

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report –

Universal Periodic Review:

KAZAKHSTAN

I. BACKGROUND INFORMATION

Kazakhstan acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter collectively the “*1951 Convention*”) in January 1999. Kazakhstan is not a State party to the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on Reduction of Statelessness*.

Following the entry into force of the “National Law on Refugees” in January 2010, and after a short transitional period until April 2010, the Government of Kazakhstan assumed the full responsibility for Refugee Status Determination (RSD). The Migration Police Department of the Ministry of Internal Affairs of the Republic of Kazakhstan and its territorial offices are the main governmental bodies responsible for refugee protection. First instance RSD is conducted by the Migration Police Department, and appeals are conducted by the Migration Police Department in Astana city and the judicial system.

As of 1 January 2013, there are a total of 564 refugees and 85 asylum-seekers residing in Kazakhstan. The vast majority of refugees and asylum-seekers live in urban areas in three regions of Kazakhstan. 533 refugees were recognized on an individual basis by the State under the *1951 Convention* and the National Law “On Refugees” (hereafter the “Refugee Law”). A further 31 refugees were recognized on an individual basis under UNHCR’s Mandate.

The Migration Police Department and its territorial offices are responsible for registering and documenting stateless persons in Kazakhstan. As of 1 January 2013, there were 6,935 stateless persons officially recognized by the Government of Kazakhstan. This number has decreased from the 7,337 recorded in 2011. The total number of stateless persons and persons of undetermined nationality is unknown. In the 2009 Census, over 57,000 persons self-identified as stateless, but this data is not considered fully reliable. The legal status of officially recognized stateless persons is that of a permanent resident, with permanent residency authorized for 10 years. According to the “Law of the Republic of Kazakhstan On Citizenship” (hereafter the “Citizenship Law”), after five years of residing in the country, stateless persons have the right to apply for Kazakhstani nationality. Children of officially recognized stateless persons born in Kazakhstan are recognized as nationals of Kazakhstan.

Persons whose status as stateless persons was revoked or rejected may appeal the negative decision to the higher administrative instance, the Migration Police Department in Astana city, and the judicial system.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

On 21 June 2012, the Commission on Human Rights under the President of the Republic of Kazakhstan presented a Special Report "On the situation concerning the rights of Oralmans (ethnic Kazakhs returnees), stateless persons and refugees in the Republic of Kazakhstan" (hereafter the "Special Report"). The Report provides a comprehensive overview of the rights of refugees, asylum-seekers, and stateless persons and describes the policies of the Government of Kazakhstan towards those groups. The recommendations listed in the report give particular focus to legislative improvements necessary to allow access by refugees to employment and State social assistance and to improve the capacity of Migration Police officials conducting RSD.

On 6 June 2012, UNHCR presented a comprehensive analysis of national legislation related to refugees and asylum-seekers to the Parliament of the Republic of Kazakhstan. As a consequence, on 29 January 2013, Kazakhstan adopted a Law "On ID documents" and amended several legislative acts. According to these amendments, since January 2013, refugees and asylum-seekers received the right to obtain an Individual Identification Number that allows them to make civil transactions (civil registration, bank operations, tax payments, obtaining of authorization documents, and registration of business activities). The refugee certificate was included to the list of State ID documents and to the Labour Code in order to eliminate legal barriers for official employment of refugees. Other UNHCR recommendations for amendments of national legislation are still being considered by the Government.

Since 2011, the Government of Kazakhstan has included UNHCR in all State RSD Commissions at the first and second administrative instances where UNHCR has an advisory role and provides its comments and recommendations to the RSD Commission on individual cases.

In July 2011, the Government of Kazakhstan amended its Nationality Law adding provisions that further prevent statelessness. As such, the provision stating "nationals of Kazakhstan could lose their nationality in case they live abroad on permanent residency and did not register themselves with Kazakhstani consulates within three years" was repealed.

The key recommendation of the Special Report in 2012 was that Kazakhstan accede to the *1954 Convention* and *1961 Convention*. It also recommended that the Government of Kazakhstan conduct a countrywide exercise aimed at documenting and profiling undocumented persons and persons with undetermined nationality and that the Government revise its national legislation concerning nationality and statelessness.

UNHCR would like to acknowledge that as a follow-up on the implementation of recommendations of the Special Report, the Government of Kazakhstan has been concentrating efforts on the reduction and prevention of statelessness. In October 2013, the Government of Kazakhstan called for its first Inter-Ministerial Working Group on statelessness, with several relevant State agencies and UNHCR participating. As a result of the meeting of this working group, concrete measures were considered to prevent and reduce statelessness in Kazakhstan, including a country wide registration campaign of undocumented persons and persons of undetermined nationality as well as creation of momentum for the revision of national legislation on nationality. The planned registration exercise and law reform procedure is intended to: verify whether a person has a nationality or is stateless in order to accurately determine their status; provide them with the relevant ID documents; guarantee their access to socio-economic rights; and prevent further possible cases of statelessness.

Currently, the Inter-Ministerial Working Group members, with the advice and support of UNHCR, are also working on drafting an Action Plan for Joint Activities for Reducing and Preventing Statelessness. The Action Plan will include a comprehensive campaign to identify and register persons with

documentation problems, during an “amnesty” period from administrative penalization, aimed at providing these persons with a durable solution. To prevent further statelessness, the Action Plan will also envisage work on amending existing legislation to bring it in line with international instruments ratified by Kazakhstan.

UNHCR is pleased to note that the Government of Kazakhstan actively participates in UNHCR activities aimed at the capacity building of its officials both on asylum and statelessness issues.

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: National Refugee Protection Framework

While the adoption of the Refugee Law in 2010 was a laudable step towards implementation of Kazakhstan’s obligations under the *1951 Convention*, UNHCR notes with concern that national legislation still has inconsistencies with international standards. Additionally, despite the fact that the Refugee Law is the main national legal document regulating asylum procedure, many of its provisions reference other laws. Provisions in these other laws are not always consistent with international acts ratified by the country.

There are also several subsidiary legal acts and administrative instructions containing references to asylum, which prevent asylum-seekers and refugees from fully enjoying their rights as listed in the *1951 Convention* and the Refugee Law. In addition, the Refugee Law contains general provisions that need to be elaborated on and clarified. This includes issues regulating family reunification, issuance of travel documents, referral mechanism of asylum-seekers on the border, etc.

UNHCR also notes that whilst the Refugee Law has been adopted and national refugee status determination procedures have been established, in the first three years of implementation, the recognition rate remained very low. However, it has increased substantially in the last few months.

With regards to the refugee framework, the Human Rights Committee in its 102nd session recommended that Kazakhstan “*review its legislation on refugees to ensure that it complies with the Covenant and international standards on refugee and asylum law. The State party should also ensure that it provides the necessary cooperation to UNHCR in order to allow it to execute its mandate and functions as provided for under UNHCR Statutes, the 1951 Convention and other international treaties ratified by the State party in order to guarantee the rights provided under the Covenant.*”¹

Additionally, in its 76th session the Committee on the Elimination of Racial Discrimination called on Kazakhstan to “*eliminate discriminatory practices affecting registration of asylum-seekers and to ensure full access of all persons without discrimination to the refugee determination procedure, according to the international standards. The Committee recommends that the State party provide adequate training for public officials and law enforcement personnel with the aim of avoiding any tendency towards discriminatory conduct towards non-citizens and asylum-seekers [].*”²

¹ UN Human Rights Committee (HRC), *UN Human Rights Committee Concluding Observations, Kazakhstan*, 19 August 2011, CCPR/C/KAZ/CO/1, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnVLXh7tWotjakJ2A4dlu%2fz05ShmpM0WGXOqloIeNysDmPlakJ4LYuvVHkH0FTfGnGxiA26q60QFTepNdKijJyZQO31AgZhrxhASx%2bCD8j2>.

² UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Kazakhstan*, 6 April 2010, CERD/C/KAZ/CO/4-5, available at: <http://www.refworld.org/docid/4c1724282.html>.

The Committee on the Rights of the Child, in its 45th session, also called upon the Government of Kazakhstan to “[a]dopt a national law on the protection of and assistance to refugee children in conformity with article 22 of the Convention [on the Rights of the Child] and other international standards” and to “[m]ake every effort to ensure that refugee children are able to benefit fully from the Convention’s principles and provisions.”³

Recommendations:

- Amend national legislation, including the Refugee Law, in order to bring it in conformity with international norms and standards;
- Following a revision of national laws, bring subordinate legislation in compliance with the revised laws and international norms and standards;
- Adopt necessary bylaws on refugee related-matters which are not covered by the Refugee Law;
- Consider extending complementary protection to those fleeing generalized violence; and
- Elaborate a time-bound action plan for the implementation of the recommendations relating to asylum-seekers and refugees of the Special Report.

Issue 2: Legal status of refugees

The legal status is the most pressing problem that refugees encounter in the Republic of Kazakhstan. Currently the legal status of refugees is that of “temporarily residing aliens”, which hinders their access to the full range of rights guaranteed by the *1951 Convention* and the Refugee Law.

Access to meaningful integration and naturalization

Some refugees have resided in Kazakhstan for over ten years and perceive themselves as integral members of society. However, in accordance with the Citizenship Law, only permanently residing aliens have the right to apply for nationality after permanently residing in the country for at least five years. Refugees, given the temporary nature of their stay, do not have the right to acquire nationality of Kazakhstan. Children of refugees born on the territory of Kazakhstan are also not recognized as citizens and would be stateless or at risk of statelessness if the nationality of their parents is unable to be conferred. In addition, refugees are generally precluded from obtaining permanent residency, because national legislation requires applicants to submit a range of documents, such as bank certificates proving financial solvency or documents that must be acquired from their country of origin. Refugees, who have fled their country of origin, are often unable to obtain these required documents.

Access to wage-earning employment

The *1951 Convention* and the Refugee Law guarantee refugees the right to work. Despite the fact that the Labour Code of Kazakhstan was recently amended to include the refugee certificate in the list of documents that allow individuals to find employment, in practice, refugees still face difficulties in legally accessing the labour market due to requirements that they provide the prospective employer with additional documents, such as a Social Individual Code (SIC) and residence registration, as stipulated by the Labor Code. These documents cannot be obtained by refugees because of the temporary nature of their stay (temporary residency does not qualify them to obtain such documents).

Access to social assistance

³ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Kazakhstan*, 19 June 2007, CRC/C/KAZ/CO/3, available at: <http://www.refworld.org/docid/467f6daa2.html>.

The *1951 Convention* guarantees refugees the same treatment regarding the right to social assistance (see e.g. Article 23 on “Public relief” and Article 24 on “Labour Legislation and Social Security”) on an equal basis with nationals of the hosting country. However, under the Law of the Republic of Kazakhstan “On Pension System”, refugees are considered temporarily residing aliens and are not able to make pension contributions.

Access to immovable property

Refugees, as temporarily residing aliens, also do not enjoy the right to own immovable property, which also hinders their meaningful integration and financial security in Kazakhstan.

Recommendations:

- Adopt a legal framework which recognizes refugees as permanently residing aliens and grants them permanent residency;⁴ and
- Exempt refugees from naturalization requirements which refugees are unable to satisfy due to their status as refugees (e.g. written consent by the refugee’s country of origin, a certificate of good conduct from the country of origin and proof of solvency).

Issue 3: Public relief, health services for refugees

In line with the *1951 Convention*, refugees residing on the territory of the host country should enjoy the same rights as nationals in terms of the right to public relief provided by the State, which includes the right of lawfully staying refugees to equal treatment with respect to medical assistance. However, in Kazakhstan, refugees are entitled only to the treatment of acute diseases posing a serious risk to public health. Other health services are subject to a fee. As such, for the majority of refugees who are unable to access legal and gainful employment, consistent and comprehensive health services are unattainable.

Additionally, since the Government of Kazakhstan adopted a policy on per capita financing in 2012, pregnant refugee women are unable to register themselves in state perinatal centers for their free perinatal care and newborn refugee children are unable to get free vaccinations.

In this regard, in its 44th session the Committee on Economic, Social and Cultural Rights recommended that Kazakhstan “*remove all barriers to the effective exercise of economic, social and cultural rights by migrants, refugees and asylum-seekers, including in the field of social assistance, education, employment, health services and family protection [.]*”⁵

Recommendation:

- Adopt a policy which grants refugees access to free medical assistance on an equal basis with nationals of Kazakhstan, including access for refugee woman to free reproductive health care and access for refugee children to free vaccinations.

Issue 4: Respect for the principle of non-refoulement

⁴ The status of permanent residency brings with it immediate access to wage-earning employment, social assistance, access to meaningful integration and naturalization procedures after five years, and the freedom to purchase immovable property.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Kazakhstan*, 7 June 2010, E/C.12/KAZ/CO/1, available at: <http://www.refworld.org/docid/4c1734da2.html>.

UNHCR is concerned that Kazakhstan lacks a legislative framework regulating expulsion and extradition. The current procedures and practices on expulsion and extradition can result in *refoulement*, i.e. the return of refugees to territories where their life or freedom would be threatened.

Despite the fact that the Refugee Law and the Criminal Procedure Code of Kazakhstan prohibits the return and extradition of refugees and asylum-seekers, in practice, Kazakhstan is bound by a duty to extradite individuals who fall under the purview of bilateral or multilateral extradition agreements or from international or regional instruments, such as the *Minsk Convention on Legal Aid and Legal Relations on Civil, Family and Criminal Cases* of 1993.

Kazakhstan also is a member of the Shanghai Cooperation Organization (SCO) and signatory to the *Shanghai Convention on Combating Terrorism, Separatism and Extremism* of 2001. The latter Convention obliges member states to implement measures to prevent, identify, and suppress acts of terrorism, extremism, and separatism in their territories, and to consider any such acts extraditable offences, albeit in conformity with the national laws and international treaties to which member states are party. UNHCR is particularly concerned at allegations of forcible return of asylum-seekers from Uzbekistan and from China and the unknown conditions, treatment and whereabouts of persons returned following their arrival in the receiving country.

UNHCR wishes to note that, while a duty to extradite may arise from a bilateral or multilateral extradition agreement or from international or regional instruments, States remains bound by *non-refoulement* obligations under international refugee and human rights law, which preclude the extradition of a refugee or an asylum-seeker to a requesting State. Obligations under international refugee and human rights law take precedence over those derived from other international and regional treaties to suppress and prevent terrorism.⁶ The United Nations Security Council and General Assembly have stated repeatedly that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law.⁷

With regards to *non-refoulement*, the Human Rights Committee (HRC) in its 102nd session recommended that Kazakhstan “*exercise utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where they are likely to be subjected to torture or serious human rights violations. The State party is encouraged to continue to monitor the treatment of such persons after their return and take appropriate action when the assurances are not fulfilled. Furthermore, the State party should fully comply with the principle of non-refoulement and ensure that*

⁶ See Security Council Resolution S/RES/1624(2004) of 14 September 2005, at preambular paras. 2 and 7, and operative para 4. See also the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly Resolution A/RES/51/210 of 16 January 1997, at preambular para. 8; A/RES/60/158 of 28 February 2006 on Protection of human rights and fundamental freedoms while countering terrorism, at preambular para. 7 and operative para. 5

⁷ See Security Council Resolutions SC/RES/1269 (1999) of 19 October 1999, para. 4(iv); SC/RES/1373 (2001) of 28 September 2001, at para. 3(f) and 3(g); S/RES/1456(2003) of 20 January 2003, Annex, at para. 6; S/RES/1535(2004) of 26 March 2004, Annex, at preambular para. 6; S/RES/1566(2004) of 8 October 2004, at preambular para. 4; SC/RES/1617 (2005) of 29 July 2005, at preambular para. 4; S/RES/1624 (2005) of 14 September 2005, at preambular para. 2 and operative para.4. See also General Assembly Resolutions A/RES/49/60 of 9 December 2004, Annex, at para. 5; A/RES/51/210 of 17 December 1996, Annex, at preambular paras. 6 and 7; A/RES/57/219 of 27 February 2003 on Protection of human rights and fundamental freedoms while countering terrorism, at para. 1; A/RES/58/187 of 22 March 2004 on Protection of human rights and fundamental freedoms while countering terrorism, at para. 1; A/RES/60/1 of 24 October 2005 on the 2005 World Summit Outcome, at para. 85; A/60/43 of 6 January 2006, preambular paras. 11 and 19, op. para. 3; A/RES/60/158 of 28 February 2006 on Protection of human rights and fundamental freedoms while countering terrorism, at preambular paras. 7 and 13, op. paras. 1 and 5; A/RES/62/71 of 8 January 2008 on Measures to eliminate international terrorism, at preambular paras. 12 and 20; and in particular, A/RES/62/159 of 11 March 2008 on Protection of human rights and fundamental freedoms while countering terrorism.

all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant.”

Recommendations:

- Establish a legislative framework which ensures that priority is given to the provisions of the *1951 Convention* over any less protective bilateral or multilateral agreements on extradition and which guarantees that persons whose application for asylum have been rejected can lodge an effective appeal with suspensive effect;
- Ensure that no person is expelled, extradited or in any other way returned to a country where he/she would be in danger of being persecuted and that all persons whose applications for asylum have been rejected have the right to lodge an effective appeal with suspensive effect; and
- Cooperate closely with UNHCR to ensure that persons of concern are not extradited in violation of the principle of *non-refoulement*.

Issue 5: Access to border and registration

Several legislative acts provide for the restriction or prohibition of access of asylum-seekers to the territory of Kazakhstan in various situations, including mass influxes, which contravenes the universal right to seek asylum and, in some situations, may breach the principle of *non-refoulement*. The Refugee Law also sets strict time constraints for the submission of asylum claims that may also lead to the violation of the principle of *non-refoulement* of asylum-seekers.

Despite the fact that the Refugee Law stipulates that individuals detained for irregular border crossing or irregular stay in Kazakhstan should be able to apply for asylum, in practice, asylum-seekers who are staying in the country in an irregular manner face difficulties in registering their asylum claims. Asylum-seekers without valid identity documents and a visa to enter Kazakhstan are generally not allowed to enter Kazakhstan.

Recommendations:

- Establish an accessible asylum and referral procedure at all border points, international airports, and transit zones, guarantee the individual right of every person to seek asylum in Kazakhstan and uphold the principle of *non-refoulement* in accordance with Article 33 of the *1951 Convention*;
- Ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country; and
- Ensure that the detention of asylum-seekers is only used as a last resort and, where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention.

Issue 6: Accession to the Statelessness Conventions

Accession by Kazakhstan to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness* would establish a stronger framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954

Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of these rights.

Additionally, in its 45th session the Committee on the Rights of the Child recommended that Kazakhstan “[a]ccede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness” and that it “[s]trengthen its cooperation with UNHCR.”⁸ This follows from the Committee’s unfulfilled recommendation in its 33rd session that Kazakhstan “[a]ccede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.”⁹

Recommendations:

- Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

Issue 7: Identification and Protection of Stateless Persons

The Government of Kazakhstan is paying increasing attention to statelessness issues and is currently planning to conduct a countrywide registration campaign aimed at identifying and registering undocumented persons and persons of undetermined nationality. The aim of this process is to verify and determine whether a person has a nationality or is stateless and, depending on the result of the determination, channel them into appropriate procedures. Undocumented persons who qualify for Kazakh nationality are entitled to be provided with national identity documents including passports. Those found to be stateless should be granted a status of a stateless person, accompanied with a grant of residency permit, and admitted to the naturalization procedure. Those found to be foreign nationals should be directed to the consulates of their countries, with the support of UNHCR when necessary. Providing persons with identity documents and facilitation of naturalization of stateless persons would ensure their access to civil, social and economic rights and prevent possible further cases of statelessness.

Currently, the Kazakhstan Code on Administrative Offences imposes an administrative fine on persons residing in the country without identity documents. Therefore, in order for the planned registration campaign to be successful, the authorities will be required to refrain from penalizing persons approaching competent authorities for documentation.

The current statelessness determination procedure in Kazakhstan is not suitable for resolving the situation of most stateless persons as it is complex, narrow in scope, demanding in terms of evidentiary requirements and inaccessible for undocumented persons. The determination procedure is only triggered

⁸ *Supra* note 3.

⁹ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Kazakhstan*, 10 July 2003, CRC/C/15/Add.213, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcy8%2f%2bFNoDHUBgwZRAwb6TxYgiJCn9tOiXEcdwtYdJfzJjNc6562oKQ6LikriuJLFMWv8iY1JCRZn8U2G1G5smFnA9j9Qqux>.

when a stateless person applies for permanent residence in Kazakhstan. Stringent requirements include proof of non-possession of the nationality of the former country of residence and possession of identity documents. The Law of the Republic of Kazakhstan “On Legal Status of Foreigners” and relevant bylaws also impose onerous requirements for applicants applying for statelessness status. One such requirement is a bank certificate proving applicant’s financial capacity, which currently must amount to approximately USD 15,000. In addition, the Code on Administrative Offences of the Republic of Kazakhstan includes provisions according to which stateless persons recognized by the country may be deported if they have committed administrative offences. Therefore, following the planned registration campaign, a creation of an official, broader and more effective statelessness determination procedure to deal with future cases of undetermined nationality and statelessness, would be welcome.

Recommendations:

- Expedite the planned registration activities aimed at identifying and registering undocumented persons, persons of undetermined nationality and stateless persons;
- Provide persons with no documentation or expired documentation amnesty from all possible penalization during the registration process;
- Channel undocumented former Soviet citizens, persons of undetermined nationality and stateless persons into appropriate procedures, ensuring issuance of identity documents for those qualifying for Kazakh nationality and grant of nationality for stateless persons;
- Ensure the protection and enjoyment of rights of stateless persons until such time as they acquire a nationality, including:
 - Ensure that no stateless person is deported from the country for committing an administrative or criminal offense, and ensure that a stateless offender incurs punishment within the country on par with nationals of Kazakhstan;
 - Ensure access of all children to the free school education regardless of the legal status of their parents in order to fulfill Kazakhstan’s obligation under Article 28 of the Convention on the Rights of Child; and
- Release persons applying for statelessness status from the requirement of proving their financial capacity, in order to ensure that all persons whose nationality status is unclear have access to this procedure.

Issue 8: Prevention of Statelessness in the national law

UNHCR notes with concern that the Citizenship Law contains provisions that might lead to a statelessness situation, such as:

- a) the lack of a safeguard against statelessness for children born in Kazakhstan to foreign parents who are unable to transmit their nationality to the child;
- b) children born in Kazakhstan to undocumented parents cannot acquire citizenship of Kazakhstan and are not provided with birth certificates;
- c) the difficulties citizens face in conferring Kazakhstan nationality if they reside abroad (if a child is born to one Kazakhstani parent and a foreign citizen permanently residing abroad, citizenship is only granted on the basis of a written agreement between parents);
- d) the requirement that applicants renounce their current nationality prior to obtaining Kazakhstani nationality, without assurances they have successfully acquired the new nationality. This creates risks of statelessness as, according to the Citizenship Law, the applicant might ultimately be rejected if he/she has committed a crime or administrative offence;
- e) the absence of a simplified naturalization procedure for specific categories of officially recognized stateless persons.

Recommendations:

- Review and amend national legislation on nationality and statelessness in order to bring it in conformity with international norms and standards and remove all provisions that may give rise to statelessness; and
- Elaborate a time-bound action plan for the implementation of the recommendations relating to statelessness of the Special Report.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures Reports - Universal Periodic Review:

Kazakhstan

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Kazakhstan.

Human Rights Committee

CCPR/C/KAZ/CO/1, 102nd Session

19 August 2011

13. While noting the delegation's acknowledgement that diplomatic assurances made under the Shanghai Cooperation Organisation do not release the State party from monitoring the conduct of the requesting State after the return of an individual, the Committee notes with concern that the State party may be willing to rely on such diplomatic assurances to return foreign nationals to countries where torture and serious human rights violations might occur. The Committee is also concerned at reports that individuals, particularly Uzbek and Chinese nationals, who might have valid claims for asylum or refugee status have no protection under the principle of non-refoulement due to the State party's obligations under the Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States (arts. 7 and 13).

The State party should exercise utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where they are likely to be subjected to torture or serious human rights violations. The State party is encouraged to continue to monitor the treatment of such persons after their return and take appropriate action when the assurances are not fulfilled. Furthermore, the State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant.

16. The Committee regrets the increase in the number of reported crimes related to trafficking in human beings. The Committee also regrets the increase in the number of children employed in cotton and tobacco fields. The Committee notes the State party's efforts to combat trafficking in human beings, such as the establishment of the Interdepartmental Commission against human trafficking (art. 8).

The State party should strengthen its efforts to combat trafficking in human beings by ensuring that efforts are directed towards establishing and dealing with the root causes of trafficking. Furthermore, the State party should ensure that children are protected from the harmful effects of child labour, particularly those employed in cotton and tobacco fields. In this regard, the State party should ensure that all cases of human trafficking and use of child labour are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims are adequately compensated.

19. The Committee expresses concern that despite the enactment of a National Refugee Law of 2010, its application does not guarantee the rights protected under Covenant. The Committee also expresses concern at the lack of cooperation with the United Nations High Commissioner for Refugees (UNHCR) in its mandate to conduct refugee status determination, which in effect excludes the protection provided by UNHCR in matters of non-refoulement (arts. 7 and 13).

The State party should review its legislation on refugees to ensure that it complies with the Covenant and international standards on refugee and asylum law. The State party should also ensure that it provides the necessary cooperation to UNHCR in order to allow it to execute its mandate and functions as provided for under UNHCR Statutes, the 1951 Convention and other international treaties ratified by the State party in order to guarantee the rights provided under the Covenant.

Committee on Economic, Social and Cultural Rights

E/C.12/KAZ/CO/1, 44th session

7 June 2010

14. The Committee is alarmed by the systemic discrimination against migrants, refugees and asylum-seekers with respect to their economic, social and cultural rights. The Committee is particularly concerned that these groups are not eligible for social assistance from the State party and that they face obstacles for securing legal means of subsistence.

The Committee urges the State party to remove all barriers to the effective exercise of economic, social and cultural rights by migrants, refugees and asylum-seekers, including in the field of social assistance, education, employment, health services and family protection (art. 2, para. 2).

20. The Committee is deeply concerned at the precarious situation of migrant workers who are employed without contracts in tobacco plantations and are, together with their families, vulnerable to exploitation and abuse.

The Committee urges the State party to assess the extent of the problem of migrant workers who are employed in plantations and agricultural farms and their conditions of work, with a view to establishing mechanisms that enforce the relevant Labour Code provisions on fair wages and favourable conditions of work (arts. 7, 2, para. 2).

23. The Committee is concerned that the social security system of the State party is not comprehensive, leaving part of the population, including self-employed workers, workers employed in the informal economy, non-nationals and other disadvantaged and marginalized groups without adequate protection.

The Committee urges the State party to extend the coverage provided by its social security system to self-employed workers, workers in the informal economy, non-nationals, and other disadvantaged and marginalized groups. In this regard, the Committee draws the State party's attention to its general comment No. 19 on the right to social security. The Committee also encourages the State party to consider ratifying ILO Convention No. 102 concerning minimum standards of social security (art. 9).

26. The Committee notes with deep concern that trafficking in women and children remains a serious problem despite efforts undertaken by the State party. The Committee regrets the absence of statistics on the extent of the problem.

The Committee urges the State party to intensify its efforts to combat trafficking in persons for sexual exploitation and labour purposes and to vigorously implement its national action plan to combat trafficking. The Committee also urges the State party to provide protection and rehabilitation services to victims and to prosecute offenders. The Committee requests that the State party include in its next periodic report detailed information on the extent of trafficking in persons into, within and out of the State party's territory, as well as statistics (on an annual basis) and information on prosecution cases and assistance extended to victims. The Committee also requests that the State party provide information on the outcomes of measures undertaken to combat trafficking and on the difficulties encountered (art. 10).

Committee on the Elimination of Racial Discrimination

CERD/C/KAZ/CO/4-5, 76^h session

6 April 2010

15. While welcoming the adoption by the State party of the National Refugee Law in December 2009, the Committee takes note of information received regarding the alleged refusal by the authorities to register the applications for asylum from citizens of certain countries. In addition, the Committee notes with concern that the lack of registration of their applications may lead to limits of their social and economic rights.

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens and urges the State party to eliminate discriminatory practices affecting registration of asylum-seekers and to ensure full access of all persons without discrimination to the refugee determination procedure, according to the international standards. The Committee recommends that the State party provide adequate training for public officials and law enforcement personnel with the aim of avoiding any tendency towards discriminatory conduct towards non-citizens and asylum-seekers (arts. 2 and 5).

16. The Committee is concerned about alleged information on the vulnerable situation of migrant workers whose rights would be violated, due to the lack of permanent registration and difficulties to legalize their situation, placing them at constant risk of extortion and deportation, and about alleged bad treatment of foreigners in transit throughout the country, by the police, customs and other border officials.

The Committee recommends that the State party:

(a) Take measures to facilitate the regularization of the situation of migrant workers through, inter alia, a revision of the system for granting work permits, increasing the flexibility of the quota system, and additional legal assistance;

(b) Ensure the effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and foreigners and, in particular, strengthen measures aimed at fighting illegal immigration and human trafficking;

(c) Establish training programmes for law enforcement agencies and administration on migrant and foreigners rights, so as to avoid being submitted to bad treatment, including extortion and deportation, because they are not registered or transiting the territory of the State party;

(d) Ensure that migrant workers have access to effective appeals against deportation;

(e) Ensure effective access to health care, education and social benefits for migrant workers and their families, without discrimination (art. 5 (e)).

Committee on the Rights of the Child

CRC/C/KAZ/CO/3, 45th session

19 June 2007

5. While the Committee notes that some of its previous recommendations (CRC/C/15/Add.213) have been implemented, it regrets that many of them have not been sufficiently addressed, including the recommendations regarding legislation, independent monitoring, a national plan of action, family environment, children deprived of a family environment/alternative care, refugee children, juvenile justice, economic exploitation, sexual exploitation and trafficking and street children.

6. The Committee urges the State party to make every effort to implement the recommendations contained in the concluding observations on the initial report that have not yet been sufficiently addressed and to provide adequate follow-up to the recommendations contained in the present concluding observations.

28. While the Committee notes that the principle of the best interests of the child is taken into account in the Constitution and in several laws, it is concerned that this principle is not adequately respected and implemented in all regulations as well as in practice in all domains and for all children.

29. The Committee recommends that the State party strengthen its efforts to ensure that the general principle of the best interests of the child is understood, appropriately integrated and implemented in all legal provisions and in projects, programmes and services that have direct or indirect impact on children, by paying particular attention to vulnerable children.

59. The Committee regrets that no sufficient effort has been made to effectively improve the situation of refugee children. In particular, the Committee is concerned that many of them live in severe economic hardship and their access to education and health services remains limited. The Committee is further concerned that refugee children face difficulties to receive appropriate treatment and rehabilitation when needed.

60. The Committee reiterates its previous recommendations and urges the State party to:

- (a) Adopt a national law on the protection of and assistance to refugee children in conformity with article 22 of the Convention and other international standards;**
- (b) Make every effort to ensure that refugee children are able to benefit fully from the Convention's principles and provisions;**
- (c) Ensure that all refugee children are registered;**
- (d) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; and**
- (e) Strengthen its cooperation with UNHCR.**

67. The Committee welcomes the efforts undertaken by the State party to combat trafficking such as the implementation of the Plan of Action to Combat and Prevent Offences Involving Trafficking in Persons for 2004-2005 and its subsequent Plan for 2006-2008, as well as the ongoing awareness-raising campaigns. Despite these efforts the Committee remains concerned at the prevalence of national and cross-border trafficking.

68. The Committee encourages the State party to:

- (a) Continue and further strengthen its awareness-raising campaigns including through education and the media;**
- (b) Increase protection provided to victims of trafficking, including prevention, social reintegration, access to health care and psychological assistance and free access to legal aid;**
- (c) Enter into bilateral and multilateral agreements for the prevention of trafficking and for the rehabilitation and repatriation of trafficked children; and**
- (d) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005).**

Committee on the Elimination of Discrimination against Women

CEDAW/C/KAZ/CO/2, 37th session

2 February 2007

17. While noting the legislative and other measures taken to combat human trafficking, including the amendments to the Criminal Code and other laws, the adoption of the 2006-2008 government action plan to combat and prevent crimes linked to trafficking in persons and the establishment of the

Interdepartmental Commission for Suppressing the Unlawful Removal, Import or Traffic in Persons, the Committee remains concerned about the persistence of trafficking in women and girls in Kazakhstan.

18. The Committee calls upon the State party to ensure that legislation on trafficking is fully enforced and that the action plan and other measures to combat human trafficking are fully implemented and their impact regularly monitored and evaluated. The Committee urges the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls. It also recommends that the State party address the root cause of trafficking by increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, and take measures for the rehabilitation and social integration of women and girls who are victims of trafficking. The Committee requests the State party to provide, in its next report, comprehensive information and data on trafficking in women and girls and on exploitation of prostitution, and on the measures taken to prevent and combat such activities, including their impact.

Committee on the Rights of the Child: Optional Protocol on the Involvement in Armed Conflict

CRC/C/OPAC/KAZ/CO/1, 43rd session

17 October 2006

11. The Committee welcomes the activities meant to inform students in military schools of their rights, inter alia, via teacher training, but is concerned at the limited information on the content of these trainings and courses and at the lack of information about awareness-raising activities among professionals working with refugee, asylum-seeking and migrant children who have been victims of armed conflict.

12. The Committee recommends that the State party develop systematic awareness raising, education and training on the provisions of the Optional Protocol for all relevant professional groups working with asylum-seeking, refugee and migrant children from countries affected by armed conflict, for example, teachers, medical professionals, lawyers, judges and military personnel. The Committee recommends that the State party provide more specific information about the teaching in military schools on human rights, specifically the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict, in its next report.

16. In the light of the fact that the State party is a country of destination for asylum-seeking, refugee and migrant children coming from countries where children have been recruited or used in hostilities, the Committee is concerned that assistance for addressing their psychological and/or physical health as well as social reintegration is inadequate.

17. The Committee recommends that the State party pay particular attention to the asylum-seeking, refugee and migrant children living in Kazakhstan who may have been recruited or used in hostilities in their country of origin by taking inter alia the following measures:

(a) Introduce and implement a law on refugees which is in full compliance with international standards for granting refugee status;

(b) Provide children who have fled with or without their families amid conflict in Tajikistan, the Russian Federation (Chechnya), Afghanistan and other countries and who have lived in Kazakhstan for some time (more than a year) with either refugee status or another status which will allow social reintegration in Kazakh society and provide them with equal access to education, health care and other social services;

(c) **Provide affected children with multidisciplinary assistance for their physical and psychological recovery and their social reintegration. It further encourages the State party to systematically collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been involved in hostilities in their home country. In this regard, the Committee recommends that the State party take note of the Committee's general comment No. 6 on treatment of unaccompanied and separated children outside their country of origin.**

Committee on the Rights of the Child

CRC/C/15/Add.213, 33rd session

10 July 2003

32. The Committee takes note of efforts made to ensure registration at birth; however, it remains concerned that some children, particularly children born in families of Kazakh repatriates, do not acquire nationality at birth which may have negative consequences on the full enjoyment of their rights.

33. The Committee recommends that the State party take further measures in accordance with article 7 of the Convention, including measures to facilitate applications for citizenship, so as to resolve the situation of stateless children. The Committee also suggests that the State party consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

61. The Committee welcomes the efforts taken by the State party to improve the education system with the introduction of the Education Act 1999 which includes such aims as ensuring compulsory secondary education for all children of school age, providing free textbooks to vulnerable children and compulsory pre-school attendance. The Committee remains concerned at the many difficulties education is facing, inter alia:

- (a) The increase in the cost of education which limits access to children from economically disadvantaged households and rural areas;
- (b) The decrease in the number of pre-schools;
- (c) The increasing dropout rates in secondary and vocational education;
- (d) Important regional disparities in the number of educational establishments and in the quality of education, with rural areas being at particular disadvantage;
- (e) The implementation of education reforms without the necessary preliminary preparation and training of teachers.

62. The Committee recommends that the State party to:

- (a) **Ensure the availability of free primary education and accessibility for all children in the State party, giving particular attention to children in rural communities, children from minorities, including repatriates and refugees or asylum seekers, children from disadvantaged groups and those who need special attention, and high quality education, including in children's own languages;**
- (b) **Further pursue efforts to increase the number of pre-school establishments and encourage preschool attendance including by providing appropriate financial resources;**
- (c) **Ensure that legislation with regard to compulsory education is enforced, including through the provision of the appropriate resources for that purpose;**
- (d) **Ensure that educational reforms are implemented with sufficient preparation and support to schools, including appropriate funding and teacher training, and establish a process for quality evaluation of the new programmes;**
- (e) **Improve the quality of education in the whole country in order to achieve the goals mentioned in article 29 (1) of the Convention and the Committee's general comment No. 1 on the**

aims of education, and ensure that human rights education, including children's rights, is included into the school curricula, in the different languages of instruction where applicable.

63. The Committee welcomes the information provided on the new bill on refugees and notes the efforts of the State party relating to the repatriation of ethnic Kazakhs in this regard; however, the Committee is concerned that:

- (a) De facto refugees from certain countries are not granted refugee status;
- (b) Problems exist in accessing education for children who have not been granted refugee status and do not have other documents that are required;
- (c) The treatment, including nutritional and medical care, provided for illegal migrants, including children, arriving in western Kazakhstan seeking work is inadequate;
- (d) Unaccompanied minors are not accorded the same treatment as other children deprived of their family environment.

64. The Committee recommends that the State party:

- (a) **Ensure that the (draft) law conforms to article 22 of the Convention and other international standards on the protection of and assistance to refugee children, expedite its promulgation and ensure its effective implementation;**
- (b) **Introduce procedures for the issuance of proper internationally recognized birth certificates for refugee children and, if necessary, amend related legislation or administrative regulations;**
- (c) **Develop a procedure to attend to the specific needs and situation of unaccompanied child refugees and, in cases where no parents or other family members can be found, accord the child the same protection and care and social services as any other child permanently or temporarily deprived of his or her family environment receives;**
- (d) **Consider measures through which asylum seeking and refugee children can be granted equal access to services, in particular education, irrespective of who they are and where they live;**
- (e) **Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- (f) **Continue and strengthen its cooperation with UNHCR.**