification of the 1951 Convention, the Law of the Republic of Kazakhstan on Refugees was adopted on 4 December 2009, with the main purpose of securing a system of regulation of relations in the provision of asylum to foreigners and stateless persons as well as in refugee status determination.

Recognised as refugees in the Republic of Kazakhstan are foreigners applying to the Republic of Kazakhstan for being granted refugee status, who, owing to well-founded fear of being persecuted for reasons of race, nationality, religion, citizenship, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or unwilling to avail themselves of the protection owing to such fear, or stateless persons being outside the country of their habitual residence who are unable or unwilling to return to it owing to such fear (Article 1(1), Law of RK on Refugees).

Activities of public authorities dealing with the refugee problem are guided by articles of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Law of RK on Refugees, Law of RK on Legal Status of Foreigners, and other regulatory legal acts.

The Law on Refugees took effect on 1 January 2010. It defines criteria and procedures for granting refugee status, provides for protection of the rights of asylum-seekers and refugees, and enshrines their basic rights and duties in the territory of the Republic of Kazakhstan.

The Law clarifies the procedure for submission and registration of refugee claims, and extends the period during which the competent authority must make its decision on refugee status to three months from the date of registration.

In accordance with standards of international law and recommendations of the UNHCR Representation in the Republic of Kazakhstan, special provisions have been included on refugee children and travel documents for refugees.

Issuance of the travel documents envisaged by the 1951 Convention ensures refugees' movement outside the Republic of Kazakhstan.

In order to implement the Law on Refugees, the RK Government's Resolution No. 183 of 9 March 2010 approved *the Rules of Granting, Extension, Withdrawal and Cancellation of Refugee Status*, which define a procedure for granting, extension, withdrawal and cancellation of refugee status.

Orders of the Minister of Internal Affairs of RK approved a procedure for registration and processing of a refugee claim, and specimens of an asylum-seeker certificate, a refugee certificate, and a travel document.

Hence, recommendations provided in the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012 have been implemented concerning:

- adoption of the Law of RK on Refugees;
- elimination of contradictions between legislative acts and departmental instructions regulating the freedom of movement inside the country;
- development of a procedure for treatment of asylum-seekers and migrants that does not allow for their expulsion or extradition without a court ruling;
- establishment of an open and accessible system for efficient information of foreigners and stateless persons on the rules of entry and stay in the Republic of Kazakhstan and its migration legislation.

To coordinate work with refugees, a permanent working group has been established in the Migration Police Committee of MIA RK involving representatives of the Prosecutor-General's Office, Ministry of Foreign Affairs, Ministry of Justice, and the UN High Commissioner for Refugees.

Work of refugee status determination commissions has been organised in regions. The commissions include officials of the bodies of internal affairs and national security, representatives of akimats and maslikhats.

As of 1 October 2010, the number of recognised refugees in the Republic of Kazakhstan was 559 persons, or 207 families.

In terms of ethnic composition, the refugee contingent includes 313 Tajiks, 115 Pashtuns, 80 Khazars, 35 Uzbeks, and 16 persons of other ethnicities.

In terms of education, there are 61 refugees with higher education, 18 with incomplete higher, 13 with secondary special, 174 with secondary, 6 with primary education, 97 school children, 73 preschoolers, and 21 with no education.

In terms of age, there are 352 refugees of working age, 6 of retirement age, 3 with disabilities, and 198 children.

Of the total number of refugees, 542 are nationals of Afghanistan most of whom have been living in Kazakhstan for more than 10 years, 9 are nationals of Uzbekistan, 5 of China, 2 of Ethiopia, and 1 of Somali. 247 are males, and 312 are females.

Most refugees are registered in Almaty city (463), South Kazakhstan oblast (83), and Almaty oblast (13).

Since the beginning of 2011, refugee status has been granted to one person whereas 15 applicants were rejected.

A greater part of the refugees work in various structures or are self-employed.

The most vulnerable of the refugees are rendered assistance by international organisations such as UNHCR and the Red Cross.

In cooperation with UNHCR, Almaty hosted the Regional Conference on Migration in April 2011 involving representatives of competent authorities of Central Asian countries, Russia, China, Turkey, international organisations (IOM and OSCE), and public authorities of Kazakhstan.

The conference discussed topical issues of multipartite cooperation on migration and security, and outlined key areas and practical measures of counteraction to threats of illegal and uncontrolled migration.

3. ASYLUM-SEEKERS

Asylum-seekers in Kazakhstan face problems similar to those of refugees. Generally, the existing practice towards both asylum-seekers and refugees infringes their rights and standards not only of international law but also of national legislation. Despite the Law on Refugees declares an opportunity for lodging a claim for refugee status in the Republic of Kazakhstan, asylum-seekers in Kazakhstan are sometimes subjected to administrative and extrajudicial arrest and expelled from the country by court orders.

We recommend enhancing work with staff of law-enforcement bodies to train them in international standards of treatment of asylum-seekers and refugees as well as strengthening prosecutor's supervision over migration police operations. Another recommendation consists of the proposal to open centres for asylum-seekers, similar to oralman adaptation centres. It would allow such persons to have temporary accommodation until they receive a reply to their refugee claim, while being within the reach of respective public services engaged in addressing their situation.

Providing free legal assistance to oralmans, stateless persons, refugees and asylum-seekers as well as to all vulnerable population groups is a pressing problem.

Vulnerable population groups, including oralmans, undocumented stateless persons, homeless, poor, refugees, asylum-seekers, and migrant children, are in acute need of skilled free legal assistance. At present, they are only rendered free legal assistance by international and non-profit organisations while the State must not keep out of protection of their rights by explaining their rights and duties and rendering them skilled legal assistance by free lawyers and attorneys for all cases. Working practices of human rights NGOs show that they are mainly interested in such matters as documentation, residence or stay registration, appealing against unlawful police actions including illegal detention, and bringing to justice the persons guilty of their exploitation. Individuals having no housing apply on property disputes. These people are not able even to pay for a one-time legal advice, which results in delays in handling their cases, expiration of periods for appeal, and eventually protracted violation of their rights. In our opinion, proceeding from international practices, such free legal advice offices can be organised under the aegis of local executive authorities; besides, it is possible to place a government social order for provision of free legal assistance to vulnerable population groups with non-governmental organisations already experienced in this domain.

4. DESCRIPTION OF REFUGEE GROUPS DYNAMICS IN KAZAKHSTAN

Since 2001, the State has recognised on average about 600 refugees annually (Table 1). The number of asylum-seekers was less stable, within the range of 70 to 150 per year (Table 2).

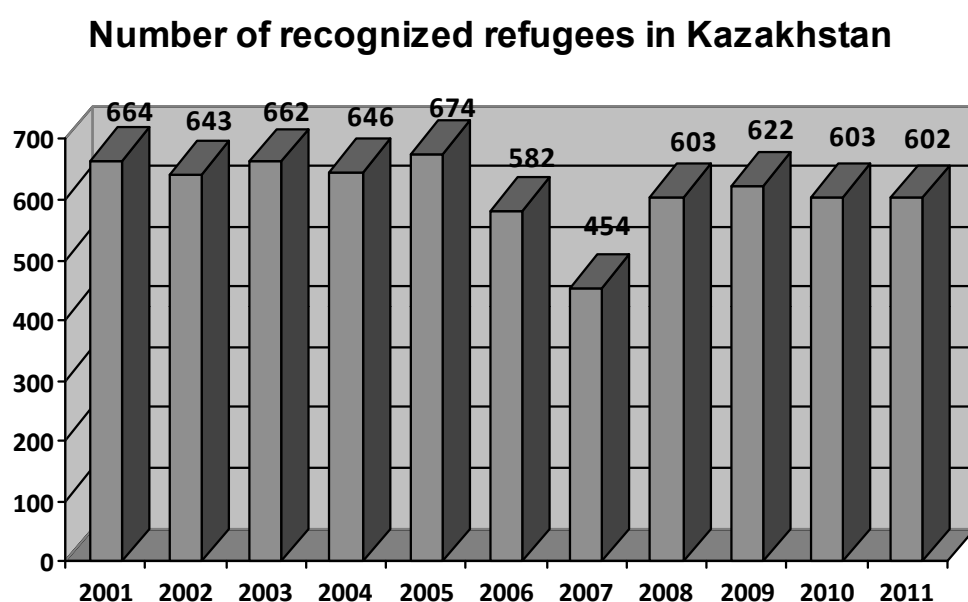
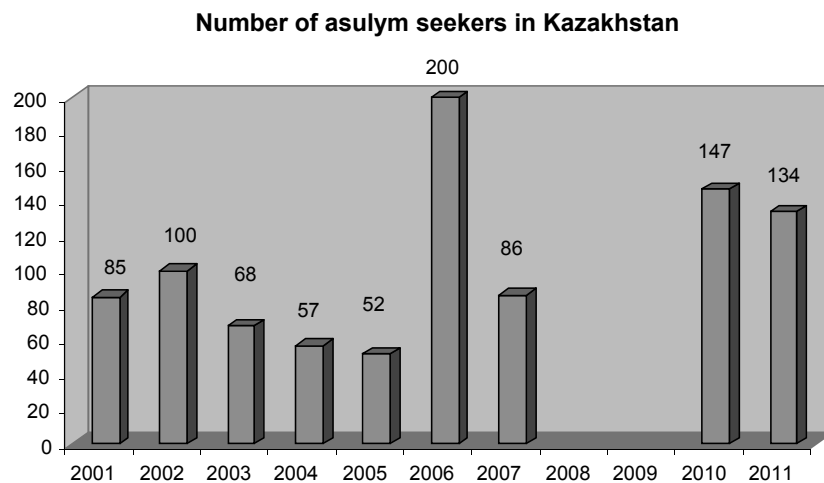


Table 1. Source: internal UNHCR statistics; Report by the Committee for Human Rights 2008; Ministry of Labour and Social Protection of RK; MIA RK

Table 2. Source: internal UNHCR statistics; Report by the Committee for Human Rights 2008



Unlike official reports, other sources tell about approximately 4,000 refugees in Kazakhstan (NGO comments 2010). This number includes people in a refugee-like situation who believe that living in Kazakhstan without registration and official refugee status is possible. As UNHCR points out, out of the total number of refugees in 2010, being 4,558, more than 80% (3,692) were in a refugee-like situation (<http://www.unhcr.a13.kz/eng/>).

The largest refugee group in Kazakhstan consists of Afghanistan natives. The Government of Kazakhstan has recognised more than 1,600 Afghans as refugees according to the 1951 Convention criteria (UNHCR study, 2009). In terms of ethnic groups, the Afghan refugees differ. For example, according to governmental data, there were large groups from Afghanistan among 622 refugees (243 families) in 2010. In terms of ethnic composition, there were Khazars (104), Pashtuns (142), Tajiks (338), Uzbeks (26), other (12) including 1 from Somali, 1 from Nigeria, and 2 from Ethiopia.

There are also some refugees from China, ethnic Uigurs having Chinese nationality. The actual quantity of Uigur refugees is not known but more than 100 persons have gained UNHCR protection since the late 1990s (UNHCR study, 2009). In 2010, refugee status was granted to 15 persons (3 families) from Uzbekistan, 8 persons (2 families) from Kyrgyzstan (UNHCR, 2011; Committee for Human Rights) (Table 3).

Refugees by countries of origin

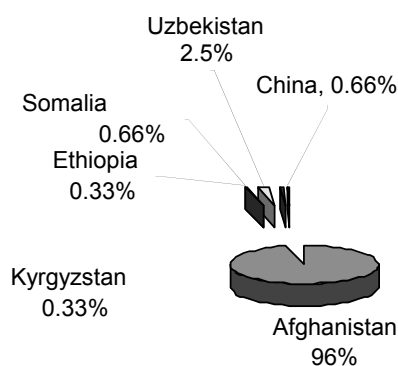


Table 3. Data from the UNHCR Representation in Kazakhstan

Most refugees in Kazakhstan settle in two regions: South Kazakhstan oblast (11%) and Almaty city (88.1%) (official data 2009). Key pull factors in Almaty include opportunities for access to livelihoods and economic potentials of a large city, labour market, and proximity to the UNHCR Regional Office (Table 4).

Table 4. Data from the MIA RK and the UNHCR Representation in Kazakhstan

It should be noted that, according to an order of the Minister of Labour and Social Protection of RK, the Government established the official *Refugees* database in 2009 in cooperation with the State Centre for Payment of Pension state enterprise.

4.1. LIVELIHOODS AND SELF-RELIANCE

This study mainly deals with the matters related to self-reliance of refugees officially recognised by Kazakhstan as well as of individuals officially applying for refugee status.

The UNHCR Handbook for Self-reliance (2005) defines self-reliance as the “social and economic ability of an individual, a household or a community to meet essential needs (including food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity”.

UNHCR defines social and economic aspects of self-reliance. Social self-reliance refers to the ability of a community to function with a level of cohesion, social accountability and mutual dependence – taking decisions, mobilising resources, and building and maximising interpersonal capacity to address issues and initiatives for mutual benefit. Economic self-reliance is based upon access to, and management of, material and monetary assets.

The UNHCR Policy on Refugee Protection and Solutions in Urban Areas (2009) emphasises that UNHCR will support the efforts of urban refugees to become self-reliant, both by means of employment or self-employment, in the context of a wide range of legal, financial, cultural and language barriers faced by refugees in urban situations.

The UNHCR self-reliance strategy builds upon a comprehensive assessment of local problems and opportunities in close cooperation with national stakeholders: public authorities, development institutions, microfinance organisations, banks, private sector, and civil social institutes.

The UNHCR policy principles presented above provide a framework for development of a comprehensive strategy and action plan for self-reliance of urban refugees in Kazakhstan.

5. ANALYSIS OF NATIONAL LEGISLATION AND ENFORCEMENT PRACTICES ON PROTECTION OF REFUGEE RIGHTS

5.1. CHANGES IN MIGRATION POLICY

In 1998, Kazakhstan acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which indicates its firm commitment to meet obligations under these international legal acts.

Functional responsibility for refugees has been transferred among three agencies since 1998:

the Agency of the Republic of Kazakhstan for Migration and Demography (AMD RK, 1998-2004);

the Committee for Migration under the Ministry of Labour and Social Protection of RK (MLSP CM, 2004 – September 2010);

the Committee for Migration Police under the Ministry of Internal Affairs of RK (MIA CMP, September 2010 – present).

Kazakhstan adopted the Concept of Migration Policy of RK for 2001-2010 in 2001. The document emphasised development of conditions for refugee integration in the receiving community and voluntary repatriation of ethnic Kazakhs (oralmans) to their country of origin.

The migration policy 2001-2010 includes, inter alia, the following policy instruments:

creating a national refugee database on regional and national levels;

securing refugees' rights according to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and other international treaties ratified by Kazakhstan.

In 2007, pursuant to the Decree of the President of the Republic of Kazakhstan No. 399 of 28 August 2007, Kazakhstan adopted its second Concept of Migration Policy for 2007-2015. Whereas the migration policy for 2001-2010 underlined provisions on sustainable demographic development, national security, and provision of immigrants' rights, the goal of the migration policy for 2007-2015 is to reduce adverse effects of migration processes in the framework of preserving the country's national identity and security, as well as to minimise illegal migration and establish a selective migration strategy. This policy relies upon *Kazakhstan 2030*, the country's long-term social and economic strategy.

According to the Decree of the President of RK of 17 August 2010 *On measures to enhance efficiency of law-enforcement activities and the judicial system in the Republic of Kazakhstan*, some functions of the MLSP CM were transferred to the newly established Committee for Migration Police under the Ministry of Internal Affairs of RK.

In accordance with the Decree of the President of the Republic of Kazakhstan No. 1066 of 22 September 2010 *On some matters of implementation of the Decree of the President of the Republic of Kazakhstan No. 1039 of 17 August 2010*, functions of the Ministry of Labour and Social Protection of RK concerning migration and refugees, except for functions concerning quotas for engagement of foreign labour and payment of lump-sum benefits to the oralmans and their family members who arrived under the oralman immigration quota, were transferred to the Ministry of Internal Affairs of RK.

5.2. THE 2009 LAW ON REFUGEES

In accordance with the recommendations given by the Commission on Human Rights under the President of the Republic of Kazakhstan and with the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012, the Parliament passed the Law of RK on Refugees on 4 December 2009.

The Law took effect as of 1 January 2010.

The Law on Refugees defines a core legal framework for refugees and asylum-seekers (hereinafter referred to as the persons of concern) in Kazakhstan. It classifies refugees into two major groups: statutory refugees and asylum-seekers.

A refugee is a foreigner or a stateless person who was granted legal asylum by the State based on well-grounded fears of persecution for the reasons specified in the Law on Refugees (Article 1).

An asylum-seeker is a foreigner or a stateless person applying for refugee status. The applicant holds the asylum-seeker status until a competent authority makes a final decision on the refugee claim (Article 1(6)).

The Law on Refugees provides the following rights related to self-reliance to persons of concern to UNHCR:

- freedom of labour or entrepreneurial activities according to legislation of Kazakhstan (Article 8(1)(8), Article 9(1)(6));

- access to healthcare services according to legislation of Kazakhstan (Article 8(1)(7), Article 9(1)(5));

- other rights and freedoms envisaged by the Constitution, laws and international treaties ratified by Kazakhstan (Article 8(3), Article 9(3)).

An important feature of the Law on Refugees is the fact that the rights related to self-reliance of persons of concern to UNHCR contain references to other regulatory legal acts.

Concerning self-reliance, the Law on Refugees provides references to laws already in force, so it does not alter the framework for self-reliance.

The Constitution of the Republic of Kazakhstan states that the international treaties ratified by the Republic have priority over its laws and are applied directly, unless implementation of an international treaty requires publication of a law (Article 4(3)). However, in practice there has been no precedent of direct application of the 1951 Convention provisions to persons of concern to UNHCR in Kazakhstan.

Simultaneously with the Law on Refugees, Kazakhstan passed the Law on Amending and Supplementing Some Legislative Acts of the Republic of Kazakhstan on Refugees in 2009. In particular, it amended and supplemented the Code of Administrative Offences of RK and the Law on State Targeted Social Assistance.

It should be pointed out that the Ministry of Justice of RK, as a principal coordinator of law drafting work, rather often criticises the quality of existing laws and draft laws in Kazakhstan. Ensuring quality is the key task of the Ministry's Strategic Plan for 2011-2015. According to the Strategic Plan, "in order to ensure stability of the legislative framework in Kazakhstan, improve its quality, involve independent experts and non-governmental sector representatives in the development of legal instruments, ... it is planned to expand the practice of passing directly applicable laws and to strengthen activity of public authorities in evaluation of secondary legal instruments" (Strategic Plan of the Ministry of Justice for 2011-2015).

The need for securing quality of regulatory documents is not new in Kazakhstan. As a matter of fact, the Ministry of Justice also included in its Strategic Plan for 2009-2011, among priorities, the goal of improving quality of legal documents not only from the viewpoint of purely juridical matters but also of social, economic and financial problems based on analysis of statistical information, analysis of implementation of legal provisions, and use of positive international experience.

The strategic plans correspond to the Concept of Legal Policy of Kazakhstan for 2010-2020 approved by the Decree of the President of RK No. 858 of 24 August 2009 (hereinafter referred to as the Legal Policy). This document especially emphasises that improvement of regulatory legal activities assumes continuing work to systematise current legislative provisions with the greatest possible minimisation of old and duplicate provisions, gaps in laws, internal contradictions in existing laws, and a multitude of references adopted instead of *directly applicable laws* in accordance with the Constitution.

The legal policy also stresses the need to carry out expert assessment and to improve juridical technology that determine quality of regulations and the professional level of civil servants in dealing with legislative acts.

The recently passed Law on Amending and Supplementing Some Legislative Acts of the Republic of Kazakhstan on Further Improvement of Rule-making Activities (1 April 2011, No. 4252-IV 3PK) defines new procedures: legal monitoring of regulatory acts exercised by public authorities on a permanent basis by means of collecting, assessing and analysing data in the matters of law drafting and implementation.

5.3. THE RIGHT TO LABOUR ACTIVITIES

The legislative acts dealing with refugee labour matters are as follows:

- 1) Law on Legal Status of Foreigners of 19 June 1995;
- 2) Labour Code of the Republic of Kazakhstan of 15 May 2007;
- 3) Law on Employment of the Population (No. 149-II of 23 January 2001);
- 4) Rules for quota determination and issuance of permits to employers for engagement of foreign labour force in the Republic of Kazakhstan, approved by the Resolution of the Republic of Kazakhstan Government No. 836 of 19 June 2001 (hereinafter referred to as the Quota Rules);
- 5) Law on Migration of the Population of 22 July 2011.
- 6) Law on Refugees of 4 December 2009.

Provisions of the 1951 Convention (Article 17) state that refugees must be accorded the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

According to the 1995 Foreigners Law (Article 6), foreigners permanently residing in the Republic of Kazakhstan have the same rights and bear the same duties in employment relations as citizens of the Republic of Kazakhstan. Foreign nationals permanently residing in Kazakhstan are those who received a permit from the authorised public body and documents certifying the right to permanent residence. Foreigners staying in Kazakhstan on other legal grounds are considered to be temporarily residing foreigners.

Refugees and asylum-seekers form part of global forced migration. However, unlike migrants²⁷, they left their countries or places of residence not because of economic situations but rather owing to inability to obtain protection of the country of origin. Therefore, as experts believe, persons of concern to UNHCR may not be regarded as temporary labour migrants either when lodging an asylum claim or upon receiving refugee status. Persons of concern to UNHCR are subject to international

27 A 'labour migrant' is a person migrating between countries in order to find employment at his/her own account, and includes any individual regularly recognised as a labour migrant (ILO 2008, 12).

protection standards and procedures set forth by the international refugee law.

According to the Law on Refugees, asylum-seekers in Kazakhstan and refugees have the right to free employment or entrepreneurial activities under legislation of the Republic of Kazakhstan (Article 8(1)(8), Article 9(1)(6)).

In order to protect the local labour market, there are certain restrictions on foreigners' labour activities in Kazakhstan. According to the Foreigners Law (Article 6), foreigners may not be appointed to positions, or engage in labour activities, that require Kazakhstan citizenship, regardless of the category of foreigners (temporary or permanent).

Another restriction, defined in the Labour Code (Article 26(1)(4)), forbids foreigners temporarily staying in Kazakhstan to sign employment agreements without a special permit from local executive authorities (akimats). A special permit for engagement of foreign labour force in Kazakhstan is governed by the Law on Employment of the Population and, more specifically, by the Quota Rules.

The system of quotas for engagement of labour was introduced in 2001 in accordance with requirements of the Law on Employment of the Population and the RK Government Rules on determination of quotas for engagement of foreign labour force. Annual quotas are set on the basis of proposals submitted by local and central executive authorities.

A quota for engagement of foreign labour force is determined as percentage of the economically active population and/or set in absolute terms by priority project and/or by countries of departure according to a labour market demand forecast for the subsequent year (Article 31(1), Law on Migration of the Population).

A decision on the subsequent year's quota is usually made by the Government at the end of the year. Employers are involved in quota distribution through submission of applications on foreign labour force for the subsequent year to akimats (ILO, 2008).

The Law on Employment of the Population (Article 11) states that requests for foreign labour force quotas do not apply to some foreign nationals and stateless persons. Foreigners engaged in entrepreneurial activities in the Republic of Kazakhstan in the form of legal persons are also excluded from the quotas. According to the Quota Rules, persons granted refugee status or political refugees in Kazakhstan are not required to obtain a work permit. Thus, this exclusion allows refugees to engage in labour activities freely. However, the Quota Rules do not provide any preference to asylum-seekers. Therefore, such persons can only work legally if their employer has obtained a special permit for engagement of foreign labour force.

To some extent, the prohibition of recruitment of foreigners temporarily living in the country with no work permit, specified in the Labour Code (Article 6), serves to employers as an excuse for unlawful recruitment of foreigners. Such unlawful recruitment can subject asylum seekers to various forms of exploitation during their period of work, and a worker can be denied payment for his work.

According to the Law on Migration of the Population (Article 37(3)), foreign workers and stateless persons permanently residing in Kazakhstan can carry out labour activities without the need for the foreign worker to obtain work permits and for the employer to engage foreign labour force.

Despite importance of such a provision, it will depend on the implementation mechanisms that are still under discussion among stakeholders, including the Minis-

try of Labour and Social Protection (MLSP), the International Organisation for Migration (IOM), and the Confederation of Employers of RK (CE RK).

5.4. IDENTITY DOCUMENTS

Mechanisms of legal employment and signing of an employment contract assume availability of proper documents (Labour Code, Article 31) and at least identity documents; qualification documents; taxpayer's registration number and social individual code.

According to the Law on Refugees, persons of concern to the Migration Police Committee of MIA RK have the right to a refugee certificate and an asylum-seeker certificate.

The Government of Kazakhstan allocated, in the triennial budget (2009-2011) framework, 3,718.4 million tenges for the implementation of the Law on Refugees and, particularly, for production of refugee certificates and asylum-seeker certificates forms of which had been endorsed by the Order of the Minister of Internal Affairs of RK No. 498 of 29 November 2010.

In accordance with the Rules of Granting, Extension, Withdrawal and Cancellation of Refugee Status, approved by the RK Government Resolution No. 183 of 9 March 2010, refugee status is granted for one year and may be extended for one more year provided that the conditions in the refugee's country of origin, which provided the ground for granting refugee status, have not changed. The refugee certificate is valid for travel over the whole territory of the Republic of Kazakhstan. Refugees also have the right to a travel document that will certify their identity and status outside Kazakhstan.

Persons applying for refugee status are issued an asylum-seeker certificate and remain registered until they receive a reply to their claim, generally within 3 months but no longer than a year.

5.5. ASYLUM-SEEKER CERTIFICATE

Throughout the study period, most interviewed asylum-seekers had no official certificates and any other documents to certify their identity. Some of them brought already outdated papers issued by UNHCR or expired certificates of submission of an asylum claim. Such persons had the right of appeal but failed to exercise it according to the procedure specified by law. However, some individuals were required to give their asylum-seeker certificates back to migration police authorities or had to leave them non-extended. These persons having no official certificate are deemed illegal in Kazakhstan despite the fact of being in the process of appeal.

Most asylum-seekers complained during the interviews that they found themselves in an illegal status not at their choice but inadvertently because:

- migration police refused to issue a certificate in time (certificates are currently not printed so they are not available);

- migration police refused to extend registration during the period when the persons in question are undergoing various stages of judicial appeal;

- UNHCR (and its implementing partners) as well as migration police authorities

refused to inform the refugees timely on stages of the process of consideration of their cases.

The above-mentioned institutions claim that the persons applying for refugee status were properly informed by them in time and that in most cases the asylum-seekers were left with no necessary documents at their own fault because they had failed to observe the rules and deadlines in the asylum process. It means that those asylum-seekers who were denied refugee status, according to the Rules of Granting, Extension, Withdrawal and Cancellation of Refugee Status, had limited time to file an appeal after they have been notified on official refusal on their case. Asylum-seekers must be notified by migration police within 5 working days from the refusal decision date. The notice is sent at the asylum-seeker's actual place of residence, and contains appeal process details. In most cases (interviews), asylum-seekers either deliberately forgot to observe the prescribed appeal process or did not know about it because they had not received any notice for various reasons, e.g. because of residence change.

According to Article 280(1) of the Civil Procedural Code of RK (CPC RK), natural and legal persons are entitled to file an application to court within three months from the day when infringement of their rights, freedoms and legally protected interests came into their knowledge.

It should be noted that missing the three-month term for filing an application does not constitute a ground for a court to refuse to accept the application (Article 280(2), CPC RK).

Hence, if asylum-seekers in Kazakhstan failed to comply with the statutory conditions for filing an appeal against the refusal, they still do have the right of appeal according to the CPC RK. Nevertheless, the migration police, operating according to the Rules of Issuance and Extension of Certificates to Asylum-Seekers, have no right to issue or extend certificates to the applicants who were denied refugee status. In this situation, such persons are actually left with no legal status despite of being in the process of appeal. In this case, they may be under UNHCR protection but UNHCR has no right to issue a document that would legalise their status as asylum-seekers in Kazakhstan.

Proceeding from these arguments, it should be pointed out that these procedural gaps exist in practice, so we recommend improving legislation and enforcement practices as to granting and withdrawal of refugee status and asylum-seeker status in Kazakhstan according to the 1951 Convention.

5.6. REFUGEE CERTIFICATE

The refugee certificate was recognised as an official identity document in Kazakhstan upon adoption of the Law on Refugees and the RK Government Resolution No. 166 of 3 March 2010 *On amending and supplementing the RK Government Resolution on the rules of documentation and registration of the population of RK (No. 1063 of 12 July 2000)*.

Some refugees claim that the refugee certificate has no value at all when looking for a job or obtaining services in public and private sectors. Although the refugee certificate is an officially valid identity document, in practice it is regarded by employers as a second-grade document. Many public authorities are not well informed on

refugees and their rights (according to the UNHCR Representation in Kazakhstan).

At present, none of public authorities, except the MIA migration police, regularly works with persons of concern to UNHCR. The UNHCR Representation of UNHCR states that there is no clearly designated public authority that would address social and economic matters concerning persons of concern to UNHCR.

The UNHCR reports points out that some employees of the Ministry of Labour and Social Protection, which was a body in charge of refugee matters for two years, could not answer basic questions on social and economic rights of refugees. Tax authorities also have little information on refugees as tax-payers. Banks, private employment centres, and other organisations are not aware of refugees, and often require confirmation of the fact that the refugee status is legal in Kazakhstan.

According to the Labour Code of RK (Article 29), an employment agreement can be concluded for an indefinite term as well as for a fixed term of no less than one year. Besides, according to Article 29(3),(4) and (5), an employment agreement can be concluded: for the period of performance of a certain work; for the period of substitution of a temporarily absent worker; for the period of seasonal work.

If an employment agreement does not specify its validity period, it is deemed to have been concluded for an indefinite term.

For the purpose of protecting workers' rights, the Labour Code forbids signing of contracts for less than one year.

Since a refugee certificate is issued for one year, an employer can conclude an employment agreement with a person having official refugee status for a period of up to one year. It follows from the above-mentioned that refugees are in less favourable employment conditions compared to citizens and foreigners having a residence permit in Kazakhstan.

Generally, compulsory extension of the refugee certificate validity period on the annual basis gives birth to unnecessary administrative expenses for the State and excessive bureaucratisation. All this restricts refugees' rights in various aspects of life because refugees must plan their life based on their principal document's validity period. As some experts state (Andrysek and Rantala, 2008), the one-year validity period of a refugee certificate leads to many undesirable consequences, including possible groundless cancellation of the status. Cancellation of the refugee status at any time is not improbable. As the experts say, permanent need for protection or other support cannot be determined by the document validity period and must not result in immediate extension of the holder's permanent legal status.

5.7. IDENTIFICATION NUMBERS

All the persons (residents and foreigners temporarily residing in Kazakhstan) who are employed or engaged in business in Kazakhstan must obtain a tax-payer's registration number (TRN). TRN is issued free of charge based on the following documents:

- application;
- identity document;
- registration document indicating the period of temporary stay in Kazakhstan (temporary registration and/or migration card);

document (copy) confirming the place of residence in Kazakhstan (e.g. lease agreement).

Many refugees have TRNs. Since 2010, refugees have had the lawful right to file an application and obtain a tax-payer's registration number.

Asylum-seekers have no right to file applications for TRN because an asylum-seeker certificate is not an identity document. According to the UNHCR data, none of the asylum-seekers interviewed had a TRN.

It is also required to specify the worker's social individual code (SIC) in an official employment agreement.

A person is required to produce the following documents to be issued a SIC:
identity document;
tax-payer's registration number.

SIC became a mandatory document in Kazakhstan in 1997, and it was aimed at securing compulsory social and pension transfers by all persons legally employed in Kazakhstan. According to the RK Government Resolution No. 1342 of 16 September 1997, citizens of Kazakhstan, permanently residing foreign nationals, oralmans²⁸ and stateless persons have the right to file an application for a SIC.

Most interviewed refugees have no SIC. However, some of them do have it. There are some examples when whole refugee families have SICs.

Generally, employers do not hire refugees who do not have a SIC.

Beginning from 1 January 2013, TRN and SIC will be replaced with individual identification numbers (IIN) for natural persons and business identification numbers (BIN) for registered legal persons.

According to the Law of the Republic of Kazakhstan on National Registers of Identification Numbers of 12 January 2007, IIN will be specified in the following documents:

birth certificate;

identity documents: passport and identity card of a citizen of the Republic of Kazakhstan;

residence permit of a foreign national;

stateless person certificate;

tax-payer's certificate – for foreigners and stateless persons who do not have Kazakh documents certifying their identity.

The refugee certificate is not included on the list of documents giving the right to obtain an IIN.

General introduction of IIN and BIN in Kazakhstan is scheduled for January 2012.

Foreigners temporarily residing in Kazakhstan as well as legal persons established thereby will be required to obtain a IIN/BIN in accordance with the Tax Code (Article 562) upon official registration with tax authorities. The Tax Committee of the Ministry of Finance of RK approved a special form by the Order of the Minister of Finance No. 232 of 28 April 2011 *On approval of a form of the registration certificate for registration of non-residents as tax-payers*. The order took effect on 1 January 2012.

The certificate is to include:

²⁸ The term "oralman" means a "repatriate" in Kazakh, and oralmans have been generally returning to their ethnic homeland, Kazakhstan, since its acquisition of independence in 1991.

- 1) name of the tax-payer (natural or legal person);
- 2) tax-payer's registration number;
- 3) IIN/BIN;
- 4) date of registration with a tax authority.

The certificate is similar to the TRN certificate format. According to the Department of Taxes and Dues, Almaty city, any previously obtained TRN will be automatically transformed into IIN/BIN, and any individual who never registered with tax authorities will be required to register and obtain an IIN/BIN.

5.8. SELF-EMPLOYMENT AND DEVELOPMENT OF ENTERPRISE

According to Article 26(4) of the Constitution of the Republic of Kazakhstan, everyone has the right to freedom of entrepreneurial activity, and free use of his property for any legal entrepreneurial activity.

Principles of the right to private property and freedom of entrepreneurial activity are the legal foundations of market economy that Kazakhstan adheres to.

The above-mentioned constitutional right of everyone to freedom of entrepreneurial activity corresponds to Article 18 of the Convention relating to the Status of Refugees and Article 9(1)(6) of the Law on Refugees.

Matters concerning the exercise of everyone's constitutional rights to freedom of entrepreneurial activity are regulated by other legislative acts of Kazakhstan.

Before 2009, private entrepreneurial entities were defined as natural and non-governmental legal persons. A similar definition was used in the 1997 Law on Private Enterprise that regulated these activities until 2006. Using this broad definition, foreigners and stateless persons, permanently or temporarily residing in Kazakhstan could engage in individual enterprise. However, after the Law on Private Enterprise was amended in 2009, individual enterprise is only allowed to citizens of the Republic of Kazakhstan and oralmans (Article 1). An exception consists of foreigners permanently residing in Kazakhstan who had registered an individual business before the Law was amended. The exception also applies to citizens of Russia, Belarus and Kyrgyzstan in accordance with the Agreement on Legal Status of Citizens Permanently Residing in Some Other State, signed on 28 April 1998 and ratified by the Republic of Kazakhstan in 1999.

The Law on Legal Status of Foreigners in the Republic of Kazakhstan (Article 6) provides that foreigners temporarily residing in Kazakhstan may only engage in individual enterprise given establishment of a legal person.

Considerable differences exist between carrying out economic activities as an individual entrepreneur and as a legal person, which affect the enterprise rights of persons of concern to UNHCR according to the Law on Refugees.

Carrying out economic activities as an individual entrepreneur has a number of advantages over the companies registered as legal persons. One of the obvious advantages consists of lower taxes than for legal persons and a simple registration procedure that is implemented by tax authorities within one business day upon production of all necessary documents.

Registration of an individual entrepreneur is not required if a person is engaged in business for no more than 90 days a year. In such a case, a special permit (*coupon*) is enough.

Since persons of concern to UNHCR can be involved in entrepreneurial activities only as legal persons, which is a more complicated and longer process, and considering that registration requires specific documents, including identity documents, asylum-seekers in this situation are not able to enjoy the right conferred thereon.

The only suitable form of enterprise to asylum-seekers is to become an individual entrepreneur through obtaining a business permit for the period of no longer than 90 days per year, which is the usual registration period for asylum-seekers in Kazakhstan.

The right of asylum-seekers to entrepreneurial activity is impossible to exercise in full because their certificates are not considered to be identity documents.

5.9. THE RIGHT TO PROPERTY

The rights to property constitute one of the most important elements of self-reliance. Property rights apply to movable and immovable property items. While refugees and asylum-seekers have clearly defined rights concerning movable property, certain restrictions according to laws of Kazakhstan exist concerning immovable property such as housing and land plots.

According to Article 9, Law on Legal Status of Foreigners of RK, foreigners in the Republic of Kazakhstan can have ownership of a dwelling (except for temporarily staying foreigners) and other property, have copyright in works of science, literature and arts, inventions, innovation proposals, industrial samples, and have other property rights and personal non-property rights except for cases specified by legislative acts of the Republic of Kazakhstan.

Foreigners permanently residing in the Republic of Kazakhstan enjoy their property rights on equal terms with citizens of the Republic of Kazakhstan.

Foreigners temporarily staying in the Republic of Kazakhstan have the right to use property rights and personal non-property rights on the grounds and according to the procedure specified by legislation and international treaties of the Republic of Kazakhstan.

Legal persons with foreign participation can acquire ownership of housing and other non-residential premises in Kazakhstan (reply from the Minister of Justice of RK, 11 March 2011, e.gov.kz).

According to Article 23(4), Land Code of RK, foreigners, stateless persons and foreign legal persons (non-governmental) can have private ownership of land plots provided for building development or built up with industrial and non-industrial buildings (structures, installations), including residential ones, including land designed for maintenance of buildings (structures, installations) according to their purpose.

In accordance with the Law of RK on Refugees of 4 December 2009, a refugee certificate is the refugee's identity document. Therefore, no problem in registration of property should arise, except the fact that many notaries and real-estate centres may apply provisions of the Law on Legal Status of Foreigners (Article 9) in practice and quite legally deny property registration to foreigners temporarily residing in Kazakhstan.

According to the current legislation of the Republic of Kazakhstan, temporarily residing foreigners and refugees do not have the right to have ownership of housing.

It follows from the above-mentioned that asylum-seekers can enjoy the right to property concerning movable property items.

If refugees acquire the status of foreigners permanently residing in Kazakhstan they are able to enjoy the right of purchasing ownership of immovable and movable property.

5.10. RECOGNITION OF PROFESSIONAL QUALIFICATIONS

An important aspect of self-reliance for persons of concern to UNHCR consist of recognition of their professional and educational qualification degrees by the receiving State for the purpose of job placement in Kazakhstan.

The procedure regulating recognition and nostrification (establishment of equivalence) of documents concerning basic, secondary, technical, pre-graduate (bachelor's), higher and post-graduate education acquired in other countries as well as in international or foreign institutions in Kazakhstan is described in the Rules of Recognition and Nostrification of Education Documents approved by the Order of the Minister of Education and Science of RK No. 8 of 10 January 2008. Education degrees can also be recognised in Kazakhstan on the basis of international agreements and treaties. For example, the 1994 CIS Agreement on Cooperation in Labour Migration and Social Protection of Migrant Workers contains provisions on mutual recognition of diplomas and other education certificates, professional qualifications, and duration of military service. These provisions require no special legalisation procedure. Provisions on mutual recognition of education documents with no need for their legalisation are also included in bilateral and trilateral agreements on labour force migration signed with some CIS States including Kyrgyzstan and Uzbekistan (ILO, 2008).

However, if there are no signed international treaties, education documents received in other countries must undergo nostrification. The Control Committee on Education and Science under the Ministry of Education and Science regulates this process in Kazakhstan.

The nostrification procedures are carried out by the National Accreditation Centre under the Ministry of Education and Science. Nostrification is only carried out after submission of the following compulsory documents by an applicant: an original diploma or certificate apostilled or certified by the Ministry of Foreign Affairs of RK or a similar institution in the document's country of issue; original statements of grades; notarised copies of the diploma or certificate and statement in Kazakh and/or Russian (notarisation must be done in Kazakhstan or via its diplomatic service in the country where the original document was issued); a notarised identity document; a copy of the licence of the educational institution or the accreditation certificate of the institute that issued the diploma or certificate (primary and secondary schools are exempted from this requirement). The accreditation centre can request additional documents. Upon production of a complete package of documents, the nostrification process must not exceed six months.

Given the existing complexity of this process, its duration, and additional difficulty of obtaining documents in their countries faced by persons of concern to UNHCR, refugees will most likely not be able to complete the process of nostrification and recognition of their degrees within the term prescribed by legislation. That's why

refugees having secondary special and higher education cannot find a job without their degrees nostrified.

5.11. INTEGRATION OF REFUGEES INTO THE KAZAKHSTAN SOCIETY

Foreigners having received a residence permit in Kazakhstan enjoy a considerably broad range of rights relating to economic and social self-reliance. Obtaining a residence permit is also an important step towards local refugee integration in Kazakhstan. Upon expiry of the residence permit's five-year validity period its holder may submit documents to acquire citizenship of Kazakhstan if he/she wishes so.

According to Article 17, Law on Refugees, refugees acquire citizenship of the Republic of Kazakhstan in accordance with the country's legislation on citizenship.

The rules regulating the issuance of residence permit documents are defined by the RK Government Resolution No. 1063 of 12 July 2000 *On the approval of the Rules of documentation and registration of the population of the Republic of Kazakhstan* and by the Instruction on the application of the Rules of documentation and registration of the Republic of Kazakhstan population, approved by the Order of the Minister of Internal Affairs No. 338 of 4 June 2005.

According to data from NGOs and UNHCR, authorised public bodies responsible for provision of residence permits in practice often require simultaneous production of three documents on financial standing of the residence permit applicant: 1) on the applicant's solvency; 2) an original bank statement; 3) on financial resources sufficient to buy housing.

There are some obstacles that complicate acquisition of residence permits by refugees: requirements on solvency, a police certificate, and consent of the country of origin. The requirement on obtaining official consent from the country of origin runs counter to international practice and treaty obligations.

The requirement on solvency and registration at the place of residence are also barriers for some refugees in Kazakhstan.

Some refugee state they do not feel integrated into the Kazakhstan society. The overall attitude typical for such refugees is that their temporary status as foreigners strengthens the feeling of uncertainty and unpredictability of their future in Kazakhstan.

It should be noted that not all refugees are aware of their rights, specific requirements, and advantages of obtaining a residence permit in Kazakhstan.

Some experts say that refugees must have the legal status of foreigners permanently residing in Kazakhstan, or that the legal regime of issuance of residence permits must apply to refugees in a way to enable them to use, on equal terms, the rights granted to foreigners permanently residing in Kazakhstan (a scientific study on the analysis and recommendations for improvement of national legislation concerning refugees in Kazakhstan, UNHCR, 2009). In Canada, for example, when a refugee arrives in the country he/she is treated as a person having a residence permit in Canada. In Belarus, a person granted refugee status is entitled to obtain a temporary status permit for no longer than one year for acquiring a residence permit. However, in all social and economic rights, the refugee status in Belarus is equivalent to that of persons having residence permits.

The requirement on financial solvency of refugees can be considered in the light of humanitarian grounds as an exception. The government of Kazakhstan pays special attention to, and exempts from the financial solvency requirement, oralmans and individuals who were citizens of the Republic of Kazakhstan or the Kazakh Soviet Socialist Republic and their family members as well as citizens of the Commonwealth of Independent States (Belarus, Kyrgyzstan, Russia, Ukraine) with which Kazakhstan has agreements on simplified procedures of citizenship acquisition.

5.12. THE RIGHT TO SOCIAL SECURITY

The chapter on social security in the Convention relating to the Status of Refugees lists a few provisions that are the most important ones for welfare of persons of concern to UNHCR. They include old-age insurance and social security, public education, housing, apprenticeship and training.

Refugees are granted state targeted social assistance at the expense of local budgets according to the Law of the Republic of Kazakhstan on State Targeted Social Assistance.

Refugees acquire entitlement to other categories of social assistance at the moment they receive a permit for permanent residence in the Republic of Kazakhstan.

According to the Law on Pension Provision in the Republic of Kazakhstan of 20 June 1997, foreigners and stateless persons permanently residing in Kazakhstan have the right to pension provision.

In accordance with legislative acts on social protection, refugees having the official status in Kazakhstan have the right to wages and social benefits in case of sickness, disability, loss of breadwinner, and on other lawful grounds.

Some refugees receive benefits from international organisations such as UNHCR.

5.13. THE RIGHT TO HEALTH CARE

Prior to 2009, foreigners (including those permanently residing in Kazakhstan, such as refugees and persons who filed an asylum claim) could receive free medical services equally with services rendered to citizens and persons having residence permits, including free emergency service and medical treatment. Other medical services provided at the personal expense via health insurance and other sources are not prohibited by legislation of the Republic of Kazakhstan. Access to guaranteed free medical services was regulated by several documents including the RK Government Resolution *On approval of the Rules of receiving health care by foreigners, stateless persons and refugees temporarily staying in the Republic of Kazakhstan* (No. 1354 of 9 January 2001), the RK Government Resolution *On approval of the Rules of receiving health care by foreigners and stateless persons temporarily staying in the Republic of Kazakhstan* (No. 997 of 16 October 2006), and the List of guaranteed free medical services for 2008-2009 (No. 853 of 28 September 2007).

On 18 September 2009, the new Code of the Republic of Kazakhstan on the Health of the Nation and the Health Care System was passed, in which Article 34 restricts the use of guaranteed free medical services by citizens of Kazakhstan and

oralmans. The rights equal to those of citizens and oralmans apply to persons having a residence permit in Kazakhstan (Article 7 of the Law on Legal Status of Foreigners).

In practice, some persons of concern to UNHCR apply for help to UNHCR and its partner, the Red Crescent. The Red Crescent is able to process some applications by asking public health centres to receive those persons of concern to UNHCR who are the most vulnerable and in need of urgent medical care. Public health care institutions receive such individuals for medical treatment given agreement with UNHCR and the Red Crescent Society.

Some refugees reported having received free medical services at public health care institutions in their residence areas.

Voluntary health insurance is a possible approach to providing health care to refugees. However, the health insurance sector in Kazakhstan is not developed and not especially popular. According to UNHCR data, less than 2% of Kazakhstan citizens had health insurance in 2010. For comparison, health insurance coverage in developed countries is 80-85%. Even in countries with public health care systems (Israel, Norway), health insurance covers about 12-25% of the population. Besides, problems with insurance companies themselves exist in Kazakhstan. For example, out of 28 insurance companies, only 23 offer health insurance, and only 9 of them have their affiliated specialised health centres. Voluntary health insurance is mainly used by large foreign organisations or private organisations employing foreign staff. Except for national companies, Kazakhstan companies are rather passive and unwilling to use voluntary insurance.

At present, implementation of the state programme of health care development in the Republic of Kazakhstan, *Salamatty Kazakhstan*, for 2011-2015 has begun. To continue strengthening of public health, including refugees' health, the programme pays special attention to introduction of a socially-oriented model of primary medical care (PMC) by means of establishing family health centres, creating departments of prevention and social and psychological assistance, and including social workers and psychologists in PMC staff schedules.

5.14. THE RIGHT TO EDUCATION

According to reports of education authorities, about 3,900 migrant children live in Kazakhstan, including 433 of pre-school age and 3,465 of school age. The largest numbers of migrant children came from Uzbekistan (2,057), Kyrgyzstan (364), Turkmenistan (166) and other countries, both CIS and non-CIS.

The number of oralman children is 13.7 thousand, including 4,078 of pre-school age and 9,676 of school age.

Besides, according to data from the Migration Police Committee of MIA RK as of 15 January 2011, 226 refugee children live in Almaty oblast, South Kazakhstan oblast and Almaty city (66 of pre-school age, 160 of school age) who arrived from Afghanistan (106), Iran (5), Kyrgyzstan (1), Pakistan (1), China (2), and Uzbekistan (11). Of them, 100 refugee children were born in Kazakhstan.

Provisions of Article 2 of the UN Convention on the Rights of the Child enshrined in Kazakhstan's legislation the norm on ensuring every child's equal rights to education.

In particular, Article 12 of the Constitution of the Republic of Kazakhstan defines that foreigners and stateless persons in the Republic enjoy rights and freedoms, and bear duties, established for citizens unless otherwise stipulated by the Constitution, laws and international treaties.

Article 47 “Protection of the rights of refugee children and forced migrant children” of the Law of the Republic of Kazakhstan on the Rights of the Child in the Republic of Kazakhstan envisages that refugee children and forced migrant children have the right to protection of their interests; tutorship and guardianship authorities at the child’s place of residence and territorial migration services assist in obtaining data on existence and residence of parents or other legal representatives and, as appropriate, place the child to health care or other organisations that exercise functions on protection of the rights of the child.

Article 10, Law on Legal Status of Foreigners, guarantees that foreigners and stateless persons permanently residing in the Republic of Kazakhstan have the rights to acquisition of pre-school, primary, basic secondary and general secondary education, equal to the rights of citizens of the Republic of Kazakhstan, according to the procedure set forth in legislation of the Republic of Kazakhstan.

It should be pointed out that children of foreigners and stateless persons having a residence permit are provided necessary conditions for in-depth study of their native languages. Besides, for the purpose of their smooth integration into the education process, additional lessons, language hobby groups, and optional sessions are organised for them to master Kazakh and Russian.

According to reports of education departments in oblasts and Astany and Almaty cities, 13,133 pupils in the republic’s 108 general education schools study 16 native languages as a separate subject as of the beginning of 2010/11 academic year.

Children of all the refugees involved in the survey pointed to accessibility of education in public schools.

In 2010, the Ministry of Education and Science of the Republic of Kazakhstan approved the Rules for acquisition of education by foreigners and stateless persons residing in the Republic of Kazakhstan (No. 468 of 28 September 2010). The rules state that children of foreigners and stateless persons permanently or temporarily residing in Kazakhstan are enrolled into educational institutions for the acquisition of pre-school, primary, secondary and general secondary education and enjoy the same rights as citizens of Kazakhstan subject to production of documents confirming their legal status in Kazakhstan.

In the opinion of the Commission on Human Rights under the President of RK, access to education for persons of concern to UNHCR should be enshrined in the Law of RK on Refugees.

5.15. THE RIGHT TO HOUSING

According to Article 21 of the Convention relating to the Status of Refugees, as regards housing, the receiving States shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. The only reference

in this regard in the Law on Refugees is Article 5(4), according to which the Government of the Republic of Kazakhstan must specify areas for temporary settlement of asylum-seekers in case of their mass inflow to Kazakhstan. The law includes no provision to envisage the establishment of centres for accommodation of refugees or their access to social housing.

According to Article 8, Foreigners Law, foreigners permanently residing in the Republic of Kazakhstan have the same rights and bear the same duties as regards housing as citizens of the Republic of Kazakhstan. Foreigners may have ownership of housing in the Republic of Kazakhstan (except temporarily staying foreigners).

Six refugee families, having received the residence permit status in Kazakhstan, managed to privatise dwellings in Almaty city.

As most refugees have no access to commercial loans, and any kind of mortgage programme is not available to them given the existing requirement of annual renewal of their status, many of them expressed great interest in living in subsidised housing that would be built for refugees, and some of them even suggested that it would provide migration police staff with a good way to manage them as a group.

Some asylum-seekers (involved in the survey) also expressed interest in access to specially designated settlement centres. These persons believe that if they are left with no proper documentation and with no legal employment opportunity, thereby having no chance to provide themselves and their families during the period of their status determination, then some concerted measures should be taken to render them assistance in such a situation. Besides, these individuals stated that they could do some work while staying in such a centre (cleaning, basic public catering services, teaching, training, etc.).

CONCLUSIONS AND RECOMMENDATIONS for Section 3

1. Granting refugee status for one year and its subsequent annual extension is in conflict with provisions of the 1951 Convention relating to the Status of Refugees and the Law of RK on Refugees, on Legal Status of Foreigners, and on Citizenship of the Republic of Kazakhstan. At present, refugees are considered to be temporarily staying foreign nationals, which does not allow them to make full use of the rights guaranteed to them by the Convention, the Constitution of RK, and the Law of RK on Refugees.

Proceeding from that, we recommend amending and supplementing the Law of RK on Refugees accordingly.

2. The 1951 Convention and the Law of RK on Refugees guarantee refugees the right to work and entrepreneurial activities. Nevertheless, in practice refugees often do not have legal access to labour market because they need to produce a number of documents to the employer required according to the Labour Code of RK: a copy of the social individual code (SIC), a copy of the tax-payer's registration number (TRN), beginning from 1 January 2013 – a copy of the individual identification number (IIN), and a copy of the registration document. Because of their temporary status, refugees are not in a position to produce these documents. Carrying out illegal labour activities entails both administrative and criminal sanctions in the form of fines, engagement in public works, or imprisonment. In the same way, the Law of RK on Private Enterprise restricts the foreign nationals' rights to engage in individual entrepreneurial activities without the establishment of a legal persons whereas this process is rather complex and lengthy. This adversely affects the economic situation of refugees who have no opportunity of either finding a job or carrying out individual entrepreneurial activity. In addition, according to the National Bank of RK Board's Resolution No. 266 of 2 June 2000 *On approval of the Rules for opening, maintaining and closing bank accounts of clients in banks of the Republic of Kazakhstan*, temporarily residing foreign nationals have no right to open accounts with banks, carry out bank transactions, or take bank loans.

For the purpose of ensuring full access of refugee to job placement and self-employment, we recommend that the Government of the Republic of Kazakhstan take proper measures to secure the rights of refugees guaranteed by the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Refugees, the Constitution of RK, and the Law of RK on Refugees.

3. According to the 1951 Convention, refugees lawfully residing in the receiving country's territory have the same rights to public social assistance and support, including health care, as the country's citizens.

According to the legislation of RK, refugees have the status of temporarily staying persons, and they are deprived of any possibility of receiving social targeted assistance provided by the State that includes pension provision, privileges for persons with disabilities, compensation for loss of a breadwinner, sickness benefits, old-age benefits, or benefits for minor children. As far as access to medical care is concerned, temporarily residing foreigners have the right only to emergency medical service and free medical treatment of diseases being of serious hazard to the population whereas all other medical services are provided on the paid basis. Considering the fact that

most refugees have problems with job placement, medical services become hardly achievable to them.

In order to secure the social rights of refugees guaranteed by the International Covenant on Economic, Social and Cultural Rights and the Convention relating to the Status of Refugees, we recommend that the Government of the Republic of Kazakhstan develop draft laws on amending and supplementing relevant laws on social protection and health care and submit them to the Majilis of the Parliament of the Republic of Kazakhstan for consideration.

4. Most refugees have been living in Kazakhstan for recent 10 or 20 years and actually feel like members of the Kazakhstan society. Their children were born and grew up in Kazakhstan and graduated from schools here. However, refugees' children born in the territory of Kazakhstan are not recognised as citizens of RK, which makes them stateless or persons at the risk of statelessness unless they are able to acquire citizenship of their parents' country. As temporarily residing foreigners, refugees may not have ownership of immovable property, that being another barrier for their integration into society. In addition, refugees have no access to acquisition of free higher education on a competitive basis, which also restricts their self-realisation opportunities in Kazakhstan.

To address emerging problems, we recommend that the Government and the Parliament of the Republic of Kazakhstan make necessary amendments and supplements to the current legislation of the Republic of Kazakhstan, according to which refugees would be recognised as permanently residing foreign nationals. The status of permanently residing foreign nationals means automatic access to employment, social assistance, public privileges and compensations, higher education on a competitive basis, integration and naturalisation in Kazakhstan.

5. We recommend opening adaptation centres for asylum-seekers similar to adaptation and integration centres for oralmans. It would allow such persons to have temporary accommodation until they receive a reply to their refugee claim, while being within the reach of respective public services engaged in addressing their situation.

6. It is recommended to secure free qualified legal assistance to vulnerable population groups, including oralmans, undocumented stateless persons, refugees and asylum-seekers.

7. It is recommended to place a government social order for provision of free legal assistance to vulnerable population groups with non-governmental organisations already experienced in this domain.

8. It is necessary to improve skills of the employees of the migration police authorities of RK responsible for the process of receiving, registering and processing applications from asylum-seekers. Implementation of the refugee status determination procedure at a sufficiently high professional level requires that skills improvement of such specialists take place with minimum staff rotation in the migration police authorities of the Republic of Kazakhstan and ensure stable and permanent employment of the trained specialists in all regional units of the MIA RK.

When revising the regulatory legal acts of RK, it is necessary to take consideration of the best practices of other countries, e.g. Sweden, Canada and the Republic of Belarus, in procedural matters including the family reunification principle. Accord-

ing to practices of other countries and basic principles of human rights protection, asylum-seekers must also be provided with necessary livelihoods and housing for the period of processing of their claims by migration police authorities.

SUMMARY

The Constitution of the Republic of Kazakhstan proclaims that an individual, his life, rights and freedoms are the highest values of the State. According to the Principal Law of the country, human rights and freedoms belong to **everyone** by virtue of birth, are absolute and inalienable, and define the contents and implementation of laws and other regulatory legal acts. The Constitution obliges the legislator, when passing laws, to proceed first of all from this norm and regard human rights as of paramount importance.

Over the Independence years, the Republic of Kazakhstan made serious steps to enshrine international standards of human rights in its national legislation.

The Republic of Kazakhstan became a full-fledged subject of international law and a party to more than 50 multilateral universal international treaties on human rights, including seven core human rights UN conventions, so-called “international human rights instruments”, including the Convention relating to the Status of Refugees and its Protocol.

The Republic of Kazakhstan reached a certain mark, hence some results of its development can be summed up.

Over the recent twenty years, there were no ethnic conflicts in Kazakhstan. Rights and freedoms of ethnoses and ethnic groups (national minorities) were secured at the level of international standards. Kazakhstan’s model of inter-ethnic and inter-religious concord and tolerance served as an example for the UN, OSCE and OIC member states.

Despite impact of the global economic crisis, GDP growth was 9% at the end of 2011.

Overall since 1993, per capita GDP has grown 16 times, now amounting to more than USD 11,000. In terms of this indicator, the Republic of Kazakhstan has outstripped some countries of Central and Eastern Europe and the CIS.

Today Kazakhstan stands at a new landmark in its development. The Programme of Accelerated Industrial and Innovative Development is under implementation. Special importance within the framework of a new social modernisation programme is attached to education and science as well as to realisation of a new employment strategy.

The National Action Plan on Human Rights for 2009-2012 is in the process of implementation.

The Concept of Legal Policy of the Republic of Kazakhstan for 2010-2020 has been adopted. Measures are being taken in its framework to enhance independence of the judicial system, humanise criminal legislation, decriminalise *corpus delicti* of some offences, and improve national legislation.

It should be noted that the results of the purposeful structural work carried out by Kazakhstan concerning market economy, democratisation of society, maintenance stability of inter-ethnic and inter-religious relations, development of civil society institutes, step-by-step humanisation of criminal policy, and protection and encouragement of human rights are obvious and recognised by many countries of the world, international and non-governmental human rights organisations.

At the same time, in the opinion of the Commission on Human Rights under the

President of the Republic of Kazakhstan, it is necessary to strengthen focus on protection of the rights of oralmans, stateless persons and refugees in the activities of public authorities, to make fuller use of civil society institutes' capacity in human rights protection, and to pay special attention to the role of legal education of the population.

The national mechanisms for protection of the rights of oralmans, stateless persons and refugees need serious adjustment.

The following are conclusions and recommendations of the Commission on Human Rights under the President of RK concerning improvement of national legislation and enforcement practices on protection of the rights of oralmans, stateless persons and refugees in line with international standards.

The Commission's conclusions and recommendations for addressing problems of oralmans in Kazakhstan:

The policy of furthering the return of ethnic Kazakhs to their historical motherland has promoted achievement, for the first time since 2004, of a positive migration balance that showed a substantial negative trend in the middle 1990s.

However, a number of systemic problems existed in the implementation of the migration policy towards oralmans:

1. No proper attention was paid to mechanisms of optimal settlement of oralmans in the territory of the Republic of Kazakhstan in accordance with social and economic needs. The top priority was to ensure greater attraction of ethnic Kazakhs to the country, and authorised public bodies aimed their efforts at activities related to oralmans' registration and provision of common state support to them regardless of their settlement regions.

As a result, the arriving oralmans and their families settled non-uniformly and concentrated mainly in southern and western regions (**especially in South Kazakhstan and Mangistau oblasts**), and a critical labour surplus emerged in those regions.

Proceeding from this, we recommend that the Republic of Kazakhstan Government settle the oralmans in an optimal way in accordance with social and economic needs of regions.

2. There was no systemic approach to oralman immigration quota setting; the quota size was changed depending on migration flow volumes and on the State's desire for covering a greater number of arriving oralmans with state support and financial assistance measures.

3. Considerable enlargement of the funds allocated for resettlement-related activities (*up to 16 billion tenges per annum*) as well as imperfect laws resulted in numerous facts of corrupt practices leading to embezzlement of budget funds both by public authority staff and by immigrants themselves and third parties.

4. Lack of legally enshrined mechanisms of participation of Kazakhstan's institutions abroad in activities related to immigration of ethnic Kazakhs.

It contributed to inflow, especially in more recent years, of immigrants with low educational attainments, unclaimed in the labour market, and, hence, to complication of the process of their adaptation in the place of arrival and their integration into society.

5. Over the independence years, the authorised body for migration of the population has been changed for four times. As a result, frequent staff turnover, including

among the body's management, led to loss of the decision-making continuity and consistency principles. In addition, the authorised body always had insufficient powers for coordination of other public authorities involved, according to their scope of competence, in implementation of the migration policy.

Measures required to address problems of ethnic immigrants:

- provide for a possibility of initial approach of ethnic Kazakhs with an application to foreign institutions of the Republic of Kazakhstan in the place of their residence abroad. This requires reinforcement of these services with skilled staff in the countries of ethnic Kazakhs' departure;

- introduce payment of differentiated benefits (financial aid) depending on settlement regions. For example, it is suggested to set the lump-sum benefit amount adjusted by the factor of **2.0** for the oralmans settling in the northern axis regions (*Akmola, Aktiubinsk, East Kazakhstan, West Kazakhstan, Kostanai, North Kazakhstan and Pavlodar oblasts*); by the factor of **1.7** for central regions (*Atyrau, Mangistau, Kyzylorda and Karaganda oblasts*); and by the factor of **1.5** for the southern axis regions (*Almaty, South Kazakhstan and Zhambyl oblasts, Almaty and Astana cities*);

- implement the mechanism for payment of monetary funds to oralmans through individual bank accounts and only upon presentation of documents proving the oralman's identity such as the oralman's certificate or identity card, or the Republic of Kazakhstan citizen's passport.

These measures will also allow strengthening oralmans' interest in timely acquisition of the Republic of Kazakhstan citizenship, preventing dual citizenship and providing creations for proper use of budgetary funds.

These provisions are envisaged in the Law on Migration of the Population in a new wording adopted on 22 July 2011. At present, work is going on to adopt subordinate regulatory legal acts aimed at implementation of this Law.

At the same time, to strengthen control over oralmans' arrival in the Republic of Kazakhstan and improve measures on provision of state support to them, we deem it reasonable to do the following, within the bounds of legislation in force:

- differentiate amounts of funds allocated to oralmans for purchase of housing depending on the settlement region (northern, central, and southern axes);

- abandon construction of separate settlements for oralmans within the Nurly Kosh Programme framework in order to prevent their artificial concentration in certain communities (districts, cities), using as much as possible restoration and purchase of empty or ownerless dwellings in existing communities;

- give top priority to consideration of the applications coming in through diplomatic missions of the Republic of Kazakhstan abroad; when receiving applications for inclusion in the oralman immigration quota, the diplomatic missions should advise the oralmans to settle in priority regions where development of socioeconomic potential is required, the list of the regions to be compiled by the MIA RK as proposed by the MLSP, MEDT and local executive authorities;

- MIA RK territorial commission for inclusion in the oralman immigration quota should make relevant decisions based on the oralmans' having an occupation in demand in the given region, their educational attainment, etc.

6. Fix in legislation a minimum pension benefit to the oralmans of retirement age from those foreign States with which the Republic of Kazakhstan does not have bilateral agreements on pension matters.

7. In order to protect oralman's rights to return to their historical homeland under or without the immigration quota as well as to secure their socioeconomic rights, it is necessary to develop and adopt a special regulatory legal act exempting them from customs duties when they cross the state border, regardless of the quantity of belongings and property. Besides, the Law on Migration of the Population should be supplemented accordingly.

8. Revise Nurly Kosh Programme so as to increase the degree of oralman's integration into the Kazakhstan society.

9. To improve the situation with oralman's integration into the Kazakhstan society, we recommend to increase the number and maintain activities of oralman adaptation and integration centres, not only state but also non-state ones, for example in the form of private institutions, foundations, or other non-profit organisations. In such centres, the oralman wishing to be included in the resettlement quota and having no secondary and higher education, arriving from countries where the legal system differs from that in Kazakhstan, and Muslim countries, must undergo an adaptation course on the compulsory basis; the adaptation course must include work with a psychologist who would identify oralman's problems in the adaptation process thereby allowing to prevent destructive moods in their community. Meetings should be organised in these centres between oralman and officials of migration police, prosecution authorities, akimats and social services for the oralman to have a clear idea of the structure of public authorities, their competence and powers. Special attention should be paid to training on interaction with public authorities, and on rights and responsibilities of foreigners, stateless persons, and citizens of the Republic of Kazakhstan. Only skilled and highly skilled repatriates should be exempted from the compulsory adaptation course. To attract highly skilled oralman, privileges and benefits should be envisaged not only in cash but also in the form of provision of housing right on their arrival in Kazakhstan. That would be an incentive to attract exactly such, most promising for Kazakhstan, repatriates.

10. For the purpose of securing the oralman's right to housing, it is necessary to develop and practically implement a mechanism of providing oralman with affordable housing within the State Housing Programme framework.

11. In order to secure in full the oralman's rights to acquisition of the Republic of Kazakhstan citizenship according to a simplified procedure as well as to eliminate possible conditions for corruptive offences on the part of officials of migration police and other public authorities, we recommend to exclude from the list of documents necessary for formalisation of citizenship an address certificate for oralman that obliges them to get permanently registered at the place of residence right after resettlement to their historical homeland despite they do not yet have any proprietary permanent housing at the place of residence.

12. For the purpose of eliminating oralman's dual citizenship, it is necessary to conclude bilateral intergovernmental agreements with their countries of departure, which would contain provisions on compulsory notification by the Ministry of Internal Affairs of RK of relevant authorised public bodies of foreign States about acquisition of Kazakhstan citizenship by a concrete oralman.

13. For the purpose of improving the national mechanisms of protection of oralman's rights and providing a permanent consultative and dialogue-oriented platform

on oralmans and foreign Kazakh diaspora, we recommend establishing a consultative and advisory body for oralmans and foreign Kazakh diaspora under the Government of the Republic of Kazakhstan.

The Commission's conclusions and recommendations for addressing problems of stateless persons in Kazakhstan:

The Republic of Kazakhstan took necessary measures to prevent statelessness of certain categories of the former USSR citizens during the period of state power succession after the Soviet Union break-up, and many people were granted citizenship of Kazakhstan. The former USSR citizens having close relatives and having no citizenship were invited to acquire the Republic of Kazakhstan citizenship according to laws in force. That policy enjoyed broad regulatory and administrative support, including a simplified procedure for granting of citizenship to ethnic Kazakhs, or oralmans. However, some residents of the former USSR – holders of old USSR passports and persons from neighbouring countries – could not timely legalise their citizenship of the Republic of Kazakhstan.

The situation with undocumented persons must be resolved by the State within the shortest possible terms. We suggest carrying out a large-scale action to find and document all the persons having no identity documents and being in such a situation for a long time, as well as to exempt them from any administrative liability for having no identity documents. In that way, Kazakhstan would secure undocumented individuals' and their family members' access to fundamental human rights, from civil and political to economic, social and cultural rights. In addition, we advise repealing administrative liability for having no identity document provided for by Article 377 of the CAO RK, because the duty of documentation lies with the State, identity documents are also owned by the State, and it is the State that is primarily interested to have all the population of Kazakhstan documented.

The 1991 Citizenship Law and other regulatory legal acts set forth certain rules and procedures that allow Kazakhstan to prevent a great deal of possible statelessness cases, both at birth and thereafter.

The bilateral and multilateral treaties concluded by the Republic of Kazakhstan with the Russian Federation, Belarus, Ukraine, the Kyrgyz Republic, and Mongolia, allow many people to successfully acquire citizenship of the Republic of Kazakhstan or change citizenship of one of these countries to that of another one. However, there is still a number of faults that should be eliminated to ensure compliance with standards and guarantees offered by international law for preventing statelessness.

Granting citizenship to children whose parents are foreign nationals unable to transfer their citizenship to their children, or to children one of whose parents is such a foreign national, another one being a stateless person, would strengthen the preventive effect of the provisions concerning at-birth citizenship acquisition. Legal guarantees of renunciation or loss of citizenship only subject to acquisition of another citizenship would promote prevention of statelessness in the future. Introducing an alternative way of producing evidence for persons having no citizenship of other States or a shorter term of permanent residence required for granting of citizenship would help reduce the number of existing statelessness cases or the quantity of persons at risk of statelessness.

Kazakhstan's accession to two UN Conventions (the 1954 Convention relat-

ing to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness), regulating protection of stateless persons and offering instruments to prevent and reduce statelessness, would improve effectiveness of the country's legal and administrative systems in the fight against existing risks of statelessness and their manifestations in the future.

Considering the above-mentioned, we recommend that the Government and the Parliament of the Republic of Kazakhstan ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

We recommend that the Ministry of Internal Affairs of RK organise and carry out in all regions of Kazakhstan a large-scale action to find stateless persons and undocumented individuals, amnesty them, and take measures to document them.

For the purposes of building institutional and professional capacity of authorised public bodies in the field of protection of stateless persons' rights, we recommend that the MIA RK, together with the UNHCR Representation in Kazakhstan, organise and hold a series of seminars, trainings and other events on finding stateless persons, preventing and reducing statelessness.

The Commission's conclusions and recommendations for addressing problems of refugee and asylum-seekers in Kazakhstan:

1. Granting refugee status for one year and its subsequent annual extension is in conflict with provisions of the 1951 Convention relating to the Status of Refugees and the Law of RK on Refugees, on Legal Status of Foreigners, and on Citizenship of the Republic of Kazakhstan. At present, refugees are considered to be temporarily staying foreign nationals, which does not allow them to make full use of the rights guaranteed to them by the Convention, the Constitution of RK, and the Law of RK on Refugees.

Proceeding from that, we recommend amending and supplementing the Law of RK on Refugees accordingly.

2. The 1951 Convention and the Law of RK on Refugees guarantee refugees the right to work and entrepreneurial activities. Nevertheless, in practice refugees often do not have legal access to labour market because they need to produce a number of documents to the employer required according to the Labour Code of RK: a copy of the social individual code (SIC), a copy of the tax-payer's registration number (TRN), beginning from 1 January 2013 – a copy of the individual identification number (IIN), and a copy of the registration document. Because of their temporary status, refugees are not in a position to produce these documents. Carrying out illegal labour activities entails both administrative and criminal sanctions in the form of fines, engagement in public works, or imprisonment. In the same way, the Law of RK on Private Enterprise restricts the foreign nationals' rights to engage in individual entrepreneurial activities without the establishment of a legal persons whereas this process is rather complex and lengthy. This adversely affects the economic situation of refugees who have no opportunity of either finding a job or carrying out individual entrepreneurial activity. In addition, according to the National Bank of RK Board's Resolution No. 266 of 2 June 2000 *On approval of the Rules for opening, maintaining and closing bank accounts of clients in banks of the Republic of Kazakhstan*, temporarily residing foreign

nationals have no right to open accounts with banks, carry out bank transactions, or take bank loans.

For the purpose of ensuring full access of refugee to job placement and self-employment, we recommend that the Government of the Republic of Kazakhstan take proper measures to secure the rights of refugees guaranteed by the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Refugees, the Constitution of RK, and the Law of RK on Refugees.

3. According to the 1951 Convention, refugees lawfully residing in the receiving country's territory have the same rights to public social assistance and support, including health care, as the country's citizens.

According to the legislation of RK, refugees have the status of temporarily staying persons, and they are deprived of any possibility of receiving social targeted assistance provided by the State that includes pension provision, privileges for persons with disabilities, compensation for loss of a breadwinner, sickness benefits, old-age benefits, or benefits for minor children. As far as access to medical care is concerned, temporarily residing foreigners have the right only to emergency medical service and free medical treatment of diseases being of serious hazard to the population whereas all other medical services are provided on the paid basis. Considering the fact that most refugees have problems with job placement, medical services become hardly achievable to them.

In order to secure the social rights of refugees guaranteed by the International Covenant on Economic, Social and Cultural Rights and the Convention relating to the Status of Refugees, we recommend that the Government of the Republic of Kazakhstan develop draft laws on amending and supplementing relevant laws on social protection and health care and submit them to the Majilis of the Parliament of the Republic of Kazakhstan for consideration.

4. Most refugees have been living in Kazakhstan for recent 10 or 20 years and actually feel like members of the Kazakhstan society. Their children were born and grew up in Kazakhstan and graduated from schools here. However, refugees' children born in the territory of Kazakhstan are not recognised as citizens of RK, which makes them stateless or persons at the risk of statelessness unless they are able to acquire citizenship of their parents' country. As temporarily residing foreigners, refugees may not have ownership of immovable property, that being another barrier for their integration into society. In addition, refugees have no access to acquisition of free higher education on a competitive basis, which also restricts their self-realisation opportunities in Kazakhstan.

To address emerging problems, we recommend that the Government and the Parliament of the Republic of Kazakhstan make necessary amendments and supplements to the current legislation of the Republic of Kazakhstan, according to which refugees would be recognised as permanently residing foreign nationals. The status of permanently residing foreign nationals means automatic access to employment, social assistance, public privileges and compensations, higher education on a competitive basis, integration and naturalisation in Kazakhstan.

5. We recommend opening adaptation centres for asylum-seekers similar to adaptation and integration centres for oralmans. It would allow such persons to have temporary accommodation until they receive a reply to their refugee claim, while

being within the reach of respective public services engaged in addressing their situation.

6. It is recommended to secure free qualified legal assistance to vulnerable population groups, including oralmans, undocumented stateless persons, refugees and asylum-seekers.

7. It is recommended to place a government social order for provision of free legal assistance to vulnerable population groups with non-governmental organisations already experienced in this domain.

8. It is necessary to improve skills of the employees of the migration police authorities of RK responsible for the process of receiving, registering and processing applications from asylum-seekers. Implementation of the refugee status determination procedure at a sufficiently high professional level requires that skills improvement of such specialists take place with minimum staff rotation in the migration police authorities of the Republic of Kazakhstan and ensure stable and permanent employment of the trained specialists in all regional units of the MIA RK.

When revising the regulatory legal acts of RK, it is necessary to take consideration of the best practices of other countries, e.g. Sweden, Canada and the Republic of Belarus, in procedural matters including the family reunification principle. According to practices of other countries and basic principles of human rights protection, asylum-seekers must also be provided with necessary livelihoods and housing for the period of processing of their claims by migration police authorities.

It should be pointed out that implementation of the recommendations presented in the Commission's special report can promote shaping a high human rights culture in society and working through efficient ways of interaction between public authorities, NGOs and UNHCR in the process of realisation of the approved recommendations.

Reasonability and significance of the work done consists of that the Commission's special report can become a criterion of success of subsequent measures aimed at improving the mechanisms for ensuring and protecting the rights and freedoms of oralmans, stateless persons and refugees.

In the course of preparation of the special report, the experts tried to consider international experience to the full extent, particularly experience of the work of authorised public bodies of Sweden, Canada and the Republic of Belarus with refugees.

Implementation of the special report should be aimed at achieving the following results:

- introducing international human rights standards in the national legislation and enforcement practice on protection of the rights of oralmans, stateless persons and refugees;

- improving national mechanisms for the protection of the rights of oralmans, stateless persons and refugees;

- ensuring efficient protection of the rights of oralmans, stateless persons and refugees;

- realising special programmes to ensure the rights of oralmans, stateless persons and refugees;

- securing transparency of work of authorised public bodies and NGOs dealing with problems of oralmans, stateless persons and refugees;

- achieving high public awareness on universally recognised standards of human

rights and on their value for every individual and for the entire society (human rights education);

- improving the level of public legal culture;
- reducing the risks of social tension risks and potential social conflicts.

Materialisation of the Commission's special report recommendations will eventually allow Kazakhstan to achieve new success in building a State governed by the rule of law and strengthening the public and community-based mechanisms for protection of the rights of oralmans, stateless persons and refugees in line with international standards.

The Commission on Human Rights under the President of the Republic of Kazakhstan expresses its sincere gratitude to the Regional Representation of the UN High Commissioner for Refugees for Central Asia, the UN Development Programme in Kazakhstan, the OSCE Centre in Astana, OSCE/ODIHR, the Ministry of Internal Affairs of the Republic of Kazakhstan, other public authorities and non-governmental human rights organisations of the Republic of Kazakhstan, Almaty Legal Corporation non-governmental institution (NGI), International Legal Initiative PF, Kazakhstan International Bureau for Human Rights and Rule of Law NGO, Erkenur-Sharapat PF, international organisations accredited in Kazakhstan (UNESCO Cluster Bureau in Almaty, the International Organisation for Migration, UNICEF in Kazakhstan, the Delegation of the European Commission to the Republic of Kazakhstan), the Regional Representation of the UN High Commissioner for Human Rights for Central Asia, the Ministry of Foreign Affairs of RK, the Permanent Mission of the Republic of Kazakhstan to the UN and other international organisations in Geneva, Embassies of Great Britain and the Kingdom of the Netherlands to Kazakhstan for provided materials that were used for preparation of this report.

In the cover design
Askhat Dinikeev's
painting was used

Design
Kamila Dzhakupbekova