

United Nations High Commissioner for Refugees

Submission to UN Compilation Report

I. Background and Framework

A. Scope of international obligations (international human rights legal obligations etc.)

1. The Republic of Kazakhstan has acceded or signed almost all major human rights treaties¹, including the 1951 Refugee Convention and the 1967 Protocol. Kazakhstan however has not signed or ratified either of the two Statelessness Conventions.
2. The Committee on the Rights of the Child (CRC) has recommended Kazakhstan to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.²

B. Constitutional and legislative framework (charters, laws and regulations etc.)

3. In accordance with the Constitution of the country, the international treaties ratified by Kazakhstan are considered as part of national legislation, moreover they prevail over national laws and can be applied directly.³
4. UNHCR notes with concern that although the country acceded to the 1951 Convention and the 1967 Protocol in 1999, incorporation of the 1951 Convention obligations into national legislation and normative acts has been slow and to date Kazakhstan has failed to comply with its obligation to give full effect to the Covenant in the domestic legal order, *inter alia* providing for effective judicial and other remedies for violations of these rights
5. However, UNHCR would like to acknowledge that currently Kazakhstan is in the process of development and adoption of the national refugee law. The draft requires substantial improvement to make it compliant with international standards.
6. In the absence of refugee-specific law, the most relevant national legislation concerning the asylum practice in the country has been the *Law on Population Migration*, which contains the definition of “refugee” and the *Law on Status of Aliens*, which outlines the rights and duties of aliens in the country. However neither of the laws is protection sensitive, and corresponds to the international standards on refugee protection.
7. UNHCR notes that apart from the Migration and Aliens Laws, there are several subsidiary legal acts and administrative instructions containing references to asylum, which in effect affect asylum seekers and refugees from enjoyment of rights as provided for under the 1951 Convention and other international human rights treaties.⁴
8. UNHCR further notes that the Presidential Decree “*On the Commission on the issues of Citizenship*” dated 10 October 2006 provides for eligibility criteria for political asylum,⁵ which

¹ Acceded to/ratified CRC, OP-CRC-AC, OP-CRC-SC, ICERD, CEDAW, OP-CEDAW, CAT, OP-CAT, ICCPR, ICCPR-OP1, ICESCR, CED. Signed, but not ratified: CRPD and CRPD-OP. Not signed: ICCPR-OP2 and ICRMW.

² See Concluding Observations of CRC on consolidated second and third periodic reports of Kazakhstan adopted at its 1255th meeting on 19 June 2007 (CRC/C/KAZ/CO/3), at para.60(d).

³ Art.4 (3) of the Constitution of the Republic of Kazakhstan stipulates that “*international treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when it follows from the international treaty that its application shall require the adoption of a law*”. Para.2 Art.10 of the President’s Decree of 12 December 1995 N 2679 “*On the manner of conclusion, application and denunciation of the international treaties of the Republic of Kazakhstan*” reiterated the above provision. Similar provisions are found under Civil Procedure Code (Para.3 Art.3), Administrative Code (Para.4 Art.1) and other laws. The Law on Legal Acts of Kazakhstan which establishes the hierarchy of domestic legislation does not apply to international treaties hence implying that international treaties prevail over national legislation as it follows from the Constitution.

⁴ See UNHCR Draft Analysis of the Compliance of Legislation of Kazakhstan with International Obligations on Refugee Protection, UNHCR Almaty, 2007.

⁵ The Decree is based on the understanding of asylum as a political act of the President whereby a foreign citizen from a country with a different political inclination is granted the right to reside on the territory with no further rights attached. Thus art. 19 of the Decree concerning Political Asylum stipulates that persons who received political asylum will be granted rights and freedoms in the Republic in accordance with the legislation

separates political criteria from the definition of a refugee as laid down in the Article 1 A of the 1951 Refugee Convention, thus creating a parallel and confusing system to the Convention refugee status determination done by the Committee on Migration as the latter body also has competence to deal with asylum claims based on political persecution, among others.

C. Institutional and human rights structure (institutions, bodies and committees etc.)

9. The Refugee Status Determination (RSD) is done by the Committee on Migration. Currently, this Committee performs the RSD functions in three cities, namely, Almaty, Shymkent and Astana. Although the law does not provide for any discriminatory approach, the Committee declines to register asylum claimants from its neighboring countries, particularly if such claims have political or bilateral implications with the claimant's country of origin.
10. UNHCR understands that there are two official human rights institution in the country: Ombudsperson Institution and the Human Rights Commission under the President of the Republic of Kazakhstan. In addition there are other mechanisms, although not specialized human rights bodies that may cover certain human rights issues as part of their mandate, e.g. National Commissions on Women's Affairs and Family and Demographic Policies under the President, Commissions on minors within the structure of the Interior Ministry, etc.
11. UNHCR also notes presence of an active although not sufficiently represented civil society.

D. Policy measures (national action plans, strategies and human rights education etc.)

12. While noting that during 2008-2009 the Human Rights Commission developed National Action Plan for Human Rights for 2009-2012, UNHCR notes with appreciation that the National Action Plan contains three specific references – (i) expedite the adoption of national legislation on refugees; (ii) creations of reception centers for refugees and asylum seekers; and (iii) respecting the principle of *non-refoulement*. However, the Action Plan does not include recommendations on effective durable solutions for refugees as this one of the challenges refugees currently have.
13. The national migration strategy and the existing migration law do not include measures for developing protection sensitive entry systems. Illegal entrants are dealt with administrative measures to deport, without any efforts at entry points to identify victims of trafficking/smuggling or potential asylum seekers. In addition, there is no registration and referral system of such persons to the appropriate bodies that have competence to deal with.
14. The UNHCR is in the process of developing an Action Plan (Roadmap) on implementation of national refugee law once it is adopted, and would like to present the Plan for discussion with and endorsement by the Government of Kazakhstan in the coming months.

II. Promotion and protection of human rights on the ground

A. Cooperation with international human rights mechanisms

15. UNHCR has been working closely with various human rights institutions and mechanism to highlight some of the human rights challenges refugees and asylum seekers have in the country. On issues affecting individuals which require swift action, UNHCR liaises with the Office of the High Commissioner for Human Rights (OHCHR) at the regional and Headquarters level, on issues affecting individual asylum seekers and refugees, as well on strategic issue of human rights advocacy.

B. Implementation of international human rights obligations, including with regard to (non-exhaustive list): equality and non discrimination; right to life, liberty and security of the person; administration of justice and the rule of law; right to privacy, marriage and family life; freedom of movement; freedom of religion and belief, expression, association and peaceful assembly, and the right to participate in public and political life; right to work and to just and favorable conditions of work; right to social security and to an

concerning the legal status of foreign citizens and stateless persons. Thus, those granted "political asylum" do not acquire any rights other than those stipulated in the national legislation for other aliens or stateless persons.

adequate standard of living; right to education and to participate in the cultural life of the community; minorities and indigenous peoples; migrants, refugees and asylum seekers; internally displaced persons; right to development; and the situation in or in relation to specific regions or territories.

1. Equality and non-discrimination

16. Asylum seekers coming from the Commonwealth of Independent States (hereinafter CIS) and Chinese Uyghurs do not have access to the national refugee status determination procedures due to political sensitivities. The Government of Kazakhstan has been denying refugee status recognition to persons (Chechens) from the Russian Federation, Uzbekistan and other neighbouring countries. Assumptions is that persons coming from CIS do not need special refugee protection benefits since there is a visa-free regime under *the Minsk Agreement on Visa-free Travels of 2000* and *the Minsk Convention on Legal Assistance in civil and criminal matters of 1993* (Minsk Conventions) for citizens of signatory states. However these instruments do not protect the CIS citizens who might have valid claims for refugee status from refoulement and do not provide for their enjoyment of basic rights at the level provided for in the 1951 Convention. Those asylum seekers, who do not have access to the national refugee status determination procedures, approach UNHCR for protection under its mandate. This discriminatory approach has been resulting in denial of basic rights to a majority of refugees currently living in the country.

2. Right to life, liberty and security of the person

17. Although there have been no forcible returns or refoulement of asylum seekers and refugees in the last few years, the threat of deportation or refoulement always exists as authorities try to detain refugees and asylum seekers either based on information from countries of origin of asylum seekers or due to absence of identification documents. The Committee on Elimination of Racial Discrimination expressed its concern over forcible return of some refugees to their countries when there were substantial grounds for believing that they might suffer serious human rights violations and the Committee recommended the State party include in its next periodic report information on the situation of refugees, the legal basis for their deportation, and the legal protection provided, including their rights to legal assistance and judicial appeal against deportation orders. It also urged the State party to ensure, in accordance with article 5 (b) of the Convention, that no refugees will be forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations.⁶

3. Administration of justice and the rule of law

18. UNHCR notes that free legal aid is provided to defendants in criminal cases but not at the time of pre-trial detention. Asylum seekers and refugees, being vulnerable persons, do not have effective access to justice system and cannot challenge the legality of administrative decisions taken against them. In a number of instances, refugees and asylum seekers were arbitrarily detained and/or mistreated without any recourse to justice or punitive actions against the law enforcement.

4. Freedom of movement

19. The *Migration and Aliens Laws* provide for certain restrictions on freedom of movement of aliens which might be reasonable and justifiable in the circumstances (i.e. certain areas in time of emergency, territories and objects relating to national security and State secrets), however in practice greater restrictions are imposed on asylum seekers and refugees, in particular in view of the status of temporary staying aliens and lack of access to identity documents for those, who do not have or cannot use the documents issued by their countries of origin.

5. Right to participate in public and political life

20. Under the existing laws of the country refugees and asylum seekers have the status of temporary staying aliens and therefore do not have access to effective participation in public or political life of the country.

⁶ Concluding Observation of Concluding observations of the Committee on the Elimination of Racial Discrimination on third period report of Kazakhstan, 10/12/2004 (CERD/C/65/CO/3) at para. 15.

6. Right to work and to just and favorable conditions of work

21. Refugees do contribute *de facto* to the local economy, but many of them work in non-qualified jobs and in the informal sector. For this reason they are unfortunately often not viewed as an economic asset. Access to lawful employment is difficult due to the denial of CIS citizens and Chinese Uyghurs to the RSD procedure, the temporary nature of refugee stay in the country, general under-employment rate, discrimination, and lack of proper documentation. Absence of comprehensive integration programs to facilitate refugees' integration through language classes, re-qualification training and time-limited integration grants remain a challenge.

22. In terms of the enjoyment of the right to employment, only Government recognized (Convention) refugees are exempted from the requirement to obtain foreign workforce permit, whereas mandate refugees and all asylum seekers are precluded from legal employment. However, even the Convention refugees in practice rarely have access to legal employment, due to formal requirements, including documents pertaining to permanent residency status. As mentioned above, for mandate refugees and all asylum seekers the opportunities for legal employment are virtually non-existent. Opportunities in the informal sector (through illegal employment) are limited and come with serious risks. Engagement in illegal employment may lead to detention and fine and may prompt the Kazakh authorities to initiate deportation proceedings, which in effect may lead to refoulement.

23. UNHCR has received reports of some of the difficulties encountered by persons of concern, including that they were exploited by employers since their employment was considered illegal and were subjected to harassment, in at least one case an allegations of enslavement was raised (although the victim refused seeking legal remedies with respect to the enslavement). Refugees have also reported non-recognition of their qualifications obtained in countries of origin and discrimination by employers as impediments to their employments.

24. Restrictions are also imposed on entrepreneurship opportunities for refugees; the amendments to the law "*On Population Migration*" and some other legal instruments regulating migration processes adopted on 12 January 2007, preclude temporarily staying foreign citizens and stateless individuals to get involved into entrepreneurial activities without establishing a legal entity. This negatively affected even officially recognized refugees who work at the local markets and other informal sectors without registration as it is a cumbersome and impossible bureaucratic process to register as an individual entrepreneur.

7. Right to social security and to an adequate standard of living

25. Under the existing laws of the country refugees and asylum seekers have the status of temporary staying aliens, which affords significantly lesser enjoyment of rights, as compared to permanently staying aliens and nationals of the country, and fall short of the standards provided for in the 1951 Convention. For example, individuals with temporary rather than permanent status cannot receive state-provided social assistance, and are not eligible for naturalization. In contrast, the situation of refugees under the UNHCR mandate is more precarious as there is no legal recognition of refugee certificates issued by UNHCR.

26. UNHCR would like to note that in the absence of explicitly articulated provisions of national refugee law on the scope of the rights of persons of concern, legislative developments in other areas of law affecting aliens may have serious implications for persons of concern. Thus changes introduced to the list of guaranteed medical assistance to foreign citizens for 2008-2009 by Government decree have significantly reduced access to free health care for refugees and asylum seekers, limiting it to the emergency health care and diseases representing threat to the public. Previously refugees and asylum seekers had the right to free public health care services on equal terms with nationals.

27. UNHCR would like to note that the majority of refugees and asylum seekers live in rented flats. However, very few of them have security of tenure, because those who lack identity documents cannot register their contracts. In view of the price of rental accommodation in cities, many refugees rent small houses outside the cities, in some instances summer cottages (dachas) and actually share rented houses with other families. Under such circumstances, they do not have sufficient space for basic household activities and recreational space is not available for children. Moreover, heating and basic sanitary conditions are not always available. No Government run shelters are available for asylum seekers and refugees. UNHCR has

received reports of refugees having to live in the parks and on the streets in summer time due to unavailability of affordable accommodation. Due to the lack of permanent residence status, even officially recognized refugees such as Afghans do not have a right to acquire real estate under the existing alien laws.

8. Right to education and to participate in the cultural life of the community

28. UNHCR would like to commend that the national law of Kazakhstan provides access to free primary and secondary education, irrespective of the legal status of persons in Kazakhstan, including persons of concern. However, in reality persons of concern face obstacles, due to lack of proper IDs, and to some extent financial burden associated with purchase of school uniforms, books, etc and due to security concerns of their refugee parents, which limit the effective access to education.

29. With regard to higher education UNHCR notes that refugees do not have access to scholarship and grant or loan schemes, due to lack of residency permits and are obliged to cover full cost of tuition and other fees, which are in some instances at the same level as in Western universities. Many refugee families cannot bear the costs and as result their children cannot obtain higher education.

9. Migrants, refugees and asylum-seekers

30. UNHCR notes that Kazakhstan was hosting a total of 4,325 refugees at the end of 2008. The vast majority were not formally granted refugee status.⁷

31. Refugees and asylum seekers have the status of temporary staying aliens, which affords significantly lesser enjoyment of rights, as compared to permanently staying aliens and nationals of the country, and fall short of the standards provided for in the 1951 Convention. For example, individuals with temporary rather than permanent status cannot receive state-provided social assistance, and are not eligible for naturalization. In contrast, the situation of refugees under the UNHCR mandate is more precarious as there is no legal recognition of refugee certificates issued by UNHCR. Lack of legal recognition does not ensure safety and security, and leaves no durable solutions options for these refugees other than third country resettlement.

32. UNHCR notes that refugees face problems with access to personal documentation, including identity and civil status documentation, it should be noted that authorities issue refugee certificates, which are renewable every year and do not serve as identity documents. These certificates are recognized by other governmental bodies, and enable the holder to register with the Migration Police Department for the period in question. However, the registration itself is attached into the holder's national passport. Therefore, if a refugee has lost his/her national passport, the police registration is refused. This means that some refugees must stay in the country without registration, which places them at risk of detention and/or penalty for irregular stay. UNHCR interventions on this issue have so far gone unheeded. Furthermore the authorities do not issue asylum seekers with any certificate to attest their status, they are only provided with a letter to the Migration Police Department, requesting the latter to issue temporary registration for one-two months. If an asylum seeker fails to register with a local Migration Police Department, s/he is at risk of detention and refoulement. While UNHCR refugee certificates issued to mandate refugees are generally respected, authorities often assume that persons holding asylum seeker certificates are not entitled to protection under the 1951 Convention as the provisions are perceived to benefit refugees only. UNHCR's understanding is that when the national refugee law comes into force, asylum seekers certificate will obtain official status certifying asylum seekers' status and permitting them to stay on the territory of the country until a final decision on their claim has been reached, while refugee certificates will be considered identity documents. As regards civil status documentation all newborns are issued birth certificates in accordance with the *Rules of Registration of Civil Acts, approved by the Governmental Order as of 22/05/99 (#620)*, however, in the past, there have been few cases of rejection of issuing birth certificates due to lack of hospital records, but with the intervention of human rights NGO, these situations were resolved. Married couples are issued with marriage certificates only if they have valid documents and temporary/permanent registration in Kazakhstan as well as a document from their country of origin certifying that they were not married before, therefore some refugees were precluded from official civil registration of their marriages and had to register their

⁷ Chechens from Russian Federation who do not have access to individual registration and refugee status determination procedures.

marriage in a mosque through religious procedure. However such a marriage is not officially recognized in Kazakhstan. Common law marriages are not recognized officially, but the partners can claim property rights under civil law.

10. Human rights and counter-terrorism

33. On a number of occasions, mandate refugees and asylum seekers were taken into custody by the national security agencies accusing them as terrorist or criminals, based on either mere suspicion or requests from their countries of origin. The detained persons were released mostly after intervention by UNHCR. Frequent incidents of such nature eroded the confidence of asylum seekers and refugees that they are safe in Kazakhstan.

34. UNHCR is seriously concerned with the existing text of the draft law on refugees, which currently contains provisions that may lead to violation of the principle of *non-refoulement*. Keeping in mind the previous history of arrests and deportations, abductions, disappearances, it is of utmost importance that the new legislation is drafted to comply with the internationally recognized principle of *non-refoulement* and thereby with the international obligations of the Government. The current draft law is too general and at times even contradicts many internationally accepted standards and core principles of the 1951 Convention. For example, para.5 of Art.12 of the draft law provides that a refugee claim can be rejected if “*there are reasonable grounds to believe that a claimant participated in a terrorist, religious-extremist or prohibited religious organizations functioning in the country of origin or country from which he/she has arrived*” (unofficial translation). Contrary to the principle of individual responsibility this provision implies that the person can be excluded from refugee status based on mere membership. Even more concerning, it provides for exclusion of members of banned religious groups; membership of which is a very common ground of persecution in some countries of origin, where torture persists, in particular in Uzbekistan. Moreover, the procedure of removal (deportation) of rejected asylum seekers does not contain basic safeguards, such as the right to stay during appeal procedures, which may effectively lead to refoulement. Similarly, the draft law does not clearly lay down the extent of enjoyment of various rights by refugees and asylum seekers, leaving much for the discretion of authorities and/or interpretation of other laws. In addition, the draft law does not contain any provision on cooperation with UNHCR recognizing the supervisory and monitoring role of UNHCR.

III. Achievements, best practices, challenges and constraints

Examples of best practices which have emerged; acknowledgement of difficulties encountered by the State in the implementation of its human rights obligations.

35. The Committee on Elimination of Racial Discrimination noted with satisfaction that Kazakhstan has ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.⁸

36. UNHCR would like to welcome the significant expansion of international human rights obligations that the country has committed to through ratification of and declarations under several major human rights treaties in the past year.

37. UNHCR would like to acknowledge that Kazakhstan is in the process of drafting and adopting a refugee-specific legislation in order to implement its obligations under the 1951 Convention Relating to the Status of Refugees, which should clarify the legal status of refugees and bring it in accordance with the Convention standards.

38. UNHCR would further like to welcome the commitment by the Government not to deport or extradite any recognized refugees since December 2005, thereby ensuring conformity with the principle of *non-refoulement*. However it should be noted due to remaining concerns over admission practices at the border and allegations pertaining to risk of abductions by the security forces of the countries of origin of asylum seekers and refugees, UNHCR cannot conclude that risk of non-refoulement is no longer posing threat.

IV. Key national priorities, initiatives and commitments

⁸ (CERD/C/65/CO/3) at para.7

Areas where further progress is required and proposed solutions and plans for overcoming obstacles; priorities; strategies recommended to address the challenges highlighted in the previous section.

39. From UNHCR perspective, it would be helpful for the conduct of our mandate functions and in support of our efforts to improve the situation of persons of concern to us, if the Human Rights Council recommended to the Government of Kazakhstan to:

- 1) ensure that the proposed refugee-specific legislation fully complies with the international standards as laid down in international human rights and refugee laws, in particular the principle of *non-refoulement*;
- 2) ensure that all asylum seekers irrespective of nationality or country of origin have access to the national refugee status determination procedures;
- 3) consider amending its national laws to ensure effective access to and protection of economic, social and cultural rights of persons of concern, in particular to ensure:
 - a) access to personal documentation, including identity and civil status documentation;
 - b) access to legal employment, including self-employment and entrepreneurship for persons of concern, and protection of their labour rights;
 - c) effective access to social welfare system;
 - d) access to healthcare services and medical supplies at the same level as nationals;
 - e) ensure equal treatment to all asylum-seekers and refugees without any discrimination, including on the basis of religion;
 - f) access to adequate standard of living, including housing conditions, legal security of tenure and right to immovable property;
 - g) elimination of the bars to the permanent residence status and naturalization of long staying refugees;
 - h) equal and effective access to primary and secondary education of persons of concern
- 4) accede to the 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on Reduction of Statelessness as there appear to be a sizable population living in Kazakhstan without nationality documentation and/or with certified statelessness status.

V. Capacity-building and technical assistance

Technical assistance provided and/or recommended by UN entities.

40. As mentioned above in para.14 UNHCR is developing its Action Plan (Roadmap) on implementation of national refugee law, which *inter alia* encompasses comprehensive capacity building for relevant government officials. UNHCR plans to present the Action Plan in the coming months to the Government for discussion and endorsement.