Human Rights Commission
under the President of Kazakhstan

REPORT
ON THE HUMAN RIGHTS SITUATION
IN THE REPUBLIC OF KAZAKHSTAN IN 2010
This Report on the Human Rights Situation in the Republic of Kazakhstan in 2010 (hereinafter “the report”) produced by the Human Rights Commission under the President of the Republic of Kazakhstan provides an analysis with respect to the human rights situation in Kazakhstan in the reporting period.

The report presents a general evaluation of the human rights situation in Kazakhstan in the year of Kazakhstan’s chairmanship in the OSCE, and identifies the key issues related to human rights protection and their solutions.

The report is based on the results of human rights activities carried out by the Human Rights Commission and its special studies conducted in the reporting period. Data from government bodies and non-governmental organizations in the Republic of Kazakhstan, as well as those provided by international organizations, have been used profusely in the report.

The report has been approved by the resolution of the President of the Republic of Kazakhstan as of May 20, 2011, resolution № 32-36.166.

The report contains a comparative analysis of the national human rights legislation, an evaluation of activities carried out by government agencies, conclusions regarding the human rights situation, and recommendations by the Commission on further improvement of legal policies, national legislation and law application practices, as well as on bringing them in line with international covenants and conventions on human rights ratified by Kazakhstan.

All conclusions and recommendations by the Commission can be taken into account while implementing the recommendations of the National Action Plan on Human Rights by the UN Human Rights Council produced within the framework of the Universal Periodic Review for the Republic of Kazakhstan.

Materials contained in this report may be useful for legislative, executive and judicial bodies, law enforcement agencies, defense lawyers, representatives of institutions dealing with extra-judicial human rights protection, non-governmental and international organizations, other public associations, and diplomatic services accredited in Kazakhstan.

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PREFACE

This information and analytical report on the human rights situation in the Republic of Kazakhstan in 2010 (hereinafter “the report”) has been produced and compiled by the Secretariat of the Human Rights Commission under the President of the Republic of Kazakhstan (hereinafter “the Secretariat of the Commission”).

The purpose of the report is to inform the President, Parliament and Government of the Republic of Kazakhstan about the human rights situation in the Republic of Kazakhstan in 2010, provide a general evaluation of the human rights situation in the year of Kazakhstan’s chairmanship in the OSCE, and identify the key issues related to human rights protection and their solutions.

In 2010, the Republic of Kazakhstan was a successful chairman of the OSCE. Kazakhstan was ensuring, to an equal degree, the balance of interests with respect to all “three baskets” of the OSCE. As far as human dimension issues were concerned, a number of large activities in the area of human rights protection were held, including the OSCE Review Conference in Warsaw (30 September – 8 October 2010) and in Astana (26-28 November 2010), conferences and roundtable meetings in Vienna, Copenhagen, Astana and Almaty. During all human rights forums, Kazakhstan’s delegation was making constructive proposals. The Human Rights Commission under the President of the Republic of Kazakhstan (hereinafter the Commission) presented, with much success, both in Russian and English, programme documents in the area of human rights protection, including the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012 (hereinafter the National Plan), Legal Policy Concept in the Republic of Kazakhstan for 2010-2020. The commission’s reports on the human rights situation in Kazakhstan were perceived with much interest, too.

At the OSCE Summit in Astana which was held on 2 December 2010, the Astana Declaration called “Toward a Security Community” was adopted.

It is worth mentioning the provisions of the National Plan and reports by the Commission which were acclaimed by international experts.

Materials provided by the Commission, and information submitted by state bodies and non-governmental human rights organizations in the Republic of Kazakhstan, international NGOs and international organizations accredited in Kazakhstan were used to produce this report. The authors also used the findings of visits by Human Rights Commission members to penitentiary, health care, social protection, educational and cultural institutions, agencies dealing with construction, and other organizations; materials of international conferences, roundtable meetings, workshops and training events conducted by the Commission together with state and non-governmental organizations in Kazakhstan, and international human rights agencies in 2010; materials of the 2010 OSCE Review Conference; and the results of generalizing and analyzing complaints and applications submitted to the Commission by physical and legal persons.
The report analyzes the respect for civil, political, social, economic and cultural rights.

The report is structured in a way as to cover in detail all issues related to the respect for civil (personal), political, economic, social and cultural rights, to which non-governmental human rights organizations, OSCE, the United Nations and other international organizations were referring.

For example, the first section analyzes in great detail such issues as the right to life, privacy, freedom of association, freedom of thought, conscience, religion, peaceful assembly and meetings, participation in public affairs (free and fair elections), freedom of speech and access to information.

The same chapter talks about the results of defending the national report on human rights within the Universal Periodic Review in the UN Human Rights Council in Geneva, and the results of defending other national reports in the UN treaty bodies in 2010. The Commission had been directly involved in the preparation and defence of the above-mentioned reports.

The second section highlights the results of special investigations carried out by the Commission which are related to such relevant issues as ensuring human rights and the rule of law in the area of labor, social and gender relations. Furthermore, this section reflects such important issues as ensuring the right to health care and qualified medical assistance. The list of relevant issues is further augmented by discussing the rights of children, women, people with disabilities, and ethnic minorities, and raising legal awareness among the public.

The third section of the report analyzes the respect for human rights during preliminary investigation and inquiry; in the area of meting out justice with regard to criminal, civil and administrative cases; during proceedings; and in penitentiary facilities. Some chapters of the report are dedicated to respecting the right to freedom against torture and other cruel or degrading treatment and punishment, and the rights of persons who fell victim to human trafficking.

All chapters of the report provide a comparative legal analysis of the national human rights legislation as regards its compliance with international standards, and conclusions and recommendations on improving the national law and law application practices in the area of human rights protection.

From 1 January through 31 December 2010 the Secretariat of the Commission received 1,320 applications in writing from physical and legal persons regarding human and civil rights violations (See Annexes 1 and 2).

The following trends were identified while analyzing incoming applications: about 27.2% of all applications were submitted to the Commission in writing by those disagreeing with court decisions on civil, administrative and juvenile cases; 19.62% of all applications – complaints against the actions or omission (nonfeasance) on the part of law enforcement agencies; 9.39% of applications – complaints against the actions and omission (nonfeansance) by akims and other public officials from executive and representative bodies (in 2009 such complaints constituted 1.49%); 6.51% of applications – complaints dealing with non-enforced court decisions; 6.06% of applications – complaints dealing with the violation of
social and cultural rights of citizens; 5.83% of applications – complaints dealing with the violation of housing-related rights; 5.37% of applications – complaints dealing with the violation of labour rights; 4.92% of applications – complaints dealing with the violation of social rights; 3.48% of applications – complaints dealing with the actions and omission on the part of public officials in correctional institutions and incarceration conditions in penitentiary facilities (in 2009 such complaints totalled to 1.06%); 2.95% of applications – complaints against the actions and omission by public officials in economic entities; 1.97% of applications – complaints against the actions and omission of judicial bodies; and 1.93% of applications – complaints against the actions and omission of public officials in second-tier banks (a more detailed picture regarding the structure of written applications submitted to the Commission is presented in Annex 1). All applications received by the Commission are analyzed in corresponding chapters of this report. Applications submitted by citizens and relevant recommendations or conclusions made by the Commission were submitted for consideration to government institutions of the Republic of Kazakhstan (prosecutors’ offices, courts, federal and local executive bodies), and national human rights institutions in other countries (following the complaints by foreign nationals).

Moreover, in 2010 the Secretariat of the Commission considered 450 verbal complaints regarding the protection of citizens’ rights in an extrajudicial manner. All citizens who approached the Commission verbally (who were, for the most part, citizens belonging to vulnerable groups) received exhaustive legal counselling by Commission members, Secretariat staff, and experts working in the Commission.

In 2010, the Secretariat of the Commission organized and conducted 12 reception meetings for the public in the Public Reception Office under the President’s Administration.

Commission members were also receiving people and providing them with legal assistance at their permanent place of work.

While studying written complaints from the public, the Commission took 57 complaints under its special control, since there were substantiated doubts as to whether they had been considered impartially by the relevant government bodies. Of these, human rights abuses in 25 complaints were proved to be true. With the assistance of the Commission, it became possible to redress these violations.

Essentially, every chapter of the report provides, for purposes of a comparative analysis of human rights violations, information regarding those complaints that were received by the Commission in 2010 and resulted in a positive resolution of the case.

In the end of the report, the Commission presents its major conclusions as to further improvement of the system for ensuring and protecting human rights in the Republic of Kazakhstan.
On the results of defending the National Human Rights Report within the Universal Periodic Review

On 12-16 February 2010, Kazakhstan’s delegation headed by Deputy Prime-Minister E. Orynbaev participated in the defence of the national human rights report within the Universal Periodic Review (UPR) of the UN Human Rights Council (HRC) in Geneva.

UPR is a new human rights mechanism of the UN Human Rights Council introduced in accordance with the UN General Assembly Resolution 60/251 as of 15 March 2006.

It is incumbent on the UN Human Rights Council to observe, on a regular basis, once every four years, how each of the 192 UN member states complies with its human rights obligations.

The UPR procedure was carried out in the form of a three-hour interactive dialogue with Kazakhstan’s delegation, which all UN member states were allowed to attend. NGO activists could participate as observers without the right to vote.

In the course of the UPR for Kazakhstan, 72 states signed up for making statements, while 54 state delegations actually had the floor.

128 recommendations provided by them became part of a final report by the UPR Working Group which was adopted on 16 February 2010.

Recommendations provided by various states had to do with different aspects of human rights protections in Kazakhstan.

In their statements, member states pointed to a high level of preparation for the UPR demonstrated by Kazakhstan, and noted a highly representative delegation which, in their view, was a sign of Kazakhstan’s interest to further ameliorate the national human rights system.

Those making speeches underscored a significant progress achieved by Kazakhstan in terms of promoting civil, political, social, economic and cultural rights. In most of their recommendations, the speakers made a wish to see a continuation of the current legal policy and ongoing reforms. In particular, Kazakhstan’s policies on ensuring interethnic and interdenominational concord and the right to education, specific steps toward improving the status of women and children, and intentions to further perfect the legal system were highly appreciated.

It is also worth mentioning positive feedbacks that came as a result of developing and implementing the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012. Provisions of Kazakhstan’s National Action Plan were lauded by 50 out of 54 country delegations that had the floor during the meeting. Four country delegations wished Kazakhstan to implement the recommendations of the National Action Plan successfully. A number of delegations suggested that Kazakhstan’s experience on developing the National Action Plan and Digital Library of the Human Rights Commission be replicated.

It was emphasized that electing Kazakhstan as OSCE’s Chairman-in-Office was a recognition of meaningful achievements in the area of human dimension.
At the same time, in their recommendations a number of Western countries expressed their concern regarding the non-compliance of activities carried out by the Commissioner for Human Rights in the Republic of Kazakhstan (National Ombudsman) with the widely accepted UN Paris Principles (Hungary, Germany), extradition of refugees and asylum-seekers (Belgium), situation of human rights defenders, journalists, and lawyers, and restrictions on media freedoms (Norway), inappropriate treatment of religious minorities (United States), lack of a mechanism to bring those applying torture to justice and strengthened control over the Internet (United Kingdom), cases of torture and cruel treatment of prisoners, criminal liability for libel and restrictive legislation regarding the right to peaceful assembly (Australia), situation in prisons, freedom of expression, status of political parties and spread of violence against women (Slovenia).

The working group that took part in defending the national report within the UPR continued working on the remaining 26 recommendations out of 128. In mid-May 2011, responses to these recommendations were sent to the UPR Task Force of the UN Human Rights Council through the Ministry of Foreign Affairs of Kazakhstan.

On 9-10 June 2010, Kazakhstan’s delegation headed by Secretary-in-Charge of the Ministry of Justice M. Beketaev participated in the discussion and endorsement of the report by the UN HRC Task Force in Geneva which was produced following the consideration of the national human rights report within the Universal Periodic Review of the UN HRC as of 12 February 2010.

As was mentioned earlier, 54 out of 72 member states that signed up for presentations had the floor during the UPR for Kazakhstan. 128 recommendations provided by them became part of the draft final report of the UN HRC Task Force which was adopted on 16 February 2010. As regards 112 recommendations, Kazakhstan’s delegation was able to provide responses supported by arguments in the course of defending the national report. According to HRC procedures, the working group that participated in defending the national report within the UPR was working on and coordinating the remaining 26 recommendations with relevant state bodies upon their return from Geneva.

During the meeting on discussing the draft report by the UN HRC Task Force, the head of Kazakhstan’s delegation mentioned in his report that 19 out 26 recommendations had been accepted for consideration, while 7 recommendations had been rejected.

The delegation of Kazakhstan dismissed, justifiably, the following recommendations by the UN member states:

- ratification by the Republic of Kazakhstan of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (recommendation by Algeria);

- accession to the Declaration on Sexual Orientation and Gender Identity (France);
- ratification by the Republic of Kazakhstan of the Rome Statute of the International Criminal Court (Slovenia);

- conducting annual briefing for the UN Human Rights Council regarding further activities following recommendations of the Universal Periodic Review (Hungary);

- cancellation of registration for religious groups introduced in the Administrative Code of the Republic of Kazakhstan by laws adopted in 2005 in order to eliminate extremism and strengthen national security, and reviewing the provisions of the law on freedom of faith and religious associations in order to provide effective guarantees of freedom of faith and non-discriminating legal system during the registration of religious associations (Mexico);

- considering regulations on the registration of religious groups and taking measures to facilitate interdenominational harmony, including religious views regarded as non-traditional, in order to abide by the Constitution and international norms (Norway); and

- reviewing the amendment to the law on information and communication networks to prevent the application of criminal legislation for libel in the Internet, and strengthening the freedom of expression and freedom of press with respect to political issues (Spain).

After the head of Kazakhstan’s delegation made his eight-minute speech (according to the UN HRC procedures each delegation is given 20 minutes, while the UN members states and international NGOs accredited in the Economic and Social Council have 40 minutes), statements were made by delegations from Bahrain, Algeria, Uzbekistan, Pakistan, Malaysia, Indonesia, Qatar, Belarus, the United States, Iraq, Norway and the Russian Federation, and representative of international NGOs including Human Rights Watch, International Federation for Human Rights Leagues, Amnesty International, Interfaith International, Reporters Without Borders and European Region of the International Lesbian and Gay Federation.

In their statements, the UN member states pointed to Kazakhstan’s high level of preparedness for the UPR procedure, and the country’s willingness to further improve the national human rights system.

Those making statements underscored a significant progress achieved by Kazakhstan in terms of promoting civil, political, social, economic and cultural rights. In most of their recommendations, the speakers made a wish to see a continuation of the current legal policy and ongoing reforms. In particular, Kazakhstan’s policies on ensuring interethnic and interdenominational concord and the right to education, specific steps toward improving the status of women and children, and intentions to further perfect the legal system were highly appreciated.
Ten out of twelve delegations that had the floor highly appreciated Kazakhstan’s National Action Plan. Four country delegations wished Kazakhstan to implement the recommendations of the National Action Plan successfully (United States, Norway, Bahrain, Indonesia).

At the same time, while voicing their positions, a number of countries and international NGOs accredited in the Economic and Social Council expressed their concern regarding the non-compliance of activities by the Commissioner for Human Rights (National Ombudsman) in the Republic of Kazakhstan with the widely accepted UN Paris Rules (Pakistan, Indonesia, Human Rights Watch), status of human rights defenders, journalists and lawyers, and restrictions on media freedoms (Norway, Human Rights Watch, Reporters Without Borders), maltreatment of religious minorities (United States, Norway), cases of torture and cruel treatment of those under investigation and prisoners, and a lack of mechanism to bring those applying torture to justice (United States, Amnesty International), and human rights abuses among sexual minorities (European Region of the International Lesbian and Gay Federation).

In their statements, representatives of the United States and Human Rights Watch mentioned the well-known cases of E. Zhovtis, R. Esergepov and M. Jakisheev who were sentenced to imprisonment by Kazakhstan’s courts.

T. Abishev, Secretary of the Human Rights Commission, provided responses supported by arguments to those issues that were raised in the course of discussing the draft report of the UN HRC Task Force. The report was produced following the consideration of the national report within the UPR.

Following the discussions, the UN HRC approved the report by the UN HRC Task Force produced after considering the national report within the UPR, taking into account all remarks and proposals made by Kazakhstan’s delegation.

The Government developed an Action Plan on implementing the UPR recommendations, and currently the Ministry of Justice together with other relevant government bodies and NGOs is working on the step-by-step implementation of the above-mentioned recommendations.

On the results of defending the National Report on Compliance with the Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination

From 26 February through 1 March 2010, during the 76th session of the Committee on the Elimination of Racial Discrimination (CERD), Kazakhstan’s delegation successfully defended a combined fourth and fifth national report on complying with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

Mr. Anwar Kemal (Pakistan), Chairperson of the CERD, opened the meeting and gave the floor to the head of Kazakhstan’s delegation, Vice-Minister of Culture and Information of the Republic of Kazakhstan G. Telebaev, who delivered a report.
After G. Telebaev, a report was presented by Mr. Ion Diakon (Romania), a Special Rapporteur of the CERD on Kazakhstan.

During the first day of the meeting, CERD experts asked more than 45 questions to Kazakhstan’s delegation. Members of the Human Rights Commission were able to provide exhaustive answers to certain questions (those asked by delegations of Nigeria, Romania and Russia) on the same day.

During the weekend (27-28 February) delegation members prepared their answers to the remaining forty questions.

On 1 March 2010, in the course of a three-hour interactive dialogue, members of Kazakhstan’s delegation were able to answer all questions asked by CERD experts on the first and second days of defending their report.

In their statements, CERD experts pointed to a high level of preparedness demonstrated by Kazakhstan in defending its national report.

They underscored significant progress achieved by Kazakhstan in promoting the rights of ethnic minorities. In particular, they appreciated highly the state’s policy on ensuring interethnic and interdenominational concord and the rights of ethnic minority groups, providing them with education and ensuring their social, economic and cultural rights. They also spoke in positive terms as regards the activities of the Kazakh People’s Assembly and provisions of the National Action Plan on Human Rights for 2009-2012.

CERD experts were interested in language and migration policies, law application practices in the area of preventing racial discrimination and the conflicts that took place in Aktau, Malovodnoe, Malybay, Shelek and Mayatas.

At the same time, a number of experts expressed their concern about the fact that activities by the Commissioner for Human Rights (National Ombudsman) in the Republic of Kazakhstan contravene the widely accepted UN Paris Principles (Ireland, France), and also about inappropriate treatment of religious minorities (France, United Kingdom), lack of separate legislation on combating racial discrimination, and no separate article in the Criminal Code and Administrative Code providing for either criminal or administrative liability for fomenting ethnic feud and spreading the idea of racial supremacy (France, Ireland, Romania, United Kingdom). Members of Kazakhstan’s delegation were able to provide well supported responses to all issues raised by the UN experts.

The Government approved an Action Plan on implementing a recommendation by the UN Committee on the Elimination of Racial Discrimination following the consideration of the combined fourth and fifth national reports by Kazakhstan on complying with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. Currently, the Ministry of Culture, with the participation of all relevant government bodies and NGOs, is involved in the step-by-step implementation of the UN Committee’s recommendation.
On the results of defending the National Report on Compliance with the Provisions of the International Covenant on Economic, Social and Cultural Rights

On 10-11 May 2010 Kazakhstan’s delegation successfully defended the first national report on implementing the provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter the ICESCR) which took place in Geneva within the 44th session of the UN Committee on Economic, Social and Cultural Rights.

Mr. Jaime Marchan Romero (Ecuador), Chairperson of the UN CESCR, opened the meeting with his welcoming remarks, and the floor was then given to A. Nusupova, head of Kazakhstan’s delegation, Vice-Minister of Labour and Social Protection of the Republic of Kazakhstan, who delivered her report.

On the first day, the defence of the national report was carried out in the form of a three-hour interactive dialogue with Kazakhstan’s delegation, which was attended by students of the Geneva Academy of International Humanitarian Law and Human Rights and NGO representatives as observers without the right to speak or vote.

After Ms. Nusupova delivered her report, the floor was given to experts of the UN CESCR who asked over 30 questions on the national human rights protection system and Articles 1-5 of the International Covenant. Members of Kazakhstan’s delegation provided responses to these questions the same day.

On 11 May 2010, during a six-hour interactive dialogue, experts of the UN CESCR asked over 50 questions on the state’s legal policy in the area of human rights protection and on Articles 6-15 of the International Covenant. Having grouped repetitive questions, members of the delegation were able to provide answers to all questions asked by the UN experts as they did during the first day.

In their statements, experts of the UN CESCR pointed to a rather high level of preparedness demonstrated by Kazakhstan’s delegation during the defence of the national report on implementing the provisions of the International covenant. In particular, Mr. Romero (Ecuador), Chairperson of the Committee, referred to Kazakhstan’s success in social and economic issues, and emphasized that Kazakhstan, compared to other UN member states, submitted its national report for consideration by the Committee on time.

In her statement, Ms. Virginia Bonoan Dandan (Philippines), Deputy Chairperson of the UN CESCR, wished members of Kazakhstan’s delegation to present the country’s achievements in the area of vindicating and ensuring economic, social and cultural rights and to share their experience in this field.

Kazakhstan’s significant progress in promoting economic, social and cultural rights was highly appreciated. In particular, positive evaluation was given to the state’s policy on ensuring interethnic and interdenominational concord, specific steps toward improving the status of women and children, including people with disabilities, and intentions to further ameliorate the national legal system. The provisions of the National Action Plan on Human Rights, the state’s policy in
ensuring equal rights and opportunities for men and women, and effective measures on ensuring social, economic and political stability in the country carried out by Kazakhstan in the conditions of the global crisis were also acclaimed.

UN experts were interested in economic, social, cultural and language policies, and law application practices in the area of ensuring economic and social rights of citizens.

At the same time, a number of experts expressed dismay at the non-compliance of activities by the Commissioner for Human Rights in the Republic of Kazakhstan (National Ombudsman) with the widely accepted UN Paris Principles (Mauritius, Germany, France, Poland, Netherlands, Costa Rica), judicial bodies non-applying the norms of the International Covenant on Economic, Social and Cultural Rights when considering specific cases (Cameroon, Poland, Netherlands, Philippines), lack of separate anti-discrimination legislation (Jordan), ensuring independence and transparency of judicial bodies (Mauritius, Cameroon, Columbia, Poland, Netherlands), constitutional norms taking precedence over those contained in international human rights agreements ratified by Kazakhstan (Poland, Cameroon, Jordan, Netherlands, France), preventive mechanisms to stave off domestic violence against women and children and implementation of the Law of the Republic of Kazakhstan “On Prevention of Domestic Violence” (Poland, Germany, Egypt), cases of trafficking in women (Jordan, Costa Rica), status of labour migrants and stateless persons (France, Algeria), supplying drinking water to those living in remote villages and problems related to the recovery of the Aral Sea (Portugal, Germany, Columbia). Members of Kazakhstan’s delegation provided well supported answers to the questions posed by UN experts.

The Government approved an Action Plan on implementing a recommendation of the UN Committee on Economic, Social and Cultural Rights following the consideration of Kazakhstan’s national report on complying with the provisions of the International Covenant on Economic, Social and Cultural Rights. At the present time, the Ministry of Labour and Social Protection is involved, with the participation of all relevant state bodies, in the step-by-step implementation of recommendations provided by the UN CESCR.

**Right to life**

According to Article 15-1 of the Constitution of the Republic of Kazakhstan everyone has the right to life. Therefore, an important step in implementing the strategy of the judicial reform was the President’s Edict of 17 December 2003 “On Introducing a Moratorium on the Death Penalty in the Republic of Kazakhstan,” which is still in effect.

As a result of the constitutional reform carried out in May 2007, the scope of applying the death penalty has been limited and is now confined exclusively to terrorist offences leading to the loss of human life, and very grave offences committed during wartime, which essentially implies the abolition of the death penalty.
The constitutional reform entailed new opportunities for further improvement of criminal policy. For instance, an amendment to Article 15 ensuring the right to life has effectively abolished this type of punishment. According to this amendment, the death penalty may be applied by law only for exceedingly serious offences committed during wartime and terrorist crimes resulting in the loss of life. This does not mean, however, that the death penalty has, by all means, to be applied for all such offences. This constitutional norm, by limiting the scope of applying the death penalty, simply allows a possibility of using it by law for strictly defined offences.

It is worth mentioning that the preservation of Article 15-2 of the Constitution (possibility of applying the death penalty) contravenes Article 12 of the Constitution guaranteeing the universality and inalienability of human rights and freedoms, Article 15-1 of the Constitution whereby everyone has the right to life, and Article 39-3 of the Constitution which says that the rights to life should not be subject to restriction under any circumstances.

The very existence of the death penalty in the legislation contravenes the above-mentioned constitutional norms and is not compliant with the goals of criminal punishment laid down in Article 38 of the Criminal Code (correction of prisoners). It also has to do with causing physical suffering which is prohibited by law.

Furthermore, Article 12 of the Constitution says that universal and inalienable human rights and freedoms inherent to all people and guaranteed by the Constitution determine the contents of laws, and therefore, the Criminal Code (CC) should contain Article 49 allowing, if applied, a possibility of violating the constitutional right to life.

At the 61st session of the UN General Assembly which took place on 19 December 2006 the Republic of Kazakhstan acceded to the Statement of the European Union on the Death Penalty.

At the legislative level, the Constitution of the Republic of Kazakhstan restricts the use of the death penalty, and yet it doesn’t prevent the state from ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty.

The legal policy concept of the Republic of Kazakhstan for 2010-2020 approved by the Edict of the President of the Republic of Kazakhstan, Ref. No. 858, of 24 August 2009 provides for further improvement of criminal legislation, and in particular continuing with a gradual limitation of the scope of applying the death penalty, further liberalization of criminal legislation, including by way of decriminalizing some offences which do not pose any public threat and classifying them as administrative offences, expanding the grounds for exoneration, and studying international experience in this area in order to replicate it in Kazakhstan.

As coordinated with the President’s Administration, a representative of the Ministry of Justice joined the International Commission against the Death Penalty (ICDP) proposed by the Government of Spain.
On 6 January 2011, the Minister of Justice appointed Ms. E. Azimova, Director of the Ministry of Justice Department, as a national coordinator of Kazakhstan in the ICDP.

Kazakhstan is following consistently the path of humanization in the area of criminal legislation. Some articles of the Criminal Code are now subject to decriminalization, and criminal liability is superseded by administrative liability. Inquiry and investigation procedures are being simplified, with an attempt to introduce the concept of conciliation of parties.

All this work is carried out on a systematic basis, and is one of a few areas within the criminal policy humanization programme.

As mentioned above, on 17 December 2003 President of the Republic of Kazakhstan Nursultan Nazarbaev signed an Edict “On Introducing a Moratorium on the Death Penalty in the Republic of Kazakhstan.” This Edict was signed by the President pursuant to Article 15-1 of the Constitution ensuring the right of every person to life. Aimed at implementing the provisions of the Legal Policy Concept of the Republic of Kazakhstan of 20 September 2002 on further humanization of criminal legislation, this Edict is yet another step toward limiting the application of the death penalty.

The Edict provides for suspending the enforcement of death penalty sentences imposed by courts. We believe that introducing life imprisonment as an alternative to the death penalty is justified before the death penalty is abolished completely at the legislative level.

There are grounds to believe that introducing the concept of life imprisonment will minimize the number of death penalty sentences imposed by judicial bodies, which may create actual prerequisites for the possibility of abolishing the death penalty whatsoever.

Currently, discussions are going on as for the signing and ratifying of the second Optional Protocol to the International Covenant on Civil and Political Rights by Kazakhstan and complete abolition of the death penalty as a criminal sanction. This is directly linked with the principle of the inherent value of human life and its protection proclaimed by the Constitution.

Amendments to Article 15 of the Constitution limit the scope of applying the death penalty significantly, allowing the law to make a final decision in such cases.

Over seven years have passed since announcing a moratorium on the death penalty, and today we can say that abandoning the death penalty and the criminal policy humanization process in general have not resulted in a higher crime rate, and the crime situation in Kazakhstan remains relatively stable. In addition, the country has not seen any new public movements demanding that the moratorium be repealed and the death penalty be restored. Moreover, public surveys demonstrate that the number of people who are against the death penalty has been increasing after the moratorium became effective.

Today there are no death row inmates in Kazakhstan. The moratorium on the death penalty is still in effect, and it should not expire, as is mentioned in the Edict, until the death penalty is abolished completely.
According to the Penal Committee under the Ministry of Justice, there are 86 life sentence prisoners in Kazakhstan’s penitentiary facilities, of who 28 prisoners were pardoned (3 prisoners died because of disease).

Is it possible to abolish such a sanction as the death penalty in Kazakhstan completely? From the constitutional and legal point of view, it is. By 30 January 2003, the Constitutional Council of the Republic of Kazakhstan adopted a Regulatory Resolution, Ref. No. 10, “On Official Interpretation of para. 4 Article 52, para. 5 Article 71, para. 2 Article 79, para. 3 Article 83 and para. 2 Article 15 of the Constitution of the Republic of Kazakhstan.” Explaining the norms of Article 15-2 of the Constitution which outline all offences punishable by death, the Constitutional Council notes that these norms are restrictive by nature. In other words, when providing for the death penalty for a certain type of offence, the legislator does not have the right to go beyond the limits delineated by the Constitution. At the same time, as was noted by the constitutional control body, offences listed in Article 15-2 may be punishable by other penalties other than the death penalty. We can deduce that the applicable the Constitution of the Republic of Kazakhstan does not hamper any further restriction regarding the scope of applying the death penalty or abolishing it whatsoever. To accomplish this goal, appropriate emendations should be made to the Criminal Code.

Many countries abandoned the concept of the death penalty, which include both developed countries in Europe and countries experiencing problems in the area of economic and political development and public order.

The existence of capital punishment in Kazakhstan’s Criminal Code may be used as a pretext for asserting that the country’s criminal policy is repressive and inhumane. Therefore, appropriate amendments should be introduced in the Criminal Code.

Extra-judicial or arbitrary execution or forced disappearance of people carried out by law enforcement or national security agencies do not exist in Kazakhstan.

The position of the Human Rights Commission under the President of the Republic of Kazakhstan is such that Kazakhstan as a member of the United Nations and OSCE where a human being, his/her life, rights and freedoms are regarded as the highest value should ratify the second Optional Protocol to the International Covenant on Civil and Political Rights.

**RECOMMENDATIONS:**

1. To improve national human rights protection mechanisms in the Republic of Kazakhstan and to strengthen international human rights protection mechanisms, it is recommended to sign the second Optional Protocol to the International Covenant on Civil and Political Rights of 15 December 1989 aimed at the abolition of the death penalty (Resolution of the UN General Assembly 44/128 of 15 December 1989).

2. To remove Article 49 from the Criminal Code of the Republic of Kazakhstan.
3. To step up the activities of Kazakhstan’s national coordinator in the International Commission against the Death Penalty.

**Right to association**

The right to association in the Republic of Kazakhstan is governed by Articles 5 and 23 of the Constitution, section 7 Article 2 of the Civil Code, laws on non-commercial organizations, political parties, public associations, trade unions, freedom of faith and religious associations, some legislative provisions on national security and counteraction to extremism, criminal, administrative and tax legislation, and a wide range of by-laws, such as instructions, rules, regulations, etc.

Kazakhstan recognizes ideological and political diversity. The Constitution of the Republic of Kazakhstan refers to the equality of all public associations before law.

The right to freedom of association (right to association, freedom of unions, right of every individual to associate with others or the right to join non-commercial organizations and unions) is one of the most fundamental and inalienable constitutional rights whose exercise meets the public interest and is protected by the state.

The Republic of Kazakhstan guarantees its citizens the freedom to establish public associations.

Freedom as a measure of possible behaviour is also ensured by the fact that participating or not participating in the activities of a public association cannot be viewed as grounds for restricting someone’s rights and freedoms.

At present, all necessary legal and political conditions have been established in Kazakhstan for the development of civil society institutions, or non-governmental organizations, including public associations and political parties.

Such a pivotal part of civil society as non-governmental organizations has strengthened enormously. During the first years of Kazakhstan’s independence there were almost no non-governmental organizations in the country. Today the number of registered non-governmental and non-commercial organizations exceeds 18 000. More than 13 million USD is allocated annually from the state budget to implement the state’s social order by these organizations.

Nowadays, civil initiatives are manifested in all areas of social life, and public associations reflect a wide spectrum of public interests.

Thus, public associations are established in order to exercise and protect economic, political, social and cultural rights and freedoms; to help people become more active and develop their amateur activities; to satisfy professional and amateur interests; to develop scientific, technical and artistic creativity; to protect people’s life and health and the environment; to participate in charity activities; to carry out cultural, educational, sports and health-oriented activities; to preserve historical and cultural monuments; to promote patriotic and humanistic education; to expand and strengthen international cooperation; and to carry out other activities not prohibited by national legislation.
The Law of the Republic of Kazakhstan “On Public Associations” of 31 May 1996 governs public relations arising as a result of Kazakhstan’s citizens exercising their right to the freedom of association, as well as the establishment, activities, restructuring and liquidation of public associations.

In 2010, around 720 applications for state registration reached departments of justice, of which 210 applications from legal entities were rejected.

Public associations in the Republic of Kazakhstan include political parties, trade unions and other associations of citizens created on a voluntary basis to achieve some common goals that are compliant with the law.

The Law of the Republic of Kazakhstan “On Political Parties” of 15 July 2002 determines the legal underpinnings for establishing political parties, their rights and duties, and the guarantees for their activities, and governs the relations between political parties and government institutions and other organizations.

According to Article 3 of the Law, citizens of the Republic of Kazakhstan have the right to the freedom of association in the form of political parties.

In a democratic society, political parties are institutions fulfilling their specific functions and, first and foremost, the function of representing interests of various social groups, thereby exercising political pluralism in society.

The main goals of a political party are forming public opinions; raising political awareness among the public; expressing public opinions on any issue related to public life; and transporting these opinions to the general public and government institutions.

At the present time, there are 10 functioning political parties in the Republic of Kazakhstan that were registered by the Ministry of Justice as prescribed by law.

The right to association is guaranteed in all major international human rights documents, including the Universal Declaration of Human Rights (Article 20), International Covenant on Civil and Political Rights (Article 22), and many UN conventions and regional documents on human rights.

A number of provisions related to the obligation to ensure the right to association are contained in OSCE documents adopted during various OSCE conferences in the past.

The Republic of Kazakhstan ratified the International Covenant on Civil and Political Rights, and when acceding to the United Nations and OSCE, Kazakhstan undertook certain commitments regarding the respect for fundamental rights and freedoms, including the right to association.

Not only do these commitments imply that the right to association will be enshrined in the Constitution and other pieces of national legislation, but we also talk about how this right is interpreted today and how this interpretation is perceived, how it is regulated, and to what extent those restrictions which are introduced are legal, justified and proportional.

Thus, we talk not only about certain political obligations to ensure the right to association, but also about how this right should be exercised under specific circumstances.
1. Legal status of public organizations in the Republic of Kazakhstan

According to Article 23-1 of the Constitution, citizens of the Republic of Kazakhstan have the right to the freedom of association. The activities of public associations are regulated by law.

If we follow strictly the meaning of the first part of this article, the Constitution guarantees, in full compliance with international law, the right to associate with other citizens for purposes of creating public associations.

However, based on the second part of Article 23-1 and Article 5 of the Constitution, there is only one type of associations which is envisaged by the law, and that is public associations whose activities should be governed by the law.

Thus, according to Article 5 of the Constitution, if public associations pursue the goals of, or work toward, a forceful change of the constitutional regime, disruption of the country’s territorial integrity, undermining the state’s security, and fomenting social, racial, ethnic, religious, clan and tribal animosity, such public associations may not be established and implement their activities. In addition, the establishment of militarized groups not prescribed by the law is also prohibited.

Similar restrictions are contained in Article 5 of the Law “On Public Associations” of 31 May 1996 (including amendments thereto), but this law, however, also prohibits the activities of those public associations which are not registered with government institutions.

For reference purposes, it is useful to take a look at the document that goes under the title of Fundamental Principles on the Status of NGOs in Europe (hereafter the Fundamental Principles), which was supported by the Resolution of Council of Europe’s Committee of Ministers on 16 April 2003.

Taking into account that essentially all European countries are members of the Organization for Security and Co-operation in Europe (OSCE), this document, in essence, determines an understanding of international standards related to the right to association as envisaged by OSCE’s commitments.

According to this document, the term “NGOs” means associations, unions, public associations, foundations, charity societies, non-commercial organizations, etc. Activities carried out by NGOs are also quite diverse, since NGOs may include small local organizations comprised of a few members, such as a village chess club, and international associations known all over the world, and in particular human rights organizations.

The Fundamental Principles provide some examples of various types of NGOs, however, this list is not exhaustive. The list does not contain trade unions and religious associations. In some countries all these structures, or some of them, are governed by the legislation on public associations, while in some other countries they are governed by separate laws. Political parties are not classified as NGOs.

As expressed in para. 4 of the Fundamental Principles, the main feature of an NGO is the fact that “NGOs do not have the primary aim of making profit.” All NGOs are characterized by self-governance and a voluntary nature of their activities.
As regards mandatory registration for NGOs, para. 5 of the Fundamental Principles seems fairly important: “NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.”

In other words, the document talks about differences between NGOs that do not wish to acquire legal personality and NGOs that have the status of a legal person. Similar to the legislation of many countries, the Fundamental Principles contain certain provisions which relate exceptionally to NGOs enjoying legal personality. However, the document recognizes a principle whereby NGOs have the right to implement their activities without acquiring this status. It is emphasized that such a provision should be contained in national legislation.

Thus, since these Fundamental Principles are shared by all European countries, all of them acknowledge that NGOs can be both formal and informal institutions. As was mentioned before, Kazakhstan’s legislation contains a prohibition on the activities of non-registered public associations, which creates certain difficulties in using some legal terms and notions.

First of all, a public association is one of organizational and legal forms of a non-commercial organization which, in turn, is one of the types of a legal person (Article 34 of the Civil Code of 1994). This is a legal status. Before a public association is registered with departments of justice, it does not exist legally. What exists is a group of individuals attempting to acquire “legal personality” of a legal person in the form of a non-commercial organization with “public association” as its organizational and legal form (form of incorporation). In other words, if a group of individuals call themselves a committee, council, club, public association, etc, this does not necessarily mean they are a public association.

Secondly, for some reason the legislation contains a prohibition on the establishment and activities of non-registered public associations only, although non-commercial organizations also include such organizational and legal forms as “institution,” “public foundations,” etc.

Thirdly, if the establishment and activities of non-registered public associations are prohibited, it is not clear whether this concerns only those organizations that are comprised of ten or more members (according to Kazakhstan’s legislation, there should be at least ten people initiating the establishment of a public association for it to be set up), or also those where the number of members is less than ten. For instance, we may argue whether or not a public committee on cleaning the yard comprised of five persons and headed by a chairperson is legal. Moreover, it is unclear how it can be determined that a particular association can already be recognized as legal if is not registered in accordance with the procedure prescribed by law.

Therefore, the following conclusion can be made. Mandatory registration of associations and legal norms on liability for their activities only because they are not registered fall short of international standards.
In this regard, to bring national legislation in line with international human rights standards it is imperative that people’s right to create or join associations and unions, including informal ones, be clearly envisaged.

To achieve this goal, a separate law on the right to association should be passed (following the example of Poland). Another way of accomplishing it may be advising parties provided for in the law to approach the Constitutional Council and request that Article 23-1 of the Constitution be interpreted as regards the right to the freedom of association in any form of both formal and informal organizations.

2. Members, organizers and founders of public associations in the Republic of Kazakhstan

The International Covenant on Civil and Political Rights which was ratified by the Republic of Kazakhstan in 2005 contains the following provision: “Everyone shall have the right to freedom of association with others […]”

The all-encompassing nature of the word “everyone” implies that the freedom of association, in essence, also covers those who are not citizens of a country in which they are staying (i.e. nationals of other states, refugees, stateless persons and repatriates).

International law recognizes a possibility of introducing some restrictions with regard to political activities of those who are not nationals of a particular state (non-citizens), which also touches upon the freedom of association. However, only those restrictions are considered acceptable which comply with the principles of political democracy, freedom and the rule of law. Therefore, a prohibition on membership of non-citizens in political parties is thus justified, since parties participate in forming national government institutions.

According to para. 15 of the Fundamental Principles, any physical or legal person, be it a citizen, a foreigner or a group of such people, should be entitled to establishing NGOs freely. At the same time, an explanatory note thereto states that there can be no grounds for restricting the right of foreign nationals to establish NGOs. Naturally, this does not refer to political parties which, as stated earlier, are not NGOs.

Thus, based on international human rights documents and international experience, we can make the following conclusion. There are no restrictions for foreign nationals, refugees, stateless persons and repatriates to establish, to be members of, and to participate in the activities of non-commercial organizations, except for some restrictions of their political activities (in particular, participation in the activities of political parties, financing election campaigns, etc). Furthermore, there are no restrictions for non-citizens in their right to manage a non-commercial organizations or its branch (representative office).
3. Registration of public associations in the Republic of Kazakhstan

As stated above, in accordance with international standards and practices in many countries of the world, NGOs can exist both with the status of a legal person and without one.

However, most NGOs prefer to acquire such a status (in the form of a non-commercial organization), since this enables them to receive tax benefits and state support, and makes it easier for them to work in general.

The Fundamental Principles say that any physical or legal person, be it a citizen, a foreigner or a group of such persons, should be entitled to creating an NGO freely. Two and more persons should have the right to establish an NGO based on the principle of membership. To acquire the status of a legal person, more members may be required; however, this should not be set at a level that would impede the establishment of an NGO. Any person should have the right to establish NGOs by bequeathing or transferring property by way of gift. As a result, a fund or a trust is normally created.

The explanatory note to the Fundamental Principles says that the issue of a minimum number of persons required for establishing an NGO was studied for a long time in the course of preparing the document, as this figure varies in the laws of different countries. In some countries, one person is enough, while other legal systems have a higher threshold with two, three, five or more persons. Finally, a decision was made to draw a distinct line between informal organizations and those organizations that wish to acquire legal personality. In the first case, two persons would suffice to establish an NGO based on the principle of membership, whereas more people may be required to acquire legal personality. However, this number should impede the establishment of an organization.

The procedure for establishing organizations with acquiring the status of a legal person varies among EU countries. Organizations may acquire the status of a legal person by way of proclaiming (stating) their establishment, notary certification of their articles of incorporation, notification of a relevant body or registration.

In Kazakhstan, the status of a legal person is obtained through registration. As far registration of non-commercial organizations is concerned, Kazakhstan’s legislation does not contain any direct prohibition on the activities of NGOs without registration (without the status of a legal person). Such direct prohibition, as was stated above, is envisaged with respect to public associations only.

However, what we have seen based on law application practices of departments of justice and prosecutors’ offices, in some cases NGOs created by a group of citizens not claiming the status of a legal person are viewed as non-registered public associations, and its founders are brought to administrative liability. Non-registered religious associations face similar problems.

Notably, Kazakhstan employs a permission-based procedure for registration of legal persons. According to this procedure, the state is obliged to register an
organization if its founders complied with all necessary legal requirements pertaining to their type of organization.

The procedure and requirements related to obtaining the status of a legal person in Kazakhstan are spelled out in the law on state registration of legal persons of 1995 and Regulations for State Registration of Legal Persons of 1999.

On the basis of the above, to bring Kazakhstan’s legislation in line with international human rights standards as regards the acquisition of legal personality by non-commercial organizations, the following steps should be taken:

- to ensure a simplified procedure for registration of legal persons in the legislation and in practice;

- to reduce the registration fee for non-commercial organizations to make it easier for them to obtain legal personality and to facilitate civil society development;

- to provide for additional rights and preferences in the legislation normally bestowed on public associations proving their regional or national status, or effacing these provisions from the law on public associations;

- to provide for at least one more organizational and legal form of NGOs without membership in the legislation, for instance a “public organization,” which will enable groups of citizens comprised of less than ten people to create NGOs without membership whose form of incorporation will be different from that of foundations or institutions.

4. Restrictions of the right to association and liability of public associations in the Republic of Kazakhstan

According to Article 5 of the Constitution, if public associations pursue the goals of, or work toward, a forceful change of the constitutional regime, disruption of the country’s territorial integrity, undermining the state’s security, and fomenting social, racial, ethnic, religious, clan and tribal animosity, such public associations may not be established and implement their activities. In addition, the establishment of militarized groups not prescribed by the law is also prohibited.

In essence, this constitutional provision is compliant with the provisions of international law.

Moreover, according to Article 39 of the Constitution, human rights and freedoms may be restricted only by law and to the extent which is necessary to protect the constitutional regime, maintain public order, and protect human rights, public health and morale. This provision is also compliant with international standards with regard to restrictions of certain human rights and freedoms.

However, if we analyze those legislative acts that regulate the right to association, we will see that they contain a fair number of restrictions related to a broad interpretation of constitutional norms, and are not compliant with such restrictions from the viewpoint of international legal theory and practice.
Article 374 of the Code of the Republic of Kazakhstan on Administrative Offences says the following: “If managers or members of a public association commit any actions above and beyond the goals and objectives determined in their articles of incorporation, or actions violating the legislation of the Republic of Kazakhstan on public associations, members of the managing board shall, upon issuance of a letter of caution, be subject to caution or a fine up to twenty-five basic monthly rates. If a public association violates the legislation of the Republic of Kazakhstan or commits the same actions again within one year after facing administrative sanctions provided for by para. 1 of this article, members of the managing board shall be subject to a fine up to fifteen basic monthly rates, and all activities of this public association shall be suspended for up to six months. If a public association commits the same actions again within one year after facing administrative sanctions provided for by para. 1 and 2 of this article, its activities shall be prohibited.”

In general, in the applicable administrative legislation public association is the only organizational and legal form or a legal person whose activities may be prohibited for repeated violations of the entire legislation on public associations.

Prohibiting the activities of any legal person is a measure of last resort, and therefore, it should proved necessary, justified and proportional both in the law and in practice.

If the goals and actions of a public association are aimed at a forceful change of the constitutional regime, disruption of territorial integrity, undermining national security, fomenting all kinds of feud, creating militarized groups, and infringement upon public health and morale, this measure, depending on how serious such violations and consequences are, may be well justified. However, any minor violations, even if they are repeated a few times, should not entail the termination or prohibition of activities.

In this regard, it would be logical to recommend that amendments be introduced in the administrative legislation to provide more details as regards administrative liability for administrative offences in the area of non-commercial organizations, including public associations, to make these norms compliant with such requirements as predictability, flexibility and efficiency and to prevent their broad interpretation.

Therefore, it is important to consider clearer wording with respect to legal and illegal goals, objectives and types of activities carried out by non-commercial organizations, and their reflection in articles of incorporations of NGOs that would be compliant with international standards on requirements to the extent of possible restrictions in this area.

Also, it is necessary to go back to the provisions of our criminal legislation as regards the liability of managers and members of public associations.

There are a number of articles in Kazakhstan’s Criminal Code providing for criminal liability for members and managers of public associations as compared to those who are not members of any public associations.

Thus, Article 336 of the Criminal Code envisages criminal liability for illegal interference of public association members with the work of government bodies.
According to the law, in this situation members of public associations face a fine or detention for up to four months, while managers of public associations may be deprived of their freedom for up to one year. Remarkably, no such articles exist in the Criminal Code for average citizens or members of commercial organizations. Apparently, if they commit such offences, they will be held liable based on such articles as “disorderly conduct” or “use of violence against a public official,” or based on a number of articles contained in Section 5 of the Criminal Code (Offences against the Constitutional regime and State Security).

In general, as far as liability of public associations is concerned, Kazakhstan’s administrative and criminal legislation should be improved to, on the one hand, eliminate inequality between public associations and other organizational and legal forms of non-commercial or commercial organizations, and on the other hand, to bring all restrictions and sanctions in line with international standards and criteria as regards the extent of such restrictions.

**Right to create and join trade unions**

The applicable legislation of the Republic of Kazakhstan allows workers to establish and join trade unions on a voluntary basis. This provision is regulated by the Constitution of the Republic of Kazakhstan, ILO Convention 87 and the Law of the Republic of Kazakhstan “On Trade Unions.”

Many large areas of economy, such as education, coal mining, metallurgy, health care, railways and communications are almost fully covered by trade unions functioning at their enterprises.

To promote intense interaction between state bodies and NGOs in the area of protecting the rights of workers, the state has created a Republican Tripartite Commission on Social Partnership and Regulating Social and Labour Relations (RTC) chaired by the Deputy Prime-Minister of the Republic of Kazakhstan.

The largest and most representative organization of workers in the country comprised of over two million trade union members is the Trade Union Federation of the Republic of Kazakhstan (TUF RK). The organization includes 26 republican sectoral trade unions, 14 oblast-level associations and a trade union association of the capital of the country, Astana. Their structures consist of more than 17,000 primary, over 530 city and regional, and 190 oblast-level trade union organizations.

Trade union organizations implement their activities on protecting social, economic and labour rights of workers irrespective of government institutions, employers and political parties.

Non-governmental organizations are becoming united quite intensely. The following organizations have been established: Confederation of NGOs of Kazakhstan (comprised of around 90 NGOs), Civil Alliance of Kazakhstan (comprised of more than 500 NGOs) and NGO Forum of Astana. Three trade union organizations have joined together (Trade Union Federation of the Republic of Kazakhstan, Kazakh Labour Confederation, Free Trade Union Confederation of Kazakhstan).
Regrettably, sometimes obstacles are created on the way of establishing trade unions.

For instance, there is an active engineering plant called JSC Asia Auto in East Kazakhstan province. The president of the plant, Mr. M, did not allow the representatives of the sectoral trade union for engineers to enter the facility in order to establish a trade union. He justified his decision by saying that his facility did not need any trade union, and that he signed a union agreement with a person representing all workers.

In practice, such union agreements signed with representatives of workers simply copy the norms contained in the Labour Code and do not improve the life of workers at all.

**RECOMMENDATIONS:**

1. To simplify the procedure for registration of public associations at the legislative level.

2. The legislation should clearly specify everyone’s right to establish or join associations and unions, including informal ones. To achieve this aim, appropriate amendments should be made in the Law of the Republic of Kazakhstan “On Public Associations.”

3. To provide for a simplified procedure for registration of non-commercial legal entities both in the legislation and in practice.

4. To reduce the registration fee for non-commercial organizations to make it easier for them to obtain legal personality and to facilitate civil society development.

5. To ensure transparent bidding procedures at the legislative level within the framework of the state’s social order for NGOs.


7. To simplify the procedures for registration, re-registration and liquidation of political parties at the legislative level.

**Right to freedom of thought, conscience and religion**

Democratic changes, gaining independence and abandoning atheism as an ideology brought considerable positive results for the development of religion in Kazakhstan. During the nineteen years of independence, the number of denominations in Kazakhstan increased from 7 to 45, while the number of religious associations grew from 671 to 4 400. The role of religion in contemporary Kazakh society has changed considerably. At the present time, it is a significant component
of social and spiritual life. It is through religion that people try to revive traditional values and moral principles.

Kazakhstan enjoys a unique experience of various religions co-existing peacefully. We may be proud of the fact that in the history of our state we have never seen any serious conflicts based on religion.

Kazakhstan is sharing this experience of different denominations co-existing peacefully and being engaged in a dialogue with the international community through a plethora of international initiatives. As a Chairman-in-Office of the OSCE in 2010, Kazakhstan opted for spreading tolerance between nations and denominations as a priority.

There are over 2,700 active Muslim communities and about 300 Orthodox Christian communities. Catholic, Protestant, Buddhist, Judaic and other communities are also quite active. Followers of Bahaiism, the International Society for Krishna Consciousness, Jehovah’s Witnesses and the Unification Church (Moon’s Church) have also registered their associations.

In December 1999 the Jewish Congress of Kazakhstan was established which attempts to facilitate the preservation and dissemination of national customs and traditions, as well as cultural and religious legacy of Jews in the country.

As of 1 January 2011, the number of religious associations in Kazakhstan totalled 4,479, while the number of temples was 3,377.

This number of religious associations and groups includes 2,756 Muslim, 303 Orthodox Christian, over 1,260 Protestant, 87 Catholic, 27 Judaic and other religious organizations.

In terms of percentage, the situation is as follows: 61.1% - Islam, 6.8% - Orthodox Christianity, 28.5% - Protestant Christians, 1.9% - Catholicism, 0.6% - Judaism and others.

Believers have the following temples at their disposal: 2,416 mosques, 269 Orthodox churches, 88 Catholic cathedrals, 6 synagogues, over 600 Protestant prayer houses and “new” religious associations (see Table 1).

They publish 38 periodicals. At the present time, 24 religious education institutions are registered in Kazakhstan, of which 8 are Muslim, 1 – Orthodox Christian, 1 – Catholic and 14 – Protestant.

In general, the religious situation in the country remains stable with no open conflicts based on religious views.

At the same time, a number of factors remain that have a negative impact on the religious situation and its development.

Kazakhstan is offering its experience of interdenominational concord to the international community. As initiated by President of Kazakhstan N. Nazarbaev, the first and second assemblies of world and traditional religious leaders were convened in Astana in 2003 and 2006 respectively.

In 2009, the third Congress of Leaders of World and Traditional Religions took place in Astana again which was attended by more than 60 delegations representing different denominations from across the globe. Famous politicians and public figures were invited as honourable guests (Israeli President Shimon Peres, UN Deputy
Secretary-General Sergei Orjonikidze, OSCE Secretary-General Mark Perren de Brishambo, Spanish Foreign Minister Miguel Angel Moratinos, ex-Prime Minister of Norway Kjell Magne Bondevik, Director of the Secretariat of the United Nations Alliance of Civilizations Marc Scheuer and others).

A high-level OSCE conference on tolerance and non-discrimination that was conducted in Astana on 29-30 June 2010 contributed greatly to discussing such issues as interaction between different cultures and religions and practical implementation of decisions reached earlier.

**Freedom of thought, conscience and religion in Kazakhstan**

Religious associations in Kazakhstan are involved in social and cultural events aimed at strengthening civil peace and spiritual concord in the country, while the leaders of the largest religious centres and associations are part of the national and small Assemblies of the Peoples of Kazakhstan, State Commission for Developing and Specifying the Democratic Reform Programme and Councils on Religious Associations.

Currently, religious traditions are undergoing active rehabilitation with new temples emerging (mosques, churches, prayer houses), as well as religious and educational centres and media outlets. Turning to religious values has become one of the aspects of reviving traditional cultural practices for the public. As estimated by experts, the number of believers in Kazakhstan has almost doubles compared to the mid-1980s.

A secular state in accordance with its Constitution, Kazakhstan guarantees free development of all religious denominations and has extensive practical experience of applying the existing legal norms and its international commitments as regards the respect for the freedom of religious association.

Kazakhstan has ratified, and bases itself on, widely recognized international acts on human rights, including the Universal Declaration for Human Rights and International Covenant on Civil and Political Rights.

Article 22-1 of the Constitution talks about everyone’s right to the freedom of conscience (freedom to choose their own views). In 1992, a Law “On Freedom of Faith and Religious Associations” was adopted which was named liberal by experts.

Kazakhstan’s legislation guarantees the right to the freedom of faith. Similar to the International Covenant on Civil and Political Rights, Kazakhstan’s legislation says that exercising the freedom to profess one’s religion and spread religious views may be limited by the legislation only for purposes of protecting public order and safety, life, health, moral, and the rights and freedoms of other citizens.

To follow the above-mentioned constitutional right stringently, the state is constantly taking measures to identify and eliminate any violations of the law in this area, and to restore the rights of believers irrespective of their faith.

To carry out the state policy in the area of religion aimed at developing an interdenominational dialogue and improving Kazakhstan’s model of ethnic and denominational concord promoting the unity of peoples living in the country, two
programmes were approved which are coordinated by the Committee on Religions under the Ministry of Culture of the Republic of Kazakhstan.

A simplified mechanism for registering religious associations which was introduced in 2004 and the state’s tax policy aimed at exempting religious associations from profit tax and church fees promote free development of religious organizations registered in Kazakhstan.

In July 2006, the President of Kazakhstan signed a Decree on approving the Civil Society Development Concept for 2006-2011. The goal of the concept is further improvement of the legislative, social, economic, organizational and methodological basis for a comprehensive development of civil society institutions and their equal partnership with the state in accordance with international legal instruments within international treaties and covenants on human rights and human dimension. According to the concept, civil society institutions also include religious associations. The key issue of interaction between government and civil society institutions is ensuring the freedom of faith and the right to association.

The Organization for Security and Co-operation in Europe, United Nations and other international organizations provided a number of positive responses as regards the effective model of civil peace and concord in the country.

The model of interdenominational concord in Kazakhstan was highly acclaimed by Pope John Paul II during his visit in 2002 and leaders of various religious groups who came to Kazakhstan to participate in the assemblies of world religious leaders.

Notably, the right to the freedom of thought, conscience and religion in Kazakhstan is enshrined in Article 22 of the Constitution: “1. Everyone shall have the right to freedom of conscience. 2. The right to freedom of conscience must not specify or limit universal human and civil rights and responsibilities before the state.” Article 39-1 of the Constitution reads as follows: “Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population.”

Furthermore, according to para. 3 of Article 39 of the Constitution freedom of conscience is reckoned among those rights and freedoms which should not be subject to restriction under any circumstances.

The right to the freedom of conscience and faith in Kazakhstan is governed by the Law “On Freedom of Faith and Religious Associations” (hereafter the Law on Freedom of Faith), Civil Code and other legislative acts.

The total number of regulatory and legal acts that affect, in one way or another, the exercise of the freedom of conscience and religion, equals to approximately one hundred documents.
### Number of religious associations, missionaries and temples in the Republic of Kazakhstan as of 30 December 2010

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<th>Name of denomination</th>
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<td>foreign</td>
<td>number of</td>
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<td>person or branch</td>
<td>group</td>
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<td>Total Denominations that emerged in the 19th and 20th centuries</td>
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<td>Unification Church (Moonies)</td>
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<td>1) Evangelical Christian Church (Christian Disciples)</td>
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<td>2) Church of God (Children of God)</td>
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<td>1</td>
<td></td>
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<td>3) Sun Bok Ym</td>
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<td>3</td>
<td>9</td>
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<td>4) Union of Christians of Evangelical Faith</td>
<td>20</td>
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<td>1</td>
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<td>14</td>
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<td>5) Assembly of God</td>
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<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
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<td>6) and others</td>
<td>29</td>
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<td>8</td>
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<td><strong>2</strong></td>
<td><strong>11</strong></td>
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<td>3) Hope Mission</td>
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<td>4) Emmanuel Mission</td>
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<td>6) Kosin Mission</td>
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<td>7) Salvation Mission</td>
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<td>8) Zion Mission</td>
<td>4</td>
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<td>9) Kore Church</td>
<td>1</td>
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<tr>
<td>10) Galbori Church</td>
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<td>11) Onsezan Church</td>
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<td>12) and others</td>
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<td>3) Gospel Church</td>
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<td>4) Harvest Church</td>
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<td>5) Living Word Church</td>
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<td>6) Vefil Church</td>
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<td>7) Complete Gospel Church</td>
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<td>8) Revival Mission</td>
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<tr>
<td>10) Love Church</td>
<td>10</td>
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<td>11) Korean-American Mission in Kazakhstan</td>
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</tr>
<tr>
<td>12) Free Evangelization Youth Church</td>
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<td>13) Shapagat Church</td>
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<td>14) and others</td>
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<td><strong>Total:</strong></td>
<td><strong>343</strong></td>
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**BUDDHISM**

| 24 | Tibetan Buddhism Centre | 2 | 1 | 1 |
| 25 | Won Buddhism and others | 3 | 3 | 1 | 1 |

**JUDAISM**

| 26 | Judaic communities | 28 | 28 | 3 | 5 |

**Non-traditional religions**

| 27 | Baha’i faith | 19 | 19 | 2 |
| 28 | International Society for Krishna Consciousness | 12 | 10 | 2 | 2 |
As identified in the course of monitoring, religious associations, small religious groups and missionaries that are active in Kazakhstan mostly comply with the applicable law, and their activities promote stronger interdenominational concord in society.

In 2010, the main types of activities carried out by religious associations were acts of worship, prayer meetings and missionary work.

Within Kazakhstan’s chairmanship in the OSCE, in 2010 prosecutors’ offices were taking additional measures on protecting, and preventing the violation of, the rights of believers, and were carrying out explanatory work when detecting breaches of the law.

For instance, on 28 January 2010 the prosecutor’s office of the Syrym region in West Kazakhstan province were able to find out that the regional police had illegally taken the fingerprints of six persons belonging to an unregistered group, International Council of Evangelical Christian Baptist Churches (hereinafter the ICECBC), and seized their religious materials.

Following a petition of the regional prosecutor’s office and based on the Order of the chief of the regional police unit (internal affairs department), Ref. No. 31, of 29 January 2010, three policemen were reprimanded, and the religious materials that had been seized illegally were returned to the community.

Following an illegal inspection of a small-sized religious group, Rakym, and untimely consideration of an application by N. Nuralinov about the registration of this group, on 26 February 2010 the prosecutor’s office of the Ayaguz region in East Kazakhstan province sent a petition to the akim of the region asking to redress the situation.

In this regard, following the Order of the akim of the Ayaguz region, Ref. No. 548, of 10 March 2010, the chief specialist of the internal policy department working in the above-mentioned regional akimat, R. Kairbaeva, was brought to disciplinary liability in the form of admonition.

Also, on 10 February 2010 the Prosecutor-General’s Office submitted a petition to the Supreme Court of the Republic of Kazakhstan asking to reverse the judicial acts on bringing T. Yarach and J. Kikot, members of the Governing Body of Jehovah's Witnesses, to administrative liability in accordance with Article 375-3 of the Code on Administrative Offences for preaching the Bible in front of believers in Almaty.

The petition was submitted based on the fact that the actions of the above-mentioned persons did not contain any elements of the specified offence, since they

On 17 March 2010 the Supreme Court considered the petition, and the judicial acts against these individuals were reversed.

Moreover, as protested by the Prosecutor-General’s Office, on 17 March 2010 the Supreme Court of the Republic of Kazakhstan reversed a judicial act of the Kazalinsk regional court in Kyzylorda province of 20 January 2010 on bringing Ms. Raudovich to administrative liability as per Article 374-1 of the Code on Administrative Offences and subjecting her to a fine totalling 100 basic monthly rates for chairing a non-registered community of the ICECBC.

When submitting their petition, the Prosecutor-General’s Office took into account a rigorous financial standing of Ms. Raudovich, since the only source of income in her family was the wages of her husband, Mr. B.J., who was working as a guard. Also, they considered the fact that she was raising seven underage children, and took into account the circumstances under which the offence was committed. At the same time, they did not dispute the classification of actions committed by Ms. Raudovich in their petition.

In general, in 2010 prosecutors’ offices submitted around 400 explanatory notes to persons who had violated the law which were, for the most part, illegal missionary activities and religious activities without registration in government bodies.

At the same time, breaches of the law were identified in the activities of religious associations and missionaries, for which all perpetrators were brought to justice as prescribed by the law.

Thus, following the suits of prosecutors, five inactive religious associations were liquidated and the activities of two religious associations were suspended in a judicial manner.

For instance, following a suit of the prosecutor’s office in Aktobe, a decision was reached by the specialized inter-district court of Aktyubinsk province of 7 May 2010 to suspend the activities of a religious association called Mechet Fatiha (Fatih’s Mosque) for three months for disregard of tax legislation.

In 2010, prosecutors’ offices were able to discover cases of illegal missionary activities. Such acts were committed by persons belonging to non-registered communities of the ICECBC and Tabligi Jamaat.

**Missionary activities**

The Law on Freedom of Faith defines missionary activities as “preaching and disseminating religious views by way of religious and educational activities which are not contained in the constitutional provisions of a religious association functioning on the territory of the Republic of Kazakhstan” (para. 2 Article 1-1). Article 4-1 of the Law reads as follows: “Citizens of the Republic of Kazakhstan, foreigners and stateless persons (hereinafter the missionary) shall implement their missionary activities on the territory of the Republic of Kazakhstan upon
registration. Carrying out missionary activities without registration shall be prohibited.”

On 1 March 2010, new visa regulations were introduced in Kazakhstan approved by a joint Order of the Ministry of Foreign Affairs and Ministry of the Interior (hereinafter the Regulations). The Regulations determine a new type of a visa called a “missionary visa” which is granted upon producing an invitation from a religious association registered on the territory of the Republic of Kazakhstan and coordinated with a relevant body on religious associations. Visas can be single-entry, double-entry and multiple-entry and cannot be extended which, in our opinion, should be rectified as per Article 39 of the Constitution, the International Covenant on Civil and Political Rights and other international human rights acts ratified by Kazakhstan.

RECOMMENDATIONS:

1. To improve the Law of the Republic of Kazakhstan “On Freedom of Faith and Religious Associations” and law application practices in the area of religious relations and bring it in line with the International Covenant on Civil and Political Rights and OSCE commitments undertaken by the Republic of Kazakhstan.

2. The Regulations on Visa Issuance approved by a joint Order of the Ministry of Foreign Affairs and Ministry of the Interior should be brought in compliance with the Constitution of the Republic of Kazakhstan and international human rights acts ratified by Kazakhstan.

Right to freedom of peaceful assembly and meetings

Freedom of peaceful assembly in the Republic of Kazakhstan is guaranteed by Article 32 of the Constitution: “Citizens of the Republic of Kazakhstan shall have the right to assemble peacefully and without arms, hold meetings, rallies and demonstrations, street processions and pickets. The use of this right may be restricted by law in the interests of state security, public order, protection of health, rights and freedoms of other persons.”

In addition, Article 39 of the Constitution says: “1. Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population.”

Freedom of peaceful assembly in Kazakhstan is regulated by applying the Law of the Republic of Kazakhstan of 17 March 1995 “On the Procedure for Organizing and Conducting Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan” which was amended on 20 December 2004 (hereafter the Law).

Some norms related to the legal regulation of the freedom of peaceful assembly in the Republic of Kazakhstan are laid down in the Law of the Republic


Finally, Article 373 of the Code on Administrative Offences (hereinafter the COA) and Article 334 of the Criminal Code contain sanctions for violating the law on the procedure for organizing and conducting peaceful assembly, meetings, marches, pickets and demonstrations in the form of fines and administrative detention up to fifteen days, and deprivation of freedom for up to one year.

In 2010, 359 different campaigns were registered in Kazakhstan in general (in 2009 – 373 campaigns) with the total number of participants around 70,000 people, of which 171 campaigns were illegal (in 2009 – 160 illegal campaigns) with over 53,000 people participating.

Some of the causes of the above-mentioned unauthorized meetings included dissatisfaction of some people with their social and economic status, land and housing issues, mortgage loans, salaries and wages, and others.

In the reporting period, the main hotbeds of public discontent were observed in Astana and Almaty, and Mangystau, Atyrau, Akmola, East Kazakhstan and South Kazakhstan provinces.

The right to the freedom of assembly is enshrined in Article 32 of the Constitution. The procedure for organizing and conducting peaceful assemblies is governed by the Law “On the Procedure for Organizing and Conducting Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan” (hereafter the Law).

This law is aimed at creating conditions for exercising constitutional rights and freedoms, ensuring public security and order during such campaigns on the streets, in the squares and in other public areas.

During mass street protests, a special attention is paid to compliance with the law and maintenance of order, as well as containing the causes and sources of such events as expeditiously as possible with looking for ways and mechanisms of their legal resolution.
In case of unauthorized events, prosecutors’ offices take immediate measures to explain the norms of the applicable law and bring all those guilty to justice as prescribed by the law, including to administrative liability pursuant to Article 373 of the COA.

Criminal liability is envisaged as per Article 141 of the Criminal Code for any direct or indirect restriction of individual rights and freedoms based on beliefs, affiliation with public associations, or based on any other circumstances.

In 2010, no single person was brought to criminal liability for violating the procedure for conducting assemblies.

As Kazakhstan is becoming, by leaps and bounds, part of the international community, a special attention is paid to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly as of 2007.

Over the last two years, not a single participant of assemblies has suffered as a result of actions by law enforcement officers. Only 24 meetings were terminated following most egregious violations of the procedure for conducting such meetings.

Article 12-5 of the Constitution says that the “exercise of a citizen’s human rights and freedoms must not violate rights and freedoms of other persons, infringe on the constitutional system and public morals.”

At the same time, it is incumbent on internal affairs bodies to protect public order and safety of citizens during mass street events, to suppress any unauthorized gatherings and to bring their organizers and most active participants to administrative liability (Article 373 of the COA “On Violating the Legislation on the Procedure for Organizing and Conducting Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations”).

One of the prerequisites of ensuring public order and safety during mass street protests is clear regulation of the procedure for organizing and conducting assemblies, as well as actions that can be undertaken by government officials and local self-governance bodies to prevent and to suppress any possible violations, and to bring all those behind them to justice.

In 2010, as many as 236 persons were brought to administrative liability for breaking the norms of Kazakhstan’s applicable law.

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As shown by observations by human rights NGOs, including the monitoring carried out by the public foundation Charter for Human Rights, law application practices are far from being perfect, and they should be improved drastically.

Thus, the following problems have been identified:

1. Freedom of assembly is interpreted by local authorities as a collective right which contravenes the Constitution and international standards. As a result, a citizen does not enjoy any individual freedom of peaceful assembly.

2. Courts fail to apply the principle of proportionality regarding the restriction of the freedom of peaceful assembly when dealing with complaints against refusals to allow holding an assembly, and when considering administrative cases of individuals charged with violating the law on freedom of assembly.

3. It is not always that law enforcement agencies, when arresting street
protestors, are guided by real threats, which leads to a high number of individuals arrested without any grounds. Arrests are often carried out based solely on suspicions that a person has an intention to take part in an assembly.

4. By their behaviour, law enforcement agencies instill uncertainty and unpredictability in citizens. Oftentimes, when assemblies are about to be terminated forcefully, the police do not warn the participants about their actions.

5. When considering applications on peaceful assemblies, local authorities tend to apply extreme measures in the form of refusals, which are often based on formal grounds. Quite often they disregard the possibility of requesting additional information from applicants and entering into negotiations with organizers regarding their meeting.

On the basis of the above, the Human Rights Commission under the President of the Republic of Kazakhstan deems it expedient to improve the legislation of the Republic of Kazakhstan on peaceful assembly.

RECOMMENDATIONS:

1. To amend the Law of the Republic of Kazakhstan “On the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations” or to formulate a new draft law on freedom of peaceful assembly in compliance with international standards.

2. To conduct regular workshops and training courses for internal affairs bodies (police) and local executive bodies on such issues as peaceful assembly and demonstrations in light of international standards.

Right to freedom of speech and information

The Constitution of the Republic of Kazakhstan guarantees freedom of speech and creativity, prohibits censorship, and enshrines everyone’s right to receive and disseminate information by any means not prohibited by law.

At the same time, there are certain restrictions accepted in international practice. Para. 3 Article 20 of the Constitution prohibits the incitement to, and spreading the ideas of, the forceful change of the constitutional regime, disruption of the country’s territorial integrity, undermining national security, war, social, racial, ethnic, religious, clan and tribal supremacy, as well as the cult of cruelty and violence.

The above-mentioned freedoms, rights and restrictions are also reflected in Article 2 of the Law of the Republic of Kazakhstan “On Mass Media.”

The mass media are one of the most important instruments as regards the exercise of individual rights and freedoms.

In recent years, Kazakhstan has seen dramatic changes with respect to media activities. In particular, the media sector has been denationalized. Currently, around **85% of all media in the country are private.**
Such newspapers as *Vzglyad, Svoboda Slova, Vremya, Jas Alash* and other publications are circulated freely across Kazakhstan. Journalists working in these media outlets are accredited to central and local government offices.

Market-based reforms have led to both quantitative and qualitative growth of the media. In terms of how fast the media develop, Kazakhstan has far outstripped many countries in Central Asia and the Caucasus. Kazakhstan’s leadership in terms of media infrastructure development is proved by Eurasian media forums which are held in the country annually.

However, there are cases when the right to freedom of speech is subject to restrictions. As asserted by some NGOs, there are cases when the right to freedom of speech is violated in Kazakhstan. Some media representatives fall victims of corporal injuries.

In 2010, there were no cases of terminating or suspending the work of Internet resources in accordance with judicial decisions.

On an annual basis, the Information and Archives Committee under the Ministry of Communication and Information receives about 700 applications from the media seeking registration. To be registered, owners must produce four documents: 1) application on media registration; 2) copy of the owner’s state registration certificate; 3) copy of the owner’s articles of incorporation; 4) state fee payment receipt (five basic monthly rates or 50 USD).

The Law “On Mass Media” clearly outlines all grounds based on which the owner may be refused registration. An authorized body may refuse registration in case of identical media titles on the territory of circulation, or in case an application is not compliant with the applicable Law.

Periodic printed publications should receive their media registration certificate within fifteen calendar days.

Thus, the registration procedure is not onerous for media development.

Moreover, an amendment to the Law “On Mass Media” helped remove superfluous administrative impediments. In Article 10 of the new version of the Law “On Mass Media,” registration of TV and radio broadcast organisations has been removed. Also, re-registration of media outlets in case of changing their office or editor’s address has been cancelled. The media registration procedure is aimed at ensuring the country’s national security.

Furthermore, according to international experience, the media registration procedure has its own peculiarities in various countries. In Europe, registration of the printed media is practiced in *France, Sweden, Poland, Moldova, Latvia*. It is also used in some CIS countries such as *Russia, Azerbaijan, Ukraine, Belarus* and *Kyrgyzstan*. For instance, in France media outlets should be registered by prosecutors’ offices. In Poland it is the prerogative of courts, while in Sweden a publication licence is issued by a government body. In post-Soviet countries, registration of the printed media is carried out by authorized bodies.

Thus, the media registration procedure used in Kazakhstan does not contravene international standards.
Kazakhstan is taking measures aimed at developing its own segment of the Internet. An important avenue for combating information inequality is Internet development. In this area, one of the top priorities for Kazakhstan is expanding access to the world wide web. To achieve this aim, the state is taking measures to cover more people with access to the Internet and to develop information technologies.

To ensure proper access of remote areas to communication channels and providing Internet services, efforts are underway to develop communications in villages. A wireless connection network based on CDMA technologies within the range of 450 MHz is being currently installed. As regards the development of the CDMA radio access network, it is expected to increase network coverage from 59% in 2009 to 100% in 2012.

Pilot projects were launched in Kostanay and Aktyubinsk provinces. Currently, around 1 560 villages are covered by the CDMA 450 wireless connection system.

Attention is paid to improving the legal underpinnings for developing Kazakhstan’s segment of the Internet. This has been caused by the need to identify the rules of the game for all participants to follow. In this regard, in 2009 the Law “On Amending Some Legislative Acts of the Republic of Kazakhstan on Issues of Information and Communication Networks” was adopted.

As shown by the results of a comparative study, the Law of the Republic of Kazakhstan “On the Internet” is liberal and is aimed, for the most part, at preventing the spread of illegal information in Kazakhstan’s segment of the world wide web. It should be mentioned that only courts have the right to identify whether or not such information is illegal.

If we talk about classifying Internet resources as the media, it is worth mentioning that since the adoption of the Law of the Republic of Kazakhstan “On Mass Media” in 2001 websites have been treated as the media. In the above-mentioned Law, the term “website” has been replaced by “Internet resource,” while the criteria for classifying certain means of disseminating information as the media remain intact. In other words, to be classified as the media, they should be a form of periodic or continuous dissemination of mass information. At the same time, Internet resources do not become the media in the full sense of the word, as they are not registered with authorized bodies, and no licence should be issued to them. Internet resources are treated as the media of this type in many countries of the world, including some OSCE participating states (e.g. Poland, Austria, Russia).

Any responsibility for posted information, including illegal information, is imposed on the owner of a particular resource. The adopted Law helps make the relations between various participants of Kazakhstan’s online resources more civilized.

Also, the amendments that were adopted help settle different Internet conflicts before they are taken to court and prevent cyber-crimes.
Thus, by passing the Law it became possible to create an effective mechanism of self-regulation for Kazakhstan’s segment of the Internet. Since the Law “On the Internet” was adopted, there has been no single case of shutting down Internet resources, or any other restriction on the dissemination of information.

One of the important components in ensuring the constitutional right to access to information is **access to public information**.

In its Law Drafting Plan for 2010-2011, the Government of Kazakhstan scheduled the development of a draft law “On Information and Protection of Information.” According to the concept of this draft law, it was supposed to target not only access to information, but also different protection mechanisms thereof. However, during a series of discussions with civil society activists, it was decided that a priority should be the formulation of a special law regulating access to information.

As a result, at the meeting of the Inter-Agency Commission on Law Drafting under the Government of Kazakhstan which was held in September 2010, a decision was made to move away from developing a separate law on information and its protection, confining these efforts to amending the applicable law.

In parallel, an initiative group comprised of Members of Parliament and NGO activists formulated a draft law “On Access to Public Information” based on international experience. This draft law was presented and approved during public hearings, and as a result, the Parliament was recommended to put forward the development of a draft law with the same name as a legislative initiative.

In the future, Kazakhstan will continue working consistently toward creating conditions for the media, freedom of speech and access to information to develop freely.

**Review of defamation legislation in other countries**

The term “defamation” is derived from the Latin word “diffamatio” which has the root “fama” meaning “reputation.” The English word “defame” which means “damage the good reputation” is derived from this Latin word. Today, the term “defamation” is still used in most countries with Romano-Germanic and Anglo-American law, but these days it is meant to indicate “libel” or its various types.

Such issues as ensuring the right of every person to privacy and protection of honour and dignity has always been of paramount importance.

In this regard, one of the most frequently discussed topics is actions of OSCE participating States aimed at bringing their national legislation in line with the standards spelled out in the International Covenant on Civil and Political Rights.

A strategic OSCE benchmark on this issue is achieving absolute decriminalization of libel and defamation.

In some countries, criminal punishment is envisaged by defamation legislation.

In particular, the Criminal Code of Poland contains special norms regarding this issue. For instance, according to Article 212 of the Polish Criminal Code,
simple libel is punishable by restriction or deprivation of freedom for up to one year.

For libel and defamation in the media, the Polish Criminal Code provides for sanctions in the form of a fine, or restriction or deprivation of freedom for up to two years. The Polish Criminal Code contains sanctions for public offence of a public official while carrying out their work duties (or related to their work duties), and also for insulting or humiliating the country’s constitutional body.

If someone insults the President of Poland in public, they may face up to three years of imprisonment. Criminal punishment is also envisaged for insulting the religious feelings of other people, public sacrilege with respect to items of worship or areas designated for public religious rituals.

Also, more rigorous liability is envisaged in Poland for insulting publicly a person or a group of people in relation to their ethnic, racial or religious belongingness, or their atheistic views.

According to criminal legislation in Spain, accusing someone of committing a crime is considered as libel in case a person doing it knows that this information is false.

According to Article 210 of the Spanish Criminal Code, public insult called “serious” is also qualified as an offence.

Those guilty of spreading libel among a large number of people may face deprivation of freedom from six months to two years, or a fine.

The veracity of defamation cases in France is determined in compliance with the law on freedom of the press. From the viewpoint of the French law, defamation implies accusations and false statements derogating from the honour and dignity of physical persons.

Non-public insult of a person preceded by provocation may be regarded as a criminal act in France.

Sending or delivering messages to a recipient’s home address may, if outraging all decency, be punishable by a fine.

Legal persons may also be brought to criminal liability for defamation as prescribed by the French law.

In France both physical and legal persons are brought to criminal liability for public and non-public defamation and insults of racial and discriminatory nature.

French criminal legislation also envisages punishment for false denunciation (providing false information about someone to the authorities – Translator’s note). In particular, providing false accusatory information about a public official from a judicial agency or those working in the judicial or administrative police, or a body authorized to carry out criminal prosecution, may be punishable by five years of imprisonment and a fine in the amount of 300 000 francs.

All charges against an informant should be considered exclusively by a court of law.

The French Criminal Code envisages liability for an insult expressed through words, gestures, threats, non-published materials or images of any sort, or for an insult by way of sending any items by mail to a civil servant while they carry out
their work duties, or in relation to their work duties, if this insult may tarnish their dignity or may derogate from the respect with which the person should be treated due to obligations imposed on them.

The German Criminal Code envisages a number of various offences which have to do with the deliberate spreading of false information. In particular, for insulting other people, a person may face deprivation of freedom for up to one year or a fine. If such an insult takes the form of an action, it may be punishable by deprivation of freedom for up to two years. Slander is also regarded as a criminal offence.

The section on libel in the German Criminal Code says the following: “Those who deliberately state or spread false information about other people that discredits these people or derogates from their dignity in the eyes of the public, or if this information is not proven to be true, shall be subjected to deprivation of freedom for up to two years or a fine. If an act is committed publicly or by way of disseminating written materials, perpetrators shall be subject to deprivation of freedom for up to two years or a fine.”

The German Criminal Code provides for liability for disseminating false information, either publicly or in writing, besmirching the name of a political figure in relation to his/her civil service. A person found guilty of this offence may face deprivation of freedom from three months to five years. Any propaganda against the Bundeswehr in Germany is also regarded as a criminal offence. All issues related to the media as regards the provision of information to the public and shaping the public’s opinion are handled by the German Press Council. The same body considers complaints against publications or actions of media representatives.

In Norway the main legal document governing the responsibility for providing information in the media is the Media Act, according to which physical and legal persons are entitled to dispute information published or broadcast on the radio and/or TV in the media and the Media Appeals Council in case such information is not presented appropriately or is false.

In Italy the issue of liability for defamation in the media is also considered through the prism of criminal law. For libel and derogating from someone’s reputation in the media a person may face deprivation of freedom from six months to three years, or a fine.

The term “defamation” in the British law system may imply either libel, or a published false statement in a written form, or slander which is expressed verbally. Today, there are two main pieces of legislation in the United Kingdom in this area, which are the 1996 Defamation Act and 1819 Criminal Libel Act.

Libel is treated within the Criminal Libel Act if it is blasphemous, disruptive, or aimed at inciting a riot, or contains obscenities. Hypothetically, the same media outlet in this country may be subject to both administrative and criminal justice, while its owner may be imprisoned and face a fine for the damage caused at the same time.

However, in practice the above-mentioned norms of British criminal law are almost never applied.
According to Article 300 of the Canadian Criminal Code, everyone publishing discrediting information which is deliberately false is found guilty of committing a criminal offence and should be punished with imprisonment for up to five years.

According to Article 301 of the Canadian Criminal Code, everyone publishing discrediting information besmirching someone’s name is found guilty of committing a criminal offence and should be punished with imprisonment for up to two years.

The way media defamation is regulated in the US is significantly different from European practices. Criminal liability for defamation in American legislation does not exist. At the same time, a priority is given to protecting the constitutional rights of national media outlets to access and spread information. A distinct feature of the American defamation law is the fact that the burden of proof always lies with a claimant who should prove the guilt. At the same time, the “degree of guilt” depends on whether a claimant is a public official, public figure or just a citizen.

Furthermore, American law contains a concept of the so-called defamation privileges. Therefore, false statements in the press regarding court or legislative proceedings are exempt from liability for defamation. It is worth mentioning that in this case they try to protect the constitutional right of the media to cover such official proceedings in order to inform the public as much as possible.

In some states within the US they have so-called agency privileges which help the media publishing materials prepared by information agencies avoid liability for libel in the media.

By defamation, the American law system means a statement that is deliberately false, derogates from a person’s reputation, and encourages other to condemn or hate this person, or causes damage to someone’s business. If defamation is presented in a written form, it is called libel, and if is expressed verbally it is called slander.

Time limitations for defamation cases in this country are around one year from the moment of publishing derogatory materials in the media.

At the same time, most of the states have so-called disclaimer acts whereby a claimant may submit a written request to the media asking to disclaim certain information within thirty days after it was published.

**RECOMMENDATIONS on bringing Kazakhstan’s legislation in line with international accepted UN and OSCE standards as regards the right to freedom of speech and to receiving and disseminating information:**

1. To exercise the constitutional right to receive information to the full extent, it is important to expedite the adoption of the Law “On Access to Public Information.”

2. To continue working on decriminalizing libel and insult at the legislative level, and envisaging civil liability for such acts.

3. To provide for the statute of limitations as regards cases on protecting honour and dignity. The state fee in such disputes should be made harmonious with
the amount which is required to compensate for moral harm. The upper limits of such compensation should be regulated, while the media should be exempt from liability for causing moral damages unintentionally.

4. It is important to differentiate liability for violating personal non-property rights and business reputation, and to identify that only independent legal person involved in economic activities may possess business reputation.

5. Seizure of published materials or equipment, or suspending the activities of the media as punishment for procedural violations is unacceptable and falls short of international standards. Media activities should be suspended only if ruled so by the court of law.

6. To eliminate the negative impact of the cult of cruelty on legal awareness of the coming generation, to regulate the showing of films, including videos, that contain scenes of violence, cruelty and murder at the legislative level.

Right to participate in public affairs (free and fair elections)

The right to participate in public affairs and the right to elect and to be elected into government bodies and local self-governance bodies are anchored in Article 33 of the Constitution, and also in Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights.

The Head of State, Members of Parliament and executive bodies are elected by people. The President, Members of the Mazhilis of the Parliament and maslikhats are elected based on the equal and direct electoral right through secret ballot. Members of the Senate of the Parliament are elected based on the indirect voting right through secret ballot.

Citizens of the Republic of Kazakhstan who have turned eighteen years old have the active right to vote, regardless of their origin, social status, position, property, gender, race, ethnicity, language, attitude toward religion, views, place of residence and any other circumstances.

According to para. 3 Article 33 of the Constitution, those deemed incapable by the court, as well as persons kept in places of deprivation of freedom following a court’s ruling, do not have the right to vote and be voted for, or to take part in national referenda. According to para. 4 Article 4 of the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” (hereinafter the Election Law), a person with prior conviction that has not been cancelled or removed as prescribed by the law may not run in presidential elections, parliamentary elections (including based on party lists) and elections of maslikhats and other local self-governance bodies as a candidate.

The Constitution provides for residence qualification, age requirement and a number of other requirements for those claiming elective posts.

Those running in presidential elections should be citizens of the Republic of Kazakhstan by birth, should not be under 40 years old, should speak the state language fluently and should reside in Kazakhstan for the past fifteen years.
A Member of Parliament should be a person who is a national of the Republic of Kazakhstan and has resided on the territory of Kazakhstan over the past ten years. A Member of the Senate of the Parliament may be a person who has reached 30 years of age, who has a University degree and at least five years of experience, and who has resided on the territory of a particular province, city of national status or the capital for at least three years. A Member of the Mazhilis of the Parliament should be a person who has turned 25 years old.

A member of maslikhat should be a person who has reached 20 years of age.

It is worth mentioning that for ensuring the active right to vote it is necessary to improve voting conditions for people with disabilities. This involves the installment of ramps at polling stations, using special ballots for the visually impaired, and applying new technologies for the disabled to take part in the elections. In this regard, it would be useful to study the experience of other countries (first of all, the United States and EU countries) and to pass necessary legislation for ensuring their full participation in the electoral process.

Requirements for those claiming elective posts are laid down in the Constitution, Constitutional Law “On Elections in the Republic of Kazakhstan” and other laws of the Republic of Kazakhstan.

According to the established electoral cycle, no regular elections were held in 2010.

According to para. 2 Article 101 of the Constitutional Law “On Elections in the Republic of Kazakhstan,” on 28 March and 31 October 2010 local elections of members of maslikhats were held in the regions (to replace those who left). In total, as many as 115 deputies were elected in 2010, including 17 oblast-level, 12 municipal and 86 regional members of maslikhats.

Early resignation of members of maslikhats was caused by the following: election or appointment to a post which, in accordance with the applicable law, is not compatible with the duties of a maslikhat member (32 persons or 27.8%); leaving for permanent residence outside a particular administrative and territorial unit (42 persons or 36.5%); personal resignation (16 persons or 13.9%); death (20 persons or 17.4%); regular failures to fulfill the duties (2 persons or 1.8%).

Oblast-level, municipal and regional election commissions, as well as 115 constituency and 562 precinct election commissions took part in conducting the elections.

All relevant territorial election commissions were fully supplied with all necessary methodological and regulatory materials. The elections were financed from the budget.

In general, the election campaign was held as required by the election law. The local media published, in a timely manner, information about the boundaries of constituencies and precincts and composition and location of territorial, constituency and precinct election commissions. Efforts were taken to fill vacancies in election commissions and to clarify voter lists.

Candidates were nominated and registered in accordance with the approved calendar of planned activities.
In the course of the maslikhat election campaign, 316 candidates were nominated and 256 candidates were registered, which includes 36 oblast-level, 191 regional and 29 municipal maslikhats. Of all those registered, 140 candidates (54.6%) nominated themselves, 114 (44.5%) were nominated by the Nur Otan Party, and 2 (0.9%) were proposed by public associations.

Voting was taking place in 562 polling stations. In total, 496,226 voters were added to voter lists, of who 390,231 (78.6%) took part in the election. Compared to 2009, voters were more active in all provinces. Members of maslikhats who were elected include the following:
- members of the Nur Otan Party – 115 (100%)
  - men – 97 (84.3%)
  - women – 18 (15.7%)
- persons with a University degree – 105 (91.3%)
- those with specialized secondary education – 7 (6.1%)
- those with secondary education – 3 (2.6%)
- staff of akim and maslikhat offices – 8 (7%)
- public officials – 51 (44.3%)
- representatives of commercial organizations – 55 (37.4%)
- representatives of political parties and NGOs – 8 (7%)
- pensioners – 1 (0.9%)
- others – 4 (3.5%).

As many as 1,571 candidate proxies, representatives of political parties, public associations and the media were observing the voting and counting of ballots.

According to the Resolution of the Central Election Commission of the Republic of Kazakhstan, a Member of the Senate of the Parliament from Kostanay province was elected on 23 April 2010 (to replace the one who left).

During the election campaign, two candidates were nominated and registered by the Kostanay Province Election Commission on 1 April. Their last names were put in the ballots.

Voting, the counting of ballots and announcement of the results were handled by the Kostanay Province Election Commission in one day (23 April). The turnout was 95.7%.

Of 300 voters added to voter lists, 287 persons took part in the elections (95.7%).

23 candidate proxies and representatives of political parties, public associations and the media were observing the voting and counting of ballots.
265 voters (92.7%) voted for J. Nurgaliev and 21 voters (7.3%) voted for A. Muratov. One ballot was considered invalid.

In general, election campaigns were held in compliance with the election law. No complaints or applications were submitted to the Central Election Commission thereupon.


In particular, amendments were introduced in Article 53 of the Constitutional Law of 28 September 1995 “On Elections in the Republic of Kazakhstan” whereby the First President of the Republic of Kazakhstan was given the status of the Leader of the Nation.

Currently, efforts are underway toward further improvement of the election legislation. In particular, the Central Election Commission cooperates, on a regular basis, with international organizations, political parties and public associations in the Republic of Kazakhstan on this issue. The main purpose of these activities is perfecting the electoral process in the Republic of Kazakhstan and bringing it in line with internationally accepted standards.

The Central Election Commission closely collaborates with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on improving the election legislation in the Republic of Kazakhstan. Recommendations put forward in the following six basic documents have been discussed with the OSCE/ODIHR:

- final observation reports on the 1999 and 2005 presidential elections;
- final observation reports on the 1999, 2004 and 2007 parliamentary elections;

In total, the above-mentioned documents contain 161 recommendations, of which 54 are repetitive (duplicating). Thus, 61 out of 107 recommendations have been already integrated in Kazakhstan’s legislation and implemented in practice.

A number of recommendations are being currently discussed as for their possible implementation.

Some recommendations by the OSCE/ODIHR have been implemented at the level of resolutions issued by the Central Election Commission.

23 recommendations cannot be accepted by Kazakhstan for a number of reasons, including the following: they contravene the Constitution; they worsen the status of parties to the electoral process; they are not in line with the political situation in the country; or they are not compliant with the requirements laid down in other international documents to which Kazakhstan acceded.
Examples of such recommendations include the following: removing restrictions on nominating candidates for Mazhilis elected based on party lists which belong exclusively to political parties; depriving the President of the right to apply to the Constitutional Council regarding the accurate conduct of presidential elections and elections of Members of Senate and Mazhilis; electing all Members of Mazhilis through national vote, or moving away from electing Members of Mazhilis by the Assembly of the People of Kazakhstan; removing the requirement which says that those claiming seats in the Mazhilis should reside permanently on the territory of Kazakhstan ten years before elections; reducing the time limits for submitting complains against decisions and actions (or omission) of an election commission to a higher-level election commission; and lifting a ban on the use of campaign materials printed outside Kazakhstan.

RECOMMENDATIONS:
1. To continue working toward further improvement of elections legislation in compliance with international standards set by the UN and OSCE.

2. To ensure the participation of all political parties registered as prescribed by the law in the work of election commissions. At the same time, such participation should not depend on the political composition of maslikhats electing commission members, but rather it should be based on a mechanism whereby all political forces can participate on an equal basis in the work of election commissions.

3. To ensure transparency during the compilation of voter lists by local executive bodies in the legislation.

4. To ensure public control over the electronic voting system, during the counting of votes and tabulation at polling stations in the legislation.

Human rights in the area of labour relations

Everyone’s constitutional right to freedom of labour, free choice of occupation and trade, working conditions compliant with safety and hygiene requirements, and remuneration for labour without any discrimination lie at the core of our labour legislation.

In accordance with the Kazakh Labour Code (hereafter the Code), everyone has the right to use their labour skills freely, and to choose any occupation without any discrimination or coercion.

As stated in the Law of the Republic of Kazakhstan “On Public Employment,” the state should ensure such policies that would help achieve productive and freely chosen employment among the public.

At the same time, the state guarantees its citizens, as far as their employment is concerned, facilitation in choosing a job and employment with the help of authorized bodies.
On the situation in the labour market

Continuous monitoring carried out by the Ministry of Labour and Social Protection of the Republic of Kazakhstan (hereafter the Ministry) and Statistics Agency of the Republic of Kazakhstan demonstrates that the situation in the labour market is stable. In the fourth quarter of 2010, economically active population increased by 146.9 compared to the same period in 2009, and totalled 8 616 100 people, while the number of those employed increased by 204 000 people and amounted to 8 141 400 people.

In the beginning of 2010, the number of the unemployed was 532 900 people with the unemployment rate of 6.3%, and at the end of the fourth quarter of 2010, the number of the unemployed dropped by almost 55 200 and totalled 477 700 people with the unemployment rate as low as 5.5%.

To improve the situation in the labour market and to prevent unemployment growth, authorized government bodies are actively implementing various measures to facilitate public employment.

As reported by local executive bodies, on 1 January 2011 the number of unemployables registered with employment centres totalled 35 400 people. Overall, in 2010 434 300 people approached employment centres nationwide seeking employment, of who 381 700 (87.9%) were provided with jobs.

According to regional public employment programmes, and in particular the Road Map Programme, in the reporting period 58 100 unemployed individuals were sent for vocational training, 100 300 people participated in community works, 46 600 unemployed individuals were provided with social jobs, and 42 000 graduates of educational organizations were provided with “youth internship”.

The programme of youth internship and creating social jobs had a significant impact on the unemployment rate among the youth. In the third quarter of 2010, it was 4.7% which was 1.2% lower than during the same period of 2009 (5.9%).

To defuse tension in the labour market and to ensure public employment, local executive bodies work regularly on creating new jobs.

Overall, in 2010 260 900 new jobs were created, including 120 100 jobs in rural areas. At the same time, 32 100 jobs were created in the industrial sector, 30 200 – in the commercial sector, 35 600 – in the area of construction and public utilities, and 17 600 – in agriculture. Of the total number of new jobs, 179 500 were permanent jobs, while 76 100 jobs are related to the small-sized business.

In 2010, the number of labour inspectors in the country totalled 323 persons.

Cases of violating the labour legislation

In 2010, state labour inspectors detected over 71 100 violations of the labour legislation, including untimely payment of wages (5 303) and rescinding labour contracts illegally (409).

As far as violators of the labour legislation are concerned, 15 825 order were issued and 11 311 fines were imposed amounting to 409.4 million KZT.
In 2010, Kazakh courts nationwide received 2,136 civil cases on reinstating laid-off workers in their jobs, and 5,233 cases on the payment of salaries and wages. Consequently, the total number of cases that were considered with decisions reached thereupon was 1,266 and 3,365 respectively.

Prosecutors’ offices keep the issue of labour rights protection under their constant control.

In 2010, prosecutors submitted 1,599 petitions and 669 orders on correcting violations, provided legal explanations with regard to 1,066 cases, and initiated 39 criminal cases related to non-payment of salaries and wages. Following prosecutorial orders, 1,604 and 1,350 persons were brought to administrative and disciplinary liability respectively. Also, employers paid off 9.3 billion KZT worth of salaries and wages, and as a result of the measures that were taken it became possible to protect the rights of over 225,000 citizens.

Communication with enterprises not paying salaries and wages for a long time (over three months) became more intense.

For instance, following an order of the Almaty prosecutor’s office of 26 October 2010, the Almaty akim (mayor) requested that funds be allocated from the national budget to compensate the JSC KUAT Corporation for the expenses on buying land for constructing the Eastern Bypass Highway. As a result, the Government of the Republic of Kazakhstan reached a positive decision on this issue, and the Ministry of Transportation and Communications was given 3 billion KZT from the Government’s reserve fund for their urgent needs which were later transferred to the Amaty akimat as target current transfers to deal with the problem above (Resolution of the Government of the Republic of Kazakhstan, Ref. No. 1288, of 30 November 2010).

Similar efforts are undertaken by territorial prosecutors.

For example, as a result of the measures taken by prosecutors’ offices, in December 2010 five enterprises in South Kazakhstan province paid 8.5 million KZT to 365 workers, nine enterprises in Almaty paid 200 million KZT to 1,984 workers, and four enterprises in Jambyl province paid 10.6 million KZT to 356 workers, thus paying all backdated wages due to their employees.

As shown by inspections carried out by territorial prosecutors together with agencies on employment, enforcement proceedings and insolvent debtors, the amount of back pay in the Republic of Kazakhstan is 4.31 billion KZT with 224 enterprises involved.

The highest back pay rate was identified among construction companies, processing facilities and transportation and warehousing companies, hitting the most such areas as Almaty, Astana and Karaganda province.

In 2010, Kazakhstan’s prosecutors were able to recover 9.3 billion KZT worth of backdated salaries and wages.

In December 2010, as ordered by a prosecutor’s office, PSK Kokshetaustroi, Ltd paid 15,880,604 KZT worth of backdated wages to 250 workers.

Following prosecutorial measures, eight enterprises in Astana paid 103 million KZT to their workers as backdated wages.
In December 2010, 200 million KZT were paid to workers as backdated wages in Almaty.

The director of Olja Alem, Ltd was convicted by the court for spending 8 851 929 KZT on his personal needs instead of paying this money as backdated wages to his employees.

According to the applicable law, alongside the state labour inspection there should be public control over labour safety and protection.

Thus, Article 341 of the Labour Code empowers a public inspector on labour protection to protect the right of workers to labour protection in front of their employers through public control over the compliance with regulatory and legal frameworks on labour safety and protection by employers, agreements, collective contracts on creating proper working conditions by employers, and safety regulations in organizations.

At the present time, the number of public inspectors is around 19 000 people. In 2010, public inspectors were able to detect violations of 124 700 items, with 43 case files submitted to the state labour inspection for measures to be taken against heads of organizations and 29 cases files sent to courts.

All necessary activities and legal improvements in terms of labour safety and protection notwithstanding, work-related accidents still happen, and quite often they lead to real tragedies giving rise to serious economic losses. Economic losses incurred by society as a result of industrial accidents are expressed not only through expenses on compensatory payments, but also through other losses.

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<td>2892</td>
<td>2450</td>
<td>2103</td>
<td>2151</td>
</tr>
<tr>
<td>Number of deaths</td>
<td>457</td>
<td>408</td>
<td>405</td>
<td>344</td>
<td>363</td>
</tr>
</tbody>
</table>

As can be seen from the table, the industrial injuries rate was decreasing over the years, but in 2010 it increased by 5.5% and the percentage of deaths constituting 22.8%.

**Right to social security**

The top priority for the social security system is implementing constitutional guarantees for social security and bringing it in line with the standards that exist in most developed countries.
As instructed by the Head of State, in 2010 expenditures on social security and benefits in the national budget were increased by 25% through the social programme of the Nur Otan Party and government’s action programme.

Sizes of solidary (distribution) pensions and social allowances from the state are adjusted according to the index on an annual basis, ahead of forecasted inflation rates.

As the financing of social programmes is growing, this helped increase the size of social benefits to all categories of recipients.

As reported by the State Centre for Pension Payment (SCPP), in 2010 the annual average number of pensioners in country was over 1,677,200 people.

As part of implementing the President’s address to the people of Kazakhstan of 6 February 2008 who said that by 2012 the average size of pensions should see a two-and-half-fold increase as compared to 2007, on 1 January 2010 the size of pensions increased by 25%.

To provide new pensioners with the increasing size of pensions similar to those who have been long retired, starting from 1 January 2010 the income which is used for calculating the size of pensions has been increased from 28 to 32 monthly basic rates (MBRs).

Starting from 1 January 2010, the size of basic pension payments has increased by 9% compared to 2009 and amounted to 5,981 KZT, which is 40% of the minimum subsistence level approved by the Law of the Republic of Kazakhstan “On the Republican Budget for 2010-2012”.

As a result, the minimum size of pension payments was, taking into account basic pensions, 18,325 KZT, medium – 27,481 KZT and maximum – 39,893 KZT.

Starting from 1 January 2010, the size of state social benefits (hereafter the SSBs) and special state benefits increased by 9%. In 2010, the medium size of the SSBs was 14,632 KZT. The size of special state benefits in List 1 and List 2 were also increased by 9% and constitute 12,717 KZT and 11,304 KZT respectively.

Tax authorities are responsible for controlling whether mandatory pension contributions are paid on time and they act in accordance with Kazakhstan’s applicable law.

The Prosecutor-General’s Office analyzed whether everything was legal in the area of ensuring the right to social security and support from the State Social Insurance Fund (hereafter the Fund) as regards the loss of income due to pregnancy and childbirth (hereafter the allowance).

As a result of the analysis, a conclusion was made that the applicable law in this area should be improved as soon as possible.

For instance, the norms regulating and determining the method of calculating social payments from the Fund in case there are several sources of income should be discussed separately. According to the legislation, average monthly income is calculated separately for each employer, and then these figures are added up (para. 17 of the Regulations on calculating, re-calculating (determining) and increased the size of social payments from the State Social Insurance Fund approved by the Government’s Resolution, Ref. No. 1307, of 28 December 2007).
Thus, the emergence of social risk is proved by providing a certificate of incapacity for work. At first glance, this norm may well define legal consequences. However, as shown by the analysis, the legislator has not regulated the circumstances upon the emergence of social risk and continuing to receive income from sources whose income was already taken into account when prescribing and determining the amount of social payments.

For instance, J. Mukusheva, a participant of the compulsory social insurance system, received social payments from the Fund in the amount of around 1.85 million KZT based on her wages certificates issued by Q & D, Ltd and Kazakhstan’s office of CB & I Europe B.V.

To prove the emergence of social risk, J. Mukasheva provided a certificate on incapacity for work issued by Q & D, Ltd with a specific time period.

However, prosecutors of Atyrau province were able to identify that during her incapacity for work J. Mukasheva was still receiving income from Kazakhstan’s office of CB & I Europe B.V., and therefore, no social risk emerged with regard to this job.

If the social payments were calculated only based on the income from Q & D, Ltd, J. Mukasheva would be entitled to 762 182 KZT.

This became possible due to different practices of applying the Regulations on issuing certificates on temporary incapacity for work approved by the Minister of Health of the Republic of Kazakhstan, Ref. No. 556, of 23 October 2009 (hereinafter the Regulations of the MH).

Thus, according to para.25 of the Regulations of the MH, if a person works in several places, he/she should be issued several certificates on temporary incapacity for work for each place of work with mentioning the name of each employer.

However, para. 26 of the Regulations says that women, due to pregnancy and childbirth, should be issued a certificate (a singular noun) on temporary incapacity for work for issuing payments from the Fund.

In this case, the legislation is silent on whether applicants should present certificates on incapacity for work from each place of work to claim social payments from the Fund.

Therefore, authorized bodies have no right to demand such certificates from each place of work.

In our opinion, this case requires legal regulation.

We also deem it necessary to review certain legislative norms regulating the index in case two or more children are born.

Para. 4 Article 23-1 of the Law “On Compulsory Social Insurance” (hereafter the Law) and para. 12 of the Regulations provide for indices 4.2 and 5.7 as regards pregnancy and childbirth, and indices 4.7 and 6.2 in case of complicated child delivery or birth of two and more children.

We believe that a family is likely to incur more expenses in case two or more children are born, rather than only one child. Indeed, parents have to buy all essentials for the newborn, and also such children tend to be born less developed physically, and thus with poorer health.
Therefore, we suggest that indices 4.2 and 5.7 be set for each child separately, and indices 4.7 and 6.2 may be used for complicated child delivery.

Furthermore, the minimum amount of the allowance should amount to ten or fifteen monthly basic rates (149 520 – 224 280 KZT) or more, as persons with low incomes are doomed to receive scanty social payments which cannot cover all essential supplies. The amount proposed above will help provide significant financial support to families with newborn children.

The term “regressnik” is used to indicate workers who worked at enterprises with difficult, hazardous and dangerous working conditions for many years in the past and acquired professional diseases or injuries as a result. Consequently, they lose capacity for work, or become incapable as a result of industrial emergencies and accidents.

Nowadays, ensuring the rights of regressniks is a particularly important issue. This is due to the fact that the amount of compensation for potential earnings (income) that have been lost and other payments granted as a result of deteriorated health or death should be increased according to increases of a monthly basic rate.

One of many examples can be provided when the applicable civil law makes the status of Kazakhstan’s regressniks much worse.

In 2000, Mr. T. who worked as a carpenter at the construction company “SK Sozhis, Ltd” received an industrial injury. As a result, he was assigned disability group III (40% loss of capacity for work). At the moment, his wages were 4 500 KZT. The amount of compensation for the injury was 1 800 KZT. By 1 January 2011, his monthly compensation amounted to 3 250 KZT only.

Today, average wages in this sector amount to 70 000 KZT. According to previous legislation (Civil Code before 1999), Mr. T. would be receiving 28 000 KZT (70 000 KZT x 40% = 28 000 KZT).

In 2008, a special working group was established in the Ministry of Labour and Social Protection that developed a draft law “On Amending Some Legislative Acts of the Republic of Kazakhstan on Compensation for Health Damage.” The Parliament has already passed this law.

This issue seems particularly important in Karaganda province. Two branches of the Karaganda Regressnik Miners Movement, or so-called “akkoshkarovtsy” (named after their leader Akkoshkarov), who lost their capacity for work while working in Kazakhstan’s mines during the Soviet times (these mines are now dormant), and not receiving any benefits today (before the closure of the mines, they used to receive allowances until 70 years of age), and workers with disabilities from Lakshmi Mittal’s coal-mining facilities who still receive allowances based on wages as of 1 November 1995, joined their efforts to seek justice together.

From the viewpoint of the Human Rights Commission under the President of the Republic of Kazakhstan, pension provision for administrative and political public officials should be enhanced taking into account their special social status, length of civil service and peculiarities of civil service. Taking into account Kazakhstan’s economic growth, specific features of public service and the positive
experience of other countries with regard to decent retirement benefits paid to their public servants, we recommend that the Government and Parliament of Kazakhstan develop and adopt a Law “On Introducing Amendments to the Law of the Republic of Kazakhstan on Pension Provision in the Republic of Kazakhstan,” envisaging a special procedure for pension provision for public servants depending on their length of service. We recommend that public servants’ length of service be calculated starting from 16 December 1991 when the Republic of Kazakhstan gained independence.

RECOMMENDATIONS:

1. To improve the Labour Code and to introduce amendments therein prohibiting all kinds of discrimination when paying for equal work done by workers in foreign companies irrespective of their ethnicity or citizenship.

2. To ratify the ILO Protection of Wages Convention (No. 95).

3. To ratify the ILO Minimum Wage Fixing Convention (No. 131).

4. To strengthen the protection of social and economic rights, to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

5. It is important to review some legislative norms regulating the index in case two or more children are born, and to introduce relevant amendments in the Law “On Compulsory Social Insurance” and the Regulations on issuing certificates on temporary incapacity for work approved by the Minister of Health of the Republic of Kazakhstan, Ref. No. 556, of 23 October 2009.

6. Taking into account the positive experience of the Russian Federation and EU countries, as well as some other countries, on ensuring the right of public servants to decent pension provision, to recommend to the Government of the Republic of Kazakhstan, Ministry of Labour and Social Protection and the Agency of the Republic of Kazakhstan on Public Service to develop a draft law “On Introducing Amendments to the Law of the Republic of Kazakhstan on Pension Provision in the Republic of Kazakhstan” envisaging a special procedure for pension provision for public servants depending on their length of service and submit it for consideration by the Mazhilis of the Parliament. We recommend that public servants’ length of service be calculated starting from 16 December 1991 when the Republic of Kazakhstan gained independence.

Right to health care and qualified medical assistance

The Constitution of the Republic of Kazakhstan provides for the right to health care, free guaranteed volume of medical assistance, paid medical services as prescribed by law and paid medical services in government and private medical facilities, as well as those provided by private medical practitioners.

Public health is one of the major factors in ensuring the state’s national security. The main principles and tasks of the state policy on health care are the
respect for the constitutional right to health care and high-quality medical services, and providing state guarantees in this area.

The Head of State and the Government are paying a particular attention to these issues, considering them as one of the national priorities. Therefore, the improving of public health and further development of this sector are viewed as a requirement for Kazakhstan to join the world’s competitive countries.

Health care agencies and organizations continued working toward implementing the State Health Care Development Programme of the Republic of Kazakhstan for 2005-2010. Thus, in 2010 96.2% of children were covered by preventive medical examination. Of this number, health dysfunctions were found in 26.8% of children, of who 68.3% were treated successfully. Medical screening was conducted among women as regards oncopathology of the reproductive system. It became possible to examine 95% of the expected number of women with respect to cervical cancer, of who 6.9% were found ill. Of this number, 69% passed treatment successfully. As regards breast cancer, 98% of women were screened. Of this number, 12.7% turned out to be ill, of who 62% were treated successfully. As far as free and preferential provision of medications to children under 5 years of age is concerned, 99.2% of children received medicines.

Since 2010, the list of guaranteed free medical services (hereafter GFMS) has included a service on assisted reproductive technologies, including in-vitro fertilization (hereafter IVF). By 2015, GFMS will be increased with a higher number of IVF cycles.

To decrease morbidity and mortality among infants, in 2010 the National Vaccination Calendar was augmented with vaccination against pneumococcal infection. Since December 2010, vaccination has been launched in Mangystau and East Kazakhstan provinces where the morbidity and mortality rates due to pneumonia among children under 5 year old are fairly high.

To enhance the provision of medical services to women and children, and to reduce maternity and infant mortality, activities continued to be carried out to introduce effective international technologies in the area of obstetrics, gynaecology and perinatology and regionalization principles with respect to perinatal assistance aimed at sustaining life and health among pregnant women and the newborn. Efforts are continued on prenatal diagnosis screening and prevention of congenital and hereditary diseases among children. A programme on Integrated Child Disease Management recommended by the World Health Organization (WHO) is introduced in in-patient hospitals and outpatient clinics and organizations.

As ordered by the President, emergency centres on reducing maternal and infant mortality are active at the national level and in the regions. In 2010, 16 national meetings of the Centre were held (of which 5 were held in the regions), attended by oblast-level and municipal deputy akims, heads of national and oblast-level medical organizations, and representatives of medical universities and scientific centres. In 2010, the sectoral programme on reducing maternal and infant mortality for 2008-2010 came to an end, which was aimed at improving the health status among women and children and reducing maternal and infant mortality.
For purposes of improving medical assistance to the public, and first of all, to those residing in rural areas, activities continued to be carried out on bringing the network of primary medical and sanitary assistance (PMSA) organizations in line with the established standards. Currently, as regards the rural population, medical assistance is provided by 180 central regional and regional hospitals, 163 village-level district and village hospitals (hereafter VDHs and VHs), 1,508 medical ambulant clinics (MACs) and family doctor clinics (FDCs), 43 primary medical and sanitary assistance (PMSA) centres, 556 medical and obstetrical stations (FAPs), 4 obstetrical stations (FPs), 3,710 medical stations (MS) and 262 medical workers without separate premises.

At the present time, all villages have been supplied with medical equipment in accordance with the approved state standards for the health care organizations network, which made it possible to provide those residing in rural areas with access to primary medical and sanitary assistance. Efforts are underway aimed at providing those in rural areas with mobile medical units with full-time field doctor teams for carrying out preventive screening of the public. This will help improve the accessibility of medical services in settlements with no specialized doctors and where diagnostics is needed. Also, a transition to general practitioner practice is going on. General practitioners constitute 35% of the total number of PMSA doctors.

Activities aimed at reducing morbidity and mortality due to circulatory diseases (hereafter CDs) were carried out within the Cardiological and Cardiosurgery Assistance Development Programme in the Republic of Kazakhstan for 2007-2009. As a result of implementing this Programme, a clear trend of reduced mortality from CDs is observed (from 535 to 406.4 per 100,000 people in 2005 and 2010 respectively). As of today, a network of cardiological and cardiosurgery organizations has been established in the country. In 2006, only three medical organizations were providing cardiosurgery assistance, while at the end of 2010 such services were provided by over 22 medical institutions, including four scientific centres and scientific and research institutes. In the regions, such assistance was provided by cardiological departments in multi-specialist municipal and oblast-level hospitals. Also, this includes five independent oblast-level cardiological centres (Karaganda, Shymkent, Uralsk, Taldykgorgan, Petropavlovsk), municipal cardiological centres in Almaty and Astana (with day-patient departments), a cardio-rheumatological unit under the JSC National Centre for the Protection of Mother and Child, and 30 cardiological units in oblast-level and municipal hospitals. As many as 2,926 cardiological beds have been installed in health care organizations providing cardiological assistance.

As estimated by the WHO, there is a need for approximately 16,000 heart surgeries in Kazakhstan per annum. In 2009, over 5,000 surgeries were performed, while by the end of 2010 over 9,000 surgeries were performed. Except for heart transplantation, almost all types of heart surgeries are performed on adults and children, including surgeries with a CPB pump and beating-heart surgeries.
One of the most important issues related to public health is injuries and poisoning. Compared to 2009, the number of injuries and poisoning cases decreased from 4080.4 to 3817.3 per 100 000 people in 2010. This rate is particularly high in Karaganda province (5758.9), West Kazakhstan province (5303.3), Pavlodar province (4866.2), North Kazakhstan province (4754.7), Akmola province (4626.4), East Kazakhstan province (4565.9) and Jambyl province (4095.6).

Mortality due to accidents, poisoning and injuries is the third major cause of deaths, and its level reached 109.8 per 100 000 people (compared to 108.2 in 2009).

As regards overall mortality due to accidents, mortality due to road accidents constitutes 23.6%, and it does not always depend on the availability of medical assistance. In 75% of deaths as a result of road accidents, individuals die immediately or on the way to hospitals, mostly due to shock or loss of blood.

For purposes of providing emergency medical assistance to victims of road accidents on time along national and oblast-level highways, work is underway on developing sanitary aviation services. To provide timely medical assistance to road accident victims along national highways, annually the state is purchasing reanimobiles (in 2010 – 14 vehicles with 15 more vehicles to be purchased in 2011). Starting from 2011, air units will be on duty along the most dangerous national and oblast-level highways prone to road accidents.

To reduce TB morbidity, early TB detection is strengthened in the country in the PMSA network and agencies, with more attention paid to the issue to TB prevention and timely diagnostics. Activities are continued to be carried out on restructuring TB facilities for purposes of preventing the spread of nosocomial tuberculosis.

In August 2010, one case of poliomyelitis brought from outside was registered in South Kazakhstan province. As per WHO recommendations, in order to prevent the spread of poliomyelitis, the Ministry of Health undertook systemic measures and established a centre on coordinating the work of health care bodies and organizations aimed at preventing the spread of poliomyelitis in the country. Also, additional immunization rounds have taken place.

As a result of implementing the national Drinking Water Programme for 2002-2010, public access to water supply increased by 8.3%, and amounted to 82.5% as of 1 January 2011. Also, the number of dysfunctional water supply pipes and pipes that fall short of sanitary requirements tends to dwindle. Thus, since 2002 the number of dysfunctional pipes decreased by 2.4 times (from 346 to 139), while the number of pipes not meeting sanitary requirements has decreased by 3.9 times (from 524 to 133).

The compliance indicators of tap drinking water with hygienic requirements improved, including based on sanitary and chemical indicators – from 7.2% in 2002 to 1.7% in 2010 and based on bacteriological indicators – from 3.2% to 1.4%.

As a result of improving access to drinking tap water, outbreaks of infectious diseases caused by unsafe water dwindled.

To enhance public access to drinking water, this issue was transferred, on the initiative of the Ministry of Health, to territorial akims. The quality of drinking
water undergoes monitoring on a quarterly basis. There is interaction going on with the Committee in Water Resources under the Ministry of Agriculture of the Republic of Kazakhstan in compliance with the Water Code and legislation on ensuring the sanitary and epidemiological well-being of the public.

Some problems related to the condition of drinking water supply to the public include poor indicators with respect to the compliance of drinking water with sanitary and chemical standards, and also a high number of accidents with regard to water supply networks. The main challenges in this area are reducing the number of dysfunctional pipes and pipes that fall short of sanitary requirements, and improving qualitative indicators of drinking tap water in some parts of the country.

A lot of work was done within the Customs Union initiative on creating a common surveillance (control) system along the external borders of the customs union and on the territory of the customs union to ensure safety of commodities controlled by the sanitary and epidemiological service and to ensure their free circulation due to mutual recognition of authorization (consent) documents.

On 1 July 2010, the Law of the Republic of Kazakhstan “On Ratification of the Agreement on Sanitary Measures” came into force. This law regulates the principles of one single policy as regards the state sanitary and epidemiological surveillance (control) on the territory and along the external borders of the Customs Union.

The issue of counterfeit medications is urgent, and it has to do with national security and declining trust in the system of provision of medicines among the public.

As estimated by independent experts, the counterfeit drugs market in the country amounts to 10-12% (in CIS countries – 10-30%). As a rule, those medications that are well known and are in high demand tend to be counterfeited. Judging by the existing data, we can say that over 80% of all counterfeit drugs are medicines produced abroad.

For purposes of preventing the spread of low-quality and counterfeit medicines, the Ministry of Health made some positive steps toward developing and amending regulatory frameworks by introducing the term “counterfeit medications” and administrative liability for circulation of counterfeit drugs (Article 324 of the Code on Administrative Offences). A norm has been envisaged whereby all medications should have labels in the state language on them. Prime-Ministers of the CIS countries, including the Republic of Kazakhstan, signed a Cooperation Agreement on Combating the Circulation of Counterfeit Drugs (14 November 2008, Kishinev).

Despite certain positive results in combatting counterfeit medications, it is important to strengthen comprehensive measures on detecting and preventing counterfeit drugs from circulation.

The main principles of the Single National Health System (hereafter the SNHS) were carried out all throughout 2010. Thus, within the SNHS, the number of functional beds (without psychiatric, tuberculosis and infectious beds) totalled 78
Availability of medical assistance to the public increased as patients have a chance to choose a medical organization freely. Around 550,000 persons used their right to choose and received treatment in hospitals as scheduled, of whom 36.3% were inhabitants of rural areas.

Alongside the Hospitalization Bureau, in 2010 it became possible to develop and launch a new Routine Hospitalization Portal based on web-technologies allowing doctors to assign a hospitalization code from their place of work and identify the date of patient’s hospitalization to a hospital that he/she selected. Introduction of the SNHS will help patients be closer and have guaranteed access to highly specialized medical assistance (HSMA). After introducing the payment system for the final product, the SNHS now offers a possibility to finance new medical technologies in the region.

After launching the SNHS, daytime beds were introduced in all clinics and hospitals which increased in-patient hospital replacement assistance to the public. In 2009, as many as 377,441 were treated in day patient departments, while in 2010 their number amounted to 826,289. An increase in the use of low-cost in-patient hospital replacement assistance and a decrease of expensive hospital assistance by 9% made it possible to re-invest 14.6 billion KZT for developing HSMA in the regions, ramping up in-patient hospital replacement assistance and introducing early rehabilitation treatment and medical rehabilitation.

By increasing the number of pharmacy organizations providing medications within a guaranteed volume of free medical aid on the basis of previously approved prices, patients have a possibility to choose a pharmacy and medicines.

For purposes of vindicating the rights of patients, increasing responsibility of medical workers for their mistakes and lack of professionalism and supporting highly skilled medical workers, all medical organizations now include internal audit services (hereafter “the service”). The service is aimed at developing activities on preventing and eliminating drawbacks in the work of a particular medical organization, reducing the number of complaints against the quality of medical assistance and solving them on the spot.

In all regions, health organizations together with the Nur Otan Party receive individuals, register complaints against the quality of medical services and receive complaints against telephone trust lines.

Measures that are taken to improve the health status of Kazakhstani citizens were further reiterated in the State Health Care Development Programme “Salamatty Kazakhstan” (hereafter the Programme) approved by the President’s Edict, Ref. No. 1113, as of 29 November 2010. The goal of the Programme is strengthening the health of Kazakhstan’s citizens in order to ensure the social and demographic development of the country. According to the 2010 President’s Address, the Programme is focused on popularizing a healthy way of living and the principle of everyone’s responsibility for their health. The Programme will be implemented based on the following directions:
- increasing the efficiency of inter-sectoral and interagency interaction on public health care;
- strengthening preventive activities and screening examinations, and improving the diagnostics, treatment and rehabilitation of major socially significant diseases and injuries;
- improving the sanitary and epidemiological service;
- improving the organization, management and financing of medical assistance within the Single National Health System;
- improving medical and pharmaceutical education, and developing and introducing innovative technologies in medicine; and
- increasing availability and quality of medications for the public, and improving the installation of medical equipment in health organizations.

The Programme will help achieve the goals set in the Strategic Plan for the Development of Kazakhstan by 2020 and create a competitive health care system to satisfy the needs of the public.

**Public health status in the Republic of Kazakhstan**

As reported by the Statistics Agency of the Republic of Kazakhstan, the main demographic indicators per 1000 individuals as of 1 December 2010 look as follows: natural population growth – 13.55 (11 months of 2009 – 13.5), birth rate – 22.61 (11 months of 2009 – 22.52), and mortality rate – 9.06 (11 months of 2009 – 9.02).

If we analyze mortality indicators based on the major causes of deaths, the following can be observed during the eleven months of 2010 as compared to the same period in 2009. Deaths due to circulatory diseases dropped from 415.4 to 406.4 per 1000 people, due to neoplasm (tumours) – dropped from 112.7 to 110.9, and due to accidents, poisoning and injuries – increased from 108.2 to 109.8.

In 2010, the infant mortality rate was 16.7 per 1000 live-born children (as compared to 18.3 in 2009). The highest infant mortality rate was observed in Kyzylorda province (20.7), East Kazakhstan province (20.1), South Kazakhstan province (19.4), Mangystau province (18.2) and Atyrau province (17).

In 2010, the maternity mortality rate in the country was 23.1 per 100 000 live-born children (85 women) as compared to 36.8 in 2009 (133 women). The highest maternity mortality rate was observed in Kyzylorda province (35.1), Aktyubinsk province (33.9), Jambyl province (29.5), South Kazakhstan province (27.7), East Kazakhstan province (26), North Kazakhstan province (24.1) and Almaty (28).

As regards the major causes of maternity death, they were obstetrical bleeding (30%) and heavy preeclampsia and eclampsia (25%).
According to some preliminary data, the morbidity rate in the country dropped from 60 107.7 to 54 971.5 per 100 000 people in 2009 and 2010 respectively.

As shown by the preliminary data, in 2010 the number of circulatory diseases in the country dropped from 2 273.1 to 2 220.2 per 100 000 people in 2009 and 2010 respectively. The highest number of circulatory diseases is observed in Kyzylorda province (3 906), Almaty province (3 155.9), Jambyl province (2 641.3), North Kazakhstan province (2 571.9), South Kazakhstan province (2 242.1), East Kazakhstan province (2 225.9) and Almaty (2 594.2).

According to raw data, in 2010 the epidemiological situation as regards tuberculosis improved. The tuberculosis morbidity rate was 95.5 per 100 000 people (as compared to 105.3 in 2009). The decline rate is 9.3%. Rates higher than the national average rate are observed in East Kazakhstan province (124.1), Akmola province (121.9), Atyrau province (116), Kostanay province (110), Kyzylorda province (107.8), North Kazakhstan province (105.7) and Astana (166.6).

The tuberculosis morbidity rate also dropped in the reporting period, and constituted 10.3 per 100 000 people (as compared to 12.9 in 2009). Rate higher than the national average rate were observed in North Kazakhstan province (17.8), East Kazakhstan province (17.7), Karaganda province (14.7) and Pavlodar province (13.8).

As show by the preliminary data, in 2010 the number of reported cases of malignant tumours dropped, amounting to 174.2 per 100 000 people (as compared to 182.6 in 2009). Rates higher than the national average rate are observed in North Kazakhstan province (282.6), Pavlodar province (270.5), East Kazakhstan province (262.7), Kostanay province (246.6), Karaganda province (215), West Kazakhstan province (211.5), Akmola province (203.6) and Almaty (224.3).

In 2010, the mortality rate due to malignant tumours in the country amounted to 98.4 per 100 000 people (as compared to 111.8 in 2009). Rates higher that the national average rate were observed in East Kazakhstan province (156.1), North Kazakhstan province (142.5), West Kazakhstan province (141.7), Pavlodar province (138.1), Karaganda province (133.3), Akmola province (124.7), Kostanay province (115.1) and Almaty (118.5).

According to raw data, the number of reported cases of mental and behavioural disorders in the country dropped from 124.2 to 118.3 per 100 000 people in 2009 and 2010 respectively. At the same time, high rates are still observed in Kostanay province (190.2), Karaganda province (189.6), North Kazakhstan province (148.6), Pavlodar province (147.4), East Kazakhstan province (145.2), West Kazakhstan province (144.1), Kyzylorda province (130.3) and Almaty (128).

On 31 May 2010, the Ministry of Health held an enlarged board meeting in Astana on the Status of Psychiatric and Narcological Assistance in the Republic of Kazakhstan. At the end of the meeting, a decision was made to undertake systemic measures to enhance the provision of psychiatric assistance to the public, to strengthen material and technical resources and to hire staff members of medical organizations providing psychiatric assistance. State sanitary and epidemiological
control bodies were entrusted with a task of strengthening sanitary and epidemiological control over the conditions and nutrition of patients in mental facilities.

As part of providing proper conditions in mental hospitals pursuant to the Resolution of the Government of the Republic of Kazakhstan, Ref. No. 1559, of 12 October 2009 “On Approval of Accreditation Rules in the Area of Health Care,” in August and September 2010 all medical psychiatric facilities underwent accreditation. In the course of this process, they were entrusted with a task of strengthening their requirements as regards the respect for the rights of patients.

For purposes of preventing involuntary hospitalization to mental facilities, local executive bodies were charged with a task of informing, if needed, prosecutorial bodies about such cases. 147 staff members of psychiatric organizations were brought to disciplinary liability for not fulfilling their duties appropriately, including 7 managers, and 10 people were brought to administrative liability, including 4 chief doctors. Two persons in Aktyubinsk and Kostanay provinces were dismissed from their posts. Special boxes for applications and complaints have been installed for patients to exercise their right to complain against the actions of medical workers.

Alongside the aforementioned steps, the Ministry of Health developed and approved the orders of the Minister of Health “On Approval of the Regulations on the Activities of Psychiatric Organizations in the Republic of Kazakhstan” (Ref. No. 15, 5 January 2011) and “On Approval of the Rules on Providing Psychotherapeutic Assistance in the Republic of Kazakhstan” (Ref. No. 15, 5 January 2011).

Court proceedings as regards forced hospitalization of individuals are one of the main ways of protecting individual rights, freedoms and interests through courts.

However, in conditions of applying the effective norms from the Code “On People’s Health and Health Care System” (hereafter the Code) when psychiatric organizations and individual psychiatrists are entitled to make decisions with respect to someone’s forced hospitalization independently from a controlling and judicial body, citizens may be deprived of their right to judicial protection of their constitutional rights.

The hospitalization procedure set forth in the Code falls short of international legal standards on psychiatric assistance.

For instance, through its Resolution 46/119 as of 17 December 1991, the UN General Assembly adopted the Principles for the protection of persons with mental illness and the improvement of mental health care.

According to para. 1 of Principle 17, forced hospitalization is prohibited unless such a decision is reached by a judicial or other independent controlling body.

According to Articles 16, 17, 18 and 13 (part 2) of the Constitution of the Republic of Kazakhstan, a person’s freedom may be restricted only if allowed by court; before a decision is reached by court, a person should not remain in custody.
more than 72 hours; and everyone is guaranteed judicial protection of their rights and freedoms.
When we deal with restricting someone’s right to freedom and security of person, judicial protection guarantees become of paramount important.

Indeed, this is recognized by international legal acts whereby all those in detention or arrested and charged with a criminal offence should have the right to judicial consideration of their case within a reasonable time period or the right to release (para. 3 of Article 9 of the International Covenant on Civil and Political Rights and para. 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

Thus, in international practice restrictions of freedoms and security of person for a significant period of time outside judicial control are not allowed.

According to Article 125 of the Code, to hospitalize a person to a mental facility, it is sufficient to have the conclusions of one psychiatrist confirming that a particular person has a mental disorder (disease) and making a decision that this person should be examined and treated in a hospital.

We should take into account that placing a person in a psychiatric facility involuntarily presupposes a restriction of their personal freedom (freedom of movement or using and possessing something), forced medical interference and a restriction of their right to meetings (and consequently, their right to communicate with the outside world).

The Code does not set any limitations as for how long a person may be kept in a psychiatric organization, which is determined by their health status which, in turn, depends on the accuracy of methods, medications and general tactics of the attending doctor.

Thus, according to Article 125 of the Code, a person’s life and destiny hinge upon the personal opinion of a single psychiatrist.

What we have seen demonstrates that any further attempts to verify whether such a forced placement and detention of a person in a mental facility are legal and substantiated become hopeless.

Thus, according to Principles for the protection of persons with mental illness and the improvement of mental health care (adopted by the UN General Assembly’s Resolution 46/119 as of 17 December 1991), forced hospitalization of a person based on the opinion of a single specialist is not allowed (para. 1, b) of Principle 16).

As laid down in Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, everyone’s right to freedom and security of person presupposes that people with mental disorders may not be deprived of their freedom and taken into custody other than as prescribed by the law. Such persons should be guaranteed the right to a fair trial, including the right to have a case considered by an independent and impartial court of law established on the basis of the law, within a reasonable time period, and also the right to protect yourself personally or through a defender of your own choosing.
Furthermore, it is worth mentioning that according to the Resolution of the Constitutional Court of the Russian Federation, Ref. No. 4-P, of 27 February 2009, the provisions of the Russian Law “On Psychiatric Assistance and Guarantees of Citizens’ Rights During the Provision Thereof” were recognized as unconstitutional. According to this law, it was allowed to hospitalize individuals to psychiatric institutions forcibly who were deemed incapable, without any judicial decision, upon checking the grounds and need for such hospitalization.

We presume, therefore, that to ensure the constitutional rights, freedoms and interests of citizens, the existing mechanism of coerced hospitalization to psychiatric organizations should be re-considered by reviewing the Code of the Republic of Kazakhstan, Ref. No. 193-IV, of 18 September 2009 “On People’s Health and Health Care System.”

The above-mentioned proposals have now been taken into account in the Law of the Republic of Kazakhstan of 29 December 2010 “On Introducing Amendments to Some Legislative Acts of the Republic of Kazakhstan on Anchoring the Grounds, Procedure and Conditions of Keeping People in Institutions in which They Are Temporarily Isolated from Society.”

As shown by the inspection, medical workers also commit illegal actions against persons with mental disorders when reaching a decision on their release from hospitals.

Some persons requiring medical assistance do not receive appropriate evaluation of their health status, and as a result, they are released prematurely, and sometimes they commit illegal actions, being mentally incapable and inadequate.

In particular, in February 2010 Mr. Ch. was released from the Kostanay oblast psychiatric hospital due to improvement of his mental health. He had been registered with a mental clinic and controlled due to aggressive behaviour expressed as a result of shift-like schizophrenia.

Within one month after his release in March 2010, Mr. Ch. committed a murder of his mother and nephew, after which a criminal case was launched. Due to his mental disorder, the criminal case was terminated, and forced medical measures were imposed. In 1993, Mr. Ch. killed his own son.

Such cases (illegal hospitalization, untimely prolongation of hospital stay and premature release) demonstrate that medical workers employ a subjective, and highly inadmissible, attitude toward their duties related to the provision of assistance in conditions of a psychiatric hospital.

As a result of inspecting the conditions of patients in psychiatric facilities, numerous violations were identified pointing to the discrimination of rights enshrined in the Constitution of the Republic of Kazakhstan and the Code (Articles 91 and 120).

The following are some of most frequently occurred violations: medical services not provided to the full extent; overpopulation; lack of contact with the outside world; using measuring tools for laboratory tests that did not pass an inspection; lack of rehabilitation-oriented activities; and inefficient use of the budget and social allowances received by patients.
The list of these violations is not comprehensive, which leads us to the conclusion that personnel of medical institutions do not approach the issue of human rights with much responsibility. This exacerbates the status of persons who are already restricted in their activities due to poor health.

According to Article 127 of the Code, psychiatric assistance in hospitals should be provided in least restrictive conditions ensuring safety of those hospitalized and other persons, with medical staff respecting their rights and legal interests.

As shown by the inspection carried out by prosecutorial bodies, the existing system for protecting the rights of patients is not effective enough, and in some regions of the country it is totally inactive.

For instance, health care facilities in Jambyl and North Kazakhstan provinces do not have boxes for applications from the public, and as a result, in apparent violation of para. 1 of Article 13 of the Constitution and para. 8 of Article 91 of the Code, patients are deprived of their right to complain against the actions or omission committed against them by medical workers.

In East Kazakhstan and Kostanay provinces such violations were eliminated only after the interference of relevant non-governmental organizations.

One more factor derogating from the dignity of patients concerns current conditions in which such patients are kept, which fall short of most basic sanitary standards and fire precautions.

For instance, in South Kazakhstan province, due to overcrowding in a facility intended for 160 persons only, patients of the oblast-level psychoneurologic dispensary have to keep their paraphernalia under their pillows and mattress pads.

Furthermore, in the same facility rooms are not ventilated in the fall and winter due to certain technical problems (*window frames are simply not designed for this purpose*).

Overcrowding has also been observed in mental hospitals in Almaty, Atyrau, Jambyl, West Kazakhstan and Karaganda provinces, and Almaty.

At the same time, almost in every region the premises of mental facilities require renovation, both capital repair and maintenance works, replacement of so-called “soft inventory” (includes clothes, shoes, bed sheets, straightjackets, uniforms – *Translator’s note*), installment of automatic fire alarms, replacement of unmovable metal window bars and fire equipment, proper equipment of water supply networks used in case of fire, and furnishing children’s play rooms and class-rooms.

Neglect of fire safety regulations laid down in the law jeopardizes the life and health of patients, and may cause damage to state-owned and personal property.

Furthermore, in some parts of the country (Atyrau, Kyzylorda and North Kazakhstan provinces) it became possible to discover cases of inappropriate nutrition arrangements for patients, with expired foodstuffs in storage areas, disregard of food storage requirements, and using food items for cooking without any documents proving their quality and safety.
Taking into account the health status of patients in hospitals, such conditions (lack of convenience) do not foster their recuperation. On the contrary, they lead to new psychological problems and pose a threat of damage to their life and health.

Except poor living conditions, some other rights of patients in such facilities enshrined in the Constitution and the Code tend to be restricted.

In particular, in apparent violation of para. 2 of Article 20 of the Constitution and subpara. 8 of para 1 in Article 88 and Article 91 of the Code, patients in medical facilities are not sufficiently informed of their rights.

For instance, in psychiatric facilities in Kostanay and South Kazakhstan provinces there are no relevant information stalls.

In an attempt to find out to what extent patients are familiar with their rights, non-governmental organizations conducted a survey in Astana, East Kazakhstan province and Kostanay province. The results have shown that in most cases the users of medical services learn about their rights which are set forth in the law from medical workers verbally.

One of the most important rights that should be respected with regard to individuals either deprived of, or restricted in their freedom, is preserving contacts with the outside world. Absolute isolation has an adverse impact on the treatment and rehabilitation of patients.

As shown in the course of prosecutorial inspections, the rights of Kazakhstan’s citizens envisaged in Articles 18 and 22 of the Constitution, subpara. 4 of para. 1 in Article 91 and subpara. 5 of para. 2 in Article 120 of the Code are observed almost nowhere.

For instance, there are no telephones in medical organizations in Jambyl, Kostanay, Mangystau and South Kazakhstan provinces.

In hospitals in Jambyl, West Kazakhstan and North Kazakhstan provinces and Almaty there are not separate facilities for meetings with relatives and rooms for religious rituals.

In the municipal psychiatric hospital in Rudnensk, Kostanay province, in violation of Article 18 of the Constitution, they allow censorship of all incoming and outgoing correspondence.

Alongside, in many provinces of the country the right of patients to choose treatment and to be informed about the methods of treatment is violated (Articles 88, 91 and 120 of the Code).

Experts from agencies for controlling medical and pharmaceutical activities were invited to carry out an inspection in this area, and their findings included a lack of skilled medical staff, medical services that were not provided to the full extent resulting in re-hospitalization, storage of expired medications, lack of relevant certificates among some medical workers, and some doctors and nurses who did not pass training courses to enhance their skills.

In some provinces (Aktyubinsk, Atyrau and North Kazakhstan provinces) medical facilities use, in violation of the Law “On Ensuring Unity of Measurements”, as part of laboratory tests (for examining different tests of patients),
equipment that was not inspected. As a result, the accuracy of such tests is rather dubious.

Violations of citizen’s rights to health care and a guaranteed volume of free medical aid have also been noted in Aktyubinsk, Akmola, Almaty, East Kazakhstan, West Kazakhstan, Jambyl, Kostanay, Mangystau, North Kazakhstan, Pavlodar and South Kazakhstan provinces, and Almaty.

For instance, psychiatric assistance provided by the Almaty Centre for Mental Health is considered as poor due to a lack of highly skilled doctors (only 56% of the required number of staff work in the facility with the national rate of 73%).

Also, in this facility there are no arrangements for psychiatric assistance, nor are there staff psychotherapists and specialized rooms. For the same reason, psychological correction of patients is not carried out.

As a result of understaffing, there is only one doctor, head of unit and an intern in units for 70-80 people. As a result, this affects the quality of medical services which lead to re-hospitalization.

Also, in the course of the inspection it became possible to find out that rehabilitation programmes envisaged in Articles 116 and 122 of the Code are either confined to routine work which has no impact on the health status of patients, or are missing whatsoever.

Such cases were registered in Jambyl, Kostanay, North Kazakhstan and South Kazakhstan provinces.

Based on the inspection results, we can conclude that the above-mentioned violations of the law (over 800 cases) that resulted in the infringement on constitutional rights of more than 7 000 patients in 33 psychiatric facilities became possible due to medical workers not fulfilling their duties appropriately, flawed legislation and a lack of proper agency control from health care management bodies.

As a result of the inspection, the Prosecutor-General’s Office submitted a relevant resolution to the Prime-Minister of Kazakhstan requesting that a set of measures be taken to eliminate the existing violations and to prevent them in the future.

On the results of monitoring the respect for the constitutional right to health care in the state public enterprise “Municipal Hospital - 1” in Astana

According to working plans of the President’s Administration and the Human Rights Commission under the President of the Republic of Kazakhstan (hereafter the Commission) for 2011, and also within the framework of producing the annual Report on the Human Rights Situation in the Republic of Kazakhstan in 2010 to be submitted to the Head of State, on 15 March 2011 members of the Commission headed by its Chairperson, S. Tursunov, visited the state municipal enterprise “Municipal Hospital - 1” in Astana (urology and andrology unit and otolaryngology unit). Before the visit, from 5 April through 20 December 2010, members of the Secretariat were conducting a monitoring research as to how the administration,

During their fact-finding visit to the Municipal Hospital - 1, members of the Commission were interested in the respect for the constitutional right to health care and qualified medical assistance, availability of medical assistance to Astana dwellers and residents of other regions in Kazakhstan, and the social and legal protectedness of doctors and other medical workers, as well as their training in EU countries, Israel and Russia (Moscow and St. Petersburg).

As shown by the preliminary monitoring by the Secretariat of the Commission in the state public enterprise “Municipal Hospital - 1” in Astana meant to explore the respect for the constitutional right to health care and qualified medical assistance, and also by the visit of Commission members to this medical institution, Municipal Hospital 1 in Astana ensures the constitutional right to health care and qualified medical assistance as prescribed in the applicable law of Kazakhstan.

The Commission noticed the good work by the head doctor, Associate Professor Anamzhol Baimenov; academician of the National Academy of Sciences of the Republic of Kazakhstan, Doctor of Medicine, Prof. Rais Tolebaev; head of the otolaryngology unit, Doctor of Medicine, Prof. Gulmira Mukhamadiieva; Doctor of Medicine, Prof. of the Otolaryngology Department Bolatbek Jusupov; head of the urology and andrology unit Sheriyazdan Abdugalimov; urologists Askar Jashenov and Anastasia Ospanova; and otolaryngologists Natalia Populova and Arman Abilev. These specialists demonstrate professionalism and loyalty to their duties as doctors and the art of curing people.

On 27 April 2011, the Chairperson of the Human Rights Commission under the President of the Republic of Kazakhstan handed in letters of appreciation to the doctors mentioned above.

Members of the Commission advised the Astana Health Department to replicate the positive experience of treating patients in the urology and andrology unit and otolaryngology unit of the state public enterprise “Municipal Hospital – 1” in Astana in other medical institutions of the capital and nationwide.

Taking into account the positive experience of treating patients by professors and associate professors of the Otolaryngology Department in the JSC Medical University of Astana, and considering the fact that there are five Doctors of Medicine working at the Otolaryngology Department under the supervision of academician Rais Tulebaev, the Commission has recommended that the Government of the Republic of Kazakhstan, Ministry of Health and the President of the JSC Medical University of Astana establish a scientific and medical otolaryngology centre under the JSC Medical University of Astana as an institution for consulting and treating patients from all over Kazakhstan.
To ensure succession of medical staff, the Commission recommended the administration of the municipal hospital and Astana Health Department to arrange continuing education and training courses for young doctors in the leading medical institutions of Germany, Austria, France and other EU countries, as well as Israel and Russia.

**RECOMMENDATIONS:**

1. To ensure the exercise of the constitutional rights to health care and qualified medical assistance, to continue working toward strengthening material and technical resources of regional and village state medical institutions and staffing them with highly skilled medical workers.

2. To ensure the best balance between responsibility and interests of citizens, employers, medical service providers and the state as regards health care and strengthening public health.

3. To enhance control in the area of sanitary, epidemiological, medical and pharmaceutical activities by way of introducing a new risk management system.

4. To undertake all necessary and effective measures on reducing cases of disability and premature mortality among the public.

5. To conduct evaluations of the activities carried out by tuberculosis services of all levels, to introduce a strict epidemiological control system over the treatment of those with TB, and to strengthen quality requirements to anti-tuberculosis medications.

6. To increase the amount of quotas for in vitro fertilization in 2011.

7. To undertake all necessary measures on raising legal awareness among medical workers and increasing the quality of medical services provided to the public.

8. To ensure the forming and improving of a modern safety control system over drinking water and foodstuffs, including the effective control over genetically modified food items coming from abroad.

9. To introduce a new effective model for providing the public with medications in outpatient facilities using fixed reference prices for medicines.

10. To introduce European standards for quality and services in Kazakhstan’s medical facilities.

11. Taking into account the positive experience of treating patients by professors and associate professors of the Otolaryngology Department in the JSC Medical University of Astana, and considering the fact that there are five Doctors of Medicine working at the Otolaryngology Department under the supervision of academician Rais Tulebaev, to establish a scientific and medical otolaryngology centre under the JSC Medical University of Astana as an institution for consulting and treating patients from all over Kazakhstan.

12. To ensure succession of medical staff, to arrange, on a regular basis, continuing education and training courses for young doctors from the urology and andrology unit, as well as otolaryngology and surgery units of the state public enterprise “Municipal Hospital - 1” in Astana and other medical facilities in the
leading medical institutions of Germany, Austria, France and other EU countries, as well as Israel and Russia.

13. Measures should be taken to replicate the positive experience of treating patients in the urology and andrology unit and otolaryngology unit of the state public enterprise “Municipal Hospital – 1” in Astana in other medical institutions of the capital and nationwide.

14. To ensure the quality and competitiveness of state-owned medical facilities and scientific research on health care.

15. To undertake measures on easing the workload of medical workers, including by way of freeing doctors from extraneous duties and routine paperwork by introducing information technologies in the health care system.

16. The Ministry of Health is recommended to prepare all necessary justifications and calculations on increasing the salaries of doctors and other medical workers, and submit them to the Government of the Republic of Kazakhstan for consideration.

Rights of the child

Issues pertaining to the protection of children’s rights are a priority in Kazakhstan’s state policy.

As of 1 January 2011, there are 4,940,494 children under 18 living in Kazakhstan, which is one-third of the country’s population. Of this number, 2,097,996 children are of pre-school age, while 2,523,857 children are school children. Also, this number includes 147,679 children with development disabilities, 38,386 parentless children and those left without parental care; 13,766 children with a deviant behaviour; and 17,481 children who are raised by dysfunctional families.

As reported by education departments in provinces and Astana and Almaty, as of 1 October 2010, 825 parents were deprived of their parental rights. 1,072 children of such parents were placed in children’s facilities for orphans and those left without parental care, or given to other families (guardianship, foster care, adoption).

For purposes of implementing the state policy in protecting the rights and legal interests of children, the Ministry of Education and Science of the Republic of Kazakhstan (hereafter the MES) is carrying out a set of measures on ensuring the social and legal safeguards of living standards among children.

One of the key issues in protecting the rights of children is creating an effective system of interagency interaction among different government bodies, NGOs and international organizations on children’s rights protection.

As of today, as many as 9 ministries and 184 non-governmental organizations are dealing with children’s issues, providing social, medical, legal and other services depending on the type of their activities.

To ensure interagency coordination and control over the implementation of the state policy on children’s rights protection, an Interagency Commission on
Minors and Protection of Their Rights has been established under the Government of the Republic of Kazakhstan (hereafter the IAC).

The Commission includes 18 representatives of ministries and agencies, as well as three non-governmental organizations.

The key task of the Commission of developing recommendations on issues related to the protection of children’s rights and legal interests.

In tandem with the United Nations International Children’s Emergency Fund (UNICEF), the Committee on Children’s Rights under the MES is implementing an international project entitled “Child-friendly cities.”


**On improving Kazakhstan’s legislation in the area of children’s rights protection**

For purposes of creating a cooperation system between different states negotiating an agreement and mutual recognition of child adoption, the Parliament passed a Law of the Republic of Kazakhstan, Ref. No. 253-IV, of 12 March 2010 “On Ratification of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption by the Republic of Kazakhstan.” The ratification of this Convention will provide more powers in terms of protecting children who are adopted by foreign citizens.


To follow the order of the President of the Republic of Kazakhstan made during the 5th Women’s Forum in Kazakhstan on 5 March 2009, the issue of assigning and disbursing children’s allowances to guardians taking care of children left without parental care has been included in the Law “On the Republican Budget for 2011-2013.”

As much as 14 387 204 000 KZT was allocated from the state budget for these purposes, including the following: 3 821 429 000 000 KZT in 2011, 5 004 300 000 KZT in 2012 and 5 561 500 000 KZT in 2013. The disbursement will commence in March 2011.


An Action Plan was adopted for carrying out campaigns and other awareness-raising activities aimed at preventing social orphanage and promoting the idea of adopting parentless children and children left without parental care in 2011. The Action Plan was approved by the Head of President’s Administration, M. Ashimbaev, on 14 January 2011.

**On implementing a strategy on deinstitutionalization and prevention of social orphanage**

In Kazakhstan the number of parentless children and children without parental care exceeds 38,000. Of this number, 22,067 children are looked after by guardians, 2,267 children have been sent for foster care, and 14,052 children without parents or parental care are raised by 210 organizations dealing with public education, health and social protection.

To reduce the number of children without parents or parental care, information campaigns and explanatory works have been stepped up through the media on placing orphans in Kazakh families, and special columns entitled “A Family for Every Child” have been introduced in newspapers.

Nationwide campaigns such as “Kuan sebi” (“Be happy, kid”), Guardian’s Day and “Rizashlylyk” (“Kindness for the Good of Children”) are held in Kazakhstan to attract potential foster parents.

With UNICEF support, Family Support Centres have been created in two regions of the country that accepted children from the above-mentioned category for foster care, and six regions it became possible to establish Schools for Foster Parents preparing those who wish to adopt orphans.

Together with NGOs, associations and councils of guardians are established helping guardians to forge trust-based relations between them and children, and to learn more about the psychological features of orphans. This helps reduce the risk of secondary orphanhood when guardians have to renounce children (for the second or third time) and place them back in children’s facilities.

As a result of such measures, the total number of children without parents or parental care decreased by 4,108 or 9.6% (in 2009 – 42,494 children, in 2010 – 38,386 children), the number of orphans in orphanages – by 1,064 (7%) and the number of children sent for foster care – by 204 or 10% (in 2009 – 2,063, in 2010 – 2,267).

**On compliance with the children’s constitutional right to education**

The Ministry of Education and Science of the Republic of Kazakhstan together with akims of provinces, Astana and Almaty, as well as internal affairs bodies and agencies on education and children’s rights protection are taking the following measures to cover all children of school age with education.
School attendance by children is subject to monitoring. As reported by education agencies, by 15 December 2010 there were 929 students who were not attending school without valid excuse (in 2009 – 1 363). Of this number, 690 children were sent back to school, while 239 students do not attend classes yet (in 2009 – 313). The major reasons for non-attendance were as follows: migration – 50; reluctance to study – 81; under investigation – 16; and wanted by the police – 92.

In 2010, local executive bodies allocated 5.5 billion KZT to provide social support to students from low-income families. It was possible to provide material and financial assistance to as many as 520 000 students, including the provision of hot meals to 223 618 students, clothes and shoes – 168 691 children, trips to out-of-town summer camps to have rest and to improve health – 108 976 children, and financial assistance and participation in cultural sports events – 19 642 children.

Nationwide campaigns such as “Road to School” and “Care” have been carried out to support those children and families that found themselves in a difficult life situation. Thus, in August and September 2010, as a result of the campaign “Road to School” as many as 271 000 children were given around 1.5 billion KZT as financial support (in 2009 – over 194 000 children received 1 billion KZT worth of financial aid).

In January 2010, as part of the campaign “Care” as many as 103 937 schoolchildren received over 232.5 million KZT worth of financial assistance.

To ensure the right of schoolchildren in rural areas to education, a draft standard of the state service entitled “Free transportation for students to general education facilities and back home” was developed. This standard should be approved in the first quarter of 2011.

Work is in progress on monitoring school nutrition arrangements. Thus, in 5 777 schools of the country (77%) hot meals are provided for 1 741 822 students (70%). Of this number, free meals are provided to 590 795 students (35%), including 204 875 students (80%) from low-income families.

The greatest coverage of students with free hot meals is observed in Aktyubinsk, West Kazakhstan and Karaganda provinces, and Astana and Almaty. The lowest coverage is observed in Almaty, Atyrau and South Kazakhstan provinces.

To control the quality of meals for students, in September and October 2010 relevant agencies studied the work of education agencies and organizations in Aktyubinsk province in terms of high-quality nutrition arrangements for students in general education schools and ensuring general compulsory education.

In April and September 2010, they studied the work of six republican boarding school on nutrition arrangements for students, including military schools in Shymkent and Karaganda and boarding schools for gifted children in Almaty.

In 2010, it became possible to step up interaction with local executive bodies on school nutrition arrangements, better education coverage, school transportation, work of Centres for Adaptation of Minors, and monitoring with regard to the use of the worst forms of child labour. Thus, such issues as school nutrition improvement and general compulsory education have been included in the State Education

As part of the social order, two sociological research studies have been carried out and methodological guidelines on ensuring the rights and protecting the legal interests of children (Respect for the Rights and Legal Interests of Children in Educational Organizations and Automated Student Movement Monitoring System – Vseobuch) have been published together with non-governmental organizations.

Coordination and control over the activities of Centres for Adaptation of Minors

For purposes of implementing the recommendation from the National Human Rights Action Plan, on 17 August 2010 the President of the Republic of Kazakhstan signed an Edict, Ref. No. 1039, “On Measures on Increasing the Efficiency of Law Enforcement Activities and the Judicial System in the Republic of Kazakhstan” whereby 18 Centres for Temporary Isolation, Adaptation and Rehabilitation of Minors (hereafter CTIARMs) with 386 staff members were transferred to the education system of local executive bodies.

This decision was made following the intention of our society to change the existing system of preventing homelessness among, and neglect of, children taking into account global humanization trends with respect to minors.

According to the Law “On Introducing Amendments in Some Legislative Acts of the Republic of Kazakhstan on Improving the Activities of Internal Affairs Bodies on Ensuring Public Safety,” CTIARMs were re-structured, turning into Centres for Adaptation of Minors (CAMs).

It became possible to develop the Regulations on the Centres for Adaptation of Minors which were approved by the Minister of Education and Science via his Order, Ref. No. 1, of 10 January 2011 (the Order was registered in the State Registrar of Regulatory and Legal Acts on 14 January 2011 and assigned Ref. No. 6734).

The following categories of minors aged 3 to 18 are subject to placement in Centres for Adaptation of Minors: neglected children, homeless children, children left without parental care and minors sent to specialized education organizations.

Juveniles who committed certain acts which are dangerous to the public and contain elements of a crime, exonerated from criminal liability by court and sent to specialized education organizations with a special confinement regime are transferred, before a court decision comes into force, to parents, guardians and other persons responsible for their upbringing by law or are kept in specialized institutions if their isolation from society is required.

Moreover, CAMs are also responsible for providing urgent assistance to minors in coping with a crisis situation, as well as their placement and restoration of their ties with the family.

At the present time, intensive work is going on in the regions on organizing the activities of the newly established centres for adaptation of minors.
On the prevention of child labour, suicide and violence

Campaigns such as “Children in Cities at Night,” “Street” and “Teenager” are carried out on a quarterly basis to prevent the worst forms of child labour, neglect of children, and homelessness.

On 1-12 June 2010, the fifth national information campaign under the title “12 Days of Combatting Child Labour” was held together with the ILO/IPEC and NGO “Union of Women Involved in Intellectual Labour.”

The goal of the campaign was to draw the attention and inform the public of such issues as the worst types of child labour and to promote proactive interaction between state bodies, on the one hand, and NGOs and the media, on the other, to eliminate the worst types of child labour.

As part of the campaign, over 4 000 events were held covering more than 300 000 adults and children.

In 2010, as many as 553 cases of child labour among minors were detected who were begging on the streets and working as waiters, car-washers, etc (in 2009 – 911).

As reported by the Committee on Legal Statistics and Special Reports of the Prosecutor-General’s Office of the Republic of Kazakhstan, during the nine months of 2010 the total number of registered suicides was 2 359.

A higher number of suicides among adolescents was the main issue discussed during the international conference on “How to Preserve the Mental Health of Adolescents and Young People” which was held with the help of the Almaty education department, national public association of teachers “Ar-Namys” and legal consulting service “Komissar.” School teachers, psychologists and social workers expatiated on the major factors affecting the development of suicidal behaviour in teenagers. As opined by Galina Spivak, a psychologist, a suicidal mood may be triggered by a relationship between young people and their parents, Internet dependence, educational facilities and subcultures. The participants largely supported Harry Anthony McDowell, President of the Umit International Centre, who said the following: “A suicidal mood is indeed a horrendous thing. With the emergence of the Internet, the suicide rate has been growing rapidly. Indeed, it is the Internet that promotes many things which are prohibited, such pornography, violence and cruelty. On various websites, a child may even learn how to take his/her own life. We should also bear in mind the popularity of video games with their cult of violence.” Later, Mr. McDowell said the following: “A person not developed mentally fully imitates his/her favourite heroes. However, they are families that are largely responsible for the education of children and personal development. Therefore, we carry out training courses mostly for parents. Why do we white-wash trees? To strengthen their roots, or their foundation. The same is true of children. Everything depends on the input of their parents.”

For purposes of strengthening the responsibility of state and local executive bodies on suicidal mood prevention among minors, a joint action plan has been developed for 2011 by ministries of health, internal affairs, health, communication
and information, culture and tourism and sports designed to prevent suicidal behaviour. This action plan will help coordinate the actions of all stakeholders, including NGOs, on this issue.

In November 2010, a consultative meeting was held in Taldykorgan on suicide prevention among juveniles with the participation of the Ministry of the Interior, deputy akims of provinces and cities, and heads of education units and departments for the protection of children’s rights.

In December 2010, the MES conducted a panel discussion in its premises which was attended by staff members from ministries of health, internal affairs, communication and information, culture and labour and social protection where they discussed the prevention of suicides and suicidal behaviour among children and adolescents.

Violation of children’s rights

In 2010, prosecutorial bodies in Kazakhstan carried out as many as 3 064 inspections regarding the respect for the rights of minors. As a result, they were able to unveil 39 247 violations and to protect the rights of 133 398 children.

Protecting and supporting the rights and legal interests of children is one of the priorities in the activities of prosecutorial bodies. Due to a variety of reasons, minors require special care and protection of their rights. In this respect, in 2010 it became possible to carry out certain activities, such as studying and identifying the issues pertaining to the protection and support of children, carrying out relevant inspections and taking appropriate response measures thereupon.

The Prosecutor-General’s Office carried out an inspection in an attempt to look into the compliance with the applicable law and international treaties of the Republic of Kazakhstan on protecting the labour rights of minors, including the inadmissibility of engaging them in labour which may be dangerous to their life and health.

As shown by the inspection, illegal child labour is still found in Kazakhstan. The inspection helped uncover the violations of labour rights among minors, including by government bodies which are authorized to protect and ensure the rights of minors. Moreover, it was possible to detect cases of attracting minors to the worst forms of child labour.

After the inspection, prosecutorial bodies submitted 103 petitions on eliminating breaches of the law and 1 order to relevant agencies, launched 109 administrative and 3 disciplinary proceedings, and issued 2 protest letters against illegal acts.

One petition was sent to the Prime-Minister of the Republic of Kazakhstan.

Last year prosecutorial bodies carried out a number of inspections to identify possible violations in the work of organizations responsible for keeping, educating and providing learning to children without parents and parental care. The main purpose of such inspections was the protection of children’s rights.

In the course of the inspection, it was possible to detect the violations of children’s social and property rights, non-compliance with nutrition standards and
poor provision of clothes, disregard of sanitary, epidemiological and fire regulations in the work of children’s centres, and the violation of requirements regarding the identification and timely placement of children belonging to this category.

As a result of the inspection, relevant supervision acts were issued, including a petition on eliminating breaches of the law and causes and conditions appertaining thereto which was submitted to the Government of the Republic of Kazakhstan.

A particular attention was paid to crime prevention among minors which was also discussed by the Coordination Council of Law Enforcement Bodies.

Upon considering the letter from the Prosecutor-General’s Office, amendments were introduced in the List of Types of Earnings and/or Other Income from which Alimony is Deducted for Underage Children (approved by the Resolution of the Government of the Republic of Kazakhstan, Ref. No. 776, of 15 May 2002). In accordance with these amendments, alimony for minors should be deducted from all types of bonuses.

As regards the deprivation of parents of their parental rights, in accordance with the statistical data in 2010 there were 2 369 cases in courts on depriving parents of their parental rights. Of this number, 1 687 cases were considered with relevant decision passed thereon.

RECOMMENDATIONS:
1. To expedite the adoption of the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family.”
3. To ratify the Convention against Discrimination in Education.
4. To consider a possibility of establishing the post of a National Ombudsman on the Rights of the Child in order to ensure the effective protection of children’s rights.
5. To create specialized juvenile courts that would be able to consider criminal, civil and administrative cases affecting children’s rights in all regions of Kazakhstan.
6. To improve the social status and financial standing of teachers, and to enhance the prestigious status of this occupation in the eyes of the public; and to shift to such a system of paying teachers that would fully take into account their professionalism, additional workload, etc.
7. To develop mechanisms and procedures for identifying children engaged in the worst forms of child labour who fall victim to various kinds of violence and to strengthen them at the legislative level.
8. To organize, on a regular basis, a series of mandatory and regular programmes and columns in the national, oblast-level, municipal and regional media devoted to the issues of families, children, traditional child upbringing, and suicide prevention among minors.
Women’s rights

In the United Nations Millennium Declaration which was signed by the majority of world countries in 2000, promoting equality between men and women and women’s empowerment are identified as the main goals of humankind’s development in the third millennium.

During the twenty years of its independence, Kazakhstan has achieved some progress in terms of protecting the rights and legal interests of women and men.

In 1998, Kazakhstan ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. Also, Kazakhstan ratified the UN Convention on the Political Rights of Women and Convention on the Nationality of Married Women. In total, Kazakhstan ratified over 60 multilateral international universal human rights treaties.

It should be mentioned that experts from the UN Committee on the Elimination of All Forms of Discrimination against Women generally provided a positive response as regards the protection of women’s rights in Kazakhstan.

By his Edict, Ref. No. 1677, of 29 November 2005 the President of the Republic of Kazakhstan approved the Gender Development Strategy in the Republic of Kazakhstan for 2006-2016 (hereafter the Strategy).

The Strategy is a pivotal document aimed at implementing the state’s gender policy, serving as the main tool in implementing the Strategy and monitoring this process by the state and civil society, and acting as an important step toward democratic development. The implementation of the Strategy will help create proper conditions for equal exercise of human rights by men and women. The Strategy is also designed to solve a number of tasks aimed at achieving equal rights and opportunities for men and women from 2006 through 2016.

1. Right to gender equality in the area of labour, employment and pension provision

Introducing equal rights and opportunities for women and men in the area of labour relations is done through a social partnership mechanism implemented based on norms and regulations which are intertwined at the level of general, industrial and regional agreements.

Sections of tripartite agreements are based on the protection and safeguards of women’s rights. The General Agreement signed by the Government, national associations of workers and national associations of employers includes a section ensuring the rights and safeguards of female workers and young people engaged in labour activities.

In this section, the parties to social partnership undertook an obligation to develop and realize a set of measures aimed at the protection of mother and child, social support of women, solving gender issues in the area of social and labour relations, and elimination of discrimination against female workers.

The social partners also considered a possibility of ratifying the ILO
Convention 103 on Maternity Protection.

The analysis of industrial agreements that were signed shows that twelve of them contain items pertaining to the rights and safeguards of female workers.

Industrial agreements by workers from such areas as electrical engineering, manufacturing engineering, armed forces, communication, railways, culture, health, construction, education and civil aviation provide for additional benefits and compensation payments to women who have children of pre-school age or in primary schools.

The agreements also provide for the compliance with legal norms on protecting women against the hazards of an industrial environment and heavy work, and on transferring pregnant women to easy jobs. The industrial agreement of railroad workers provides for certain funds for their training and the training of their children in higher education and vocational training schools. Nineteen industrial agreements provide for mandatory medical screening for female workers.

In all regions of Kazakhstan, tripartite agreements on social partnership contain similar sections on ensuring the rights and safeguards of female workers and young people involved in labour activities.

In their trilateral agreements almost all regions undertook a commitment to implement the Gender Equality Strategy for 2006-2016 or promote gender equality on the basis of this Strategy.

Efforts are underway in the regions on including sections on labour safety and protection for female workers and improving their social welfare in the collective agreements.

In December 2009, a Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Opportunities for Men and Women” was adopted which provides for the obligation of employers to carry out special programmes on bridging the gap between men and women in terms of wages by eliminating differences in their professional training skills. Employers also have to create working conditions allowing to combine work and family obligations (introducing flexible working hours, exemption from overtime work, introducing part-time work, on-the-job training). If employers fail to comply, or do not properly comply, with the Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Opportunities for Men and Women,” they may be brought to administrative liability.


Following the demand put forward in the resolution of the Congress of Female Workers, from 1 January 2008 employers have been exempt from their obligation to pay out benefits due to pregnancy or child birth. Today, such payments are issued by the State Social Insurance Fund. Also, pension accumulation will continue while women are on a maternity leave or away from work taking care of their child up to one year old.

State allowances to families with children increased from 15 to 30 monthly basic rates. From 1 January 2010, women with four and more children have been
entitled to one-time payments in the amount of 50 monthly basic rates, while one-time state payments for the first, second and third child amount to 30 monthly basic rates.

According to the Statistics Agency of the Republic of Kazakhstan, in the third quarter of 2010 the economically active population aged 15 and above reached 8,652,700 people, including 4,263,200 women (in the third quarter of 2009 – 8,490,800 people, including 4,202,500 women).

As many as 8,171,100 persons, including 3,995,100 women, were involved in the country’s economy (in the third quarter of 2009 – 7,955,200 persons including 3,896,600 women). The level of women’s employment, as compared to the economically active population, was 93.7% (in the third quarter of 2009 – 92.7%). Of those employed, the number of women working for hire is growing, and currently this figure amounts to 2,607,600 women which is higher than in the same period of 2009 by 83,600. In rural areas, the number of women working for hire also increased by 18,100 people, and in the third quarter of 2010 it totalled 866,800 people.

Women are employed in all sectors of the economy. However, women still tend to be better represented in such areas as health care, education, social services and commerce. At the same time, the lowest number of women is observed in such sectors as industry (mining industry), production and distribution of electricity, gas and water, and fishing.

The number of self-employed women, as compared to the same period in 2009, has increased insignificantly and amounted to 1,387,400 persons, while in rural areas this number amounted to 974,700 persons.

Compared to the same period in 2009, the number of unemployed women decreased by 37,700 and constituted 268,100 persons, while the unemployment rate among women was 6.3% (in 2009 – 7.3%).

Within regional employment programmes and the Road Map programme, authorized bodies undertook active measures on facilitating employment among those having no jobs, including women (providing assistance in terms of employment, community works, professional training and re-training, creating social working places, employment in the form of internship for young people).

In 2010, out of 207,700 women who approached employment agencies in search of work, 173,300 persons (83.4%) were provided with permanent jobs. 64,700 women took part in community works, 21,600 women were provided with social jobs, while 28,500 young women were sent for internship.

To increase women’s competitiveness in the market in various areas of employment, in the reporting period as many as 20,000 women passed vocational training. Of this number, 13,200 persons (66%) were provided with permanent jobs.

At the present time, the Government of the Republic of Kazakhstan has approved the Employment Programme by 2020.

Within this Programme, measures will be envisaged on involving a significant portion of self-employed individuals, including women, in the formal labour market, and improving and increasing the efficiency of their employment.
Women’s rights protection lies at the basis of tripartite agreements.

To balance the interests of parties to labour relations, the Ministry of Labour and Social Protection and social partners considered, at the meeting of the Interagency Working Group, a fair amount of proposals with regard to the Labour Code, including on gender equality. Thus, a number of coordinated proposals were reflected in the draft law “On Introducing Amendments in the Labour Code of the Republic of Kazakhstan” which was submitted to the Parliament for consideration.

According to the Law “On Pension Provision in the Republic of Kazakhstan,” women start receiving pensions earlier than men (at the age of 58 and 63 respectively). Women who gave birth to five and more children and raised them until they reached 8 years of age have the right to retire at the age of 53. In the past, such a possibility was bestowed only on women residing in rural areas.

Taking into account Kazakhstan’s international human rights commitments and the demand in the domestic labour market, and also for purposes of eliminating gender-based discrimination against women upon retirement, we deem it expedient to ensure, at the legislative level, the exercise of equal rights for men and women upon retirement, allowing women to retire either at the age of 58 or 63.

2. Women’s rights in public administration

At the present time, women in the Parliament of the Republic of Kazakhstan constitute 14% of all MPs. Also, they constitute 17.1% in maslikhats. In developed EU countries 30% of all members of representative bodies are women.

According to Article 12 of the Law of the Republic of Kazakhstan “On Civil Service,” no direct or indirect restrictions based on gender may be applied with respect to those seeking a position in government offices.

The number of women in government bodies has increased, and today they constitute 58% overall. As far as political civil servants are concerned involved in decision-making, only 7% of them are women.

In accordance with the recommendations of the UN Committee on the Elimination of Discrimination against Women, we deem it necessary to introduce a legislative quota (30% from the total number of members) for women in representative bodies. Also, women should be better represented at the decision-making level in executive public offices.

3. Gender-based violence against women and the role of health care facilities in its elimination

In accordance to the Declaration on the Elimination of Violence against Women, proclaimed by UN General Assembly Resolution 48/104, dated December 20, 1993 the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological
harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Gender-based violence is an act of violence perpetrated by a representative of one gender against a representative of another gender. This type of violence reflects and strengthens inequalities between men and women and ruins health, dignity and independence of a victim. It covers a broad range of human rights violations, including sexual abuse of children, rape, domestic violence, sexual harassment, women and girls trafficking, and harmful traditions. Such cases cause deep psycho-trauma, they are harmful to health, including reproductive and sexual health of women, and in some cases have lethal outcome.

Although there are many different biases related to gender-based violence (GBV), in reality, any woman can become a victim. GBV victims may include rich and poor women, educated and illiterate, married, widowed and divorced women. World Health Organisation (WHO) estimated that every fifth woman becomes GBV victim sooner or later (WHO, 1997). According to other estimates, every third woman becomes a victim of violence.

In February 2008, United Nations Secretary-General Ban Ki-Moon launched his campaign “Unite to End Violence against Women and Girls” all over the world.

“Violence against women is an issue that “cannot wait”. Even a quick look at statistics shows that at least one out of every three women is likely to be beaten, coerced into sex or otherwise abused in her lifetime”, — the Secretary General said at the launch of his campaign. “There is no blanket approach to fighting violence against women. What works in one country may not lead to desired results in another. Each nation must devise its own strategy,” he said. “But there is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, and never tolerable.”

The campaign is designed for 2008–2015, being coincided to the timeframe for achievement of development goals, formulated in the United Nations Millennium Declaration (UNMD). The campaign calls governments, civil society, women organisations, youth, private sector, mass media and the entire UN system for uniting actions to fight the global pandemic of violence against woman and girls. The campaign used the existing political and legal framework and powerful driving force, concentrated around this problem, and expressed in an increased number of initiatives of UN partners, governments and NGOs.

Family violence (domestic violence) – is an act of physical, psychological, sexual, and also economic violence committed by an intimate partner or a family member. Secretary General Ban Ki-moon said in his address on March 8, 2007: “Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women's lives, on their families, and on society as a whole. Most societies prohibit such violence -- yet the reality is that too often, it is covered up or tacitly condoned”.

Domestic violence implies situations, when one person controls or tries to control behaviour or feelings of another person. Domestic violence as one big
category has more specific sub-categories, defined by the nature of relationships between an offender and a victim, and also by their living conditions. There are four types of domestic violence: physical, sexual, psychological and economic.

PHYSICAL ABUSE
This is intended use of physical power or tools in order to inflict injuries or traumas to a woman.

It includes: hitting, slapping, punching, and stabbing that result in physical injury to the victim and sometime death.

According to the World Health Organisation (WHO), men use violence against women as a way to punish them for violation of their traditional female roles or for challenging their male qualities.

SEXUAL ABUSE
This is a forced sexual intercourse, which makes a woman to have a sexual contact without her consent, or contact with a sick woman or a woman with disabilities, under the pressure or under alcohol or drug intoxication.

Sexual aggression, with rape as its extreme case, is a complex and multilevel phenomena. It manifests itself in three main forms: sexual harassment, coercion and rape.

PSYCHOLOGICAL ABUSE
It means controlling a woman, her isolation, and humiliation.

It is expressed in ongoing criticism, insult and humiliation. And also in acts of violence against children, or other persons in order to control the partner; threats of violence towards himself, a victim and other persons, intimidation through violence against pets, or destroying property items, control over a victim’s activities; victimization, controlling social network of a victim; control over the access of a victim to a different resources (social support and health care, medications, vehicles, socializing with friends, access to education, job, etc.); emotional abuse, forcing a victim to perform humiliating acts; controlling a daily routine of a victim, etc.

Another very important aspect of violence is isolation of a victim by an offender. This can be expressed by the fact that he gradually destroys her social contacts, starting from the family of her parents. This does not happen overnight, but can be achieved through progressive manipulations, starting from such expressions as ‘your parents do not understand me’ or ‘your friend has been flirting with me’; and she would sooner break the contacts with her friends and family than challenge his words, since she believes him and is willing to keep the relationships.

Psychological abuse has also high prevalence and it is present in nearly every case of family violence. Repeated violence usually results in psychological sufferings, posttraumatic stress, depression, persistent fear, and sometimes even more serious consequences, such as attempts to commit suicide.
ECONOMIC ABUSE

This includes rejecting a woman an access to means of subsistence and taking power over her.

This can also be expressed in refusing to support children; in hiding income; wasting family money; in independent financial decision making – for example, when shopping for food, the needs of children or a wife may not taken into account, and, as a result, children may not receive adequate nutrition; a wife, when shopping, has to report back to her husband, providing receipts, etc.

This form of violence cannot be defined as delinquency and is very dangerous. It creates preconditions to unpunished psychological, physical and sexual violence, since a victim becomes dependent from her abuser.

Alternatively, even those women that work and the women that earn more than their husbands, may become victims of violence. Crisis centres often come across with cases when a husband manages all the money, allocating a pitiful amount to his wife for food. And women, in such situations, while feeling guilty, since their husbands were not able to fulfil their breadwinning capacity, and feeling sorry for them, cannot understand quickly enough that are in domestic violence situation.

Programme of Action of the International Conference on Population and Development (Cairo, 1994) is the fundamental steering document, which determines the strategy in fighting violence against women. Participants of this conference came to a common conclusion that empowerment of women, elimination of all forms of violence against women and girls are the key aspects of population and development.¹

The Beijing Platform for Actions, adopted at the Fourth World Conference on Women, says that …acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the State, instil fear and insecurity in women’s lives and are obstacles to the achievement of equality and for development and peace. The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities.² Moreover, the violence against women is exacerbated by the social pressure, mainly by the feeling of shame that makes women not to report certain acts committed against them; lack of women’s access to legal information, protection or support; lack of legislation prohibiting violence against women; inadequate efforts of authorities in assisting to communication of information about existing laws and their enforcement; and lack of educational and other measures on elimination of causes and consequences of violence. In this regard, violence against women is associated with high social, health and economic costs, and it is very important that gender based violence affect every member of the society.

² Platform for Actions, adopted by the Fourth World Conference on Women, Chapter IV, D. Violence against Women
In this regard, fighting the gender-based violence is extremely important nowadays.

UN uses the concept ‘gender-based violence’ in order to confirm that this violence results from gender inequality and it often tolerated or condoned by laws, institutional or social norms; gender violence is not only manifestation of gender inequality, it often strengthens gender inequality (Heise, Ellsberg and Gottemoeller, 1999).

The World Bank report says that gender based violence (GBV), and mainly violence against women is serious factors that provide greater impact on mortality and disability of women of reproductive age than oncologic diseases, malaria and road and other accidents. GBV may result in development of chronic mental and physical disorders and provide a negative impact on various aspects of a woman’s life. International documents report that aggressive behaviour in the family remains to be a serious problem due to the lack of punishment, adequate measures of law enforcement agencies and public tolerance to violence against women.

According to the research findings report that was conducted in 71 countries, 102 UN member-countries did not have laws that prohibit domestic violence, and 53 member states could not prosecute cases of marital rape, and only 93 member states had laws that prohibit women trafficking. Moreover, the report identified that 89 UN member states had developed legislation related to domestic violence, 140 countries – prosecuted marital rape cases, and 90 countries developed legislation about sexual harassment at work. Nevertheless, about a half member states do not have this legislation.

Legal systems and public of many societies have attitude that harms victims of violence. Often women become responsible for violence, committed against them, and laws of many countries leave offenders unpunished.

While many countries have legislation that prohibits domestic violence, it is still highly prevalent. In order to eliminate this factor, countries have to focus more on implementation and enforcement of enacted legislation and abolish laws that make preference to reunification of a family over the rights of women and girls.

Kazakhstan made significant achievements in ensuring gender equality and prevention of domestic violence for the recent years. Accession to Convention on the Elimination of All Forms of Discrimination against Women and other international legal documents in this filed was very important for Kazakhstan. National Commission for Women Affairs and Family and Demographic Policy by the President of the Republic of Kazakhstan, established by the Decree of the President of the Republic of Kazakhstan, of December 22, 1998 has a very important role in this regard. The Commission together with different ministries and agencies carries out invaluable efforts on the elimination of violence against women.

However, a number of crimes related to domestic violence remains quite high. So according to the Ministry of Interior of the Republic of Kazakhstan, 954 domestic crimes were registered for 12 month of 2008 (the total number of
registered crimes was 118965), including 65 minor offences, 215-crimes of medium gravity, 336-grave crimes, and 338 – very grave crimes.

In the total number of crimes against the person there are 903 domestic crimes, including 336 homicides, 328 cases of intended infliction of grave bodily injuries, including 201 cases of infliction of death by negligence and 2 rapes.

For 12 months of 2009, the number of domestic crimes was 887 (the total number of registered crimes - 110103), including 61 minor offences, 207-crimes of medium gravity, 297-grave crimes, and 322 – very grave crimes.

In the total number of crimes against the person there are 842 domestic crimes, including 320 homicides, 291 cases of intended infliction of grave bodily injuries, including 149 cases of infliction of death by negligence and 3 rapes.

For 3 months of 2010, the number of domestic crimes was 194 (the total number of registered crimes - 38689), including 19 minor offences, 25 - crimes of medium gravity, 72-grave crimes, and 78 – very grave crimes.

In the total number of crimes against the person there are 189 domestic crimes, including 78 homicides, 71 cases of intended infliction of grave bodily injuries, including 36 cases of infliction of death by negligence and 0 rapes.

However, since the major part of crime remains unreported, the real number of victims is probably much higher than official statistics. This situation is dramatized by the fact that the victims of aggressive acts, besides their physical, moral, and psychological sufferings, have been losing faith in the government’s ability to ensure their constitutional rights and personal security.

Survey on the level of awareness of people of Kazakhstan on domestic violence proved that more than 60% of women in Kazakhstan at least once in their live exposed themselves to different types of violence (physical, sexual, economic, social, psychological, etc.), and that any member of the family may be exposed to violence, however, the real facts say that 95% of violence survivors are women and children. Findings of the survey “The Level of Awareness of People on Domestic Violence” show that the most common type of family violence that respondents have ever experienced or heard is moral and psychological violence, according to 306 (53,7%) respondents, which was proved by every second answer. The second position in prevalence of domestic violence falls on physical violence - 290(51, 1%): people (every second respondent) have indicated that. Economic violence has the third position on the basis of the survey results - 198 (34, 7%) – this is almost every third respondent. 131 (23,0%), or every forth respondent reported on sexual violence. It should be mentioned that people are more willing to talk about violence that happens ‘somewhere else’. And at the same time, every 12th family from 570 had occasions of domestic violence. Every 8th family of respondents’ friends had cases of violence, and every 4th family of respondents’ neighbours had episodes of domestic violence.

One of the practical measures in implementation of family violence was establishment of units for protection of women from violence within the police structure in 1998. Currently 126 police officers are employed in these units. Kazakhstan is the only country in the post Soviet Union area, which has established
such a unit. In order to support women that have suffered from violence, officers of this unit work in collaboration with crisis centres. There are 21 functional crisis centres in the country, which support women suffered from violence. Some crisis centres have a capacity to provide shelter to women and their children (crisis centres Podrugy, Zabota in Almaty and GIATZ in Kargandy, etc.).

In order to improve the situation in this field, a questionnaire-survey was conducted in 2010 in different areas of the country, using the methodology, developed by the Ministry of Interior, in order to understand the level of knowledge about the forms, and the ways of domestic violence. Besides the information about violence against women, this survey allowed to obtain some data about violence against children, elderly parents, and other family members. Results of the interviews contributed to development of new forms and methods of domestic violence restrains and prevention, and recommendations for personnel of law enforcement agencies for its prevention. This survey was conducted in collaboration with the Research Institute of the Ministry of Interior Academy.

Ministry of Interior has been closely collaborating with the National Commission for Women Affairs, and Family and Demographic Policy under the President of the Republic of Kazakhstan and Human Right Commission. Together with representatives the National Commission they conduct different round tables, workshops and also various actions to prevent and restrain the violence against women.

It has to be mentioned that the existing legislation of Kazakhstan provides for criminal and administrative responsibility for different offences related to domestic violence, such as abasement of human dignity, beating, tortures, infliction of bodily injuries, murder, etc. At the same time, the Civil Code has some provisions that give opportunities for every person to restrain in judicial procedure the acts of people that violate or threaten to violate rights of individuals. Nevertheless, these pieces of legislation have not been always applied to victims of domestic violence, which, in return, have not been given a chance to restrain the facts of such violence, and create safe conditions for potential victims, provide them required health care, psychological, legal and other types of social support.

Adoption of key documents, such as Strategy for Gender Equality for 2006-2016, as well as the law 'On State Guarantees of Equal Rights and Equal Opportunities for Men and Women, and the law ‘On Prevention of Domestic Violence’, signed by the President of the Republic of Kazakhstan – was a significant step fighting domestic violence and ensuring gender equality. Pursuant to these laws, some other pieces of legislation had to be modified, in particular the Criminal Procedure Code, laws about law enforcement agencies, arms trafficking, etc., and a new provisions related to responsibility for unlawful acts in the field of domestic and family relationships was added into the Code of Administrative Offences in 2008 (p. 79-5).

The law ‘On Introduction of Amendments and Additions to Some Legislative Acts of Republic of Kazakhstan on Issues of Domestic Violence Prevention’ was enacted on December 4, 2009. An important specific feature of this legal document
is well developed conceptual framework. Specifically, it gives definitions to the terms physical, psychological, sexual, and economic abuse. Today domestic violence implies wilful unlawful act (acts or failure) perpetrated by one person in the field of family and domestic relationships against another (other people), inflicting or threatening to inflict physical and (or) psychological sufferings. Marital – domestic relationships characterizes relationships between married people that live together in one residential house, apartment or other residential premises, as well as between ex-spouses.

The very important provision of the law include definition of the authority of entities that are involved into prevention of domestic violence – the Government, local executive bodies, commissions on women affairs and family and demographic policy, minors commissions, law enforcement agencies, departments of education health, and social protection, etc.

The certain difficulty in fighting domestic violence is that victims often will not extradite abuser in fear of deteriorating her situation. In this regard, the government bodies have to promptly create safe conditions for victims, provide necessary information, legal and psychological support, and use individual prevention measures to an offender. As far as responsibility of abusers is concern, this issue can be successfully resolved under the existing criminal and administrative legislation. Pursuant to new legislative enactments, policemen have additional authorities, such as a right to conduct a preventive interview with an offender; a right to deliver an offender to a police station to write an infringement notice or a police order, a right to make a police order, which will restrain behaviour of an abuser towards a victim; a right of administrative arrest (detention) (isolation from the victim) up to 48 hours; a right to petition the court for setting up the special requirements to behaviour of the offender; a right to restrain the rights of a suspect or an alleged offender during investigation who had written undertaking not to leave the place and have proper behavior as a preventive measure. The body that takes criminal action shall send a written warning to a a suspect or an alleged offender about the prohibition to seek out, victimize, visit the victim, to have verbal, telephone or other contacts with the victim.

For breach of the police order, the special requirements to the offender’s behavior and non-fulfillment of restrictions by arraigned persons, the legislator shall estalish a stricker responsibility or stricter preventive measure.

If desired, the victim may extend the period of the police order up to 30 days, by sending a request and having received a prosecution warrant. If however the abuser breaches the requirements, a policeman may write a report and take the case to a court, which may extend these restrain measures up to one year.

According to the Ministry Interior of the Republic of Kazakhstan in 2009 administrative actions were brought against 27 thousands offenders for domestic violence.

of Kazakhstan on Prevention of Offences’ more than 8 thousands police orders were made for offenders involved into domestic violence.

Organisational and practical measures aimed at prevention of domestic violence, carried out in 2009 had resulted in 12.8% reduction of a number of domestic crimes.

At the same time, training of judges and lawyers on law application practice in the filed of women rights protection gains greater importance.

It is obvious that the issues of domestic violence prevention have to be resolved together with law enforcement, judicial, health and educational organisations.

Health organisations play a very important part in fighting and preventing gender-based violence, since women sexual and reproductive health aspects have been closely related.

Women that suffered from sexual violence in their childhood had a greater risk of neglecting safe sex rules, resulting in higher risk of HIV/AIDS transmission in their juvenile and middle age.

Women exposed to physical violence more frequently find themselves in situations of unplanned pregnancy. Many rape victims develop very serious physical and mental traumas right down to insanity and death. Suicide likelihood is nine times higher among rape victims than among women that have not been raped.

GBV problem used to have a wall of silence up until recent times, and victims of violence usually didn’t share their problems to health professionals.

At the same time, the experienced violence, whether it happened long time ago, or recently, provides a terrific impact on behavior of a woman and her attitude to people. For example, women suffered from sexual abuse in their childhood, often have feeling of shame and guilt, and they keep on blaming themselves. These negative emotions force them to take unjustified sexual risk, which make them particularly exposed to unplanned pregnancy, HIV/AIDS, and infertility. Researches show that these women also suffer from increased vulnerability from the viewpoint of probability of repeated acts of violence in juvenile and mature age, which only worsens their mental traumas and ruins their health.

Statistics shows that victims of the violence tend to seek health care in 50% more often that before it. And still the major part of these women do not share their sexual trauma with health professionals, and health professionals do not ask them.

Although we all understand that despite of the fact that health professionals do not discuss the GBV topic with their female patients, almost every day they have to treat victims of violence. Victims often have complains about growing pains of unspecified origin, nondiagnosed diseases, unwanted pregnancies. GBV provide multiple impacts on reproductive and sexual health of a woman. Therefore the role of health professionals is extremely important here, they have to solve health and psychological problems of persons that exposed themselves to gender-based violence. As a consequence it is very important that health professionals understand the GBV signs and solve GBV-related health problems. In health care facility
settings, victims are usually those women that have a reputation of a ‘difficult patient’. They often ‘labeled’ as a ‘poor thing’, since they cannot correctly use family planning methods that doctors prescribe them, fulfill recommendations of physicians and psychologists, come in time for follow-up visits. Their health gets worse time after time, they continue to complain on uncertain growing pains, headache, abdomen heaviness, backaches, problems with GI tract, etc.

Very often, such behavior and symptoms hide non-detected GBV case. It means that the real problem is that these women don’t get the healthcare and support that they need. Therefore, if GBV is not detected in time and timely treatment of its consequences is not delivered, effectiveness of reproductive health and sexual health programmes will be undermined.

Possible medical consequences and risk factors of gender based violence can be very significant. Most of the CBV victims would never admit that they suffered from GBV. Many of them never share anything about that with anybody. The research show that health professionals did not ask the major part of the victims about probability of GBV.

Research findings show that 70% of women will be willing to say the truth about the violence that they experienced, in case health professionals ask them directly about that. In reality, only 6% of women, involved into the abovementioned survey, were asked directly. 90% of women gave a positive response on the question, whether, on their opinion, physicians can help them in solving the problems that they developed as a result of the sexual violence that they experienced. The victims said that it was difficult for them to confess this at the beginning, however they were willing to have a confidential talk to the health professional, provided he/she was asking questions about GBV in a warm-hearted and unambiguous manner. In reality, many victims have been waiting that health professionals would be asking questions about GBV in their lives, but they didn’t.

In addressing the problem of gender-based violence it is important for health care facilities to collaborate with other organizations and groups dealing with GBV issues. Enactment of relevant legislation or amendments to laws pertaining to gender based violence is extremely important in this regard.

### Addressing the issues of GBV prevention in health sector legislative acts of the Republic of Kazakhstan

Gender based violence issues are reflected in Kazakhstani legislation in the law of the Republic of Kazakhstan, no. 214-IV, December 4, 2009 ‘On Prevention of Domestic Violence’. Concerning health organisations, the law on ‘On Prevention of Domestic Violence’ says that jurisdiction of law enforcement agencies include referring victims of domestic violence to support organisations or health care facilities (Article 10, p.7), and at the same time the article 12 of the abovementioned law regulates the jurisdiction of internal affairs bodies, which, according to its provisions, shall:
1) develop and approve in agreement with authorised social protection and education bodies standards for delivery of special social services;

2) develop and introduce methodological recommendations for delivery of health care and psychological support to victims into the practice of health care facilities;

3) participate in development of regulatory and legal acts pertaining to prevention of domestic violence.

At the same time, the article 13 of the abovementioned law regulates responsibilities of health organisations, which shall:

1) provide detoxification treatment, psychological, mental health care, health care and preventive measures, as well as medical rehabilitation of victims and persons perpetrated domestic violence;

2) inform law enforcement agencies on facts of victims’ seeking care and provision of health care to them;

3) implement activities aimed at prevention of alcohol, drug and substance abuse.

Despite of the obvious innovative nature of the new law, the practical mechanisms of its implementation have not been developed.

Let’s see how the gender based violence prevention issues are reflected in legislative acts in the health sector of the Republic of Kazakhstan. It should be mentioned that before enactment of the Code of the Republic of Kazakhstan ‘On People Health and Health System’, no. 193-4, dated 18.09.2009, health legislation included some laws and regulatory and legal acts that had been partially duplicating each other, and certain provisions were contradicting to each other.

With enactment of the Code of the Republic of Kazakhstan ‘On People Health and Health System’, health legislation was significantly unified and systematized.

In this regard, the following legislative acts and regulatory and legal acts of the Republic of Kazakhstan have been legally assessed:

The Code of the Republic of Kazakhstan ‘On People Health and Health System’

Regulation on Units of Anonymous HIV Testing and Psychosocial Counseling, dated 15.07.2008

Operational Rules for Health Organisations that Provide Inpatient Care, dated 21.07.2008

Rules for Delivery of Qualified Health Care to People, dated 21.07.2008

Rules for Delivery of Counseling and Diagnostic Services, dated 21.07.2008


From the viewpoint of supporting victims of the gender-based violence, it is very important to keep confidential their visits to health care facility. In this regard, it has to be mentioned that the Article 95 of The Code of the Republic of Kazakhstan ‘On People Health and Health System’ has a provisions on patient confidentiality: the information about that fact that a patient is seeking care, his/her
health status, his/her diagnosis, or other information, received during patient’s examination and (or) treatment constitute medical secrecy. Disclosure of the medical secrecy information by persons that found out this information during training, while performing professional, official and other duties is prohibited except the cases, stipulated by the paragraphs 3 and 4 of this Article.

It is not allowed to use personal information, related to a patient’s private life without his/her permission.

It is not allowed to connect automated databases with personified information to networks that link them with other databases without permission of patients, when information related to their private life is used.

The Article 96 regulates rights and responsibilities of citizens in protection of their reproductive rights. Citizens have a right to: free reproductive choice; reproductive health and family planning services; access to valid and full information about their reproductive health status; treatment of infertility, including using modern auxiliary reproductive methods and technologies, permitted in the Republic of Kazakhstan; donorship of sex cells; use and free choice of contraceptive methods; surgical sterilization; induced abortions; protection of reproductive rights; free decision making concerning a number of children and timing for their birth within (or outside) marriage; birth intervals that are necessary to preserve health of a mother and a child; storage of sex cells.

Adolescents have a right for protection of their reproductive health, as well as for sexual and moral education.

Citizens have to respect rights, freedoms and legal interests of other people, when they exercise their reproductive rights.

The Article 104 regulate the issues of induced abortions, which is especially important for victims of sexual abuse. At the same time, it is important to remember that abortions remain to be the main cause of maternal mortality. In order to prevent abortions, physicians have to talk to their patients, explaining moral, ethical, psychological and negative physiological consequences and possible complications of abortions.

Pregnancy can be terminated at will of a woman up to twelve weeks, on the basis of social indications – up to 22 weeks, on the basis of medical indications, threatening the life of a pregnant woman or (and) fetus (single gene disorders, incurable fatal congenital malformations and health condition of fetus), – regardless the gestation period. Artificial termination of pregnancy for adolescents can be done with consent of their parents or other legal representatives (Article 104, paragraphs 1-3).

An important thing is that health care facilities may provide pre- and post-abortion medical and social counselling at a woman’s will, including individual selection of contraception methods. (Article 104, пункт 4).

Medical and social care to HIV positive patients and patients with AIDS become very important for prevention of gender based violence, which is reflected in the chapter 19 of the Code.
The Article 112 ensures the government guarantees in prevention, diagnostics, and treatment of HIV/AIDS. The Government guarantees: 1) accessibility and quality of voluntary and (or) confidential free medical examination, ensuring dynamic medical supervision, delivery of psychosocial, legal and medical counselling; 2) health care and pharmaceutical support under state guaranteed benefit package; 3) social and legal protection; 4) prevention of any form of discrimination in relation to the nature of this disease; 5) implementation of preventive measures to reduce the risk of HIV vertical transmission from a mother to a child. The Article 113 regulates social protection of HIV positive patients or patients with AIDS. Education in school or other educational institutions are guaranteed for HIV-positive children or children with AIDS. Dismissal, refuse to hire, to admit into children pre-school institutions, impairment of other rights or legal interests of HIV positive and people living with AIDS, as well as impairment of rights to housing or other rights or legal interests of their family members and close ones. HIV positive or people living with AIDS that got infected as a result of improper work of health professionals or professionals form consumer services, have a right for compensation of harm to their live and health pursuant to the legislation of the Republic of Kazakhstan.

HIV prevention of is an important factor for prevention of gender based violence (Article 114). Pursuant to provisions of this Article, HIV prevention measures shall be performed through: development and implementation of targeted preventive and educational programmes for different groups of population; informing population through mass media on HIV epidemiological situation and preention measures; development and dissemination of information materials for different population groups; implementaiton of programmes for protection from HIV sexual and blood transmission; establishment of Confidential Counseling Services (needle exchange points), anonymous testing, psychological, legal and medical counseling; safety control at delivery of services related to skin integrity damage.

The Article 115 regulates provisions related to HIV testing, which say that citizens of the Republic of Kazakhstan and repatriates (oralmans) have a right for free voluntary anonymous and (or) confidential HIV testing and examination.

The following categories are subject to mandatory HIV testing: individuals, in relation to whom there are reasonable causes to belive that they are HIV positive, on the basis of requests of health authorities, public prosecutions department, investigative agencies and the court (article115, p. 2); individuals that have clinical and epidemiological indications pursuant to the regulations of the authorised agency (paragraph 2, sub-paragraph 3); foreigners and persons without citizenship resident at the territory of the Republic of Kazakhstan –in case of evasion of HIV testing shall be deported outside of the Republic of Kazakhstan, (paragraph 3).

Testing of a adolescents and disable persons shall be performed with the consent of their legal representatives or on their will (artcle 115, p 4). Health organisations that have detected HIV, shall provide a written information to the patient about the result, inform him/her about necessary precautions to protect
his/her own health and health of other people, and also give a warning about administrative and criminal responsibility for evasion of treatment and transmission of HIV to other people.

For prevention of gender based violence it is important to conduct preventive measures and treatment of patients with alcohol, drugs and substance abuse, which is reflected in the Article 21 of the Code.

The Article 130 regulates organization of health care to patients with alcohol, drug and substance abuse, where the state ensures the system of measures for prevention and treatments of alcohol, drug and substance abuse. Coercive healthcare measures can be applied on the basis of a court decision, to people that have committed a crime and need treatment from alcohol, drugs or substance abuse, and evade voluntary detoxification treatment.

Medical and social rehabilitation of drug, alcohol and substance users shall be done on the voluntary basis, when they seek medical advice in health organisations that provide detoxification treatment, and can be anonymous at a patient’s will (p.131 paragraph 1). Medical and social rehabilitation to adolescent users of alcohol, drugs and substances, as well as drug users that have been acknowledged by a court to be legally incapable shall be provided with the consent of their legal representatives (paragraph 2).

State health organisations may acknowledge that a patient has alcohol, drugs or substance dependence disorder after appropriate medical examination according to the procedure, established by the authorised body (Article 132 paragraph 1).

In case a person expresses his/her disagreement with acknowledging him/her as a patient with alcohol, drugs or substance dependence disorder, this decision may be appealed in senior health authorities or in court (Article131 paragraph 2). The Article 133 regulates the rights of persons with alcohol, drugs or substance dependence disorder. Persons with alcohol, drugs or substance dependence disorder have a right to: qualified health care; choice of detoxification clinic; to get information about his/her rights; on the nature of his/her substance dependence disorder, applied methods of treatment and community-based medical and social rehabilitation or at home, if necessary. (Article 133, p. 1). Drug user, or his/her legal representative has a right to refuse from medical and social rehabilitation at any stage (paragraph 2). Person that have refused to use services of medical and social rehabilitation shall be given explanations of all consequences of not using medical and social rehabilitation. Refusal from medical and social rehabilitation with indication on possible consequences shall be written in medical records and signed by the person with substance dependence disorder or his/her legal representative and an addiction psychiatrist (paragraph 3). At the same time, restrictions of rights and freedoms of drug users, only of the basis of the diagnosis ‘substance dependence disorder’ and the fact of that he/she has been monitored in drug detoxification clinic shall not be accepted, except in the cases stipulated by laws of the Republic of Kazakhstan (paragraph 4).

The Article 134 regulates registration and monitoring of people with alcohol, drugs and substance dependence disorders. Individuals certified as patients with
alcohol, drugs and substance dependence disorders are subject to registration and monitoring in community health organisations and have to receive supportive care in an order, established by the authorised body.

Healthy lifestyle has acquired an important meaning in prevention of gender based violence (Chapter 25, Article 154). Development of healthy lifestyle implies health education, healthy nutrition, and prevention of diseases through dissemination of information, hygiene education, and educating people on issues of health promotion and prevention of behavior-related diseases. Healthy lifestyle development has been ensured by health entities with coordination and methodological guidance of the authorised body in collaboration with other public authorities, internaitonal and non-governmental organisations.

The List of Types and Volumes of Predoctor (paraclinical) Services, of 21.07.2008, approved by the Decree of the Minister of Health of the Republic of Kazakhstan, Ref. no 134, of February 26, 2007 says about the need of of preventing diseases, including implementation of health promoting activities and psychoprophylactic preparation of pregnant women to delivery. Paraclinical (predoctor) care is a complex of services, provided by health paraprofessionals in preventive purposes, as well as at diseases that do not require use of diagnostic, treatment and medical rehabilitation methods involving a physician (para. 4). Volumes of paraclinical health care shall be determined in accordance to standards (protocols) of diagnostics an treatment, approved by an authorised health body. In the absence of the standards (protocols) the volume of diagnostic and therapeutic measures shall be determined on the basis of common approaches (para. 5).

Another regulatory and legal document the defines the state guaranteed benefit package for health services for 2008-2009, of 16.07.2008, approved by Resolution of the Government of the Republic of Kazakhstan, Ref.no. 853, of September 28, 2007 states that emergency care, including drugs support from the List of Essential Drugs shall be provided for free in an order, established by the authorised health body (hereinafter – “the authorised body”), for all categories of people in life- and health- threatening conditions (medical emergencies), caused by an acute disease, or relapse of chronis illnesses, accident, traumas, poisioning, as well as pregnancy and deliveries (para. 4).

HIV/AIDS preventive activities are very important for prevention and fighting gender based violence. In this connection the role of the units for HIV-anonymous testing and psychosocial couselling become very important, which is regulated by the Regulations on Units for HIV/AIDS Anonymous Testing and Psychosocial Counselling, of 15.07.2008, approved by the Order of the Minister of Health of the Republic of Kazakhstan Ref. no. 227, of March 9, 2004, “On Organisation of Units of HIV Anonymous Testing and Phychosocial Counselling”. Units of HIV Anonymous Testing (herinafter – AT) and Psychosocial Counselling (hereinafter - PSC) shall be organised by the territorial centers for fighting and preventing AIDS (hereinafter – AIDS Centers), as well as on the basis of other public health organisations (prenatal clinics, clinicodiagnostic polyclinics, students policlinics, family–outpatient clinics, narcological and dermatovenerologic
dispensaries) and are their structural units (para 2). It is very important for individuals that have been sexually abused, that HIV testing is accompanied by elements of pre-test psychosocial counselling in a form of interview before the blood test. A professional, trained in HIV/AIDS issues with pre- and post-test counselling skills works in AT unit (para. 3).

This regulatory and legal act defines that psychosocial counselling is a confidential dialogue between a consultant and counsultee, with the purpose to discuss objectives and reasons for tests, assessment of HIV transmission risk, which is related to behaviour of counsultee, determination of emotional reactions, and possible consequences after communicating the test results, and training safe behavior (para 14). Work of the psychosocial counselling unit is aimed at provision of consultations on HIV/AIDS issues to counselees and pre- and post- HIV test psychosocial counselling (para. 15). PSC units involve professionals trained in HIV/AIDS issues with skills of psychosocial and pre- and post- HIV test counselling (para. 16).

Delivery of qualified health care to population shall be regulated by the “Regulations on Delivery of Qualified Health Care to Population” of 21.07.2008, approved by the Order of the Minister of Health of the Republic of Kazakhstan, of September 23, 2003, Ref. no. 701, which states that the qualified health care shall be provided by rural outpatient clinics, family outpatient clinics, polyclinics (counselling centers) by region (central) hospital, including pubertal units (wards), territorial city policlinics, including children polyclinics and female counselling centres, counselling-diagnostic polyclinics and other types of outpatient – polyclinic organisations (para.10).


Analysis of health legislation of the Republic of Kazakhstan, therefore, can lead to a conclusion that it has indirect provisions pertaining to prevention of gender-based violence, and at the same time it does not have direct provisions on procedure of delivery of health and psychological services to individuals affected by gender based violence, which, obviously, requires some improvement. The main strategic document aimed at prevention of gender-based violence is the Law of the Republic of Kazakhstan “On Prevention of Domestic Violence”, as well as the Strategy of Gender Equality of the Republic of Kazakhstan for 2006-2016. Implementation mechanisms for the law ‘On Prevention of Domestic Violence’ have not been developed yet; and in order to ensure more effective protection of women rights, mechanisms for application of provisions of UN Convention on the Elimination of All Forms of Discrimination against Women in courts.

The major efforts have to be focused on the elimination of causes of violence against women, on creating conditions for early prevention of violence through ensuring gender equality even in crisis environment. In fact, the crisis multiplies all
risks associated with violence against women, such as poverty, unemployment, substance abuse, women and girls trafficking, and their sexual exploitation.

Collaboration with different organisations that work on one common problem shall increase probability of making a difference. These changes may include adoption of appropriate GBV laws, or amendments to them, ensuring government support and/or financing basic services provided to GBV victims, development or expansion of non-governmental organisations that are involved in measures to fight gender based violence.

Joint efforts in fighting gender-based violence, among other matters, will allow avoiding duplication of services provided by GBV victims. Health care facilities have to recognise that many women that visit doctors in relation to family planning, antenatal care, or pediatric issues – are GBV victims, and this issue had to be addressed, when a woman seeks care. Since no woman is guaranteed that she will never become GBV victim, it is very important to assess every patient for this particular aspect.

It is possible that some of the health professionals already trained to detect GBV cases, however, they simply do not have an opportunity to use their skills, since they don’t have an organisational support in a form of a special project of supporting GBV in the framework of the general health care programme of their facility. When they are asked about the reasons for such a drawback, they say that they feel uncomfortable to address such an issue with their visitors, since they afraid of posining female visitors' minds against themselves or do not know how to help them, in case a women gives a positive answer.

Some administrators report that they afraid of the fact that if the problem is revealed, their personnel will have to deal with the needs of GBV victims. As a result, health professionals won’t be able, on top of all, to cope with their main responsibilities.

In reality, introduction of assessment of female patients in relation to GBV allows even improving quality of the health care, provided in other aspects. The experience proves that interviewing female patients in relation to GBV issue is beneficial both to health care facilities and their clients. For patients – GBV victims, such a project allows to put an end to the isolation, where they find themselves as the only keeper of their terrible secret, and at least partially get rid of oppressive feeling of guilt and shame, and to increase the level of understanding of interconnectedness of the painfull symptoms and GBV. All these interventions help the victims to have greater control of their lives and feel empowered.

As far as personnel is concerned, being trained in detection and treating the consequences of gender based violence, they will be able to expand and strengthen the range of their professional skills. Besides learning many new things about gender-based violence, they will learn techniques of discussing sensitive issues with their patients in general, improve their interpersonal communication skills, and, eventually, relationships between patients and physicians will be much better.

This is particularly important for polyclinics that provide reproductive health services, services in sexual hygiene, mother and child health. Besides, such an
approach can be used by any facility that have been visited by women, for example, public or private social welfare organisations, which are willing to adopt innovations. It is important to remember that GBV affected women need to get support in every organisation they go.

Therefore it is very important to understand the nature of relationships between GBV and reproductive and sexual health. In this relations, the programmes that train health professionals to deal with GBV victims become very important.

In summary, the further investigation of the problem related to violence against women, development of proposals to introduce amendments and modifications into existing legislation, improvement of forms and methods of working with GBV victims and persons perpetrating it, will allow to solve effectively the outlined problems.

**RECOMENDATIONS:**

1. With regard to international commitments of the Republic of Kazakhstan in human rights and protection of the needs of internal labour market, as well as in the purpose of the elimination of gender-based discrimination against women – civil servants at retirement, we recommend to the Government and the Parliament of the Republic of Kazakhstan to ensure enforcement of the equal rights for men and women at old-age retirement, providing women a right to choose, whether to be retired at age 58 or 63.

2. To set a quota by law for women in representative agencies of State power up to 30% of the total number of parliamentarians. To develop practical measures to increase women representation at the decision-making level in the executive State government bodies.

3. To ensure practical implementation of recommendations of UN Committee on the Elimination of All Forms of Discrimination against Women, developed on the basis of the review of the reports of the Republic of Kazakhstan on implementation of provisions of the Convention on the Elimination of All Forms of Discrimination against Women.

4. To ratify the Maternity Protection Convention of June 28, 1952

5. To ratify Convention (No. 100) concerning EQUAL REMUNERATION FOR MEN AND WOMEN WORKERS FOR WORK OF EQUAL VALUE, adopted on June 29, 1951


7. Analysis of health sector legislation of the Republic of Kazakhstan may lead to a conclusion that it has indirect provisions pertaining to prevention of gender-based violence, and at the same time it does not have direct provisions on procedure of delivery of health and psychological services to individuals affected by gender based violence, which, obviously, requires some improvement.

8. The major efforts have to be focused on the elimination of causes of violence against women, on creating conditions for early prevention of violence through ensuring true gender equality.
9. To create shelters for women affected by domestic and gender violence, human trafficking and other types of discrimination in province centres of Astana and Almaty.

10. To develop and adopt the Training Programme for health professionals to work with persons (victims) that have outlived gender-based violence.

11. To conduct regular activities aimed at prevention and restraining offences related to gender-based violence.

**Rights of persons with disabilities**

Legal framework for social protection of persons with disabilities is established by the Law of the Republic of Kazakhstan "On Social Protection of Persons with Disabilities in the Republic of Kazakhstan" (hereinafter – the Law), which specifies legal, economic and organisational conditions for ensuring social protection of persons with disabilities and equal opportunities for their life activity and social integration.

For every disabled person, depending on his/her rehabilitation potential, an Individual Rehabilitation Programme (hereinafter – IRP) is developed to specify a set of rehabilitation arrangements, which include medical, social and professional rehabilitation measures aimed at recovery and/or compensation of organism functions that are in disorder or have been lost.

Based on their IRP, persons with disabilities are provided with prosthetic and orthopedic aid, with technical auxiliary (compensatory) devices, specialized means of transportation, and sanatorium and resort therapy in accordance with the list and procedures that are specified by the Government of the Republic of Kazakhstan.

In addition, standard hygienic aids, services of sign language specialists or individual assistants are provided to those persons with disabilities who require them.

For example, in 2010, prosthetic and orthopedic products and prosthetic and orthopedic aid were provided for more than 6.7 thousand persons with disabilities to the amount of 701.8 million KZT. More than 2 thousand wheelchairs were procured for persons with disabilities to the amount of 201.2 million KZT.

Audiology aids were provided for more than 4.1 thousand persons with hearing impairment to the amount of 230.5 million KZT.

Over 6.6 thousand persons with disabilities were provided with blind aids to the amount of 169.6 million KZT.

Sanatorium and resort therapy was provided to more than 8.6 thousand persons with disabilities to the amount of 746.7 million KZT.

There were also provided:

- individual assistant services – for 5.6 thousand persons with disabilities of the I group, audiology specialist' services – for 2.2 thousand persons with hearing impairment to the amount of 1.1 billion KZT;
- standard hygienic aids – for 13.6 thousand persons with disabilities to the amount of 872.9 million KZT.
Local executive authorities are taking measures to ensure unimpeded access to social infrastructure facilities for persons with disabilities.

As of January 1, 2011, the country numbered 13,270 access communications, access ramps, facilities for wheelchairs.

3,544 public transport stops are equipped for persons with disabilities.

Out of 12,852 municipal buses available in the country, 458 buses are equipped with devices for persons with disabilities to get on a bus and to get off a bus.

669 zebra crossings are equipped with audible and light warning devices, persons with disabilities are serviced by 156 specialized buses.

According to local executive authorities, in 2010, 11,700 persons with disabilities, who have IRPs, were offered employment, and 30.9% (3,630 people) were employed.

4,257 people were placed in jobs under quotas.

552 persons with disabilities, who have IRPs, were referred to vocational training, among them, 235 people, after training, were placed in permanent jobs. Persons with disabilities were provided with professional training for the following professions: a masseur, cook and confectioner, hairdresser, bookkeeper, PC operator, small business manager, etc.

Out of the total number of persons with disabilities in the country, who completed their training in 2010, 99 persons were placed in temporary jobs.

Under implementation of the Law "On Special Social Services", introduction of a Standard for children with psychoneurological pathologies in in-patient hospitals is in progress; also, since January 1, 2010, a Standard for provision of special social services for persons with psychoneurological diseases above 18 was promulgated, for the amount totaling 2,026.1 million KZT.

2,789.3 million KZT is committed for further implementation of new nutrition standards in 2010.

In 2010, within the framework of the state social order, procurement of special social services, conducted in nine regions of the country, amounted 453.5 million KZT.

In 2010, 202.3 million KZT were allocated for the development of outpatient health and social facility network in eight regions of the country.

Kazakhstan is preparing conditions for ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.

Under the Direction of the Prime Minister of the Republic of Kazakhstan No.157-p, dated November 6, 2009, a working group was established to draft a long-term national action plan to ensure the rights and improve life quality for persons with disabilities (hereinafter – the National Plan).

During 2010, the working group held 11 meetings, at which it considered proposals related to the draft National Plan from interested central and local authorities.
Submission of the draft Plan to the Government is planned for the 1 quarter of 2011.

With a view to be prepared for ratification of the Convention on the Rights of Persons with Disabilities, experience of the number of FSU countries and foreign countries was studied.

**RECOMMENDATIONS:**

1. To develop and adopt the National Action Plan for long –term prospective in ensuring rights and improvement quality of life for people with disabilities.
2. To ratify UN Convention on Rights of People with Disabilities and Optional Protocol to the Convention.

**Rights of ethnic groups (ethnic minorities)**

Since gaining its independence, Kazakhstan developed its own **model for preservation and strengthening of interethnic and interdenominational concord based on unity in diversity principle.** The Kazakh solution for interethnic and interdenominational relations is recognized by international community - from the OSCE to the UN. Tolerance issues formed one out of four mottos of Kazakhstan’s presidency in the OSCE in 2010.

In 1992, at the I Ethnic Forum devoted to the independence anniversary, President Nazarbaev raised a point on the necessity to institutionalize interethnic relations. He **put forward an idea to create an Assembly of the People of Kazakhstan** (hereinafter – the Assembly, APK), and was providing all the support to the ethnic culture revival process. The Assembly of the People of Kazakhstan became the key conductor for peace and concord, a unique platform ensuring interaction among all ethnic groups and coordination of their interests. In 2007, the Assembly, after it gained a new status, was transformed from a consultative and advisory institute to constitutional authority ensuring representation of ethnic minorities in public and political life of the country.

The past year of 2010, became a stage demonstrating noticeable strengthening of the national economy after the global economic crisis: the expected GDP growth exceeded 7%. A Programme of accelerated industrial and innovative development of Kazakhstan was launched. Development Strategy for Kazakhstan to 2020 was approved. We managed to maintain and increase our social achievements.

Successful presidency in the OSCE and success in the Summit in Astana signalized global triumph of the Leader of the Nation, of the people of Kazakhstan, and of the county’s multiple-vector foreign policy.

This success became feasible due to strengthening of the domestic policy in Kazakhstan, due to our stability, peace policy and social consensus, which reached a new quality level. An enacted Law on the Leader of the Nation is fixing an objective status of the Head of the State in the social and political life and public administration.
Significant political success for the people of Kazakhstan became discussion and enactment by the Assembly of the People of Kazakhstan (hereinafter – the Assembly, APK) of a major ideological document – National Unity Doctrine (hereinafter – the Doctrine) that is based on common values, among which Independence is the main value. Its provisions were taken into consideration when drafting the Development Strategy for Kazakhstan to 2020; the Doctrine implementation measures were included in strategic development plans for central and local executive bodies, including the programmes developed for 12 ministries.

As to scientific, theoretical, public and political aspects, President N. Nazarbaev’s formula for Kazakh model of interethnic tolerance and social consensus was developed and presented at all the events held by the OSCE under the presidency of Kazakhstan, and the UN events attended by Ban Ki-moon. By now, this model became an efficient political and public mechanism that is recognized in the world, is time-proved, and practice-proved. Just in 2010, representatives from 11 countries (USA, UK, France, China, Netherlands, Germany, etc.) paid a special visit to be familiarized with our model. This testifies once again the relevance of our experience, proves that the entire world is in search of the unity formula.

In Moscow State University named after Lomonosov, in Russian State Humanitarian University, a special course on Kazakh Model of Interethnic Tolerance is delivered, including in Kazakh language.

Main goals, objectives and provisions set in the medium-term Strategy (until 2011) of the Assembly of the People of Kazakhstan are achieved. In his report to the Head of the state, the Head of President’s Administration stated that under the Strategy, “key targets have been achieved. Experience of Kazakhstan in interethnic relations became one of the key factors for Kazakhstan’s presidency in the OSCE; it received appreciation of UN institutes”.

The year 2010 became the 15-year anniversary of the Constitution of the Republic of Kazakhstan and 15-year anniversary of the Assembly of the People of Kazakhstan. In the history of our country, these events will always remain inseparably related with each other. On their eve, there were presented two large scientific and research monographs: “Nursultan Nazarbaev: Idea of Piece and Public Consent” (in 3 languages), and “The Assembly of the People of Kazakhstan: a Historical Sketch” (in 2 languages). Analysis of speeches delivered by the Head of the state at all 15 sessions proved their historical value in terms of policy forming for Kazakhstan, demonstrated that stability, confidence, economic and social achievements, which are globally recognized, became possible due to the unity of the people, interethnic consensus, and consistent implementation ofconstitutional principles in the area of interethnic relations.

The XVI Session of the Assembly of the People of Kazakhstan, which was held under the slogan “Confidence, Traditions, Transparency, Tolerance”, showed for the entire world an example laid by the Leader of the Nation to the foundation of public consensus. This was confirmed by the results of the High-level OSCE conference in Astana on tolerance and non-discrimination.
It is no coincidence that “the Spirit of Astana” is discussed worldwide as a well-shaped political and philosophical phenomenon, a model for existence of societies and states in XXI century, as a symbol of universal aspiration for world order based on principles of confidence, consensus, mutual respect and unity in diversity.

Results achieved by the Assembly in 2010 include bettering of monitoring and operational control over the interethnic situation. For the last 3 years, the APK managed to quarter the number of conflict situations of ethnic nature; at the second half of the year 2010, there were no conflicts at all, however, the focus on the issue remains strong and the work is continued.

Infrastructural strengthening of interethnic relations was achieved. There were created the Scientific and Expert Council, three public funds, the Club uniting journalists that are the leading experts in ethnic issues, including those at the regional level. Multifunctional web portal of the APK is under development, “Menin Elim” and “Dostyk – Druzhba” magazines are published. The Palace of Piece and Accord in Astana and Houses of Friendship in regions are at the disposal of ethnic and cultural centres.

Diligent and tireless work of hundreds of people is behind this list: scientists, experts, activists of ethnic and cultural associations.

The work conducted by the Assembly with the youth was also significantly strengthened, students’ “Kamkor” movement was created, and All-national Forum “Young People for the Unity of the People of Kazakhstan” was held.

Coordinating role of the APK Secretariat in implementation of the national policy was strengthened. It encompasses formational, educational, pedagogical, law enforcement and legal, and international aspects of interethnic consensus in the country.

Unfortunately, “critical decay” forewarned about by Nursultan Nazarbaev at the dawn of the new millennium, was marked by escalation of intolerance and antagonism, and outbursts of ethnic and confessional conflicts all over the world.

Recognition of multiculturalism policy crisis in Europe, problems in Balkan countries, more than fifty-year conflict in the Middle East – all these indicate that the issue of unity in poly-ethnic communities remains among top priorities in the global agenda.

In his speech devoted to the Independence Day, President Nursultan Nazarbaev emphasized the importance of transferring traditions of friendship and accord to future generations. Therefore, he requested for a new concept to be developed for celebration of the Day of Unity in a new format.

The world has approached such a point in civilization evolution when cultural polyphony of the world makes itself known more as an individual global phenomenon. It becomes obvious that way of living, traditions, culture, and ethnic history of different regions of the world may not be ignored.

In this connection, the President of the Republic of Kazakhstan set a task to search for new approaches to preserve ethnic and cultural variety of the people of Kazakhstan, and instructed the Secretariat of the Assembly, the National Welfare
Fund “Samruk-Kazyna” together with the mayoralty of Astana to draft and submit proposals on creation of ethnic aul in Astana. This important innovative project intends to create careful attitude to our main wealth – Independence, land, unity and spirituality – as a public norm and internal necessity.

Development of patriotism, forming of Kazakhstan identity and national unity is a key issue in the agenda requiring direct participation and specific feedback from every citizen of the Republic of Kazakhstan.

It should be noted that inter-sectoral centre on interethnic relations, development of common understanding and new mechanisms for improvement of Kazakh tolerance model will be established.

The aforesaid allows to state that Kazakhstan created necessary conditions to satisfy the needs of all ethnic minorities and harmonize interethnic relations. Measures aimed at protection of civil, political and cultural rights of ethnic minorities in Kazakhstan comply with the standards of the Declaration on the Rights of Persons Belonging to Nationalor Ethnic, Religious and Linguistic Minorities, and the CIS Convention on Minorities Rights.

**RECOMMENDATIONS:**

1. For implementation of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopt special Law of the RK “On Counteracting Manifestation of Racial (National) Discrimination”, or legally introduce individual administrative and criminal liability for persons propagandizing racial (national) superiority, or those allowing manifestation of racial (national) discrimination of other people.


**Raising public legal awareness**

Effectiveness of the state of human rights mechanisms is directly dependent on the level of public legal awareness and legal culture of a country's population.

A low overall legal culture provides for a favourable environment for corruption related offenses and crimes.

Activity in forming of a high legal culture should be carried out in two directions, which are focused on improving quality of the professional lawyers, legal training for employees of the state apparatus, including law enforcement agencies, and legal education of the population.

On 27 September 2006, a Digital Library of the Commission on Human Rights under President of the Republic of Kazakhstan, which provides free access to legal information for the population of Kazakhstan, was opened in Astana. Support for Digital Library in the country was entrusted to the National Academic Library of the Republic of Kazakhstan (NABRK). Library documents are available at [http://hrc.nabrk.kz](http://hrc.nabrk.kz) in Kazakh and Russian languages; the interface of the library website is presented in Kazakh, Russian, French and English languages.
Creation of a Digital Library is an integral part of the preparation process of the National Action Plan for Human Rights. It was created jointly by the UN Development Programme in Kazakhstan, the UNESCO Cluster Office in Almaty and the Commission on Human Rights under President of the Republic of Kazakhstan.

It should be noted that the Digital Library of the Commission on Human Rights is essentially an innovation for the Baltic countries, Eastern Europe, CIS and Central Asia, a step in the process of improving access to legal information, of providing education on human rights for all through open public service.

The important characteristics of the Digital Library are: multilingualism, ease of use, volume: more than 1000 documents issued though handling of public complaints by the Secretariat of the Human Rights Commission in the area of human rights violations.

The target audience is, first and foremost, the rural communities, the most vulnerable groups - the disabled, pensioners, women, children, the poor and those groups, who had no access to legal information. A section of the library “Methods”, which includes more than 70 understandable to people categories, systematizing knowledge in the field of human rights, was provided for this purpose. Frequently Asked Questions are provided in most categories.

The Digital Library can significantly improve a level of public awareness in the area of human rights and become an effective educational tool.

Free software Greenstone was provided by UNESCO, developed by the University of Waikato, New Zealand http://www.greenstone.org.

The Digital Library’s tools provide two levels of access:
- Via the Internet – online
- Without such Internet connection on local computer or local area network – off-line.

Digital Library does not require professional training in a field of information technology; it has built-in free display and development of content tools.

Use of information and communication technologies is the most effective way of disseminating information over a large area with a small population.

To date, the Digital Library on Human Rights was successfully launched at mayoralty and maslikhat of Almaty and South Kazakhstan region with the assistance of the Commission on Human Rights, United Nations Development Programme (UNDP) and UNESCO Cluster Office in Almaty and Shymkent.

RECOMMENDATIONS:
1. Develop an educational manual “Human Rights in Kazakhstan” in official and Russian languages for secondary schools, colleges and universities.
2. Develop a human rights geared special educational programme for police officers as a part of implementation of recommendations of the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012, of the Commission on Human Rights under the President of the Republic of Kazakhstan.
jointly with the Kazakhstan’s International Bureau for Human Rights and Rule of
Law, with the support of MOES RK and the UN Democracy Fund (UNDEF). Such
programme will consist of two main components:

a) development and introduction of a compulsory human rights course in
higher educational institutions of Ministry of Internal Affairs of the Republic of
Kazakhstan and in Academy of Financial Police;

b) development and introduction of a special human rights course in post-
secondary educational institutions of Ministry of Internal Affairs of the RK.

3. Provide regular media coverage of topical issues in the area of human rights
protection for the general population of the republic, including publication of
leaflets on human rights in cases of detention, arrest, when signing contracts, being
admitted to university, being hired and fired, etc.

4. Ministry of Justice together with the National Academic Library is to
continuously amend data base of the Digital Library, located on the web site of
National Academic Library: http://hrc.nabrk.kz, with updated regulatory and legal
acts by subjects and sections in the official and Russian languages.

5. Ministry of Culture and National Academic Library are to ensure the
continuous functioning of the Digital Library on Human Rights.

6. Mayoralties of provinces and Astana city (except for Almaty and South
Kazakhstan province) are to take necessary measures to create and launch a
Regional Digital Library on Human Rights.

Prevention of human trafficking

Human trafficking is a serious violation of human rights and therefore also
represents a security threat not only in the OSCE region, but throughout the world.
In light of the need for a concerted, coherent, and coordinated approach,
international agencies and national governments have developed and implemented a
variety of anti-trafficking measures, increasingly in close cooperation with civil
society. Importance of this approach is emphasized in the Action Plan to Combat
Trafficking in Human Beings adopted by the OSCE participating States in 2003.

The implementation of a comprehensive rights-based anti-trafficking policy,
which is based on respect for human rights of trafficked persons, should be seen as
an element of democratic and transparent governance based on the rule of law.
Thus, a crucial prerequisite of effective measures to combat trafficking is the
building and strengthening of relevant local and national institutions.

It should be noted that law enforcement agencies, government agencies and
nongovernmental organisations (NGOs) often lack the expertise, experienced
personnel, and sensitivity needed to deal effectively with the special needs of
victims of trafficking. Police departments may be required under law to detain
victims for their actions while on the territory of the country, even if these were
conducted under duress, or police may be most interested in using victims to obtain
information on organized-crime rings. Other officials may focus on a victim’s lack
of proper documentation or illegal immigration status. Countries of origin might be
unwilling to readmit their own citizens if they are not in possession of the proper travel or citizenship documents. Non-governmental organisations may lack there sources or expertise required to ensure the safety and integration of victims. As a result, even after victims are freed from their traffickers, they may continue to feel trapped, controlled, ill-treated, and unable to make decisions about their own lives.

Adoption of the approach to deal with victims of trafficking, based on adherence to human rights rules is the most important step toward putting an end to such abuses. Approach based on human rights recognizes that trafficking is not just illegal activity. This is an illegal activity that is directly linked to human rights, and this applies to both victims and government agencies and NGOs, which should help victims of trafficking. Creating an effective National Referral Mechanism (NRM) may be an important step towards guaranteeing the rights to victims of trafficking.

The OSCE’s Action Plan to Combat Trafficking in Human Beings recommends that OSCE participating States establish NRMs by building partnerships between law enforcement agencies and NGOs, by creating guidelines to properly identify trafficked persons, and by establishing cross-sector and multidisciplinary teams to develop and monitor direction and implementation of policies geared to combat human trafficking.

During the 12 months of 2010 there were 501 crimes registered in the republic related to trafficking, including:

- art.128 CC of RK (trafficking in human beings) - 22;
- art.133 CC of RK (trafficking in minors) - 17;
- art.125 CC of RK (kidnapping) - 127;
- art.126 of the CC of RK (illegal deprivation of freedom) - 137;
- art.270 CC of RK (drawing into prostitution) - 7;
- art.271 CC of RK (organizing or keeping a brothel for prostitution and pandering) - 191;
- art.113 CC of RK (forcible removal or illegal removal of organs and tissues) – no crimes have been reported.

Over aforementioned time period, 368 cases were sent to court, including:

- art.128 CC of RK (trafficking in human beings) - 15;
- art.133 CC of RK (trafficking in minors) - 19;
- art.125 CC of RK (kidnapping) - 74;
- art.126 CC of RK (illegal deprivation of freedom) - 98;
- art.270 CC of RK (drawing into prostitution) - 6;
- art.271 CC of RK (organizing or keeping a brothel for prostitution and pandering) - 156.

According to the statistics from judiciary courts’ unified automated informational analytical system of the Republic of Kazakhstan courts reviewed and issued verdicts for cases: in art.128CC of RK(trafficking in human beings) - 4 cases, in art.133 CC of RK(trafficking in minors) - 2 cases, in art. 125 CC of
RK(kidnapping) - 25 cases; in art. 126 CC of RK (illegal deprivation of freedom) - 7 cases, in art.270 and art.271 CC of RK—information not provided in the report.

Courts convicted and sentenced to imprisonment 193 persons, of whom:

- art.128 CC of RK (trafficking in human beings) – 5 people;
- art.133 CC of RK (trafficking in minors) – 5 people;
- art.125 CC of RK (kidnapping) - 32 people;
- art.126 CC of RK (illegal deprivation of freedom) – 16 people;
- art.271 CC of RK (organizing or keeping a brothel for prostitution and pandering) – 135 people.

In 2010 a criminal case was brought by Karasai district court of Almaty region against Suliev, Ahunzhanova, Imanbekova and Masivova, who, after drinking alcohol, called Ms. V. from her house, put her in a car against her will, and then sold her to an unidentified person for 20 000 KZT on Seyfullina Street in Almaty.

A court verdict was issued on 22.02.2010 according to which Suliev was sentenced to 8 years in prison, Ahunzhanova and Masivova to 6 years in prison, and Imanbekova to 1 year of probation.

Criminal activity of K. A. was brought to justice in Temirtau. In 2008, he fraudulently took a minor A. P. out from the communal living facility № 31 in the village Acts, Karaganda region, and then made her drink an unidentified substance, put a victim to sleep and brought her to Astana, where by using threats he forced her to engage in prostitution, and then passed her onto a woman named Shinar, who used her as a prostitute in one of the city’s apartments.

Similarly, K. kidnapped and engaged in prostitution three other teenage girls.

Accomplices of criminal activity by I.E. - Ch, J, Y and O were identified during the criminal investigation.

Total of 24 criminal charges were filed against aforementioned persons, art. 132, part 3 CC of RK- drawing a minor into prostitution by using threats of violence, art. 128, part 2, para. "a, b, g " of CC of RK - human trafficking, art. 126, part 3 CC of RK- unlawful deprivation of liberty of a person and art. 133, part 2 CC of RK- trafficking in minors.

Such crimes are classified into two types: committed for sexual and labour exploitation. In the first type of crimes most victims are women between 14 and 25 years, who are citizens of the Republic of Kazakhstan.

In order to protect women-victims of trafficking crimes, as well as to raise level of the legal knowledge for them to protect their rights and enable legal advocacy, the Ministry of Justice is in second-year implementation of four socially-relevant projects under the state social order. The projects are to:

1) provide support for NGOs, which work with victims of trafficking and create a «Call Centre» in order to ensure prompt communication with victims of crimes of trafficking;

2) ensure production and placement in the national media social video clip on combating trafficking in human beings;
3) ensure publication of special booklets for the citizens of the country, who are travelling abroad with addresses, phone numbers of overseas agencies of the Republic of Kazakhstan;

4) provide further funding for crisis centre "Komok" in Astana, which provides temporary accommodation and rehabilitation of victims of trafficking.

Funds in the amount of 5865, 00 thousand KZT from the republican’s 2010 budget programme “Financial assistance to citizens of the Republic of Kazakhstan, who are smuggled into foreign countries and became victims of trafficking, as well as victims, who suffered from other crimes abroad and came into force majeure circumstances” were allocated from the state budget in 2010 to Ministry of Foreign Affairs of the Republic of Kazakhstan. Based on above, for the first half of 2010, the Republic of Kazakhstan’s foreign establishments provided help to seven citizens of the Republic of Kazakhstan in the amount of 967 231.68 KZT.

Based on information provided by Ministry of Foreign Affairs, there were no victims of crimes connected with trafficking for the above mentioned people.

In order to eliminate this negative phenomenon in our modern society, and given the fact that this category of crime –“trafficking in human beings” has a transnational and cross-border nature, we offer to enhance interaction with law enforcement agencies in the countries of origin, destination and transit of trafficked person.

**RECOMMENDATIONS:**

1. Conduct regular prophylactic measures aimed at preventing and combating crimes related to trafficking, sexual, labor or other exploitation.

2. Strengthen the staffing of a special unit of Interior Ministry of the Republic of Kazakhstan on combating human trafficking with highly qualified specialists by allocating additional staff positions.

3. Establish shelters for women and children affected by domestic violence, trafficking and other forms of discrimination in all regional centers.

4. Put into practice recommendations of the OSCE’s Action Plan to Combat Trafficking in Human Beings, which was approved by the 2003 Ministerial Council Meeting in Maastricht.

5. Consider establishing of an Institute of the National Rapporteur on trafficking in human beings in Kazakhstan.

6. Together with NGOs organize ongoing courses, seminars and trainings on human rights for law enforcement officers and public representatives.

7. Involve specialized NGOs on a continuing basis in the prevention of violations in the area of human trafficking, as well as in the investigation of crimes related to trafficking in human beings for sexual and labor exploitation.
Right to freedom from torture and other cruel or degrading treatment and punishment

Since the time of independence the Republic of Kazakhstan undertook a number of system-wide steps in fighting tortures and other types of cruel treatment and punishment.

These steps were carried out both in legislative and practical fields. Therefore, as far as legislative reforms are concerned, it has to be mentioned that the Republic of Kazakhstan ratified the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment and Punishment on June 29, 1998 (hereinafter – the “Torture Convention”).


Amendments and additions were introduced into the Criminal Code, Criminal Procedure and Penal Code on December 21, 2002, according to which the Article 347-1 into the Criminal Code, which made provisions for criminal responsibility for using tortures, and the provision on inadmissibility of evidence obtained through the use of torture was included into the criminal procedure legislation.

Republic of Kazakhstan ratified International Covenant on Civil and Political Rights on November 2, 2005.

In 2008 the Optional Protocol to the Torture Convention was ratified, and declarations were made on Articles 21 and 22 of the Torture Convention.

On July 10, 2008, the Supreme Court of the Republic of Kazakhstan adopted a Resolution on application of provisions of international covenants in courts.

On February 11, 2009 Kazakhstan ratified Optional Protocol to International Covenant on Civil and Political Rights, which allowed citizens to submit individual communications to UN Human Rights Committee.

As pertaining to institutional reforms it should be noted that:

On September 19, 2002, the position of Human Rights Commissioner (Ombudsman) was established by the Edict of the President of the Republic of Kazakhstan.

In 2001 the decision was made on transfer of prison system and remand prison (pre-trial detention centres) system from the system of the Ministry of Interior to the Ministry of Justice, which implementation was launched on January 1, 2003. This reform was not completed, however, since pre-trial detention centres remained in the Ministry of Interior system, and remand prisons of Committee of the National Security were not transferred to the Ministry of Justice.

On January 16, 2006, legislation on jurors was adopted, which became a significant step in improvement of judiciary system.

Besides that, the positive steps may include:

Establishment of Public Monitoring Commissions 2004-2005 with the authority to inspect detention facilities

Public monitoring shall be performed by public associations in order to support people in custody in correctional and pre-trial detention facilities, in execution of their rights, and legal interests, as it pertains to conditions of confinement, health care, and organisation of labour, leisure time and training, stipulated by the legislation of the Republic of Kazakhstan.

Rules for Establishing Province (cities of Republican significance) Public Monitoring Commissions, which conducted public monitoring, were approved by the Resolution of the Government of the Republic of Kazakhstan, of September 16, 2005.

Besides, pursuant to para.11, of the Programme for Penal System Development (PS), the PS Committee of the Ministry of Justice of the Republic of Kazakhstan has developed Recommendations for Monitoring of Observance of Rights and Legal Interests of the Suspects, Accused and Convicts and distributed to all Public Monitoring Commissions.

Public Monitoring Commissions are established nearly in all regions of the country and include representatives of non-governmental human rights organisations.

However the status and activity of these commissions are not enshrined in the law, and they don’t have a right of a unannounced visit to places of confinement;

The Working Group was established for torture prevention by the Human Rights Commissioner of the Republic of Kazakhstan (Ombudsman), involving representatives of human rights organisations, which objectives include visiting detention facilities and development of recommendations on a model and a procedure for developing national preventive mechanisms. The Working Group already made its first visits to a number of custodial institutions in October 2008;

In 2008 – Public Councils were established by the Ministry of Interior and a pilot project had been implemented in Almaty for establishing monitoring group from representatives of human rights NGOs to monitor rights of detainees with the right to make unannounced visits to police stations and temporary detention facilities under jurisdiction of the Ministry of Interior. The Project was initiated by the Ministry of Interior and it will be expanded to several other provinces of Kazakhstan.

Despite of positive achievements, the situation in general causes a serious concern by the scope of using unlawful interrogation and investigation methods, including tortures and other types of ill-treatment, and ineffective fighting with them.
1. Legislative problems
The provisions of the criminal procedure legislation pertaining to inadmissibility of evidence obtained by use of tortures, as well as vaguely defined regulatory resolution of the Supreme Court pertaining enforcement of international covenants were the only legislative steps made to combat tortures. Kazakhstan did not adopt any legislative provisions pertaining to independent bodies investigating communications on tortures, or procedural provisions related to effective investigation of tortures communications, etc.

More importantly, for example, such an important document, as Rules of Confinement in Pre-trial Detention Facilities of the National Security Body, is classified as “For internal use only” and is not in the realm of public documents, which is, inter alia, a violation of the Constitution of the Republic of Kazakhstan, which prohibits use of non-published regulatory and legal acts that affect human rights and freedoms.

2. Institutional problems
Independent bodies for implementation of effective torture investigation were not established. Establishment of Internal Security Directorate within the Ministry of Interior structure, designed to investigate torture communications, did not influence the situation due to the obvious departmental corporativity.

More importantly, despite of the transfer the system of Ministry of Interior to the jurisdiction of the Ministry of Justice, the investigation isolation facilities of the national security still remained in the jurisdiction of the Committee of the National Security of the Republic of Kazakhstan.

Institution of the Human Rights Commissioner (Ombudsman), established in 2002 does not conform to Paris Principles, Related to the Status of National Institution on human rights, since it was established by a by-law, but not by the law, and it has limited power and competence.

In accordance to the international standards set forth by UN and OSCE recommendations, activity of the Ombudsman institution shall conform to Paris Principles, which establish common criteria of independent and effective functioning of the national human rights institution. The national institutions, established in non-conformity to Paris Principles, are considered to be dependent and not in the confidence of the international community.

In this regard, the institution of Ombudsman has to be established pursuant to the Constitution or by a separate Law, which means to be independent with clearly outlined jurisdiction and authority. And the procedure of appointing Ombudsman shall be carried out according to the Law, involving the Parliament of the country. Existing Kazakhstan legislation allows for equal involvement of both the President and the Parliament in appointment of the Human Rights Commissioner without alteration of the Constitution and provides an opportunity to adopt a new Law on Ombudsman. For example, the President shall nominate a candidate for Human Right Commissioner (Ombudsman) and the nomination shall be approved by Majilis of the Parliament, or by entire Parliament, which is in
conformity with universally acknowledged Paris Principles and OSCE recommendations.

The need to enact the Law of the Republic of Kazakhstan ‘On Human Rights Commissioner in the Republic of Kazakhstan” was repeatedly articulated in final documents of international human rights conferences, conducted by the Human Right Commission by the President of the Republic of Kazakhstan and communicated to appropriate authorized government bodies.

Some treaty bodies, UN Human Rights Council, Special Rapporteur on Tortures - Manfred Nowak, and Special Rapporteur on adequate housing - Raquel Rolnik made recommendations to Kazakhstan to create Ombudsman institution in conformity to UN Paris Principles.

There is the long-felt need of elaboration and enactment of the Law of the Republic of Kazakhstan “On Human Rights Commissioner in the Republic of Kazakhstan”.

Enactment of such a law would allow to raise the status of Kazakhstan Ombudsman in conformity to international standards, since Ombudsman, as people’s advocate, would effectively protect violated rights of a specific individual that consider himself/herself as a victim of inequitable acts of government authorities and their officials, and other organisations. This would eliminate criticism of Kazakh Ombudsman by international and human rights organisations.

Internal Security Directorates in internal affairs departments and prosecution authorities that investigate complains about tortures, sanction inquiries, and appear for the prosecution in courts are the bodies related to corporativity and their functions do not imply independent and effective investigation of torture communications. There is also a lack of independent health services for independent examination of torture victims, and medical units of places of deprivation of freedom and places for pre-trial detention operate in prison and police systems accordingly.

UN Committee against Torture reviewed the second report of Kazakhstan on implementation of Torture Convention on November 2008. On-governmental organisations submitted their ‘shadow report’.

Concluding observations of the UN Committee against Torture, elaborated on the basis of the review of the second report of the Republic of Kazakhstan and provisions of alternative report has more than 20 recommendations pertaining to legislative, institutional and procedural aspects of prevention and effective fighting tortures.

On May 2009 the Special Rapporteur on the Elimination of Tortures and other Cruel, Inhuman and Degrading Treatment or Punishment, Mr. Manfred Nowak visited Kazakhstan.

Mr. Nowak expressed his opinion on a need to create a legal mechanism for prevention of torture and other violence in the field of relationship of a state and an individual. And the Supreme Court of the Republic of Kazakhstan deemed appropriate to adopt such a regulatory resolution.
The Supreme Court of the Republic of Kazakhstan examined proceedings of tortures cases in 2007-2008, which served as a basis for adoption of regulatory resolution on December 28, 2009. Draft resolution was shared with province or equivalent courts, to stakeholder public authorities, to scholars, and members of Research Advisory Board by the Supreme Court.

Regulatory Resolution of the Supreme Court ‘On Application of Provisions of Criminal and Criminal Procedure Legislation on Observance of Personal Freedom and Immunity of Human Dignity, Counteraction to Tortures, Violence, and Other Cruel and Degrading or Humiliating Treatment or Punishments’ reflected issues addressed by the Special Rapporteur on Tortures, Mr. Nowak.

Special Rapporteur indicated that the time of apprehension and delivery to police station has not been recorded, it is impossible to identify, whether three hours maximum of initial period of detention is observed. First hours of arrest are used by law enforcement agencies to obtain evidence through the use of torture.

In order to eliminate this, the Regulatory Resolution stipulates that a person have to be promptly delivered to an investigator or interrogating officer no later than 3 hours after actual apprehension to make a decision on his/her arrest. The time accurately to the minute of actual apprehension shall be reflected in the detention report.

UN Special Rapporteur had also expressed his concern with lack of adequate response to acquiescence of officers of investigative authorities to use of tortures. In this regard, the Supreme Court explained in the para. 18 of the regulatory resolution that not only those persons shall be prosecuted that have inflicted physical and mental sufferings, but also initiators of tortures, instigators and supporters that are not public officials. A public official that gave consent or acquiescence, condoned or earlier promised to conceal the torture committed by a perpetrator, subordinate to this public official shall be prosecuted as accomplice of the crime. In all these cases these persons shall be responsible for fellowship in crime and their acts shall be defined by the Article 141-1 of the Criminal Code with application of the Article 28 of the Criminal Code. This provision is in line with the Article 1 of the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, pursuant to which, besides the torturer, a person that have instigated or gave consent or acquiescence for tortures shall be brought to criminal liability.

Regulatory resolution covers the issues of consideration and investigations of complains about torture, separation of torture from related crimes, compensation of damage inflicted by tortures.

All explanations of the Supreme Court are in line with recommendations of Mr. Manfred Nowak.

Right to complain

Kazakhstan withdrew reservations to the Torture Convention on February 2008, providing an opportunity for citizens to submit individual communications to
UN Committee against Tortures, and in June 2009, people were provided an opportunity to lay complaints to UN Human Rights Committee. Working Group for Investigation of Facts of Use of Torture and Other Cruel, Inhuman and Degrading Treatments or Punishments was established by the Human Rights Commissioner of the Republic of Kazakhstan on October, 2008. It includes representatives of all law enforcement agencies and civil society.

Definition of offence ‘torture’,
investigation of torture communications and punishment of torturers

The Article 347-1 ‘Torture’ of the RK Criminal Code was deleted by the RK Law “On Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues Related to Further Humanization of Criminal Legislation and Strengthening the Rule of Law Guarantees in Criminal Proceedings PK» of January 18, 2011. The Article 141-1 “Tortures” was added to the RK Criminal Code by the same law. In such a manner the legislator implemented one of the recommendations of UN Committee against Torture, which insisted that this Article had to be shifted from the section “Crime against Public Justice and Penal Execution Procedure” into the section “Crime against the Person”. Besides that, the more precise definition of torture was given “at the instigation of or with the consent or acquiescence of another person”.

In practice, there are more criminal proceedings related to unlawful methods of investigation on the Article 308 of the RK Criminal Code that prescribes punishment for excess of authority or official power.

In 2009-2010 a number of legislative measures to counteract tortures were adopted. The Supreme Court adopted a regulatory resolution on application of provisions pertaining to counteraction to torture on December 28, 2009.3 On February 1, 2010, an instruction was enacted on investigation of torture complaints,4 approved by the Order of the Prosecutor General. In 2010, a number of ministries made a joint order related to participation of experts of forensic medicine in medical examination of persons in custody5, and also joint order about interaction with civil society at investigation of torture complaints6.

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3 Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan, Ref.no. 7, of December 28, 2009 “On Application of Provisions of Criminal and Criminal Procedure Legislation on Issues of Inviolability of Human Dignity, Couteraction to Torture, Violence and Other Cruel, or Humiliating Treatment or Punishments”.
4 Instruction on Investigation of Complaints on Torture and Other Illegal Methods Related to Cruel Treatment with Persons Involved into Criminal Proceedings and Confined in Specialised Institutions, and Their Prevention,
5 Joint Order “On Compulsoty Participation of Forensic Medicine Experts in Medical Examination of Persons in Custody in Pre-trial Isolation and Correctional Facilities”, signed by the Ministries of Justice, Health, Interior and the Committee of the National Security.
6 Joint Order of the RK Ministry of Justice, Prosecutor-General’s Office, the Committee of the National Security of the RK, RK Agency on Economic and Corruption Crime “On Collaboration of Law Enforcement Agencies and Subjects of Civil Society at Investigation of Complains on
In reality, investigation of torture communications has been conducted by the same ministries that were the subject of a complaint: by the regional services of Departments of Internal Security of the Ministry of Interior or the Ministry of Justice. These inquiries have confidential, closed and in-house nature. A complainant actually does not have a right to request medical examination, to call witnesses, include evidence, and deprived of access to investigation files. Usually such inquiries are lengthy, which prevent timely documentation of evidence and result in refusal to institute criminal proceeding. Lack of justified resolution on results of investigation, in reality disables the applicant to lodge a complaint, as a result deprives him/her of judicial defence. It is not infrequent that a complainant is being forced to withdraw the complaint under the pressure of new tortures.

Nevertheless, some positive changes have been happening recently in this field: the RK Agency on Economic Crime and Corruption (Financial Police), which is an independent body from the Ministry of Interior and the Ministry of Justice does pre-trial investigation on criminal cases opened on the Article 141-1 of the RK Criminal Code (“Torture”).

Draft Law on Independent Preventive Mechanisms

By ratifying Optional Protocol to Convention against Torture (OPCAT) in June, 2008, Kazakhstan committed to establish the National Preventive Mechanisms (NPM) by November 21, 2009. On February 2010, the Government made a statement that it allows Kazakhstan to postpone creation of the NPM up to three years.

The Working Group for discussion of the law “On Independent Preventive Mechanisms” was established by the Ministry of Justice in the beginning of 2010. It included representatives of government bodies, civil society and international organisations.

The Ministry of Justice of the Republic of Kazakhstan brought up for discussion the draft law on introduction of amendments and additions into certain legislative acts. The proposed modifications do not take into consideration specific features of different institutions, such as healthcare facilities or penal institutions. Ministry of Justice has also developed a separate NPM draft law. However, there is no final decision regarding priority of these draft laws, therefore 2 draft laws have been discussed.

Coalition against Torture, international organisations, and the Special Rapporteur on Torture address the need to develop a separate NPM Law. The Coalition proposed to the Ministry of Justice of the Republic of Kazakhstan to create NPM on the basis of the Human Rights Commissioner, involving public monitoring commissions (the model “Ombudsman+”). It is also necessary to develop, discuss and enact the law on Human Rights Commissioner, which shall be

_Torture and other Impermissible Methods of Investigation and Interrogation, and Prosecution of These Facts_
in conformity with UN Paris Principles. Civil society representatives have developed two alternative draft laws on NPM.

According to some NGOs, involved into the Working Group, the NPM model proposed by the Ministry of Justice is not complaint to the Optional Protocol Requirements, in terms of definition of national institution, which shall execute the functions of the executive NPM body; source of NPM authorities (a separate law or introduction of amendments or additions into the existing legislation); mandate and a source and procedure of NPM functioning. Specifically, the Coalition against Torture considers financing of the new NPM under state social contract as inadmissible, since this would jeopardize its functional independence, stability, and operational efficiency of the NPM. UN Special Rapporteur on Torture, Mr. Nowak, also underlined inadmissibility of social contracting.

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In 2010 criminal cases were initiated on 14 offences against 22 law enforcement officers.

Subsequent to investigation results, 6 criminal cases were initiated and sent for trial, under which 7 people were convicted under part 2 of the Article 347-1 of the Criminal Code.

August 2010, Courts of Semey city and East Kazakhstan province determined guilt of Barmakov and Sharipov under the Article 347-1 p. 2 p. “a” and sentenced them to different terms of confinement in standard regime penal colony.

The fact that Barmakov and Sharipov illegally delivered Semi T. to Aesop Police Department, placed him to temporary detention facility and caused bodily injuries to him, encouraged prosecution.

According to human rights NGOs, 263 complaints of citizens for torture and ill-treatment were registered in 2010 (for informational purpose: in 2009 - 286 complaints, in 2008 – 212, in 2007 – 178, in 2006– 137, in 2005– 64, and in 2004– 104). In the meantime, according to the official statistics, only 1 police officer was prosecuted for torture in 2009 (under the Article 347-1 of the CC RK), and 7 persons were convicted by final judgments in 2010.

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Interactive discussion of the annual report of the Manfred Nowak – the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment and Punishments took place in the first decade of March 2010 in Geneva in the framework of 13th session of the United Nations Human Rights Council. Reviewing human rights situation in European countries in the context of counteraction to torture, the human right activist paid a special attention to his working visit in May (2009) to certain post–Soviet states, including the Republic of Kazakhstan.

According to the Professor Manfred Nowak, there has been considerable progress in the prevention and combating torture in Kazakhstan. In his opinion, the conditions of detention in Kazakhstan improved significantly in recent years. Torture is not systematic and widespread.

Earlier in his interview with the Austrian news agency, Nowak said that human rights situation in Kazakhstan is one of the best in the former Soviet Union.
Kazakhstan was elected chairman of the Organisation for Security and Cooperation in Europe at its true worth.

The UN Human Rights Council reacted positively to the information of representative of the Kazakh government on measures taken to implement the recommendations of the Special Rapporteur and the UN Committee against Tortures.

Kazakhstan achieved a serious progress in the last few years to counter the use of torture. The Republic is the full member of more than 60 multilateral universal international agreements in the human rights field. Ratification of Convention against Torture and the OPCAT is the evidence of zero-tolerance to such a negative phenomena.

Kazakhstan has significantly reformed its prison system: in 2002 it was moved from the jurisdiction of the Ministry of Interior and transferred to the jurisdiction of the Ministry of Justice, which resulted in positive changes: improved living conditions, quality of health services, development of education and vocational training of prisoners.

RK Government Resolution, Ref. no.71, of February 4, 2010 approved Plan of Activities for Implementation of Recommendations of the UN Committee against Torture for 2010 – 2012, aimed at improvement of legislation, public information, and professional development of personnel of law enforcement agencies.

The Special Rapporteur expressed his special gratitude to the Government of Kazakhstan for support, collaboration and sharing information, important for his report.

RK Government representative, in return, expressed the readiness to further constructive partnership with UN Human Rights Council. The Special Rapporteur was offered to make a second visit to evaluate efforts of the country to implement UN Council recommendations.

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Instruction on investigation of torture complains or other illegal methods related to cruel treatment was approved by the order of the Prosecutor General of February 1, 2010, Ref. no 7. The instruction is related to people in custody, involved into criminal proceeding.

Instruction was adopted in order to improve procuracy supervision with regard to recommendations of the UN Special Rapporteur Manfred Nowak. This document provides for a range of measures to prevent and combat tortures and other cruel treatment at all stages of the criminal proceedings and penal execution.

Prosecutors shall have confidential interviews of all suspects, accused persons, and prisoners in pre-trial detention penal facilities.

Besides, the Instruction provides for mandatory medical examination and check-up of every new arrested and detained person delivered from the temporary detention isolation facilities (IVSs) to the remand prison. Medical examination shall be performed in every case of torture communication.

In case of confirmation of these negative facts, the issue will be addressed pertaining to admissibility of evidence obtained through use of impermissible
methods down to withdrawal of charges. Officers that used impermissible methods of treatment, as well as public officials that connived or instigated these acts shall be subject to criminal liability.

In accordance to the above-mentioned and recommendations of the UN Committee against Torture, UN Special Rapporteur Mr. Nowak, as well as in accordance to the fact that the Republic of Kazakhstan have to provide a report on implementation of a number of recommendations until the end of 2012, this report contains some RECOMMENDATIONS aimed at improvement of the legislation and law application practice pertaining to protection from torture and other cruel treatment and punishment:

1. To accelerate enactment of the Law on Creation of Independent Preventive Mechanisms for Torture using proposals of the civil society.


3. To develop instructive and methodological materials for personnel of law enforcement agencies, prison system, public monitors, in relation to the national preventive mechanisms for tortures.

4. To carry out comprehensive training of personnel of law enforcement agencies, prison system, prosecutions department, judiciary system, public monitors in the framework of the national preventive mechanisms and procedures of protection from tortures.

5. To introduce appropriate amendments and additions into the Criminal Code pertaining to:
   - Criminal liability for tampering with time of apprehension and delivery of persons to police departments;
   - To the Code of the Criminal Procedure:
     - About change in procedure of submission of complaints addressed to the national preventive body, and to the prosecutor, and the court (they have to be submitted in a sealed envelope without opening and inspection of correspondence);
     - On procedural order of complaints processing by a preventive body, prosecutor’s office and the court on use of torture and other cruel and degrading treatment;
     - On responsibilities of a prosecutor, supervising legality of pre-trial investigation of cases, arrest of persons, detention in custody, on detection and combating torture, and other inhuman or degrading treatment, and prosecution of torturers.

6. To enact into law the court review procedure of defendants’ communications about torture during pre-trial investigation.

7. To include torture into the list of illegal acts of public authorities and public officials, which perpetration entails compensation of psychological and financial damage to persons suffered from them.

8. To introduce the institution of independent medical examination that enables collection of evidence of torture signs presence.
9. To provide for compulsory dismissal from office of persons, accused of torture under pre-trial investigation.

**Human rights during preliminary investigation and inquiry**

An analysis of supervisory activities and law application practice, including the issue of appeal against illegal actions of law enforcement officers, shows that such violation of constitutional rights as: false arrest, use of non-admissible methods of investigation and use of torture and other degrading treatment, are still common.

These violations are attributable to improper performance evaluation system of law enforcement agencies.

Another important factor is the issue of selection and deployment of manpower, inadequate material and technical support of prosecuting agencies.

The practice shows that often violation of constitutional rights of citizens are related to improper execution of their duties, low professional level by of operative and investigation officers, and sometimes to primitive lack of knowledge of criminal procedure legislation, international legal human rights documents, ratified by Kazakhstan.

The above mentioned shortcomings generate so called ‘procedural oversimplification’, when collection of evidence is unsatisfactory; investigations have been bureaucratically delayed, which result in unlawful procedural decision and violation of rights of citizens participating in the criminal proceeding.

Career development system with complete professionalism, due process of law, a sense of duty and responsibility before citizens and the state as priority has to be developed and introduced.

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Protection of constitutional rights of citizens in criminal procedure remains to be the main priority in supervisory activity of prosecutors.

The work implemented by prosecuting agencies on detection, combating and prevention of violations of constitutional rights of citizens is still not compliant to the specified requirements.

Unconscientiously attitude to their duties, lack of due care and diligence result in use of physical power, psychological pressure and other unlawful acts by some law enforcement officials.

In total 71 criminal cases of violation of the constitutional rights of citizens were launched against law enforcement officials, including 23 cases by prosecutors. 56 cases were launched against officers of bodies of the Ministry of Interior, (including Military Investigation Department), 3 against financial police officer, 1 – customs officer, 9 – Penal System Committee, and 2 cases against officers of the Ministry of Emergency Situations. 34 cases in relation to 54 persons were sent for trial.

For example in April 2009 an inhabitant of the Konstanay city, could not stand any longer beatings of operative officers Jusupov and Nurgazin in order to
obtain confession, and jumped out of the window of the second floor of the building of Northern Operating Unit of the Department of Interior of Kostanay city, which resulted in broken limbs.

Jusupov and Nurtgazin were sentenced for 3 years of imprisonment by the verdict of the Kostanay Court as of 26.02.2010 on the Article 308, p. 4, subparagraph ‘a’ of the Criminal Code.

According to statistics in 2010, 1043 citizens were released from facilities of prosecuting agencies, including its major part (1034 persons) – from facilities of internal affairs departments.

For example on October 11, 2010, duty prosecution officers of Kostanay Department of Interior released minors Seidakhmetov and Sesin that had spent more than 5 hours in the premises of the Department of Interior under the pretence of investigation of their involvement in committed crimes.

As a result, alleged public officials were subject to strict disciplinary actions.

1144 persons were released by prosecution officers during an inspection of temporary detention facilities (IVS) and in the process of solving the issue of arrest sanctioning, including 35 persons – due to on-confirmation of suspicion in committing a crime, 1094 - due to absence of ground for restrain in a form of arrest and 15 – due to the breach of detention procedure.

Pursuant to the requirement of the para. 13, of the Article 153 of the RK Code of the Criminal Procedure 4 detainees were released from custody (Moldashev, Malikova – from pre-trial detention facility (SIZO) in Taraz city, Kanafin - SIZO no.12, of Astana city, Taskulov – SIZO no.8, Almaty).

According to the statistical data, in 2010 prosecution bodies launches 59 criminal cases in the process of the supervision of investigative activities (57 – Ministry of Interior, 2 - Agency of the Republic of Kazakhstan for Fighting Economic and Corruption Crimes (AFECC), including 5 cases against public officials, implementing investigative activities.

For example, prosecutor’s investigation established the facts of falsification of service documents of inquiry proceedings.

So, the results of inspection made on request of N. established that DFECC (Department for Fighting Economic and Corruption Crimes) officers of false report on handing over to Ulanov and chemical processing of 10 000 KZT. This amount of money was later placed to the vehicle of Shakirov M brother – Shakirov B – “Volkswagen Passat B6”.

At the same time, after the bribe in amount of 10 000 KZT was received from Ulanov, it got hidden with other banknotes’ serial numbers by a mediator N on the territory of Registration Examination Division of the Road Police Department (RED RPD) of Lissakovsk, where it was taken away by the province prosecution officers.

Public Prosecutors’ Office of Kostanay province instituted criminal proceedings Ref. no. 09390001100015 of 09.09.2009 on the ground of constituent elements of offence, stipulated in the Article 348, p.3, of the Criminal Code.
The above-mentioned criminal case was taken up by a head of investigation group, the first officer of the RK Prosecutor General.

In order to document unlawful activity of the province DFECC officers on facts of evidence falsification, obstructing to investigation of the criminal case, operative support of the criminal investigation, the province prosecutor made a resolution on 14.09.2009 related to implementation of special investigative activities, which was submitted for execution to the Department of the National Security Committee of the Kostanay province.

In the process operational investigation activities, authorized by the province prosecutor, a group of public officials accessorial to this corruption offence was identified.

On 29.01.2010, the investigation team initiated criminal cases against Kostanay DFECC officers - Mukheev, Shambulov, Kaidaull, Sokolov, Khakimov on elements, essential to the offence, provided for in the Article 307, p. 2, 314, p. 2 of the RK Criminal Code.

Mukheev, Shambulov, Kaidaull, Sokolov, Khakimov were sentenced to different terms of deprivation by a verdict of the Lissakov City Court as of 05.08.2010 under the Articles 349, p.2, 28 p.2 p.3, 348 p.3, 28 p.3, 145 p.3 of the Criminal Code.

Moreover, during special investigation activities prosecutors detected 90 facts of illegal detention (Ministry of Interior - 89, AFECC - 1).

It was founded by an inspection conducted on 03.11.2010 that police officers of the Department of Interior of Auezovskiy region of Almaty illegally detained a juvenile Tolegenov.

On the basis of findings of the prosecutors’ inspections, 385 rulings were made to stop illegal special investigation activities, including 350 cases related to – law enforcement agencies, 29 – to financial police. 3 – to customs, and 3 – to the Penal System Committee.

For example, examination conducted by Astana prosecutorial body of ongoing corruption investigation case related to unlawful activity of a public official of the RK Ministry of Emergency Situation, pending in Astana DFECC showed that the criminal case was initiated only onthe ground of incorrect communication.

The inspection showed that the inspected person actually was not working at the position, indicated in the case files, and in this regard he could not be involved into unlawful activities related to this position.

Moreover, the case files did not contain any information that would prove verification of intelligence. In this regard, the city prosecutorial body took a decision to drop investigation in relation to the subject of investigation.

There was a fact of unjustified relief of liability in relation to financial situation of offenders.

For example, it was identified that officers of Astana DFECC, while acting in a group by previous concert with unidentified persons, and being definitely aware
of illegal actions of Kovgan and Panasuk in creation of pseudo-enterprises, received remuneration from them in total amount of 30 160 000 KZT.

As a result of illegal action of the above-mentioned officers and other unidentified persons, the damage to the state was made on an especially large scale, expressed in a form of tax evasion from illegal operation of pseudo-enterprises.

DFECC Investigation Department in Astana initiated a criminal case on 24.12.2010 against M., B., and other unidentified persons under the Article 304, p.4 of the Criminal Code.

In 2010, according to the section 6 of the statistical reporting form no 3-K “On Corruption Crimes, Persons, Committed The Crimes, Flow Cases on Corruption Crimes, and Offenders” – 51 officers of the Ministry of Interior were fired for corruption; 2 from prosecutorial bodies, 12 from the Penal System Committee; 12 from AFECC; 8 from the Customs Control Committee of the Ministry of Finance; and 7 people from Frontier Service of the Committee of the National Security.

Financial police bodies initiated 167 criminal cases against 109 law enforcement officers in relation to corruption, including: 89 against police officers, 32 cases against Penal System Committee, 14 – Ministry of Emergency Situations, 11 – Financial Police, and 3 Committee of the National Security.

94 law enforcement officers were charged and brought before the court, including 43 police officers, 17 officers of the Penal System Committee, 15 - Customs Control Committee, 11 – bodies of the Ministry of Emergency Situations, 5 – Financial Police, and 3 of the Committee of the National Security. Remaining 15 cases are pending.

Financial police bodies initiated 3 criminal cases for use of torture, which filed charges to 10 law enforcement officers (2 of them are convicted, 4 are brought before the court, and cases against other 4 officers with indictment are transferred to prosecutorial bodies).

On January 2010 a forest officer of Akmola region forestry department submitted a complaint, which said that he was beaten up by akim of the village (aul) Iskra, of Akkol region, K.N., a resident of the same aul A.K., and an officer of the region police department - S.A. Akkol police department made an order to dismiss criminal complaint on the fact of infliction of bodily harm.

After intervention of the Human Rights Commission, the above facts were proved, and prosecutorial body of Akmola province annulled the order to dismiss criminal complaint, and case files were transferred for additional investigation to the Department of Interior of Akmola Province.

The major part of citizens that have been submitting their complaints to the Commissions, include the citizens that challenge legality of action or lack of actions of public officials of law enforcement bodies.

A complaint of a defence lawyer E.A to the Commission in relation to actions of officers of the Department to Fight Economic and Corruption Crime (financial police) of South Kazakhstan province ca serve as an example.
Only after submitting of communication to the Human Rights Commission by the RK President by the defence lawyer E.A, the criminal case illegally initiated under the article 177 p.2 para. “b” of the RK CC was closed due to absence of crime in the acts.

27 facts of death of persons detained under investigation and convicts, including 3 cases of suicide were registered in 2010 in temporary detention facilities.

7 deaths were registered in IVS of the RK Ministry of Interior, including 4 suicides.

Statistics of detection rate of crimes provided for by the Article 141-1, of the RK Criminal Code proves pressing necessity to implement recommendations of UN Committee against Torture in the legislation and law application practice.

As of today, a number of recommendations remain non-fulfilled:

There is no effective mechanism of prompt, impartial and complete investigation of communications or complaints of torture and ill-treatment;

In reality, there is not guarantee for full observance of the principle of inadmissibility of evidence, obtained through the use of torture and cruel treatment;

There is no independent inspection of pre-trial detention facilities and independent judiciary control over the length and conditions of detention;

Recommendations of UN Committee against Torture were communicated to public at large.

In general analysis of the situation in pre-trial investigation and inquiry proves the need of further improvement of legislation and law application practice, aimed and strengthening guarantees for observing human and civil rights and freedoms for individuals, involved into criminal and legal relationships.

It is necessary to regulate in more details the actions of investigators, inquiry officers, operatives, in the process of apprehension of persons, suspected in commitment of an offence, their delivery into agencies that handle criminal proceedings (Ministry of Interior, Committee of the National Security, Financial Police), placement of these persons to temporary detention facility (IVS), and initial interrogation. One have to establish the stricter requirements and strengthened responsibility of persons, responsible for carrying out the criminal proceeding, with regard to explaining a suspect (an accused person) his/her procedural rights, including the right to qualified legal assistance, prompt notification of relatives of the suspect of the fact of apprehension (detention).

In order to prevent excess of authority or official power during pre-trial investigation, the right of arrested persons, suspects and accused persons to independent medical examination has to be formalized in legislation.

To adopt all necessary proceedings for effective protection of rights of persons affected by a crime and witnesses.

It is necessary to develop the government Programme for implementation of the law ‘On Government Protection of Persons Involved into Criminal Proceedings’, which has to provide for financial, logistic, and organisational support, and effective implementation mechanism.
Responsibility of public officials has to become more rigorous for illegal detention of arrested persons outside of IVS, in offices and other premises – not suitable for this purpose. Temporary detention facilities have to be transferred under the jurisdiction of the Ministry of Justice of RK.

RECOMMENDATIONS:
1. Criminal procedure legislation has to be added by the provisions obliging law enforcement officer that perform de facto apprehension of persons, to promptly inform him/her, as a minimum, about following things:
   - Grounds for arrest
   - Classification of charges laid against them;
   - Right to access a lawyer (defence lawyer) on their choice, including free legal support, and confidential meeting with defence lawyer before the fist interrogation;
   - Right to remain silent (a right not to witness against self);
   - Right to appeal the arrest in court;
   - Right to prompt notification of relatives about their arrest

   It is necessary to entrench in criminal procedure legislation the fact that non-informing persons on the above mentioned rights shall be a significant violation of procedural rights of suspects, accused persons, which may result in termination of prosecution.

2. Agencies, responsible for criminal proceedings have to guarantee respect of the presumption of innocence principle.

3. have to guarantee access to qualified legal support, not only for suspects, and accused people, but also for victims.

4. To transfer IVSs to the jurisdiction of the Ministry of Justice, and give a right to public monitoring commissions to conduct unannounced visits of these entities.

5. Agencies, responsible for criminal proceedings have to take immediate measures to conduct training for their officer in human rights norms.

Right to judicial protection and fair trial

The right to fair trial is a fundamental human right. This is one of the universally applied principles, which is a cornerstone of international human rights system. Since 1948 the right to fair trial, recognized by the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR) became a legal commitment of all states as an integral part of customary international law.

The right to fair trial was recognized and specially reserved in different international and regional treaties and non-treaty norms, adopted by UN and regional intergovernmental bodies. These human rights norms were developed to be applied in all legal systems of the world, taking into account the great diversity of
legal cultures – they include minimal guarantees, which have to be provided by all systems.

For example, OSCE documents formulated necessary conditions to be provided in order to ensure the right to fair trial. They include: independence of judges and impartial functioning of government judiciary system; court authorization of arrest or detention on the basis of criminal charges; fair and open trial by a competent and impartial court, created on the basis of law; access to qualified legal support, including free legal support in case of modest means of the prosecuted person, presumption of innocence, rule of law, and independence of judiciary system.

Pursuant to the Constitution of the Republic of Kazakhstan, the justice can be exercised only by court. Judiciary system is comprised of the Supreme Court and local (province, and regional courts).

The judiciary system takes the central part in the government human right protection mechanism, by being a main government institution of rehabilitation and protection of violated human rights, independent from legislative and executive branches of power.

Kazakhstan undertakes logical measures to develop judiciary system, increase effectiveness and impartiality of legal proceedings, ensuring maximal openness and transparency, and execution of rights, freedoms, and legal interests of citizens.

More specifically, the judiciary system had been significantly reformed by the RK Constitutional Law of November 17, 2008, ‘On Introduction of Amendments and Additions to the Constitutional Law of the Republic of Kazakhstan ‘On Judiciary System of Status of Judges of the Republic of Kazakhstan”. Cassation instance was introduced in provincial and equivalent courts. The supreme judiciary body of the state – the Supreme Court was defined only as a court of supervisory authority. Specialized courts include military, financial, economic, administrative, juvenile courts, etc.

The Supreme Court systematically improves quality and timeliness of administration of justice, enhancing confidence of citizens to courts.

The issues of organisation of courts operation and status of judges, procedure of judges’ selection and appointment, as well as issues of financing, logistic and technical support of courts are fixed at the constitutional level, which underlines constitutional independence and independence of courts in their decision-making.

A unified judiciary system headed by the Supreme Court was established, and effective legal framework, regulating courts activity was developed. Specialized courts were established, including: economic, administrative, military, juvenile and financial courts.

The law “On Jurors” was enacted in 2007. The law regulates social relations pertaining to involvement of jurors into criminal proceedings, delineates legal status, independence safeguards, economic, organisational grounds for jurors’ operation. Jury trials proved their violability, and allowed broad layers of population to participate directly in administration of justice. Since August 1, 2008 courts have been issuing arrest warrants.
Granting authority to courts to issue arrest warrants for persons suspected or accused in commitment of an offense is a real evidence of commitment of our state to steadfast adherence to international legal commitments, in particular to International Covenant on Civil and Political Rights, ratified by Kazakhstan and recommendations of ODHIR OSCE.

It has to be mentioned that granting courts the authority to issue arrest warrants, introduction of jury trials, creation of administrative and juvenile courts were carried out pursuant to recommendations of the Human Rights Commission by the President of the Republic of Kazakhstan.

Judiciary system and judicial proceedings improvement processes allowed ensuring strategic orientation on maintaining stability in the society and stability of institutions that ensure the rule of law in the country.

The Concept of Legal Policy of the Republic of Kazakhstan (hereinafter – the Concept) outlined the main areas of future development of judiciary system, including consolidation of different ways and methods of reaching compromise between the different parties of private-law disputes (mediation, etc.) both on judicial and an extrajudicial basis.

In this regard, in order to implement the provisions of the Concept, and the para.6 of the Plan of Activities to implement orders of the head of the state, given on the V Congress of Judges of the Republic of Kazakhstan on November 18, 2009, Plan of Law Drafting Works of the Government, and Edict of the President of the Republic of Kazakhstan Ref. no. 1039 of August 17, 2010 “On Measures of Efficiency Enhancing of Law Enforcement Activity and Judiciary System in the Republic of Kazakhstan”, the Supreme Court has developed draft laws “On Mediation”, and “On Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Introduction of Mediation Institution”

Draft laws have been agreed with all stakeholders, submitted to Prime-Minister’s Office, considered in Majilis and Senate of the Parliament of the Republic of Kazakhstan and submitted for signature to the Head of the State.

The above laws were signed by the President of the Republic of Kazakhstan on January 28, 2011.

Provisions of the Edict of the President Ref. no. 1039 of August 17, 2010 “On Measures of Efficiency Enhancing of Law Enforcement Activity and Judiciary System in the Republic of Kazakhstan” (the Edict – hereinafter) aimed at improvement of judiciary system have to mentioned here as well.

In order to implement the Edict, the Department on Court Activities under the Supreme Court of the Republic of Kazakhstan (Apparatus of the Supreme Court) and its territorial divisions (courts’ secretarial offices) and the Committee on Enforcement of Judicial Acts of the Ministry of Justice of the Republic of Kazakhstan through reorganisation of the Court Administration Committee were established.
The President signed the Edict Ref. no. 1093 of November 3 “On Approval of Regulation on the Department on Court Activities under the Supreme Court of the Republic of Kazakhstan (Apparatus of the Supreme Court)”.  

At the same time, pursuant to the para. 5 of the Plan of Activities for Implementation of the Edict, the Supreme Court has developed draft Constitutional Law “On Introduction of Amendments and Additions to the Constitutional Law of the Republic of Kazakhstan “On Judiciary System and Status of Judges in the Republic of Kazakhstan”.  

Draft Constitutional Law provides for introduction of relevant amendments that regulate organisational, logistic and technical support of courts’ activity, procedure of establishing province, region, and equivalent to them courts, and powers of Chairpersons of the Supreme and province courts, and full courts of these courts.  

Besides that, the draft Constitutional Law shall abolished qualification classes of judges, judge shall be discharged from office in the form of resignation, grounds for termination of resignation upon shall be reduced, and grounds for suspension of judges’ shall be provided for.  

This drafts Constitutional Law is agreed with all stakeholders, submitted to the Prime Minister Office, and considered in Majilis and Senate of the Parliament of the Republic of Kazakhstan and submitted for signature to the President.  

The Constitutional Law was signed by the President of the Republic of Kazakhstan on December 29, 2010.  


Draft law provides for introduction of advanced criteria and standards for judges and candidates for position of judges, which will contribute to the development of good judicial manpower.  


The issues of vesting courts with additional authority to fill gaps of pre-trial proceedings at trial preparatory stages, respecting the main principles of justice administration, improvement and simplification of legal proceedings in order to ensure timely and fair protection of rights and legal interests of citizens and organisations, as well as the state, expansion of the judicial control limits in pre-trial proceedings shall be solved in the framework of the draft law “On Introduction of Amendments and Additions to Certain Legislative Acts of of the Republic of Kazakhstan on Issues of Improvement of Criminal and Criminal Procedure Legislation”, which is currently under consideration of the Committee on Legislation and Judiciary and Legal Reform of Majilis of the Parliament the Republic of Kazakhstan.
Analysis of judiciary system shows the need of its comprehensive reform in terms of improvement of legal proceedings, judicial organisation, and elimination of contradictions and conflicts in legislation and optimization of courts performance.

**On improvement of mechanisms of selection of candidate for position of a judge, including introduction of stepwise competition**

In order to ensure participation of candidates that meet specified requirements for vacant positions of judges of local courts, a number of measures have been undertaken to improve the procedure and mechanism of selection of judges, mainly in two stages: passing the qualifying examination, and training on probation in court.

Draft Edict of the President on introduction of amendments and additions into Regulations on Training on Probation for Candidates for Position of a Judge, approved by the Edict, Ref. no. 643, of June 26, 2001 was developed on the issues related to training on probation in court.

This draft provides for appointment of province court’ judge alongside with the judge of the region court as a supervisor of training on probation; it details the functions of the training on probation supervisors – judges of province and region courts, a supervisor need to give feedback (recommendations) on performance of a trainee – a candidate for position of a judge, and also increase of minimal timeframe for training on probation, outlines legal consequences of a negative feedback of plenary sessions of province and equivalent courts, regulates issues of training on probation on a regular basis without discharging candidates form their positions on their main job.

In general, this shall create conditions for better and more complete preparation of a candidate for position of a judge; give opportunity to understand better his/her ethics and moral, and also will contribute to involvement of the most decent candidates to participate in competition for position of a judge.

Currently the draft Edict, agreed with the stakeholders, Ministry of Finance, and the Ministry of Justice has been submitted to the Prime Minister’s Office.

At competitions to fill vacant position of judges, the Supreme Judicial Council pays a special attention to age criteria, as well as to business and moral characteristics of candidates to positions of judges.

For example, on the basis of results of May 2010 competition, conducted by the to fill vacant position of judges of local and other courts, recommendations were given to people that had passed exams in specialized magistracy, with experience of at least 5 years in legal profession in government bodies, including judiciary system, law enforcement bodies and the bar. Average age of selected candidates that were recommended for the first time for positions of judges was 34, and work experience in legal profession was more than 5 years.

In order to examine moral and professional characteristics of the candidates, their files shall be submitted to oblast courts with further publication of information about them in mass media. Publication of this information ensures public
involvement in selection of candidates to positions of judges, and feedbacks of citizens help to understand moral characteristics of the candidates to positions of judges.

Amendments and additions were introduced into the Constitutional Law of the Republic of Kazakhstan ‘On Judicial System and Status of Judges of the Republic of Kazakhstan, and the Law “On the Supreme Judicial Council of the Republic of Kazakhstan”, which provide for additional requirements to candidates to position of a judge of oblast and the Supreme Court”. These amendments were aimed at ensuring that the most experienced candidates are selected for position of a judge.

Pursuant to para.3. of the Plan of Activities to Implement Orders of the President, voiced at the meeting on November 25, 2008 (para. 6 of the Minutes of the Meeting with participation of the President, Ref. No 01-7.19, of November 25 2008), the Supreme Judicial Council developed a mechanism of joint actions aimed at elimination of courses and conditions that create favourable environment to appoint individuals to position of judges that do not meet the specified requirements.

Efforts on ensuring maximal transparency and openness of the process of judges' selection and development of judicial manpower have been made on a regular basis.

Modification of the legal framework for selection of candidates to position of a judge is aimed at strengthening the reputation of judicial power, ensuring guarantees of independence and immunity of judges, non-admission of “accidental” people into judicial manpower and its reserve.

Transparency and fairness of competitive selection of candidates for position of a judge shall be ensured. Lists of individuals, participating in the competitive selection shall be submitted to province and equivalent to them courts in order to examine their personal and moral characteristics. Lists of candidates, participating in the competition shall be published in mass media. Every candidate shall be discussed at the meeting of the province court.

Timely reveal of discreditable evidence allows eliminating people with tarnished reputation and selecting decent candidates to position of a judge.

Efforts to strengthen insistence of high standards applied to judges, zero-tolerance to any violation of due course of law and standards of judicial ethics resulted in doubled reduction of a number of judges dismissed from their offices on the basis of negative grounds in 2010 in comparison with 2009.

In 2010 – 14 judges were dismissed from their offices on the basis of negative grounds by the Presidential Edict (29 in 2009), including:

4 judges in connection to a conclusion made by Judicial Jury (7 – in 2009);
For failure to comply with requirements - 10 (2009 = - 22).

Internal investigations were conducted in relation to every case of corruption crimes and offences committed by judges, which resulted in disciplinary prosecution of guilty public officials.
Therefore, on the basis of internal investigation results in relation to arrest of a judge J.K., the Chairman of Petropavlovsk city court of North – Kazakhstan province G.S. was dismissed from his office.

The Chairman of Almaty region court A.K, was brought to disciplinary responsibility on the fact of arrest of judges of Astana city – J.R. and R.A.

On the basis of internal investigation results on arrest of judges K.N, and B.E., the Chairman of the Karasay region court and the Chairmen of Talgar region court S.T. were brought to disciplinary liability, awarding a punishment in a form of admonition.

On the basis of internal investigation results on arrest of judge K.S, the Chairmen of Otrar region court of South-Kazakhstan oblast was awarded a punishment in a form of admonition

Moreover, at the inter-plenary session for discussion of results of internal investigation, conducted by Chairmen of Almaty, North-Kazakhstan South-Kazakhstan province courts, as well as the court of Astana city, the need was indicated for taking effective measures to combat corruption and ensuring compliance to Judicial Ethics Code by judges.

The Supreme Court monitors activity of every judge in relation to quality and timeliness of justice administration. In order to determine the procedure of judicial monitoring, aimed at improvement of quality of administration of justice, the Chairmen of the Supreme Court approved Methodological Recommendations for its implementation.

Mass media play very important role in ensuring informational openness of justice bodies; they act as a link between judiciary system and civil society. Therefore activities aimed at ensuring effective efforts in fighting corruption and compliance of Judicial Ethics Code also have been conducted in close cooperation with mass media.

**Quality Assessment of Administration of Justice in Kazakhstan**

One of the fundamental criteria of the performance of courts is the quality of justice administration.

The legally enacted increased accessibility of courts enabled to fully eliminate restrictions for citizens to advocate their rights in line with increased trust to judicial power. The assessment of courts performance in the Republic shows that citizens’ trust to courts in increasing year by year. The increased use of courts by legal and physical persons to protect their rights and lawful interests testifies to it.

In recent years the Supreme Court has undertaken a great deal of measures to organisationally strengthen and upgrade the courts’ performance, create appropriate working conditions, enhance material and social guarantees of independence of judges as well as increase their accountability for honest and conscious fulfilment of their professional duty.

The statistical data prove the fact that the implemented reforms enabled to ensure high quality of justice administration, reduce the number of judicial errors.
In 2010 the total number of criminal cases (with the remainder at the beginning of period) under legal proceedings was 59455. The number of finalized criminal cases under legal proceedings was 55701. Out of them the number of considered cases with criminal sentencing has made 30130 cases and within these cases 36185 individuals were convicted and 694 individuals – were acquitted. 21329 criminal cases were discontinued with regard to 24170 individuals.

The justice with regard to criminal cases as in previous years was administered in accordance with the Constitution and laws of the Republic of Kazakhstan. As compared to indicators of 2009 there is a trend of improved quality of justice administration on criminal cases (in 2010 the average republican indicator of annulments and amendments through appellate, cassational and supervisory procedures has made 3,1 % versus 3,9 % - in 2009).

As far as it concerns considering civil cases and cases on administrative infringements through supervisory procedure during 12 months of 2010 the Supreme Court has received 13580 (in 2009 - 6026) motions, the remainder at the beginning of the reporting period has made 243 motions, the total number of motions under legal proceeding has made 13823 solicitations, which is by 120% higher than during the similar period of 2009 (6255).

Thus, when comparing indicators during 12 months of 2010 with the similar period of the last year (6026) it is evident that the number of received motions 13337 (disregarding the remainder at the beginning of the reporting period) has increased virtually by two times (by 7311 or 121,3%).

The judges of supervisory judicial collegiums have tentatively reviewed 7554 motions (in 2009– 3312), out of them they reviewed – 7017, which is higher by 2.5 times or by 133,6% as compared to 12 months of the last year (3003), returned through ruling of judges - 537(309).

Based on findings of preliminary review of motions the judges of supervisory judicial collegiums have passed decisions to revise 654 or 9,32% (339 or 11,3%) motions, the number of motions refused from revision made 6363 or 90,6% (2664 or 88,7%) from the total number of considered motions 7017 (3003).

Thus, there was a decrease in relative weight of decisions made in the reporting period on commencement supervisory proceedings as compared to the similar period of 2009 by 1,98%. Having said that there is a trend of increased relative weight of decisions made in the reporting period on refusal to revise judicial acts by 1,9%.

The supervisory judicial collegiums has considered altogether 922 (383) motions and protests to revise judicial acts on civil and administrative cases. Among them there were 609 (316) motions and 137 (39) protests on civil cases, and 176 (28) protests on administrative cases.

The judicial acts were revised with regard to eight civil cases both through motions and prosecutor’s protest.

Thus, when comparing the indicators during 12 months of 2010 with the similar period of the last year it is evident that the number of considered by
supervisory judicial collegiums motions and protests on civil and administrative cases has increased by 597 cases or 147%.

According to the statistical data for 12 months of 2010 the courts of the Republic have considered 304631 (in 2009 - 310 067) civil cases followed by courts decisions.

In 2009 through supervisory procedure 891 or 0,2% of judicial acts were cancelled, 434 or 0,1% - amended. The total number of annulments and amendments makes 1325 or 0,4%.

During 12 months of 2010 the supervisory judicial collegium of the Supreme Court has cancelled 355 or 0,1%, amended 112 decisions of courts of the first instance. The total number of cancelled and amended court’s decisions has made 467 or 0,2%.

The cassational collegiums of oblast and equivalent to them city courts have cancelled 371 or 0,1 %, amended 457 or 0,1 %. Altogether they cancelled and amended 828 or 0,2 %. Altogether the indicator of annulments and amendments made through cassational and supervisory procedures has made 1295 which makes 0,4%, out of them the number of cancelled has made 726 or 0,1%, the number of amended 569.

Thus, during 12 months of 2010 the indicator of annulments and amendments through supervisory and cassational procedures as compared to the indicator of the similar period of the last year through supervisory procedure remains at the same level.

In 2010 the specialized interregional courts of first instance on criminal cases have considered altogether 262 criminal cases with the involvement of jury.

Out of them, 258 cases were considered with further criminal sentencing. Within the mentioned cases 323 individuals were convicted, 43 individuals-acquitted.

Thus, as compared to previous years the number of considered cases with involvement of jurors on criminal cases as well as the number of individuals acquitted by them has substantially increased.

In practice very rarely one can come across the facts of human rights infringement in the result of local courts’ decisions.

For instance, on 17 May 2010 the Commission on Human Rights under the President of the Republic of Kazakhstan has received the complaint from the resident of the city of Shymkent, Ms. Meyrbekova, a mother of a multi children family.

According to the claimant she personally submitted the application on 8 June 2009 in the course of personal visit to the Commission in which she alleged that owing to the fault of Mr. A. and assistance of local executive and judicial bodies of South Kazakhstan province her rights for individual housing construction has been violated. Thus, during the winter time in execution of the court’s decision 30% of her house was destroyed and a mother of a multi children family was evicted without providing the alternative housing.
Only upon interference of the Commission on Human Rights under the President of RK the infringed rights of Ms. Meyrbekova, the mother of multi children family, were redressed. The story about this appeal was shown on NTC «Kazakhstan».

In 2010 with regard to judges of the Republic of Kazakhstan the Prosecutor General of the Republic of Kazakhstan has filed 4 criminal cases (with regard to 4 individuals) on facts of committing by them corruption related crimes.

Out of the above mentioned cases: 1 case referred to the court; 1 – discontinued owing to death of the person brought to justice; 2 persons were convicted (including those transferred to the court in 2009).

The results of implementing recommendations of Mr. Leondro Despouy, UN OHCHR Special Rapporteur on Independence of Judges and Lawyers of Kazakhstan

According to sub-para 1 and para 3, 72 recommendations of the Special Rapporteur (judicial and structural reforms)

**Subparagraph 1. The process of appointment of judges of all levels of the justice system, judicial tenure, dismissal from the office, the remuneration levels, which cannot remain within the exclusive powers of the President of the country.**

Selection of candidates for position of judges at local and other courts shall be carried out the Supreme Judicial Council on a competitive basis. Based on the results of the competitive selection, the Supreme Judicial Council recommends candidates to fill vacant position of judges at local and other courts to the President of the Republic of Kazakhstan for the consequent appointment the posts.

The candidates for position of judges at provincial courts are considered by the Supreme Judicial Council only if there is a positive conclusion of the plenary session of the appropriate provincial court.

The chairmen of judicial divisions of local and other courts, chairmen of judicial divisions of the Supreme Court are appointed by the President of the Republic of Kazakhstan upon recommendation of the Supreme Judicial Council based on approval of the Chairman of the Supreme Court and the decision of the plenary session of the Supreme Court for the duration of five years.

The judges of the Supreme Court of the Republic of Kazakhstan are appointed by the Senate upon approval of the President of Kazakhstan based on recommendation of the Supreme Judicial Council.

The Chairman of the Supreme Court is appointed by the Senate upon the approval from the President of the Republic of Kazakhstan based on recommendation of the Supreme Judicial Council for the duration of five years.

The Chairmen of local and other courts are appointed by the President of the country upon recommendation of the Supreme Judicial Council of the Republic of Kazakhstan for the duration of five years.

The Chairman of the Supreme Court upon arising of sufficient grounds as stipulated by the Constitutional Law submits to the Supreme Judicial Council the
request and materials on termination of duties of the Chairmen, Chairmen of judicial divisions and the judges of the country’s courts.

The request to dismiss a judge from the office for violation of discipline, for being unfit to perform the duties of a judge, or for non-compliance with Constitutional Law of the Republic of Kazakhstan “On Judicial System and the Status of Judges of the Republic of Kazakhstan” is submitted by the Chairman of the Supreme Court to the Council based on the decision of the Disciplinary and Qualification Association of Judges or the Judicial Panel.

The grounds for termination of office of a judge are as follows:

1) Retirement of a judge;
2) judge's dismissal from office pursuant to his own wish;
3) state of health impeding further performance of professional duties, in accordance with a medical opinion;
4) entering into legal force of a court decision recognizing the judge as legally
5) incapable or restrictedly incapable, or applying compulsory measures of a medical nature to him;
6) entering into legal force of a conviction in respect of this judge;
7) termination of citizenship of the Republic of Kazakhstan;
8) death of the judge or entering into legal force of a court decision recognizing him as deceased;
9) appointment, election of the judge to another position or his transfer to another job;
10) abolition of the court or expiry of powers, if chairman of a court, chairman of a judicial collegium or the judge does not agree to take up a vacant position of a judge at another court;
11) conclusion made by the Judicial jury;
12) reaching the judges’ compulsory retirement age.

The chairman of a court or the chairman of judicial division can leave their post prior to the end of their term at their own free will or be dismissed based on non-performance of duties.

The decisions on dismissal of a judge from his/her post are made by:

1) The resolution of the Senate of the Parliament of the Republic of Kazakhstan with regard to the Chairman of the Supreme Court and judges of the Supreme Court, upon a presentation by the President of the Republic of Kazakhstan;
2) The decree of the President of the Republic of Kazakhstan with regard to chairmen of judicial divisions of the Supreme Court, chairmen, chairmen of judicial divisions and judges of local and other courts.

The dismissal of a judge from his/her post automatically leads to termination of duties of a chairman or the chairman of a judicial division of the relevant court.

The termination of duties of a chairman or the chairman of a judicial division made voluntarily or upon expiry of the appointed term does not entail termination of their duties as a judge of the relevant court.
In accordance with Article 35-1 of the Constitutional Law “On Judicial System and the Status of the Judges of the Republic of Kazakhstan” (hereinafter the Constitutional Law) additional compulsory payments for the judge’s pension scheme in the amount of 10% of the judge’s monthly salary must be allocated from the Republic’s budget. In the event of dismissal of a judge from office based on negative grounds, the above payments will be withheld by the Republic’s budget.

According to the Prosecutor-General’s Office, no mechanism exists for making these additional payments.

Moreover, the Constitutional Law does not stipulate which exact factors constitute the reasons for dismissal on negative grounds.

Therefore, the Prosecutor-General’s Office recommends the following actions:

1) To develop the mechanism of additional payments into the pension scheme for judges;
2) To provide a detailed list of factors that constitutes the reasons for dismissal of judges on negative grounds.

In support of the recommendations of the Prosecutor-General’s Office, we recommend the Government of RK to develop the mechanism of additional payments into the pension scheme for judges.

We also consider the above recommendation of the Prosecutor-General’s Office on specifying the list of factors which constitute the reasons for dismissal of judges on negative grounds as advisable.

We believe that the negative grounds for dismissal of judges should include the coming into effect of a guilty verdict with regard to the judge, the conclusion of the Judiciary Panel and the decision of the Disciplinary and Qualification Association.

At the same time, it must be noted that in accordance with paragraph 25 of the Government Plan of Legislative Works for 2011, it is planned to submit to the Parliament in November 2011, the draft of the law “On Introduction of Amendments into the Constitutional Law of the Republic of Kazakhstan “On Judicial System and the Status of the Judges of the Republic of Kazakhstan” developed by the Supreme Court. We believe that the recommendations of the Prosecutor-General’s Office must be incorporated into this draft law.

In 2009 certain law were enacted on improvement of civil, criminal, criminal procedure and civil procedure legislation, aimed at reduction of a number of court instances, development of three-tier judicial system, harmonisation of the judicial acts revision procedure, simplification of the pre-trial procedure, etc.

Supervisory functions shall be retained only by the Supreme Court, which is endowed with appropriate powers by the Constitution.

Other innovations include exemption of legal entities and individuals from the state duty at appellation of judicial acts in civil suits, which shall expand access to appellate instances.

Sub-paragraph 3. Composition and functioning of the Supreme Judicial Council, under exclusive jurisdiction of the President of the RK
Objectives of the Supreme Judicial Council include ensuring of constitutional powers of the President of the Republic of Kazakhstan on composition of courts, guarantees of judges independence, and their immunity, improvement of judiciary system and legislation.

The Council is composed of the Chairman, a secretary and other members, appointed and appointed and dismissed by the President of the Republic of Kazakhstan.

The position of a Chairman, the secretary and a member of the Council is incompatible with participation in governing body and supervisory board of a commercial organisation, leadership position in political party.

The Council’s headquarters ensures activity of the Council.

Powers of the Supreme Judicial Council, as well as procedure of implementation of meetings are detailed on the law ‘On the Supreme Judicial Council of the Republic of Kazakhstan’.

**Regarding para. 73 of the Recommendations (Ratification of International Legal Acts on Human Rights and Related Actions in the Legal Area)**

For the purpose of standardising the local court practices, the Supreme Court in its explanatory papers on court procedures not only makes references to the international legal standards but also provides extensive coverage of their application in practice.

The fact that no references are made to the Country’s international obligations in court acts does not imply that the courts do not adhere to international standards on human right protection.

The fundamental international standards and principles of human rights protection have been incorporated into the Constitution of the Republic of Kazakhstan and Criminal and Civil Codes used by the courts in their activities.

**Regarding para. 74 of the Recommendations (Education and Professional Training in the Area of Human Rights)**

Training of highly qualified experts for the judiciary system can facilitate many an issues of the legal reform, particularly, in improving the image of the judiciary system and the quality of the judicial services.

For the purpose of addressing these issues, the Supreme Court has developed the Strategy for Judicial Education for 2009-2010 aimed at modernising the judicial education, improving the quality of training and providing retraining of the staff of the judicial system.

The training of future personnel for the judiciary system is the responsibility of the Institute of Justice of the Academy of Public Management under the President of the Republic of Kazakhstan which trains professional lawyers and offers post-graduate Programmes in jurisprudence (Master’s Degree).

The Institute also provides further education to judges and employees of the entire justice system of Kazakhstan in order to improve their professional level.

The Institute of Justice retrain the employees of regional and equivalent level courts as well as administrative staff. The training is provided in accordance with the Schedule for Improving the Qualifications of Judges and Employees of the
Judiciary system at the Institute of Justice of the Academy of Public Management. The specialty areas of the judges as well as their training needs are taken into consideration when preparing training material for the seminars and lectures provided.

The lectures cover amongst others such topics as international adoption rules, international trial, international dispute and disputes involving foreign legal entities and others.

For instance, the Institute of Justice has close ties with the UN Children’s Fund (UNICEF), which provides expert assistance in the area of international standards in juvenile justice system.

Education centres run by coordinators of educational Programmes also provide continuous training of judges at the local level in accordance with their training schedule. Educational Programmes (training seminars) of the training curriculum are based on the judges’ educational requirements and cover problems and issues that judges encounter in their work (in a specific case category). The education centres also include in their training Programmes designed for judges the study and application of international agreements concerning family issues, women and children as well as domestic violence and other topics.

In addition to the above, the Institute of Justice will incorporate into its training Programme such compulsory subjects as international human rights and international humanitarian law due to the fact that the courts of the Country consider cases that fall into this category.

**Regarding para. 78 of the Recommendations (Gender Issue Awareness)**

In December 2010, the Division on International Law of the Department of Supreme Court has developed the Compilation of the UN international laws on equality between men and women. This Compilation has been developed for the judges of local courts and subsequently placed on the website of the Supreme Court (under the section of International Cooperation).

This Compilation is scheduled for publication and subsequent distribution to the judges and other court staff throughout the Country in 2011.

**Regarding para. 80 of the Recommendations (Judges).** It is imperative to immediately separate the issue of taking disciplinary measures against judges from the issue of reaching a verdict on a case or issuing court ruling on appeal cases by judges. The situation must be achieved whereby any acts of corruption are prosecuted under the relevant laws.

Under the Constitutional Law of the Republic of Kazakhstan “On Judiciary system and the Status of Judges of the Republic of Kazakhstan” disciplinary actions can be taken against a judge in the event of any violation of law in considering a court case; for actions that contradict court ethics; for serious violation of work discipline.

It must be noted however that annulment or amendment of a court ruling does not in itself entail any liability on the part of a judge if no serious breach of law took place such as stated in the ruling of a higher court.
In the event any acts of corruption by a judge are to be established as taking place, disciplinary actions stipulated by the Constitutional Law shall be applied to such a judge including dismissal from their position.

Regarding para. 86 of the Recommendations (Ethical Norms, Transparency and Accountability). In order to improve public trust in judiciary system it is necessary to take some decisive and immediate measures by developing an effective and obligatory code of professional ethics and greater accountability.

Prevention of corruption and punishment for any acts of corruption and bribery at all levels of judiciary system as well as in the sphere of legal education are clearly of the highest priority. Anticorruption initiatives to be undertaken with the assistance of the international community must perhaps be focused on elimination of traditional court practices that tend to encourage the corruption. Another focus area should be application of appropriate penalties and punishment for cases of corruption.

On 18 November 2009, at the 5th general assembly of the judges of the Republic of Kazakhstan, the revised edition of the Code of Judicial Ethics was approved. This revised edition of the Code establishes ethical standards of conduct for the acting judges as well as the judges in retirement and is developed in accordance with the Constitution of the Republic of Kazakhstan, Constitutional Law of the Republic of Kazakhstan “On Judiciary system and the Status of Judges of the Republic of Kazakhstan”, the Main Principles of Independence of Judicial Bodies approved by Resolutions of the UN General Assembly No 40/32, of 29 November 1985 and No 40/146, of 13 December 1985 as well as the Bangalore Principles of Judicial Conduct.

In addition to the above, there are active Commissions on Judicial Ethics of the Association of Judges of the Republic of Kazakhstan that operate at every provincial court. These Commissions provide significant assistance in working out any issues that may arise in the course of meting out justice as well as in non-judicial activities; they also facilitate a better understanding and compliance with the Code of Judicial Ethics by judges. These Commissions also assist in setting clear criteria used for defining disciplinary liabilities of judges, as well as professional benchmarks for assessment of judges’ conduct and in establishing the level of liability judges should be subjected to for violation of ethical standards.

The Supreme Court continuously works to prevent and fight against corruption in the judiciary system by taking organisational and preventive actions.

The strict adherence to the Code of Judicial Ethics by judges when performing their work duties and in their non-work related activities is the subject of regular discussions at inter-plenary meetings of the Supreme Court.

If information on corruption or breach of the Code of Judicial Ethics involving judges is received, the appropriate actions are undertaken towards such judges including comprehensive monitoring of their activities.

The work of Disciplinary and Qualification Committees has been activated. In order to reinforce the work carried out by these Committees on prevention of corruption among judges, hearings are regularly held at which the chairmen of
provincial disciplinary and qualification committees give detailed information on the actions undertaken by committees against the judges that were found in breach of the code of conduct.

The role mass media play in creating greater transparency of the justice system is critical as the media are the link that connects the general public with the justice system of the country. For this reason, all the anticorruption measures as well as efforts directed at ensuring compliance with the Code of Judicial Ethics by judges are carried out by the Supreme Court in close cooperation with the mass media.

Regarding para. 87 of the Recommendations (Access to Courts)

The courts of the Republic of Kazakhstan make every effort to improve public trust in the judicial system. Regular work is performed in cooperation with various public associations including international organisations to ensure supremacy of law, monitoring of court hearings, and overall improvements of the judicial system.

In February-March 2010, as part of the implementation of the project called “Transparency and Access to Information and the Justice System in Kazakhstan” information stands were set up in five courts in Astana and Almaty for the benefit of the public.

The work continues on setting up more of the information stands and on establishing an electronic monitoring process that would enable the participants of a court case to check the progress of their papers using Internet without having to visit courts in person.

Juvenile Justice

In August 2008, the Concept for Development of Juvenile Justice in Kazakhstan for 2009-2011 was approved. At the same time, the Concept of the Legal Policy for 2010-2020 states that juvenile courts must become the central link in the juvenile justice system being created in this country as any legitimate public involvement in a child’s life must be based on a court ruling of the juvenile judge.

The Concept of the Legal Policy also states that in order to spread the positive experience in the activities of the specialised courts (juvenile courts) such courts should be established throughout the country.

At the same time it must be noted that any positive trends in the development of the justice system in the country are far from being ideal.

The guilty verdict continues to be the prevailing outcome of most criminal cases. The fact that non-guilty verdicts are so rarely issued by courts and the very cautious attitude towards such verdicts amongst judges is an indirect proof of the point.

Cases of corruption and violation of the law and of the Code of Judicial Ethics take place in the judiciary system of the country.

The most important criterion used in determining the fairness of a trial is the principle of equal powers of defence and prosecution. The application of this principle of equality throughout the trial implies that procedural actions were utilised in equal measure by the parties during the trial. It would be impossible to
provide a comprehensive list of all the violations of this principle of equality. This type of violations includes allocation of insufficient time to the accused person and/or his defence counsel to prepare for their defence and attempts to hinder the defendant’s and/or his attorney’s access to the appeal trial when prosecution is present.

The legislation and law enforcement practice in the Republic of Kazakhstan demonstrates that the equality of powers of prosecution and defence has not yet been achieved.

Paragraph 1 of the Article 14 of ICCPR (International Covenant on Civil and Political Rights) also guarantees the right to a fair and public court hearing as this right is the key element in achieving fairness of the judicial system. The principle of public hearing implies transparency of court hearings and of court rulings on those cases (but it by no means implies the openness of other trial related activities). This right belongs to not only the two parties in a trial but also to the general public living in a democratic society. The right to public hearing ensures a trial process that is held openly, with parties present and without any preliminary applications from the parties involved. The court must within reasonable time inform the parties involved of the time and place of the court hearing and to provide the necessary facilities for members of the public that wish to attend the hearing. It must be noted that the representatives of mass media and members of the public can be removed from the courtroom in accordance with requirements stipulated in paragraph 1 of Article 14 ICCPR, however this sort of actions can only be authorised by appropriate court decisions in compliance with the existing procedural requirements.

The public may be excluded from all or part of a trial for reasons of “moral, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires”. Members of the public can also be refused access to the courtroom “in the presence special circumstances where publicity would prejudice the interests of justice”. In criminal cases involving violations of law of sexual nature, the consideration of morality are traditionally viewed as sufficient grounds for not allowing access for the general public to the courtroom. The term “public interest” in this context is interpreted as maintenance of order in the courtroom, while the national security considerations are used when military and state secrets are involved. However, in both of these cases any limitations imposed on the access of the public to the courtrooms must be in compliance with legal principles of a democratic society which are at the base of the efforts at preventing arbitrary court rulings and verdicts. Protection of privacy of the parties involved in a trial (this extends to the members of their family and other relatives) can also be viewed as sufficient grounds for limiting public access to the courtrooms. An example of a situation like this is cases on guardianships, where publicity of the case may cause damage to one of the parties in a trial. Finally, limitations on the public access to the courtrooms can be imposed for considerations of fairness. This type of limitations is imposed in exceptional
circumstances and is based on relevant court decisions with ensuing detailed explanations.

The list of circumstances that require closed hearings however extensive this list may be does not, as a rule, cover the verdict announcement phase of the trial. According to paragraph 1 of Article 14 of ICCPR, any judgement rendered in a criminal case or in a suit at law “shall be made public”, except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Thus, any exceptions to the rule on public hearings can be determined with a sufficient degree of accuracy. Court judgement is considered public if it was announced verbally in the courtroom or published in mass media or made public using both of these methods at the same time. In any case, the main factor that determines the openness of a judgement is its availability to all the parties involved.

Overall, the Kazakh laws concerning the principles of openness and transparency are in compliance with the international standards mentioned above.

However, it is advisable, for the purpose of avoiding arbitrary interpretation of these fair principles by the judges, to incorporate in the laws the concept of open trials where representatives of mass media, members of the public, etc. can be present.

The right to a fair trial in a criminal case is, as a rule, administered by the competent, independent and impartial courts which act in accordance with the relevant legislation (paragraph 1, Article 14 of ICCPR). The purpose of this regulation is to prevent any arbitrary and biased decisions on the part of political or administrative bodies when considering criminal cases. The court must be competent and act within the existing legal framework. These two requirements are closely linked and together form part of a whole. Even though the issue of the court’s competence is traditionally linked with the problems of its jurisdiction, every court must operate within the existing regulatory and legal framework. The main objective of this requirement is creation of the legal environment that will ensure that the criminal cases are considered by legitimate courts independent of the particulars of a case or offence.

This independence implies division of powers and protection of courts from illegal interference in their activities on the part of the executive or, to a lesser degree, of the legislative bodies of the country.

With regard to independence of the courts, it is worth noting that the main criterion used for determining impartiality of a judge in a trial is the presence of any bias (or lack of it) on his/her part. The judge’s impartiality can immediately be questioned if he/she has been previously involved in the case in question in another capacity or if he/she belongs to a political party or has a particular interest in the case.

It general, it must be noted that all these principles have been incorporated in the legislation of the Republic of Kazakhstan.

According to paragraph 2, Article 14, of ICCPR “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty
According to law”. As the key component of the right to fair trial, the presumption of innocence implies, amongst other things, that the burden of proof in a trial lies with the prosecution; it also means that the presumption of innocence must be applied to the accused person. Moreover, presumption of innocence must be applied not only with regard to an accused person during a trial, but also with regard to an accused during the preliminary investigation phase. The officials of the appropriate law enforcement and executive agencies must do all that is necessary to ensure compliance with the principle of presumption of innocence by way of “refraining from issuing any preliminary decisions on the case under consideration.”

Despite the fact that the presumption of innocence is stipulated in the Constitution of the Republic of Kazakhstan and in Penal legislation, it is often ignored in real life practice. It is sufficient to mention that prior to the court hearings, the judge in charge of a criminal trial studies the materials on the case prepared by the prosecution. Even though the Penal legislation specifically obligates the body in charge of preliminary investigation to seek evidence that can prove both innocence and guilt of an accused person, this requirement is not followed in practice. The investigative bodies only collect evidence that proves the defendant’s guilt, under the assumption that it is up to the defence to collect evidence that can prove the defendant’s innocence or any other evidence that can help acquit the accused person. As a result, in majority of cases, the cases’ files are diligently (or more or less diligently, as the case may be) collected information that helps prosecution and thus supports the guilty verdict. It is this information that is laid on the judge’s desk, which, after examining it, will inevitably “fall into the trap” of siding with the prosecution. As a consequence, the defence becomes unable to present and defend its case, but is reduced to mere questioning of the viability of certain points presented by prosecution. This practice has to change at its core if the presumption of innocence rule is to be complied with.

Introduction of the court of jury has had a positive impact, but it cannot be relied on as a sole solution to this problem, at the very least because the list of categories of criminal cases that require the court of jury is fairly limited.

Provisions of paragraph 3 (b), of Article 14 of ICCPR stipulate that in the event a person is presented with criminal charges, such a person is entitled to “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. The right to sufficient time and facilities to prepare the defence case covers both the accused person and his defence counsel. This legal requirement must be complied with at every stage of a court trial. The amount of time deemed sufficient to form a case for defence in a trial depends on the nature of the court trial and the particular circumstances of the case under consideration. Among the factors taken into consideration in these cases are the complexity of a court case, access of the accused to evidence supplied by witnesses, time allocated for completion of various judicial procedures as stipulated in the internal legislation, and other factors. The term “facilities” covers, among other things, providing the accused and his/her defence counsel with the access to
the relevant information, files and documents necessary to prepare the defence, as 
well as supplying the accused with technical means for communicating with his/her 
defence counsel under the terms of confidentiality. The most essential component 
of the right to the appropriate conditions to prepare one’s defence is the right to 
defence counsel of one’s choice.

Overall, the provisions of the Kazakh criminal procedure legislation contain 
these guarantees. However, it is necessary to eliminate the dependency of a defence 
counsel from detectives that still exists where the granting of a meeting between a 
defence counsel and an accused person placed under arrest remains at a detective’s 
disccretion.

The right to defence counsel during the pre-trial phase of a criminal case is 
directly linked with the right to defence during a court trial, as stipulated in 
paragraph 3 (d), Article 14 of ICCPR. This provision states that every individual 
has the right “to be tried in his presence, and to defend himself in person or through 
legal assistance of his own choosing; to be informed, if he does not have legal 
assistance, of this right; and to have legal assistance assigned to him, in any case 
where the interests of justice so require, and without payment by him in any such 
case if he does not have sufficient means to pay for it”. In the latter case, the 
accused that does not have sufficient financial means is absolved from the 
responsibility of paying for defence counsel services. This legal requirement 
provides for the following specific rights:

“to be tried in his presence”. In terms of legal interpretation, this right is 
the most disputable. The literal interpretation of this right excludes the possibility of 
trial in absentia. This view is shared by most international non-government human 
rights organisations and by the International Criminal Court. However, in the 
expert opinion of the UN Committee on Human Rights trial in absentia can take 
place if the state takes “sufficient efforts to inform the accused of the upcoming 
trial, thus enabling him/her to prepare for their defence in advance”.

right of the accused to defend themselves;
right to legal assistance of one’s choice;
right to be informed on his right to legal assistant;
right to free legal services.

According to the prevalent interpretation of the fundamental provisions of 
ICCPR, the right to defence counsel covers all stages of a criminal trial including 
the preliminary investigation and pre-trial detention. Appointment of a defence 
counsel by the court contradicts the principle of fair trial only if the accused person 
has an opportunity to choose his/her own attorney. The defence counsel appointed 
by court must be able to effectively defend the interests of the accused by using all 
their experience and professional skills.

In general it must be noted that the Kazakh legislation guarantees these rights 
of the accused. In real life practice, however, the right to defence counsel of one’s 
choice still needs to be properly executed. The system of rendering qualified legal 
services that are covered by the state budget also requires significant improvement.
“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law” [Article 14(5), ICCPR]. The main objective of this right is to provide for at least a two-layer court trial in which the second layer is represented by a judicial body of a higher order. Retrial of any court case is informative by its nature, which, amongst other things, means that the higher level court not only deals with the particulars of an appeal case but also covers a wider spectrum of issues. The appellation procedures must also be executed in a timely manner. The direct consequence of the right of appeal is the court’s obligation to suspend execution of a verdict issued on a case by the first trial court until the appeal court completes the retrial. This rule does not apply only if the accused voluntarily accepts the verdict rendered by the court of the first level. The right of appeal is applied to all individuals found guilty regardless of the severity of the crime or of the verdict rendered by the court of the first level. Fair trial guarantees must be strictly administered at all and every stage of appeal procedures.

The right of appeal is incorporated in the legislation of the Republic of Kazakhstan. However, it is necessary to further improve the legislation aimed at a more thorough provision of the accused person’s rights after the particular verdict on the person’s case is rendered by a court and comes into legal force. At this particular stage, the rights of the individual to be heard out in court or to receive qualified legal assistance are often violated.

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.” [Article 14(6), of ICCPR]. Compensation for miscarriage of justice is only possible if the court has already issued a final verdict on a case. The verdict can be appealed regardless of the severity of the crime committed. In order to deliver this right, the following three conditions must be met: 1) miscarriage of justice must be formally acknowledged and confirmed by annulment of the original verdict or by the court decision on amnesty; 2) the delay in revealing of the appropriate evidence must have no connection with the accused person’s actions; 3) the final verdict with regard to the accused must have been rendered. The phrase “according to the law” means that the states must provide compensation for damages in compliance with the procedures set in their respective legislations.

The right to compensation for damages resulting from a judicial error is stipulated in the legislation of the Republic of Kazakhstan.

As can be seen from the above, the legislation of the Republic of Kazakhstan concerning the right to fair trial contains a number of key guarantees that are in compliance with international standards. The full list of rights and freedoms of
individuals during a criminal trial is stipulated, in one form or another, in the Penal legislation of the country.

However, the comparative analysis of the current legislation and the law application practices reveal a greater need for reinforcement of the existing guarantees of individual freedom and security, as well as other rights of an individual during the pre-trial, trial and post-trial stages.

At the same time, the necessary prerequisite for ensuring individual’s rights in the area of justice administration is the presence of truly independent judicial body, as well as of qualified and highly professional body of judges who value their social status and professional honour.

In order to ensure citizens’ rights to fair trial, we recommend to the Government of the Republic of Kazakhstan, the Ministry of Justice of the Republic of Kazakhstan, the Supreme Court of the Republic of Kazakhstan and other government agencies to implement the following:

**RECOMMENDATIONS:**

1. To take actions aimed at achieving greater transparency of all the open court procedures and of activities of judicial bodies.

   To fulfil this objective, it is necessary to firstly introduce such impartial methods of monitoring of the courtroom procedures as compulsory audio or video recording of a court hearing. At present, the only document that contains the more or less accurate records of a court session is the minutes of the court hearings.

   The existing legislation on administrative offences fails to even mention the requirement to maintain written records of a court session, while the right of the party in a case to use audio and video equipment during the hearing can only be realised with the permission of the court chairman on the case. Therefore, in order to avoid possible violations during the course of a court session it is necessary to introduce these changes in the procedural laws.

   Implementation of this recommendation will result in greater transparency of judicial process thus becoming an example of actual realisation of the transparency rule as applied to judicial procedures. It will also result in greater impartiality in a trial and will improve the quality of court decisions as these will be based on the hard proven evidence backed by written records of court hearings as well as audio and video records.

   The wider application of electronic means of communication is required. It can initially start with installation of videoconferencing facilities in all courts which will enable the administration of long distance court sessions, specifically, in cases of retrial of completed judicial acts.

2. Further modifications in the process of interaction of the courts with other government agencies, the press and the general public will also contribute to greater transparency of the judicial system.

   The information on the progress of a case in court must be made readily available to the public and greater access to judicial acts must be guaranteed and provided. Both individuals and entities must have a ready access to information on court activities, on the process of selection and appointment of judges and other
data. The above measures will ensure greater compliance with the principles of transparency and availability of information in the justice system of the Republic of Kazakhstan and will also facilitate the effective reform of the justice system.

3. The quality administration of justice relies, first and foremost, on the professionalism and competence of a particular judge in a trial. However, it is currently apparent that the country experiences problems with the overall quality of the body of judges. The significant amount of responsibility for this situation lies with the existing process of selection of judges which is plagued with incompetence and partiality. Therefore a greater transparency in the procedure of selecting judges is required. To solve this problem, the list of individuals to be appointed to the vacant posts of judges and heads of courts and of other judicial bodies of all the levels (this list is presented by the Chairman of the Supreme Court) must, prior to such appointments taking effect, be published in the press and posted on Internet for public domain.

Review of candidates for a post of a judge must be made in consultation with the general public including professional associations related to courts.

4. To take actions aimed at greater specialisation of courts and judges: to set up juvenile courts in all the regions of Kazakhstan; to research the grounds for creating separate tax, labour and other types of courts.

5. The legal provisions on timeframes for dealing with civil cases, setting procedures for compensation of damages incurred during the course of delivering justice and during the execution phase require further improvement. In particular, it is necessary to settle all the issues concerning extension of time allocated for hearing of a case beyond the timeframe established by law and the right to compensation for the resulting costs incurred by individuals in the case.

The provisions of the Civil Code of the Republic of Kazakhstan (hereinafter CC of RK) does not set any procedures for compensation of damages or costs resulting from actions of court staff in accordance with Article 923, of the Civil Code of RK. The only article in the CC of RK that deals with claims against a court does not provide the opportunity for the claimants to succeed in their claims, while the real life practice shows that the claims of this nature are becoming more widespread while still remaining unsuccessful.

In view of the above, it is advisable to consider expanding the coverage of constitutional procedures by including individuals in them and thus making it possible for people to approach the Constitutional Council for protection of their rights.


7. To research the possibility of setting up of the Institute of Judicial Inquiry.

8. To raise the status and procedural powers of attorneys through legislative means, with such an increase in status and powers to be aimed at providing for greater procedural equality between prosecution and defence during a trial.

9. With the aim of reinforcement of the judicial independence, to establish through law that the position of a chairman of association of courts is to be elected by the judges of appropriate courts.
10. To expand the composition of the Supreme Judicial Council of the Republic of Kazakhstan by including the representatives of civil society institutions.

11. To revise the existing process of preliminary study of supervisory appeals, which significantly limits the rights of the parties in a trial, puts them in a disadvantageous position vis-à-vis the prosecutor whose supervisory protest does not require preliminary study.

The supervisory appeals filed by attorneys representing the accused, claimants and other parties to a trial to a supervisory body must have equal treatment with those filed by prosecutors, i.e. these complaints must be dealt with directly at the supervisory division and appropriate procedural decisions must to be taken with regard to such complaints.

12. To abolish the existing process of preliminary hearings of supervisory appeals by three judges as impeding the rights of individuals to an impartial treatment. At present, the supervisory bodies consist of two layers: the preliminary hearing of a case by three judges, whose decision cannot be appealed; and the final hearing by five judges who only hear cases brought forward during the preliminary hearings. This procedure for dealing with complaints understandably causes dissatisfaction among individuals and entities involved.

13. To stipulate in the legislation the right of defence counsel to request information that constitutes state, trade or other secret protected by law.

14. To stipulate in the legislation the procedure for conducting interrogation, for ways of recording the information received through interrogation, for ways of assessment of information received in this manner, to expand the right of attorneys to collect evidence, documents and other information, i.e. to provide a legal resolution to the issue of presenting evidence in court by attorneys from the point of view of admitting the appropriateness of such evidence.

15. To abolish capital punishment as a type of criminal punishment and to ratify the second Optional Protocol to the International Covenant on Civil and Political Rights.

16. To recommend to judicial bodies to widely use the norms and requirements of ratified international agreements concerning human rights protection in the process of delivering justice on criminal, civil, administrative and other cases.

17. To introduce the compulsory professional training of judges once every five years.

18. To develop the draft of the Law of the RK “On Provision of Free and Competent Legal Assistance”.

**Human rights in the course of enforcing judicial decisions**

The execution procedure is the stage of legal proceedings at which the actual enforcement and reinstatement of the infringed rights of individuals take place.

In compliance with recommendations of the National Action Plan on Human Rights in the Republic of Kazakhstan for 2009-2012 and the Decree of the President of the Republic of Kazakhstan, ref No 1066, of 22 September 2010 “On Some
Issues Concerning Implementation of the Decree of the President of the Republic of Kazakhstan of 17 August 2010, Ref. no 1039”, the Committee for Implementation of Judicial Acts of the Ministry of Justice of the Republic of Kazakhstan was set up.

The Committee for Implementation of Judicial Acts of the Ministry of Justice of the Republic of Kazakhstan (hereinafter the Committee) was made responsible for carrying out timely implementation of implementation acts.

Exercise of citizens’ rights in the area of execution procedure is the essential element of the entire judicial system.

In 2010, there were a total of 1,102,845 enforcement proceedings to be implemented in the reporting period, of which 695,024 were completed. During the reporting period a total of 80,247 documents were completed in favour of individuals, and a sum of 37.8 billion KZT was recovered. Of these, 5,029 completed enforcement documents for the sum of 1.3 billion KZT involved recovery of salaries, and 187 completed documents for the sum of 156.8 million KZT involved recovery of pensions and other benefits.

In 2010, the balance of outstanding documents for 2011 was 405,572 documents and the balance to be recovered was around 550 billion KZT.

The results of prosecutor’s supervision of lawfulness of enforcement proceedings revealed that poor performance of bailiffs is one of the main reasons for such low levels of completion of enforcement documents. There are both objective and subjective reasons that affect the current state of judicial execution.

First of all, it is the low salary levels and resulting high staff turnover.

The analysis showed that the number of enforcement documents and the sums to be recovered based of them is increasing every year, and the low staff levels and high staff turnover will lead to even greater problems in future. The results of the latest statistical data on the subject prove the point.

On average, there are 400-500 enforcement documents per bailiff. Such high workload causes delays and violations of people’s rights as the bailiffs cannot fulfil all the requirements in timely manner.

According to the statistics, in Kazakhstan, over the last several years, only 75% of all enforcement documents were completed, this indicator is much lower in monetary terms – it is only one third of the total sum to be recovered from debtors.

Only 25% of enforcement documents are completed by bailiffs. Thus, the poor levels of enforcement of judiciary acts lead to violation of constitutional rights of a large number of individuals and legal entities, as well as of the state interests. Therefore, reinstatement and protection of these rights should become one of the top priorities for the Prosecutor’s Office in this area.

Every year, over eleven thousand enforcement documents are completed through the Prosecutor’s Office, i.e. violations of the law are removed without involving extended court procedures or expending major effort or funds to do so. Such success can be explained by the convincing arguments and highly competent actions of the Prosecutor’s Office.

In 2010, there were 5,560 enforcement documents on collection of alimony for support of underage children and elderly parents. 1,734 enforcement documents
were completed, 1,550 enforcement documents were returned due to submitting of debtor into search and at the request of claimants. The majority of enforcement documents are implemented at the debtor’s place of work, and bailiff, as a rule, closely monitor the timely and correct payments to the claimants.

At the same time, the majority of enforcement documents do not get implemented properly, if at all, with no actions applied towards debtors whatsoever.

For example, the Prosecutor’s Office of Almaty conducted an inquiry into a complaint submitted by Ms. Shikhaleva about the arrears in alimony payments by Mr. Frantsuzov that was sanctioned by a judicial order. It was established during the inquiry that bailiff Mr. Rakhmetullin of the Turksibskyi regional department of the Court Administrator of Almaty, received a court order on collection of alimony from Mr. Frantsuzov for the benefit of Ms. Shikhaleva in the amount of ¼ of all types of income. Based on this court order enforcement proceedings were initiated. Prior to this, based on a decree of 08.06.07 by the bailiff Mr. Odirov, a court order was sent to “Spira Berga” Ltd. where the obligee was employed to withhold part of Mr. Frantsuzov’s salary to pay alimony. The inquiry revealed violations of Article 57 of the Law of RK “On Enforcement Proceedings and the Status of Bailiffs” of 30.06.1998 that was in effect at the time of inquiry, specifically, the provision of the Article obligating the bailiff to monitor the correct and timely withholding of alimony payments was not followed. By order of the director of “Spira Berga” Ltd. No105a of 31.07.08, Mr. Frantsuzov was dismissed from this job, however, for two following years the judicial order remained with the company and was not returned to the bailiff as it was supposed to. Based on these facts, on 15.07.10 the Court Administrator of Almaty was instructed to remove the violations of law discovered through the inquiry and to bring the employer to administrative liability. By decree of specialised inter-regional administrative court of Almaty of 13.08.10, the chief accountant of “Spira Berga” Ltd was found guilty of committing an administrative offence, stipulated in part 1, Article 525 of Code of Administrative Procedure of RK and was fined in the amount of five monthly minimum salaries.

There are also instances of non-payment of alimony by children to support their parents who for various reasons are unable to work.

Mr. S.M. (1929 year of birth) filed a complaint on 24.11.2010 to the prosecutorial body of Almaty for procrastination in enforcement of a decision of Auezov regional court of Almaty. Examination of files showed that by the decision of the above court alimonies were recovered from S.T., S.N., and C.B in behalf of S.M in amount of fivefold monthly average estimate. Decision of an inquiry officer of the Inquiry Division of Auezov District law enforcement department denied prosecution under the Article 136 of the RK Criminal Code for absence of elements of crime in the acts of debtors. Due to incorrect application of provisions of the Code of the Criminal Procedure, consideration of the issue of responsibility of debtors, designedly evading enforcement of judicial act, was not possible without intervention of Almaty prosecutorial bodies, since the investigator took a wrong decision to deny prosecution. The decision of the investigator of Almaty
prosecutorial body was annulled due to violation of requirement of the Article 185 of the procedural law. It was indicated that the prosecuting agency had to submit case files to court for further procedural decision-making.

Further improvements in the execution procedures including introduction of the commercial execution practice is one of the most important tasks of the Committee for 2011. In the history of execution procedures this type of changes is being introduced for the first time, it will also be the first such practice in CIS. Implementation of these actions will lead to drastic improvements in the execution procedures overall and will result in a more thorough protection of citizen’s rights.

From the viewpoint of the Commission on Human Rights under the President of the Republic of Kazakhstan, the introduction of the mechanism of stimulating the work of bailiff will help solve the current problems. Such conclusion is confirmed by successful application of this practice in other countries.

In such countries as France, Poland, Slovakia, Baltic States, Germany, Azerbaijan, Armenia, Byelorussia and Moldova, remuneration of bailiff is tied to the amount of debt collected on each case, in addition to the fixed salary.

In Germany, such practice led to an almost 100% execution rate for judicial orders, with not a single case of criminal charges against bailiff.

Introduction of this practice in Kazakhstan would help solve many problems in this area, including significant improvement in the quality and qualification of bailiffs, would increase incomings into the state budget, would reduce state expenditures on maintaining the institution of bailiff and would help eradicate corruption within the execution agencies.

It is worth noting that introduction of this practice will improve the quality of judicial executions and will eliminate the need for increasing the enforcement staff.

It is unfortunate that the mechanism for bringing debtors to criminal liability for failure to comply with judicial orders remains ineffective.

Further reform of the agencies responsible for carrying out executions of judicial orders is needed. More exact and accurate outlines of the legal status of the judicial execution agencies as well as of the actual control mechanism over the enforcement process itself would result in a more effective delivery of rights and freedoms of the persons involved in the judicial execution process.

International experience in applying indirect means of enforcing fulfilment of obligations by debtors and introduction of the institution of “astrentе” (ever increasing fine) will lead to greater payment discipline among debtors. Another possibility is to legally obligate the debtor to declare their assets at the request of the bailiff and to legally enable the bailiff to file formal requests with the courts to invalidate any sale or other disposal of assets by the debtor made to conceal those assets from any claims.

**RECOMMENDATIONS:**

1. To develop and enforce the mechanism of paying special state benefits to the plaintiff, in particular to single mothers for the period of insolvency of individuals liable to pay alimonies, as well as convicted individuals failed to
compensate the damage caused by the committed crime. Whereas enforcing the subrogation rights to further claim the reimbursement of the incurred public costs from the person in arrears;

2. To elaborate and enforce the mechanism of financial labour incentives for state court bailiffs based on the review of best international practice.

3. To revise the procedure of the administration of judicial acts by government bodies and institutions financed from the republican and local budgets. To this end it is necessary to enforce in budget legislation the requirement that makes government bodies liable to budget funds to redeem its liabilities on judicial acts when planning their own budgets for the upcoming financial year.

4. To make government institutions’ top management lawfully liable to incur responsibility for nonfeasance of judicial acts.

5. Based on the efficient practice as regards to compulsory execution in foreign countries it is necessary to enact in the legislation of the Republic of Kazakhstan on enforcement proceedings the application of indirect measures to force the person in arrears to execute his/her liabilities which substantially differ from the compulsory execution and enable expanding the capacity of enforcement proceedings. To this end it is deemed necessary to enforce the mechanism of astrente (ever increasing fine) which will promote efficient public justice and protect rights of enforcement proceedings actors.

6. To legally enforce social protection measures for bailiffs. To take necessary measures to provide logistical support to the activity of state bailiffs including provision of office vehicles.

**Rights of prisoners**

The correctional institutions fall under jurisdiction of Penal System Committee under the Ministry of Justice of the Republic of Kazakhstan (PSC MJ RK).

The effective penal execution legislation of the Republic of Kazakhstan is in conformity with the majority of international standards designed to protect human rights of persons under detention or deprived of liberty according to the court verdict. The legal status of individuals with regard to whom the enforced penalty was the deprivation of liberty is the most limited as compared to other categories of convicts. This status complies with the Constitution of the Republic of Kazakhstan and the penal execution legislation. The human rights can be limited only through laws and only to that extent which is required for protection of the constitutional system in place. For instance, according to the Article 33 of the Constitution of the Republic of Kazakhstan the convicts have no right to elect or be elected, participate in the national referendum. They have also limited rights in terms of movement, choosing place of residence, etc. However the convicts being citizens of the Republic of Kazakhstan as well as other persons serving sentence in correctional institutions continue enjoying natural rights which are inherent to every human
being and include the following: - right to life, health care, education, freedom of conscience and religion, respect of human dignity, speaking native language, etc.

The Ministry of Justice of the Republic of Kazakhstan has undertaken a wide range of comprehensive measures aimed to ensure observance of human rights and lawful interests of convicts for the period of serving sentence, and primarily of those that incurred the punishment in the form of liberty deprivation in correctional institutions. The findings enable to make a statement on certain achievements in this regard.

Currently there are 94 correctional institutions within the penal system (hereinafter – PS) (in 2009 – 93), out of them: 1 - prison, 4 – juvenile correctional facility, 5 – high security colony, 19 – strict regime colony, 22 – general regime colony, including 5 colonies for incarcerated women, 16 – colonies-settlements, 8 healthcare facilities, 19 – pre-trial detention facilities. The total intake capacity of 94 institutions makes 76600 seats (in 2009 – 75310).


The PS Committee in its activity is governed by the international documents ratified by the Republic of Kazakhstan with regard to protection of convicts’ human rights (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention Against Tortures, Convention on Child Rights, etc.), and the national legislation safeguarding constitutional human and citizen’s rights and freedoms.

The Constitution of the Republic of Kazakhstan and the effective legislation put a ban to using torture, violence or other types of cruel or degrading treatment and punishment.

In order to implement the legislation of Kazakhstan as regards the observance of human rights and restraining tortures and cruel, inhuman or degrading treatment the PS Committee has prepared and the Ministry of Justice has signed the Order «On making amendments and supplements to certain orders of the Ministry of Justice» as of 27 September 2010, Ref. No 268, which enforces amendments in intra-sectoral legislative acts in terms of implementing rights of convicts as regards to using tortures and other cruel, inhuman or degrading treatment and punishment as well as discrimination of convicts on certain grounds (compliance with the requirements of UN Convention Against Tortures and the Constitution).
In recent years the Government has adopted a number of very important legislative acts, which promoted fundamental reforms in the penitentiary system of the republic, approximation of custodial conditions to universally recognized international standards.

The implementation of such reforms proved their necessity and appropriateness, enabled to enhance rule of law in places of liberty deprivation, to improve convicts incarceration/custodial conditions and their sentence serving order, to empower the convicts, to diminish confrontation between the PS staff members and convicts, to ensure greater involvement of civil society in the penitentiary system activity.

The transfer of correctional institutions in 2002 and pre-trial detention facilities in 2004 from the Ministry of Interior to the Ministry of Justice was positively perceived by the civil society, international experts and human rights defenders.

Currently there are still ongoing efforts to promote further PS development. Thus, in order to minimize the involvement of citizens in criminal justice system the Judicial Policy Concept of the Republic of Kazakhstan for 2010-2020 and the National Plan of Actions on Human Rights for 2009-2012 provide for creation of conditions for much wider use of non-custodial measures.

The Government is implementing a whole range of measures aimed to reduce the number of individuals incarcerated in places of liberty deprivation.

In line with this the Law of the Republic of Kazakhstan «On making amendments and supplements to certain legislative acts of the Republic of Kazakhstan on issues of further promoting humanization of penal legislation and reinforcing safeguards of due process of law in criminal procedure» was adopted which aimed at decriminalization and liberalization of penal legislation followed with substantial decrease of persons incarcerated in places of liberty deprivation.

The above mentioned Law enshrines the right to monitor the conduct of convicts under non-custodial penalty (with restricted liberty, probationers) with the help of electronic surveillance devices so called «electronic bracelets».

In order to promote humanization, to change the forms and ways of correctional measures towards convicts, to prepare them for release the PS Committee has initiated the amendments in the legislation, to wit:

- simplifying the mechanism of conditional, on parole, release of convicts from further serving the sentence through the convict’s appeals to the court directly. It is up to the court to decide whether to release a convict on parole or not. The correctional institution administration shall present to the court the information describing the convicts’ personality, their conduct during the time of serving the sentence;
- eliminating the restriction of conditional release of convicts that were released earlier on parole;
- serving the sentence by individuals that are first time incarcerated to liberty deprivation for the period not more than a year in colony-settlements. In the result of this, the first time convicts will not serve sentence along with the convicts who
are serving the sentence for longer time in places of liberty deprivation and be exposed to negative influence;

for juvenile convicts increasing the number of visits of relatives by two additional lengthy and short visits, as well as by two additional parcels, packages, small parcels (pursuant to the effective edition: on regular terms – lengthy visits - 2, short visits - 6, parcels - 8, smaller parcels – 8);

providing the convicts the option of having video communication (video visits) with their relatives. In September 2010 the PS Committee has implemented the pilot project on video visits of convicts. The project proved to be successful whereas this kind of innovation shall not replace the regular in-person or short-term visit. It will be equivalent of telephone communication.

In the long-term Plan of Actions of the Ministry of Justice in order to implement the Judicial Policy Concept of the Republic of Kazakhstan for 2010 - 2020 in the field of penal system approved by the Order of the Minister of Justice of the Republic of Kazakhstan as of 12 March 2010, Ref. No 80, it is intended to establish the service of probation, with further reorienting penal inspections (hereinafter - PI) from implementing surveillance functions towards fulfilling social and rehabilitation activities focused on adaptation of individuals released from places of liberty deprivation. In 2011 the PS Committee is intending to elaborate the Draft Law of RK «On Making Amendments and Supplements in Certain Legislative acts of the Republic of Kazakhstan on Issues Related to the Probation Service», which is the first step to create own model of probation service in Kazakhstan.

In order to reinforce rights and lawful interests of minors the Juvenile Justice System Development Concept in the Republic of Kazakhstan for 2009-2011 was approved through the Edict of the President of the Republic of Kazakhstan (of 19.08.2008, Ref. No 646). In order to implement the Edict the Plan of Actions of the Government of the Republic of Kazakhstan for 2009-2011 was adopted (through the Decree of the Government of 18 November 2008, Ref. no 1067).

The Concept facilitates the development of juvenile justice enabling the creation of specialized units or subdivisions to deal with minors: under the Ministry of Interior, Ministry of Education and Science, Ministry of Justice, courts, prosecution offices and Bars/Attorneys’ Offices. The Ministry of Justice has established specialized juvenile legal consultations/assistance offices in the cities of Astana, Almaty, Kokshetau, Pavlodar and Ekibastuz.

During 2010 according to PI records 2444 (in 2009 – 2649) juvenile delinquents convicted to non-custodial measures, of 1 January 2011 there are 707 juvenile delinquents are registered in police (in 2009 - 1086).

In the PS Committee the position of the chief specialist on juvenile affairs was introduced out of the existing staff members in the central headquarters and 15 positions of specialist-inspectors on juvenile affairs in oblast subdivisions.

Through the Decree of the Government s of 31.05.2010, Ref. no 494 the staff numbers of penal inspections in 2010 have been increased by 591 staff members, out of them the staff of regional and city inspections increased by 210 staff members due to introduction of additional officers in juvenile justice group.
The progress made with regard to protection of minors’ rights is reviewed at meetings of Intersectoral Commission on Juvenile Affairs and their Rights Protection under the Government of the Republic of Kazakhstan (created through the GRK Decree as of 7 May 2009, Ref. No 415).

The juvenile justice system creation in our country meets the current needs as well as addresses the issues related to improving the justice as regards to minors and their rights observance.

Another field of activity to approximate the penitentiary system of Kazakhstan with international standards is the transition to cell based incarceration of individuals in places of liberty deprivation which is the best and safest both to convicts and personnel as well as conforms with the universally recognized international practice.

The cell based incarceration of convicts inter alia provides conditions for profound implementation of the principle of individualization of sentence serving and differentiated use of forms and methods of correctional and educational measures.

The Law of RK as of 10 December 2009 «On making amendments and supplements in certain legislative acts of the Republic of Kazakhstan on issues related to further upgrading the penal system» enforces the possibility of cell based incarceration of individuals convicted to different types of regime through creating the secluded sites ensuring strict isolation.

Currently there are 5 correctional institutions with cell based incarceration under the PS of the country in PSCD in the city of Almaty and Almaty, Kostanay, Jambyl, Eastern-Kazakhstan and Southern-Kazakhstan provinces.

Owing to the amendments in the Order of the Minister of Justice of the Republic of Kazakhstan as 11 December 2001, Ref. No 148 «On approving internal rules and procedures in correctional institutions» (the Order of the RK MoJ as 27 September 2010, Ref. No 268), the convicts serving their sentence in the colony-settlements are allowed to use cell phones beyond the institution’s territory.

In conformity with the Article 24 of the Constitution «Every person has the right to free labour, free choice of occupation and profession. Involuntary servitude or forced labour is allowed only pursuant to court’s verdict or in emergency or military situations». The Article 99 of the Penal Code «The labour of individuals convicted to liberty deprivation» sets forth: «All convicted to liberty deprivation are liable to work in places and jobs determined by the correctional institution administration. The convicts are involved in jobs at enterprises of correctional institutions, government institutions or legal entities of other form of ownership provided their proper guarding and isolation. The convicts are eligible to run individual labour activities or be self-employed».

One of the priority areas of PS activity is to create job opportunities for convicts at PS enterprises. This issue is quite relevant therefore the management of the Ministry of Justice pays a special attention to job placement of convicts.
In Kazakhstan penitentiary facilities, as the practice shows, new production facilities are consistently being established, the indicator of convicts’ job placement is steadily growing. Only in 2010 more than 14 thousand convicts were placed at jobs, 5 new types of production activities were additionally opened, the production of 38 new item names was established.

There are training courses for convicts on 32 specialties arranged in 49 correctional institutions. In some colonies in addition to vocational specialty the convicts are trained on computer literacy. Only during the period of 2009-2010 academic years the total number of 4626 individuals has acquired different occupations. There was a competition in all institutions in the country where they have production enterprises – for the best lathe operator, the best baker, the best locksmith, the best seamstress and so on.

The operational plan of the MoJ of RK for 2010 envisages the establishment of vocational schools in the institutions UG-157/11 of PSCD in Atyrau province, EC-164/4 PSCD in North Kazakhstan province, AK-159/20 PSCD in Karaganda province and ICh-167/4, ICh-167/10 PSCD in South Kazakhstan province.

In 2010 there were 4 vocational schools opened in order to implement the set objectives within the Technical and Vocational Education Promotion Programme in the Republic of Kazakhstan for 2010 -2012.

Having said that the vocational school in the correctional institution ICh-167/10 PSCD of South Kazakhstan Province was not opened due to lack of budget funds in 2010. The issue of opening the vocational school was submitted for consideration at the consultative-advisory body’s meeting under the Chairmanship of Deputy Akim of South Kazakhstan province. Currently the decision on this issue was passed to allocate funds from the province budget in 2011 to open the vocational school in the institution ICh 167/10.

In conformity with the penal legislation of RK the, the general educational training is one of the key approaches of correcting the convicts.

Pursuant to para 1 of the Article 108 of PC the compulsory primary, basic secondary, general secondary education is arranged for convicts under the age of 30. The number of convicts in places of liberty deprivation under the age of 30 without secondary education makes more than 5 thousand or 11% from the total number of convicts.

Thus, if before the year of 2000 there were only 19 general educational institutions in correctional facilities whereas currently there are 56 general educational institutions in correctional facilities of the country at which 5286 of convicts are studying, 53790 textbooks of new generation were produced.

Pursuant to para 2 of the Article 10 of PC the convicts are eligible to appeal with proposals, applications and complaints to government agencies, non-governmental institutions (public associations), and intergovernmental bodies on protection of human rights and freedoms. It is the right of the convict to choose the appropriate method: to appeal to the prosecution office, court or human rights defending associations.
The PC safeguards the right of a convict to get access to remedy with the assistance of attorney or other individual eligible to provide such assistance during the process of serving the sentence, in other words, when the court proceedings are over and the verdict is delivered.

Pursuant to Article 22 of the Constitution every citizen is guaranteed the freedom of conscience. Freedom of conscience and religion is the fundamental human right safeguarded by the International Covenant on Civil and Political Rights.

In the para 1 of the Article 12 of PC the convicts are guaranteed the freedom of conscience and religion without any restrictions: «The convicts are guaranteed the freedom of conscience and religion». In the para 5 of the same Article the voluntary nature of implementing freedom of conscience and religion is specifically highlighted: «The religious practices or worships are voluntary. It should not disrupt the internal rules and procedures or abuse the rights of other individuals serving their sentence».

The convicts are allowed to practice religious rituals not prohibited by the law, to use devotional objects and religious literature.

In order to implement the Article 19-1 of PC pursuant to the Rules of creating in provinces (cities of republican rank, capitals) the public monitoring commissions (hereinafter - PMC), approved by the Decree of the Government of the Republic of Kazakhstan as 16 September in 2005, Ref. No 924, there are PSCs created in all provinces of the country. The PMC efforts are aimed at providing support to individuals incarcerated in correctional institutions and pre-trial detention facilities in terms of implementing their rights and lawful interests and providing assistance to the administration of PS institutions on these issues.

In 2010 the PSC representatives have made 966 visits to PS institutions, 1008 meetings, round tables and training classes were held.

They exchange experience on an ongoing basis through holding «round tables», workshops for PS staff members as well as organizing peer study tours on exploring prison systems in neighbouring countries and overseas abroad.

For instance, there was the study tour for PS Committee staff members to US to participate in the Programme «Prison Management in the USA» arranged by the Department of State of United States of America.

In addition under the support of the German Fund of Friedrich Ebert in Central Asia there were 2 international workshops conducted in the cities of Astana and Kostanay and study tour of PS staff members to Germany was arranged to explore German penitentiary system.

It is worth noting that the Commission on Human Rights under the President of the Republic of Kazakhstan pays substantial attention to handling the complaints of convicts suspecting or accusing the actions or omissions of public officials of pre-trial detention facilities, correctional institutions as well as complaints on incarceration conditions.

Thus in April 2010 the relatives of convicts of Koloturin, Nurgaliev, Evdokimenko, Razzhivin, and Tanabergenov have appealed to the Commission
with the complaint on unlawful actions of the administration of the correctional institution ETz-164/4, ETz -166/18 of PSC Department in Akmola province. In the course of investigation by the prosecution bodies the evidences brought in the convicts’ appeals on inappropriate health care delivery were acknowledged as valid.

The monitoring of such appeals show the discerning growth of convicts complaints on actions or omissions of public officials in correctional institutions as well as complaints on incarceration conditions in penitentiary institutions increasing from 12 appeals in 2009 and up to 46 – in 2010.

Notwithstanding certain achievements and progress made by the Penal System Committee in practice the recent events in the colonies of a number of provinces of the Republic of Kazakhstan have shown that there are still significant problems and gaps in the activity of PS in terms of fulfilling goals and objectives of criminal and penal legislation which were caused by a number of reasons and preceding circumstances:

1. Lack of systematic and consistent approach to Human Resources (HR) policy which lead to frequent turnover of deputy chairmen and managers of key subdivisions of PS Committee which adversely affected the overall performance of the agency in charge with penal execution.

Since the time of transfer to the Ministry of Justice the appointments of the new Minister and PSC Chairman were followed by appointment of new Deputy Chairmen, managers of PSC subdivisions, territorial administrations and chiefs of institutions.

Moreover, the individuals with no experience or skills to operate in the given system used to be appointed to the above specified positions. Only during the last year and a half 7 Deputy Chairmen came off duty.

The lack of social protection and low pays of staff members, in particular those of controllers and healthcare personnel, lead to lack of generations continuity and prestige of serving in PS.

2. Lack of job opportunities in places of liberty deprivation has created conditions for situation destabilization, negative influence of criminal subculture and various types of non-traditional religious streams on convicts.

Only one third of able-bodied convicts are employed at paid jobs in places of liberty deprivation.

In view of this the legislative acts in terms of compensating the damage caused by the crime are not implemented.

As of today the arrears according to order of enforcement are over 19 billion KZT. And this is excluding the writ obligatory worth of 7 billion KZT which were not received by the institutions.

Due to the unemployment the convicts are deprived the opportunity to redeem the lawsuits. Moreover, the nonfeasance of measures to repay the damage caused by the offence is one of the grounds to refuse from the conditional, on parole, release.
The issue of convicts’ job placement should be addressed in a stepwise approach.

As the first step, it is deemed necessary to concentrate convicts with qualification and less affected by the criminal subculture in those institutions where they have capacity to develop production activities and create job opportunities.

This kind of institutions should be provided with the state contract for production of goods, performing works and providing services.

3. The failure of the state enterprise NSE (National State Enterprise) «Enbek» which is the major entity liable to involve convicts in paid jobs through promotion of production and job opportunities.

According to the General Prosecution the state enterprise NSE «Enbek» having the «army» of cheap labour having failed to achieve the set tasks has got bogged in corruption.

Only during 2 years there were 7 criminal cases filed including cases against the deputy chairman, the chief of financial service and the chief of the logistical department of the PS Committee, as well as 6 directors of the state enterprise RGP for embezzlement of public funds.

It is proposed to transfer to correctional institutions the functions of organizing production activities in places of liberty deprivation and involving convicts in jobs.

4. The obsolete and expired lifespan of engineering and technical security devices, buildings, installations and communications of correctional institutions constructed in the 30th -60th of the last century create conditions and reasons for committing escapes by convicts.

In order to address this issue it is necessary to allocate funds to procure and install engineer and technical devices, modern alarm systems, call centers’ operators signals silencer, as well as construction of new facilities;

5. The negative influence on prisoners and operational and security situation of those that are under operational and prevention surveillance (so called «mafia bosses», «criminal authorities», leaders and members of criminal structures) including convicts for acts of religious extremism and terrorism.

In order to address this issue, first of all, it is necessary to ensure possibility of serving the sentence for the specified category of convicts in separate correctional institutions.

It is proposed to identify facilities where they have technical capacity to implement reconstruction for cell based detention of prisoners.

It is necessary to raise funds for construction of cells in living quarters of these facilities with the possibility to accommodate 4-6 prisoners in a cell.

It is necessary to undertake immediate actions to ensure appropriate regime in the prison of Arkalyk city the performance of which ceased to serve its direct purpose – correcting the most dangerous criminals and inveterate violators of incarceration regime;
6. Lack of appropriate interaction of operational services of law enforcement agencies to detect and suppress crimes and actions of group disobedience in places of liberty deprivation.

To eliminate this problem it is proposed to address the results of collaboration between operational services of law enforcement agencies and penal system at the Coordination Council of law enforcement agencies with the frequency of once a year.

Thus, in the course of prison reforms it became clear that there is the long-felt need to take appropriate measures designed to address a number of crucial issues such as diminishing human sufferings, changing person’s mentality and reducing dependence on criminal subculture and one should not underestimate its economic benefits for the government.

RECOMMENDATIONS:

1. To continue the efforts to supply competent and highly qualified human resources to institutions of penal system.

2. To take necessary and urgent measures on social and legal protection of the staff members in all institutions of penal system, to make their pays equal to the service pay in other law enforcement agencies, for instance, the ones of internal affairs bodies of the Republic of Kazakhstan.

3. To expedite the adoption of the Law of RK providing for creation of independent preventive mechanisms to prevent tortures in conformity with the Optional Protocol of the Convention against Tortures and other cruel, inhuman or degrading treatment and punishment with the active involvement of human rights based NGOs.

4. To create probation services, upgrade the fixed assets and production facilities of penal system institutions allowing for much wider use of non-custodial measures as alternative to liberty deprivation, much greater employment rate among the prison population and successful reintegration and re-socialization of prisoners released from penal institutions.

5. The Committee of Penal System under the Ministry of Justice of RK to take necessary measures on increasing job opportunities for convicts serving their sentence which contributes to timely redemption of lawsuits and implement their right for conditional, on parole, release.

6. To transfer to correctional institutions the functions to arrange production activities in places of liberty deprivation and involving convicts in labour activities.

7. To allocate funds to procure and install engineer and technical devices, modern alarm systems, silencers for call centre operators’ signals on the territory of correctional institutions as well as construction of new facilities.

8. To develop and publish information materials aimed to increase awareness and legal literacy on issues of on parole release of convicts as well as increasing awareness of the correctional institutions staff members.

9. To develop clear assessment criteria of convict’s correction – “mend his/her ways”, determined to mend his/her ways, proved to mend his/her ways.
10. To continue creating rehabilitation centres to adapt individuals who served sentence in places of liberty deprivation as the current conditions of incarceration in penal execution institutions of Kazakhstan inflict them certain damage to their physical and mental health of them as a human beings who in most of cases are not capable to reintegrate in normal life in society for a long time.

11. To preserve the operation of the specialized correctional institution for convicts with TB AP-162/5 PSCD under the Ministry of Justice of RK in Pavlodar province.

12. In order to ensure independence of healthcare facilities under the Penal System Committee to explore the appropriateness of transferring them to the Ministry of Health of the Republic of Kazakhstan.
CONCLUSIONS

In the Constitution of the Republic of Kazakhstan a person, his/her life, rights and freedoms proclaimed as paramount values of the state. Pursuant to the fundamental law the human rights and freedoms are inherent to every person from the birth, they are recognized as absolute and inalienable; and the content and implementation of legislative acts are governed by them. The Constitution has made the lawmakers liable when passing the law to refer, first of all, to this legal requirement and recognize human rights as top priority.

Over the years of independence the Republic of Kazakhstan has undertaken substantial measures to enforce international human rights standards in the national legislation.

The Republic of Kazakhstan has become a full-fledged party of the international law and member of more than 60 multilateral universal international human rights agreements including 7 fundamental UN Human Rights Conventions so called «international human rights protection tools ».

As compared to 2009 in 2010 the proclaimed and enforced by the Constitution of the Republic of Kazakhstan and other legislative acts the human and citizen’s rights and freedoms were further promoted and specified. The civil, political, economic, social and cultural human and citizen’s rights and freedoms safeguarded by the Constitution and the effective legislation of the Republic of Kazakhstan, its international human rights commitments were mainly compatible except for certain facts included in the present report and reports of other authorized government agencies, human rights based NGOs.

The year of 2010 had a special significance for the Republic of Kazakhstan. Kazakhstan has successfully accomplished its mission of Chairmanship in OSCE, generating impetus to all three dimensions of the Organisation activity.

The most remarkable event of the year was the OSCE Summit called according to the President of Kazakhstan initiative which was not held for the last 11 years. The Astana Declaration passed at the Summit has identified the new OSCE development vector – promotion of integrated and indivisible security between North-Atlantic and Eurasian Community.

The year of 2011 was famous with the whole range of remarkable events for Kazakhstan. They include the 20th anniversary of independence of the Republic of Kazakhstan, the anniversary of shutdown of the Semipalatinsk nuclear range, 20th anniversary of establishing diplomatic relations with the majority of states in the world.

On 3 April 2011 at extraordinary presidential elections Nursultan Nazarbaev was elected the President of the Republic of Kazakhstan having gained 95,5% of votes of constituents participating in elections. The Presidential elections of the Republic of Kazakhstan were run in conformity with the norms of the Constitution and Constitutional Law «On Elections», international legislative acts and democratic standards.
The Republic of Kazakhstan has reached certain milestone and it is time to draw conclusions of its development.

Over the past twenty years there were no interethnic conflicts in Kazakhstan. The rights and freedoms of ethnics and ethnic groups (national minorities) were ensured according to international standards. The Kazakhstan model of interethnic and interdenominational harmony and tolerance has served as a role model to be followed by state-members of UN, OSCE, and OIC.

The GDP growth by the outcomes of last year has made 7% despite the implications of global economic crisis.

Generally since 1993 the GDP per capita has increased by 12 times and exceeded 9 thousand dollars. According to this indicator the Republic of Kazakhstan has outstripped a number of countries in Central and Eastern Europe.

Currently Kazakhstan is at the new milestone of its development. The Programme designed to boost industrial and innovation development is under implementation. Within the new Programme of social modernization the special attention is paid to such areas as education and science, implementation of new employment strategy.

The time has proved the correctness and appropriateness of the strategy of the Republic of Kazakhstan – to establish sound socio-economic foundation for evolutional promotion of political reforms.

In 2007 there was a successful constitutional reform aimed to expand the authorities of the Parliament and local representative bodies, to strengthen the role of political parties, to enhance the judicial bodies’ independence.

The constitutional status of Assembly of People of Kazakhstan was enforced as a key institution for regulation of interethnic relations.

In 2009 the legal mechanism was developed enabling the formation of the Parliament with the participation of no less than two parties. In addition, there were favourable conditions created in terms of registration of political parties, improving electoral process procedures and removing redundant bureaucratic requirements regulating the performance of mass media.

The same year the gender policy related laws were passed which aimed to ensure equal rights and empowerment for men and women including the law against domestic violence.

The National Plan of Actions on Human Rights for 2009-2012 is under implementation.

The Judicial Policy Concept of the Republic of Kazakhstan for 2010-2020 was adopted enabling efforts to enhance the independence of judicial system, humanization of criminal legislation and decriminalization of components of certain crimes.

It is worth noticing that fulfilled goal-oriented structural efforts of Kazakhstan in the areas of market economy, society democratization, maintenance of stable interethnic and interdenominational relations, promotion of civil society institutes, phased approach to humanization of judicial policy and promotion of
human rights are evident and acknowledged by many states in the world, international and non-governmental human rights-based organisations.

The key long-term public policy areas were determined in the Address of the President of the Republic of Kazakhstan to people of Kazakhstan «New Decade – New Economic Upsurge – New Opportunities of Kazakhstan» delivered at the joint meeting of the Parliamentary Chambers on 29 January 2010. Within the capacity of the effective Constitution the Address provides for further improving the performance of legislative, executive and judicial branches of power, reforming law enforcement agencies, strengthening the fight against corruption and crime.

The fulfilment of set objectives will undoubtedly contribute to increased efficiency of lawmaking process and improved law enforcement practice.

Having said this, pursuant to the Human Rights Commission under the President of the Republic of Kazakhstan it is necessary to keep human rights up to date in the activity of government agencies, in particular in law enforcement and judicial bodies, to greater extent use the capacity of Kazakhstan’s Ombudsman and civil society institutions in protection of human rights.

The democratization process of the state in which human rights and freedoms have the paramount value and not limited to promotion of political human rights in the course of establishing public institutions (election of the President, Parliamentary Deputies and maslykhats, creation of central and local executive bodies of public power). Democratic political system should consistently protect civil, political, economic, social and cultural human rights enshrined in international covenants and conventions ratified by Kazakhstan. However there are still gaps and unaddressed problems inhibiting the fulfilment of this crucial task.

It is necessary to improve quality and status of laws adopted by the Parliament. The laws of the country should be made compatible with the standards of international covenants and conventions ratified by Kazakhstan.

Consistently undertake efforts to reform administrative, law enforcement and judicial bodies from the perspective of full implementation of human rights, rights of personality in the democratic state.

In accordance with international standards identified by UN and OSCE recommendations the Ombudsman Institute’s activity should conform with UN Paris Principles which determine general criteria of independence and efficiency of national human rights protection institute operation. In view of this as well as to reinforce the human rights protection activity of Ombudsman it is necessary to develop and adopt the Law of RK «On Human Rights Plenipotentiary in the Republic of Kazakhstan».

The degree of country democratization is determined by the extent of protecting human rights and freedoms. Therefore, the democratic state should consistently ensure the observance of human rights and by all means implement in practice international standards of human rights and freedoms.

In the course of upgrading the national legislation and law enforcement practice in the country it is necessary to create all conditions for the meaningful
participation of all actors of civil society in discussion of draft laws, other regulatory and legal acts concerning human rights and freedoms.

Promoting a dialogue on parity terms will facilitate strengthening the forms of public control of human rights observance in the activity of law enforcement agencies and upgrading all elements of public human rights protection mechanism.

In order to strengthen the state and public human rights protection mechanisms it is recommended to implement the relevant recommendations of the Treaty UN Committees made based on the results of reviewing national human rights reports of Kazakhstan, UN Human Rights Council within the Universal Periodic Review, Mr. Manfred Novak, the UN Special Rapporteur Against Tortures, Ms. G. McDugall, independent expert on minorities’ affairs under the UN Office of High Commissioner for Human Rights, Ms. Rachel Rolnik, the UN Special Rapporteur on Adequate Housing.

The Secretariat of the Human Rights Commission under the President of RK extends its sincere gratitude to OSCE Centre in Astana, UN Development Programme in Kazakhstan, OSCE/ODIHR, Constitutional Council of the Republic of Kazakhstan, government agencies and non-governmental human rights based organisations in the Republic of Kazakhstan, international non-governmental organisations, international organisations accredited in Kazakhstan (UNESCO Cluster Office in Almaty, United Nations Office of High Commissioner for Refugees, International Organisation for Migration, UN Children Fund in Kazakhstan (UNICEF), European Commission Country Office in the Republic of Kazakhstan, the Kyrgyz Republic and Republic of Tajikistan), the Country Office of United Nations Office of High Commissioner for Human Rights in Central Asia, the Ministry of Foreign Affairs of RK and the US Department of State, the Permanent Mission of the Republic of Kazakhstan under the United Nations Office and other international organisations in Geneva, the Embassy of Great Britain, Embassy of United States of America, Embassy of Kingdom of the Netherlands, Embassy of Canada, Embassy of Russia, Embassy of Germany, Embassy of Republic of Lithuania, Embassy of Check Republic in Kazakhstan, the Law Department of Saint-Petersburg State University for provided materials which were used in drafting of the present report.

The Secretariat of the Commission also extends its gratitude to international and local experts: Rein Mullerson, Leila Baishina and Sergey Sirotkin for valuable recommendations in the course of drafting of the present report.
Annex 1

Types of applications from the public submitted in writing to the Secretariat of the Human Rights Commission under the President of the Republic of Kazakhstan in 2010

<table>
<thead>
<tr>
<th>Range of issues raised by physical and legal persons in their complaints</th>
<th>Number of complaints</th>
<th>In per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disagreement with judicial acts</td>
<td>359</td>
<td>27,20%</td>
</tr>
<tr>
<td>Actions and omission of law enforcement bodies</td>
<td>198</td>
<td>15,00%</td>
</tr>
<tr>
<td>Action and omission of akims and other public officials from executive and representative bodies</td>
<td>124</td>
<td>9,39%</td>
</tr>
<tr>
<td>Non-enforcement of judicial decisions</td>
<td>86</td>
<td>6,51%</td>
</tr>
<tr>
<td>Housing issues</td>
<td>77</td>
<td>5,83%</td>
</tr>
<tr>
<td>Labour rights abuses</td>
<td>71</td>
<td>5,37%</td>
</tr>
<tr>
<td>Pensions, benefits, financial assistance, compensation, social allowances and other social security issues</td>
<td>65</td>
<td>4,92%</td>
</tr>
<tr>
<td>Disagreement with criminal cases</td>
<td>61</td>
<td>4,62%</td>
</tr>
<tr>
<td>Actions and omission by public officials in educational, cultural, health care and other organizations</td>
<td>49</td>
<td>3,71%</td>
</tr>
<tr>
<td>Complaints against actions and omission of public officials in correctional institutions and against incarceration conditions</td>
<td>46</td>
<td>3,48%</td>
</tr>
<tr>
<td>Actions and omission of public officials in economic entities</td>
<td>39</td>
<td>2,95%</td>
</tr>
<tr>
<td>Education, health care, science and culture</td>
<td>31</td>
<td>2,35%</td>
</tr>
<tr>
<td>Actions and omission of judicial bodies</td>
<td>26</td>
<td>1,97%</td>
</tr>
<tr>
<td>Actions and omission of second-tier banks</td>
<td>18</td>
<td>1,36%</td>
</tr>
<tr>
<td>Violating the rights of shareholders</td>
<td>18</td>
<td>1,36%</td>
</tr>
<tr>
<td>Violating the procedure for reviewing public complaints</td>
<td>17</td>
<td>1,29%</td>
</tr>
<tr>
<td>Violating the rights of oralmans (repatriates)</td>
<td>10</td>
<td>0,76%</td>
</tr>
<tr>
<td>Violating the right to health care</td>
<td>5</td>
<td>0,38%</td>
</tr>
<tr>
<td>Issue</td>
<td>Count</td>
<td>Percentage</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------</td>
<td>------------</td>
</tr>
<tr>
<td>Religious issues</td>
<td>5</td>
<td>0.38%</td>
</tr>
<tr>
<td>Racial/ethnic discrimination</td>
<td>4</td>
<td>0.30%</td>
</tr>
<tr>
<td>Other issues</td>
<td>11</td>
<td>0.83%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1320</td>
<td>100%</td>
</tr>
</tbody>
</table>
Annex 2

Distribution of written applications from physical and legal persons submitted to the Secretariat of the Human Rights Commission under the President of the Republic of Kazakhstan in 2010 by region

<table>
<thead>
<tr>
<th>#</th>
<th>Administrative and territorial unit</th>
<th>Number of complaints</th>
<th>In per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Almaty</td>
<td>249</td>
<td>18.86%</td>
</tr>
<tr>
<td>2</td>
<td>Astana</td>
<td>179</td>
<td>13.56%</td>
</tr>
<tr>
<td>3</td>
<td>Karaganda province</td>
<td>99</td>
<td>7.50%</td>
</tr>
<tr>
<td>4</td>
<td>South Kazakhstan province</td>
<td>91</td>
<td>6.89%</td>
</tr>
<tr>
<td>5</td>
<td>Akmola province</td>
<td>88</td>
<td>6.67%</td>
</tr>
<tr>
<td>6</td>
<td>East Kazakhstan province</td>
<td>81</td>
<td>6.14%</td>
</tr>
<tr>
<td>7</td>
<td>Almaty province</td>
<td>78</td>
<td>5.91%</td>
</tr>
<tr>
<td>8</td>
<td>Kostanay province</td>
<td>56</td>
<td>4.24%</td>
</tr>
<tr>
<td>9</td>
<td>North Kazakhstan province</td>
<td>51</td>
<td>3.86%</td>
</tr>
<tr>
<td>10</td>
<td>Aktyubinsk province</td>
<td>46</td>
<td>3.48%</td>
</tr>
<tr>
<td>11</td>
<td>Jambyl province</td>
<td>46</td>
<td>3.48%</td>
</tr>
<tr>
<td>12</td>
<td>Pavlodar province</td>
<td>43</td>
<td>3.26%</td>
</tr>
<tr>
<td>13</td>
<td>West Kazakhstan province</td>
<td>39</td>
<td>2.95%</td>
</tr>
<tr>
<td>14</td>
<td>Kyzylorda province</td>
<td>29</td>
<td>2.20%</td>
</tr>
<tr>
<td>15</td>
<td>Atyrau province</td>
<td>28</td>
<td>2.12%</td>
</tr>
<tr>
<td>16</td>
<td>Mangystau province</td>
<td>26</td>
<td>1.97%</td>
</tr>
<tr>
<td></td>
<td>Other countries</td>
<td>91</td>
<td>6.89%</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>1320</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
In the cover design
KAMIL MULLASHEV'S
painting was used

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KUANISH OMIRBEK