

Submission of the International Legal Initiative on Universal Periodic Review of the Republic of Kazakhstan

The International Legal Initiative (ILI) Public Foundation is an independent human rights organization dedicated to the protection and promotion of human rights, established in 2010.

§1. Legal and institutional framework for the promotion and protection of human rights

In accordance with paragraph 2 of Article 2 of the International Covenant on Civil and Political Rights of the United Nations (hereinafter referred to as the “ICCPR”), the Republic of Kazakhstan undertakes to:

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The Republic of Kazakhstan does not implement the decisions (views) of the UN treaty bodies within the framework of the signed human rights treaties that have binding legal force.

At the time of writing this report, according to the UN OHCHR website, from 2011 to the present, there have been 61 decisions made by the Committee against Torture CAT, Human Rights Committee and Committee on the Elimination Discrimination against Women, none of which have been fully implemented. In addition, Kazakhstan does not take general measures aimed at recognizing at the legislative level the mechanisms for implementing the decisions of the UN treaty bodies.

Recommendation:

Ensure, at the legislative and practical level, the creation and functioning of a mechanism for the mandatory implementation of decisions of UN human rights treaty bodies in Kazakhstan on individual communications.

§2. Freedom of Association.

The Constitution of Kazakhstan and the legislation do not recognize the right of citizens to unite in so-called informal organizations, that is, organizations that do not require state registration as a legal entity.

The coenforcement practice shows that in some cases a non-governmental organisation (NGO) created by a group of citizens who do not claim the status of a public association and have not acquired the status of a legal entity is considered an unregistered public association and its organizers are subject to administrative liability. Similar problems arise with unregistered religious associations.

At the same time, when creating formal (registered) organizations, many problems arise related to unjustified refusals by justice authorities. Commercial organisations, however, do not face such problems.

The state still does not recognize the possibility of creating and functioning of informal organizations. Code of Administrative Offenses of the Republic of Kazakhstan establishes disproportionate liability for "managing the activities of an unregistered association" in the amount of 100 MCI (monthly calculation index)! And for participation in the activities of 50 MCI!

Despite the reduction in the required number of members to create a political party, the right to create political parties in general remains unrealizable in Kazakhstan.

Despite some improvements in the Law of the Republic of Kazakhstan, a number of problems with the implementation of the right to establish and operate trade unions remain. Including the persecution of trade union leaders. Arbitrary refusals to register trade unions by justice authorities also continue.

On September 20, 2023, the State Revenue Committee under the Ministry of Finance of the Republic of Kazakhstan published the Registrar of individuals and legal entities receiving money and (or) other property from foreign states, international and foreign organizations (hereinafter referred to as the Registrar). The Registrar was published after amendments were made to the tax legislation of the Republic of Kazakhstan, which provided for the publication of the registrar of persons receiving funding from foreign states, international and foreign organizations, foreigners, stateless persons for the provision of legal assistance, including legal information, protection and representation of the interests of citizens and organizations, as well as their counselling, study and conduct of public opinion polls, sociological surveys and the collection, analysis and dissemination of information. The government stated that the measure was aimed at "increasing the level of trust of citizens."

The ILI was also included in the Registrar under No. 68. The ILI considers its inclusion in the Registrar as a measure aimed at stigmatizing the individuals and organisations listed in the Registrar. Firstly, despite the fact that the government does not use the wording "foreign agent," the Registrar performs the same function as the list of "foreign agents." It may imply that individuals and legal entities included in the Registrar work in the interests of foreign states, international organizations and foreign citizens, which is not true. Labeling journalists, activists, human rights defenders and associations as "foreign agents" may further hinder and stigmatize the legitimate work of human rights defenders, activists and civil society organizations, which seriously harms the right to freedom of association in the Republic of Kazakhstan.

The publication of the Registrar has already led to the labeling of "foreign agents" and hindered the work of, for example, the Echo NGO, whose bank accounts were blocked for some time. On December 19, 2023, the ILI filed a complaint to the Minister of Finance of the Republic of Kazakhstan. The response dated January 18, 2024 denied the complaint. Astana city courts rejected the claims of human rights organizations to recognize the publication of NGO data in the Registrar of Foreign Agents as discriminatory.

Recommendations:

1. The registration procedure for associations should be simplified and replaced with a notification system.
2. Further simplification of the procedure for creating political parties is required.
3. Stop publishing the Registrar of individuals and legal entities receiving money and (or) other property from foreign states, international and foreign organizations

§3. Rights of refugees and asylum seekers

An asylum seeker must apply for asylum within five days from the moment he/she crossed the Kazakhstan state border, without specifying whether the crossing was legal or illegal. However, Clause 3 of the same article establishes a separate deadline for filing a petition for those who were forced to illegally cross the border: “In the absence of a checkpoint across the State Border of the Republic of Kazakhstan, a person in case of forced illegal crossing of the State Border of the Republic of Kazakhstan must apply to the authorized body within 24 hours.” In our opinion, a conflict arises between these two norms when Clause 3 restricts the effect of Clause 1 of Article 10 and shortens the application period for refugees forced to illegally cross the border to escape persecution.¹

A significant number of people (the exact number is not known), fleeing persecution and torture in Xinjiang, illegally crossed the border, but did not officially apply for asylum. As a result, in the opinion of officials and the Border Service of the National Security Committee of the Republic of Kazakhstan, they violated the Criminal Code of the Republic of Kazakhstan (illegal border crossing), while the 1951 Convention relating to the Status of Refugees says that: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

Refugees who illegally cross the Kazakh border from China do not have information about the time it takes to file an application for refugee status. They turn to the authorities after a while, which serves as a formal basis for the authorities of Kazakhstan not to apply the provisions of Article 31 of the Convention and criminalize illegal border crossing. At the same time, the charge and punishment for illegal border crossing is not automatically lifted in the case that refugee status is granted in Kazakhstan and this further interferes with obtaining Kazakhstan citizenship. So, the consequence of such a criminal record may be a refusal to grant citizenship or stateless person status, since any application for Kazakh citizenship is rejected if the person “has an unspent or outstanding conviction for committing an intentional crime on the territory of the Republic of Kazakhstan or outside it, recognized as such by the legislation of the Republic of Kazakhstan.”²

Kazakhstan and China signed on 17 May 2023 an intergovernmental agreement on the exchange of information regarding citizens of both states. The most dangerous thing is that this agreement allows providing the data of asylum seekers and refugees from China to Kazakhstan, since there is no exception in the agreement for this category. Providing information about refugees and asylum seekers from the People’s Republic of China is a threat to the security of those who have applied for asylum in Kazakhstan.

The competence of the relevant body, namely the Migration Service of the Ministry of Internal Affairs, includes issuing travel documents to refugees officially recognized in the Republic of Kazakhstan. This document was planned to be issued from January 1, 2022, but the form of the travel document has not yet been approved by the Parliament of Kazakhstan. The right to obtain a travel document for refugees exists on paper, but does not exist in practice. This situation has lasted since the entry into force of the Refugee Law in 2010, that is, for 13 years.

Recommendations:

1. Kazakhstan authorities must bring domestic legislation in line with international legislation – specifically the Convention relating to the Status of Refugees and not criminalize the illegal crossing the border by refugees.

¹ Law of the Republic of Kazakhstan «On Refugees» dated December 4, 2009

http://adilet.zan.kz/rus/docs/Z090000216_

² Law of the Republic of Kazakhstan “About citizenship of the Republic of Kazakhstan” dated December 20, 1991

https://online.zakon.kz/document/?doc_id=1000816&doc_id2=1000816#activate_doc=2&pos=37;-152&pos2=185;-86

2. Exclude asylum seekers and refugees from China from the exchanging personal information between China and Kazakhstan.
3. Urgently pass a bill approving the integrated circuit of the travel document for refugees, so that they can use it in practice.

§4. Freedom from Torture

On cases related to torture in January 2022, law enforcements have evaded from the responsibility for those who beat and tortured to death those detained during the January 2022 events. In our opinion, such cases should be investigated as murders, and not just torture. One of such example is the case of Zhasulan Anafiyayev, who was killed during abuse and brutal beatings in an Almaty pre-trial detention facility in January 2022.

In January 2022, about 100 migrants from Central Asian countries and citizens of Kazakhstan became the victims of mass torture in Almaty region. They were targeted as terrorists. ILI is protecting the rights of 23 victims of torture from Uzbekistan, tortured at the same time in the same place. Authorities of Kazakhstan did not conduct properly and in time the investigation of this mass torture case. The investigation lasted for 2.5 years and only six former police officers were recognized as suspects in this case, despite dozens national security, special units and police officers participated in mass torture. On the last day of investigation, four previously arrested police officers were released under recognizance not to leave. In addition, the charges against six suspects were reduced. For the victims, this is a signal that those responsible for mass torture will not be identified and punished.

According to the Human Rights Measurement Initiative, significant number of people are not safe from arbitrary arrest, torture and ill-treatment, forced disappearance.³

Recommendations:

1. To classify cases of beating to death by law enforcement officers as murder (article 99 of the Criminal Code) instead of torture (p. 3 article 146 of the Criminal Code).
2. Ensure fair punishment for those responsible for mass torture of migrants in January 2022

³HRMI Rights Tracker [Kazakhstan \(rightstracker.org\)](https://rightstracker.org)